

guidance outlined in Chapter VII, DMA Manual 5200.1.⁶

(f) *FOUO records.* (1) Information that has not been given a security classification pursuant to the criteria of an Executive order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked FOR OFFICIAL USE ONLY (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(2) The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under FOIA. When such a record is requested, the information in it shall be evaluated to determine whether under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption(s) apply, the record may be released when it is determined that no governmental interest will be jeopardized by its release.

(g) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD component actions enjoy no special status apart from the exemptions under the FOIA.

(h) *Fees.* Chapter VI, DoD 5400.7-R, should be consulted before fees are assessed. Fee application is discussed in paragraph 6-101, fee restrictions in paragraph 6-102, fee waivers in paragraph 6-103 and fee assessment in paragraph 6-104.

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§ 293.6 Responsibilities.

(a) The Director, Public Affairs (DMA(PA)), is designated Freedom of Information Officer (FOIO) and is responsible for administering the FOIA program within DMA. The DMA(PA) is also denial authority for “no record” FOIAs. HQ DMA(PA) will:

(1) Receive, log, and determine administrative action required on all FOIA requests received at HQ DMA. If a record is held by DMA, the FOIO will

forward a copy of the FOIA request to the custodian of the record for comments regarding releasability of the requested record. Following receipt of the custodian's comments and a copy of the requested documents, FOIO will review the comments, make a preliminary releasability determination, and prepare the initial response with coordination by HQ DMA(GC). If it is apparent to the custodian that the material will be released, two copies of the requested record will be forwarded to HQ DMA(PA) (one for release and one for record keeping).

(2) Prepare DD Form 2564, “Annual Report—Freedom of Information Act,” and forward it to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), as directed.

(b) The Chief of Staff, the Deputy General Counsel and the DMA Freedom of Information of Information Act Officer (DMA(PA)) are delegated authority to initially deny release of DMA records. This denial authority is also delegated to Component Directors and Associate General Counsels (AGC) as follows:

(1) AGC AC for the DMA Aerospace Center (DMAAC).

(2) AGC HTC for the DMA Hydrographic/Topographic Center (DMAHTC), DMA Combat Support Center (DMACSC), and the Defense Mapping School (DMS).

(3) AGC SC—for the DMA Reston Center (DMARC), DMA Systems Center (DMASC), and DMA Technical Services Center (DMATSC).

(4) AGC(KL) (DMA Contract Law Office) for contract related issues.

This authority may not be redelegated. A copy of all Component denial letters will be forwarded to HQ DMA(GC).

(c) General Counsel:

(1) HQ DMA(GC) is responsible for all appeals to FOIA actions and will provide HQ DMA(PA) with a copy of the initial appeal letter and DMA's response to it. The DMA Deputy Director (DD) and HQ DMA(GC) are delegated authority to make final determinations on appeals in accordance with the provisions of section 3, chapter V of DoD 5400.7-R.

(2) Coordination with Department of Justice:

⁶See footnote 5 to § 293.5(b)

(i) HQ DMA(GC) will notify the appropriate United States Attorney prior to the release of any FOIA request for records which are pertinent to pending litigation against the United States.

(ii) The office holding records sought under the FOIA shall notify the FOIO whether such records are pertinent to pending or potential litigation involving the United States. The records holder may request the assistance of Counsel in making a determination. The record holder shall advise the FOIO, in writing, whether any of the requested records have been determined to be pertinent to such litigation. Prior to release of such records, HQ DMA(PA) shall notify HQ DMA(GC) of the request. Component FOIOs shall notify the appropriate Associate General Counsel who will notify the United States Attorney, and shall coordinate the release of such records with HQ DMA(GC) and the Department of Justice.

(d) The DMA Director of Human Resources Management (HR) will establish and implement appropriate procedures for responding to any corrective actions recommended by the Office of Personnel Management in cases involving arbitrary or capricious withholding of records by DMA officials pursuant to section 4, chapter V, DoD 5400.7-R. HQ DMA(HR) and HQ DMA(PA) shall implement training and information requirements as outlined in chapter VII, DoD 5400.7-R.

(e) Component PAs will serve as FOIO at the Component level. Components without PAs will appoint a FOIO. Component FOIOs will:

(1) Receive, log, and determine administrative action required for all FOIA requests received at the Component, except those concerning DMA contracts. (See 293.6(e)(2)). If a record is held by the Component, the FOIO will forward a copy of the FOIA request to the custodian of the record for comments regarding releasability of the requested record. Following receipt of the custodian's comments and a copy of the requested documents, the FOIO will review the comments, make a preliminary releasability determination, and prepare the initial response for coordination by the appropriate Associate General Counsel as identified in

§293.6(b). If it is apparent to the records custodian that the material will be released two copies of the requested record will be forwarded to HQ DMA(PA) (one for release and one for record keeping).

(2) Refer all FOIA requests concerning DMA contracts not held at the Component level to DMAHTC(PA), which has the responsibility for processing such requests and for interfacing with the DMA Directorate for Acquisition, Installations and Logistics HQ DMA(AQ) and the DMA Contract Law Office (KL) located at DMAHTC.

(3) Submit DD Form 22564, "Annual Report—Freedom of Information Act" to HQ DMA(PA) by January 15 each year. (See chapter VII of DoD 5400.7-R for guidance.)

(f) All DMA organizations will:

(1) Upon receipt of correspondence which either explicitly or implicitly invokes the FOIA immediately forward such correspondence to HQ DMA(PA) or the Component FOIO.

(2) The record holder will, upon receipt of a FOIA action, immediately review the requested records to determine the releasability or denial under the nine FOIA exemptions contained in 5 U.S.C. 552, as amended. Written comments regarding the releasability of records must be provided to the FOIO forwarding the action within the timeframes specified. Consultation with the FOIO, HQ DMA(GC), and Component AGCs as appropriate, is recommended.

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§293.7 Procedures.

(a) *Mandatory expeditious handling—*

(1) *Record released.* The initial determination of whether to release a record upon request will normally be made and a decision reported to the requester within 10 working days. The record requested will be forwarded promptly, usually with the initial response, provided the requester has met the criteria for release. A sample letter is shown at appendix A to this part 293.

(2) *Interim response.* If the requested record cannot be made available within 10 working days, an interim response will be forwarded. Any delay beyond