

(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

the initial 10 working days may not exceed 10 additional working days and will be authorized only for the reasons described in section 2, chapter V, DoD 5400.7-R. A sample letter is shown at appendix B to this part 293.

(3) *No record.* When providing a “no record” response in answer to a request, the requester must be advised that such a response may be considered to be adverse, and if so interpreted, may be appealed using normal appeal procedures (see §293.7(a)(4)). An additional records search shall be conducted based on the receipt of an appeal to a “no record” response as part of the appellate process.

(4) *Record denied.* If a request for a record is denied, in whole or in part, the requester will be given a written explanation for such a determination by an official designated in §293.6. The requester will also be advised of his/her right to appeal the denial to the HQ DMA(GC) within 60 calendar days from the date of the denial letter. The letter will also include the name and address of the official responsible for the denial. A sample letter is at appendix C to this part 293. All denials must have benefit of a legal review prior to signature.

(5) *Request appealed.* Final determination on appeals will normally be made within 20 working days of receipt by the Deputy Director or General Counsel. If, due to unusual circumstances, additional time is needed to decide the appeal, the final determination may be delayed for the number of working days, not to exceed 10, which were not used as additional time for responding to the initial request. Final denials to provide a requested record will be made in writing by the Deputy Director or General Counsel in accordance with the appeal procedures prescribed in section 3, chapter V, DoD 5400.7-R.

(6) *Request referred.* If the record requested was originated by another agency or Component, it will be referred promptly to the originating agency or Component for disposition. The period allowed for responding to a request misdirected by the requester will not begin until it is received by the referral. A sample letter is shown at appendix D to this part 293.

(b) *Facilities for inspection and copying records.* (1) The handling of all requests from the public to inspect and copy records will be in strict accordance with the procedures prescribed in DoD 5400.7-R. Subject to exemptions contained in 5 U.S.C. 552, as amended, DMA will ensure easy access by the public for inspection and copying of records described in 5 U.S.C. 552, unless such records have been published and copies offered for sale. This inspection and copying will take place in appropriate rooms designated by HQ DMA(PA) and Components.

(2) HQ DMA and Components will make available current indexes which identify material described in paragraph (a)(2) of 5 U.S.C. 552, as amended.

(3) Use of DMA inspection and copying facilities by the public will be made by appointment only. Appointments will normally be requested by letter to FOIA officers or those acting in that capacity.

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**§293.8 Information requirements.**

Reporting requirements prescribed by this part have been assigned Report Control Symbol DD-PA(A)1365. (See chapter VII, DoD 5400.7-R.)

APPENDIX A TO PART 293—SAMPLE LETTER COMPLYING WITH REQUEST

Dear \_\_\_\_\_:

This is in response to your letter of \_\_\_\_\_ in which you requested \_\_\_\_\_ under the Freedom of Information Act, 5 U.S.C. 552, as amended.

After careful review and consideration of your request, we have determined that the record(s) you seek is(are) releasable and is(are) enclosed. Search and duplication costs have been waived. (See Chapter VI, DoD 5400-7-R for guidance on fee assessment.)

Sincerely,  
(Signed)

\_\_\_\_\_  
(Signature block of authorized official)

Enclosure.  
As stated.

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