

(1) DA Form 4948-R (Freedom of Information Act (FOIA/Operations Security) (OPSEC) Desktop Guide) (prescribed in §§ 518.50 and 518.49).

(2) DA Label 87 (For Official Use Only Cover Sheet) (prescribed in §§ 518.41 and 518.44).

(3) DD Form 2086 (Record of Freedom of Information (FOI) Processing Cost) (prescribed in § 518.81).

(4) DD Form 2086-1 (Record of Freedom of Information (FOI) Processing Cost for Technical Data) (prescribed in § 518.92a).

PURPOSE AND APPLICABILITY

§ 518.3 Purpose.

The purpose of this Regulation is to provide policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act and DoD Directive 5400.7 (references (a) and (b)) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This Army regulation implements provisions for access and release of information from all Army information systems (automated and manual) in support of the Information Resources Management Program (AR 25-1).

§ 518.4 Applicability.

(a) This Regulation applies to the Office of the Secretary of Defense (OSD), which includes for the purpose of this Regulation the Joint Staff, Unified Commands, the Military Departments, the Defense Agencies, and the DoD Field Activities (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at enclosure 1 (appendix G).

(b) The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Public Law 86-36 (reference (c)).

(c) This part applies to—

- (1) Active Army.
- (2) Army National Guard.
- (3) U.S. Army Reserve.

(4) Organizations for which the Department of the Army (DA) is the Executive Agent.

(d) This regulation governs written FOIA requests from members of the public. It does not preclude release of personnel or other records to agencies or individuals in the Federal Government for use in official work. Section 518.52(a) gives procedures for release of personnel information to Government agencies outside DOD.

(e) Soldiers and civilian employees of the Department of the Army may, as private citizens, request DA or other agencies' records under the FOIA. They must prepare requests at their own expense and on their own time. They may not use Government equipment, supplies, or postage to prepare personal FOIA requests. It is not necessary for soldiers or civilian employees to go through the chain of command to request information under the FOIA.

(f) Requests for DA records processed under the FOIA may be denied only in accordance with the FOIA (5 U.S.C. 552(b)), as implemented by this regulation. Guidance on the applicability of the FOIA is also found in the Federal Acquisition Regulation (FAR) and in the Federal Personnel Manual (FPM).

(g) Release of some records may also be affected by the programs that created them. They are discussed in the following regulations:

(1) AR 20-1 (Inspector General reports).

(2) AR 27-10 (military justice).

(3) AR 27-20 (claims reports).

(4) AR 27-60 (patents, inventions, and copyrights).

(5) AR 27-40 (litigation: release of information and appearance of witnesses).

(6) AR 36-2 (GAO audits).

(7) AR 40-66 and AR 40-400 (medical records).

(8) AR 70-31 (technical reports).

(9) AR 20-1, AR 385-40, and DA Pam 385-95 (aircraft accident investigations).

(10) AR 195-2 (criminal investigation activities).

(11) AR 190-45 (Military Police records and reports).

(12) AR 360-5 (Army public affairs: public information, general policies on release of information to the public).

(13) AR 380-10 (release of information on foreign nationals).

§ 518.5

(14) AR 381-45 (U.S. Army Intelligence and Security Command investigation files).

(15) AR 385-40 (safety reports and records).

(16) AR 600-85 (alcohol and drug abuse records).

(17) AR 640-10 (military personnel records).

(18) AR 690 series, FPM Supplement 293-31; FPM chapters 293, 294, and 339 (civilian personnel records).

(19) AR 380-5 and DOD 5200.1-R (national security classified information).

(20) Federal Acquisition Regulation (FAR), DOD Federal Acquisition Regulation Supplement (DFARS), and the Army Federal Acquisition Regulation Supplement (AFARS) (procurement matters).

(21) AR 380-5, paragraph 7-101e (policies and procedures for allowing persons outside the Executive Branch to do unofficial historical research in classified Army records).

DOD PUBLIC INFORMATION

§ 518.5 ODISC4 Authority to approve exceptions.

The ODISC4 has the authority to approve exceptions to this part which are consistent with controlling law and regulation. The ODISC4 may delegate this authority in writing to a division chief within the proponent agency who holds the rank of colonel or the civilian equivalent. The approval authority coordinate all questions regarding the scope of authority to approve exceptions with Headquarters Department of the Army, Office of The Judge Advocate General, ATTN: DAJA-AL, Washington, DC 20310-2200.

[56 FR 48932, Sept. 26, 1991, as amended at 56 FR 56010, Oct. 31, 1991]

§ 518.6 Public information.

The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules es-

32 CFR Ch. V (7-1-98 Edition)

tablished by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. (See § 518.36 for clarification.) In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request unless the requested records are in a Privacy Act system of records; such records in a Privacy Act system of records will not be released absent a written request under the FOIA, unless otherwise releasable under the Privacy Act. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

§ 518.7 Control system.

A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation, unless otherwise required by § 518.31.

DEFINITIONS

§ 518.8 Definitions and terms.

As used in this regulation, definitions and terms are listed in appendix F to this part.