



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
1000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-1000

SECNAVINST 5720.42F  
N09B30  
6 January 1999

SECNAV INSTRUCTION 5720.42F

**From:** Secretary of the Navy  
**To:** All Ships and Stations

**Subj:** DEPARTMENT OF THE NAVY FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

**Ref:** (a) 5 U.S.C. 552, "Freedom of Information Act," as amended on 2 Oct 96  
(b) DoD Directive 5400.7, "DoD Freedom of Information Act (FOIA) Program," of 29 Sep 97 (NOTAL)  
(c) DoD 5400.7-R, "DoD Freedom of Information Act Program," of 4 Sep 98 (NOTAL)  
(d) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified, and Subordinate Commands," of 1 Nov 88 (NOTAL)  
(e) SECNAVINST 5820.8A, "Release of Official Information for Litigation Purposes and Testimony by DON Personnel" of 27 Aug 91  
(f) SECNAVINST 5211.5D, "Department of the Navy Privacy Act (PA) Program," of 17 Jul 92  
(g) SECNAVINST 5212.5D, "Navy and Marine Corps Records Disposal Manual" of 22 Apr 98

**Encl:** (1) Table of Contents  
(2) FOIA Definitions and Terms  
(3) FOIA Fees  
(4) FOIA Exemptions  
(5) Form DD 2086, Record of Freedom of Information (FOI) Processing Cost, Jul 1997  
(6) Form DD 2086-1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, Jul 1997  
(7) Form DD 2564, Annual Report Freedom of Information Act, Aug 1998  
(8) Annual FOIA Report Instructions  
(9) FOIA Case Worksheet  
(10) Annual Report Compilation Worksheet

1. **Purpose.** To issue Department of the Navy (DON) policies and procedures for implementing references (a), (b) and (c) and

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promote uniformity in the DON Freedom of Information Act (FOIA) Program. Enclosure (1) is a Table of Contents.

2. Cancellation. SECNAVINST 5720.42E. This instruction implements Electronic FOIA (E-FOIA) and should be read in its entirety.

3. Summary of Changes. Time limits for responding to FOIA requests changed from 10 to 20 working days; appeals must be "postmarked" (vice received) within 60 calendar days; activities unable to respond to requests within the time limits of the FOIA must enter requests into a multitrack processing system (i.e., simple, complex, expedited); activities may no longer use exemption "low (b)(2)" to withhold information from disclosure; activities must adjudicate "foreseeable harm" before claiming exemption (b)(5); activities may choose to make "discretionary" disclosures of information; non-exempt information may be released to a requester, without the requester having to cite FOIA as a means to access the information; Annual FOIA Report has been expanded and is reported by fiscal year with new reporting dates; guidance on establishing electronic reading rooms and websites is addressed; the DON Chief Information Officer (DONCIO) has responsibility for preparing and making publicly available an index of all DON major information systems; the appellate authorities have new addresses; removed resource materials such as sample training package, sample letters, etc., from the instruction and placed on the Navy FOIA website; expanded the list of "Other Reasons" for not responding to a request; redefined FOIA training requirements; removed guidance on For Official Use Only (FOUO) since cognizance has been transferred to the Assistant Secretary of Defense for Command, Control, Communications and Intelligence [Note: activities shall follow reference (c) pending issuance of separate guidance]; and expanded "FOIA Definitions and Terms" [see enclosure (2)].

4. Navy FOIA Website/FOIA Handbook

a. The Navy FOIA website (<http://www.ogc.secnav.hq.navy.mil/foia/index>) is an excellent resource for requesters and FOIA coordinators. It provides connectivity to the Navy's official website, to other FOIA and non/FOIA websites, and to the Navy's electronic reading rooms.

b. FOIA requesters are encouraged to visit the Navy FOIA website prior to filing a request. It features a FOIA Handbook which provides: guidance on how and where to submit requests;

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what's releasable/what's not; addresses for frequently requested information; time limits and addresses for filing appeals, etc. FOIA requesters may also use the electronic FOIA request form on the website to seek access to records originated by the Secretary of the Navy (SECNAV) or the Chief of Naval Operations (CNO).

c. A copy of this instruction and its references are downloadable from the Navy FOIA website. This instruction is also codified at 32 Code of Federal Regulations (CFR) Part 701.

## 5. Applicability

a. The policies and procedures contained in this instruction apply throughout the DON and take precedence over other DON instructions, which may serve to supplement it [i.e., Public Affairs Regulations, Security Classification Regulations, Navy Regulations, Marine Corps Orders, etc.]. Further, issuance of supplementary instructions by DON activities, deemed essential to the accommodation of perceived requirements peculiar to those activities, may not conflict.

b. The FOIA applies to "records" maintained by "agencies" within the Executive Branch of the Federal government, including the Executive Office of the President and independent regulatory agencies. It states that "any person" (U.S. citizen; foreigner, whether living inside or outside the United States; partnerships; corporations; associations; and foreign and domestic governments) has the right enforceable by law, to access Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one or more of the nine FOIA exemptions or one of three special law enforcement exclusions.

c. Neither Federal agencies nor fugitives from justice may use the FOIA to access agency records.

d. Reference (c) directs that the FOIA programs of the U.S. Atlantic Command (USACOM) and the U.S. Pacific Command (USCINCPAC) fall under the jurisdiction of the Department of Defense (DoD) not DON. This policy represents an exception to the policies directed under reference (d).

## 6. Responsibility and Authority

a. The Head, DON PA/FOIA Policy Branch [CNO (N09B30)] has been delegated the responsibility for managing the DON's FOIA

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program, which includes setting FOIA policy and administering, supervising, and overseeing the execution of references (a), (b), and (c).

(1) As principal DON FOIA policy official, CNO (N09B30) issues SECNAVINST 5720.42; oversees the administration of the DON FOIA program; issues and disseminates FOIA policy; oversees the Navy FOIA website; represents the DON at all meetings, symposiums, and conferences that address FOIA matters; writes the Navy's FOIA Handbook; serves on FOIA boards and committees; serves as principal policy advisor and oversight official on all FOIA matters; prepares the DON Annual FOIA Report for submission to the Attorney General; reviews all FOIA appeals to determine trends that impact on DON; reviews all FOIA litigation matters involving the DON and apprises the Director, Freedom of Information and Security Review (DFOISR), DoD of same; responds to depositions and litigation regarding DON FOIA policy under reference (e); reviews/analyzes all proposed FOIA legislation to determine its impact on the DON; develops a Navy-wide FOIA training program and serves as training oversight manager; conducts staff assistance visits/reviews within DON to ensure compliance with reference (a) and this instruction; reviews all SECNAV and OPNAV instructions/forms that address FOIA; and oversees the processing of FOIA requests received by the Secretary of the Navy (SECNAV) and Chief of Naval Operations (CNO), to ensure responses are complete, timely, and accurate. Additionally, N09B30 works closely with other DoD and DON officials to ensure they are aware of highly visible and/or sensitive FOIA requests being processed by the DON.

(2) SECNAV has delegated Initial Denial Authority (IDA) to CNO (N09B30) for requests at the Secretariat and OPNAV level.

b. CMC is delegated responsibility for administering and supervising the execution of this instruction within the Marine Corps. To accomplish this task, the Director of Administrative Resource Management (Code ARAD) serves as the FOIA Coordinator for Headquarters, U.S. Marine Corps, and assists CNO (N09B30) in promoting the DON FOIA Program by issuing a CMC FOIA Handbook; utilizing the CMC FOIA website to disseminate FOIA information; consolidating its activities Annual FOIA Reports and submitting it to CNO (N09B30); maintaining a current list of CMC FOIA coordinators, etc.

c. DONCIO is responsible for preparing and making publicly available upon request an index of all DON major information systems and a description of major information and record

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locator systems maintained by the DON as required by references (a) and (c).

d. FOIA coordinators will:

(1) Implement and administer a local FOIA program under this instruction; serve as principal point of contact on FOIA matters; issue a command/activity instruction that implements SECNAVINST 5740.42F by reference and highlights only those areas unique to the command/activity (i.e., designate the command/activity's FOIA Coordinator and IDA; address internal FOIA processing procedures; and address command/activity level FOIA reporting requirements); receive and track FOIA requests to ensure responses are made in compliance with references (a), (b), (c) and this instruction; provide general awareness training to command/activity personnel on the provisions of reference (a) and this instruction; collect and compile FOIA statistics and submit a consolidated Annual FOIA Report to Echelon 2 FOIA coordinator for consolidation; provide guidance on how to process FOIA requests; and provide guidance on the scope of FOIA exemptions.

(2) Additionally, CMC (ARAD) and Echelon 2 FOIA coordinators will:

(a) Ensure that reading room materials are placed in the activity's electronic reading room and that the activity's website is linked to the Navy FOIA website and the activity's reading room is linked to the Navy's FOIA reading room lobby. Documents placed in the reading room shall also be indexed as a Government Information Locator Service (GILS) record, as this will serve as an index of available records.

(b) Review proposed legislation and policy recommendations that impact the FOIA and provide comments to CNO (N09B30).

(c) Review SECNAVINST 5720.42F and provide recommended changes/comments to CNO (N09B30).

(d) Routinely conduct random staff assistance visits/reviews/self-evaluations within the command and lower echelon commands to ensure compliance with FOIA.

(e) Collect and compile command and feeder reports for the Annual FOIA Report and provide a consolidated report to CNO (N09B30).

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(f) Maintain a listing of their subordinate activities' FOIA coordinators to include full name, address, and telephone (office and fax) and place on their website. [Note: Do not place names of FOIA coordinators who are overseas, routinely deployable or in sensitive units on the website. Instead just list "FOIA Coordinator"].

(g) Notify CNO (N09B30) of any change of name, address, office code and zip code, telephone and facsimile number, and/or e-mail address of Echelon 2 FOIA Coordinators.

(h) Conduct overview training to ensure all personnel are knowledgeable of the FOIA and its requirements. See paragraph 15.

(i) Work closely with the activity webmaster to ensure that information placed on the activity's website does not violate references (a), (c) and (f).

e. Initial Denial Authorities (IDAs). The following officials are delegated to serve as Initial Denial Authorities, on behalf of SECNAV [see enclosure (2) for definition]:

(1) Under Secretary of the Navy; Deputy Under Secretary of the Navy; Assistant Secretaries of the Navy (ASNs) and their principal deputy assistants; Assistant for Administration (SECNAV); Director, Administrative Division (SECNAV); Special Assistant for Legal and Legislative Affairs (SECNAV); Director, Office of Program Appraisal (SECNAV); DONCIO; Director, Small and Disadvantaged Business Utilization (SECNAV); Chief of Information (CHINFO); Director, Navy International Programs Office; Chief of Legislative Affairs; CNO; Vice CNO; Director, Naval Nuclear Propulsion Program (NOON); Director, Navy Staff (N09B); Head, DON PA/FOIA Policy Branch (N09B30); Director of Naval Intelligence (N2); Director of Space, Information Warfare, Command and Control (N6); Director of Navy Test & Evaluation & Technology Requirements (N091); Surgeon General of the Navy (N093); Director of Naval Reserve (N095); Oceanographer of the Navy (N096); Director of Religious Ministries/Chief of Chaplains of the Navy (N097); all Deputy Chiefs of Naval Operations; Chief of Naval Personnel; Director, Strategic Systems Programs; Chief, Bureau of Medicine and Surgery; Director, Office of Naval Intelligence; Naval Inspector General; Auditor General of the Navy; Commanders of the Naval Systems Commands; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Director, Naval Criminal Investigative Service; Deputy

Commander, Naval Legal Service Command; Commander, Navy Personnel Command; Director, Naval Center of Cost Analysis; Commander, Naval Meteorology and Oceanography Command; Director, Naval Historical Center; heads of DON staff offices, boards, and councils; Program Executive Officers; and all general officers.

(2) Within the Marine Corps: CMC and his Assistant, Chief of Staff, Deputy Chiefs of Staff; Director, Personnel Management Division; Fiscal Director of the Marine Corps; Counsel for the Commandant; Director of Intelligence; Director, Command, Communications and Computer Systems Division; Legislative Assistant to the Commandant; Director, Judge Advocate Division; Inspector General of the Marine Corps; Director, Manpower, Plans, and Policy Division; Head, Freedom of Information and Privacy Acts Section, HQMC; Director of Public Affairs; Director of Marine Corps History and Museums; Director, Personnel Procurement Division; Director, Morale Support Division; Director, Human Resources Division; Director of Headquarters Support; commanding generals; directors, Marine Corps districts; commanding officers, not in the administrative chain of command of a commanding general or district director. For each official listed above, the deputy or principal assistant is also authorized denial authority.

(3) JAG and his Deputy and the DON General Counsel (DONGC) and his deputies are excluded from this grant of authorization, since SECNAV has delegated them to serve as his appellate authorities. However, they are authorized to designate IDA responsibilities to other senior officers/officials within JAG and DONGC. DONGC has delegated IDA responsibilities to the Assistant General Counsels and the Associate General Counsel (Litigation).

(4) For the shore establishment and operating forces: All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C) to convene general courts-martial.

(5) IDAs must balance their decision to centralize denials for the purpose of promoting uniform decisions against decentralizing denials to respond to requests within the FOIA time limits. Accordingly, the above listed IDAs are authorized to delegate initial denial authority to subordinate activities for the purpose of streamlining FOIA processing. They may also delegate authority to a specific staff member, assistant, or individuals acting during their absence if this serves the

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purpose of streamlining and/or complying with the time limits of FOIA. [Note: Such delegations shall be limited to comply with reference (b).]

(6) Delegations of IDA authority should be reflected in the activity's supplementing FOIA instruction or by letter, with a copy to CNO (N09B30) or CMC (ARAD), as appropriate.

f. Release Authorities. Release authorities are authorized to grant requests on behalf of the Office of the Secretary of the Navy for agency records under their possession and control for which no FOIA exemption applies; to respond to requesters concerning refinement of their requests; to provide fee estimates; and to offer appeal rights for adequacy of search or fee estimates to the requester.

g. Appellate authorities are addressed in paragraph 15.

7. **FOIA Definitions and Terms**. An comprehensive list of FOIA definitions and terms is provided at enclosure (2).

8. **Policy**

a. Compliance with the FOIA. DON policy is to comply with references (a) through (c) and this instruction in both letter and spirit; conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation; and provide the public with the maximum amount of accurate and timely information concerning its activities.

b. Prompt Action. DON activities shall act promptly on requests when a member of the public complies with the procedures established in this instruction [i.e., files a "perfected request"] and the request is received by the official designated to respond. See paragraph 11 for minimum requirements of the FOIA.

c. Provide Assistance. DON activities shall assist requesters in understanding and complying with the procedures established by this instruction, ensuring that procedural matters do not unnecessarily impede a requester from obtaining DON records promptly.

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## d. Grant Access

(1) DON activities shall grant access to agency records when a member of the public complies with the provisions of this instruction and there is no FOIA exemption available to withhold the requested information [see enclosure (4)].

(2) In those instances where the requester has not cited FOIA, but the records are determined to be releasable in their entirety, the request shall be honored without requiring the requester to invoke FOIA.

## e. Create a Record

(1) A record must exist and be in the possession and control of the DON at the time of the request to be considered subject to this instruction and the FOIA. Accordingly, DON activities need not process requests for records which are not in existence at the time the request is received. In other words, requesters may not have a "standing FOIA request" for release of future records.

(2) There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. However, this is not to be confused with honoring form or format requests (see paragraph 8h). A DON activity, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with enclosure (3).

(3) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, DON activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed when the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in

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this sense, a significant interference with the operation of the DON activity's automated information system would not be a business as usual approach.

f. Disclosures

(1) Discretionary Disclosures. DON activities shall make discretionary disclosures whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. A discretionary disclosure is normally not appropriate for records clearly exempt under exemptions (b)(1), (b)(3), (b)(4), (b)(6), (b)(7)(C) and (b)(7)(F). Exemptions (b)(2), (b)(5), and (b)(7)(A), (b)(7)(B), (b)(7)(D) and (b)(7)(E) are discretionary in nature and DON activities are encouraged to exercise discretion whenever possible. Exemptions (b)(4), (b)(6), and (b)(7)(C) cannot be claimed when the requester is the "submitter" of the information. While discretionary disclosures to FOIA requesters constitute a waiver of the FOIA exemption that may otherwise apply, this policy does not create any legally enforceable right.

(2) Public Domain. Non-exempt records released under FOIA to a member of the public are considered to be in the public domain. Accordingly, such records may also be made available in reading rooms, in paper form, as well as electronically to facilitate public access.

(3) Limited Disclosures. Disclosure of records to a properly constituted advisory committee, to Congress, or to other Federal agencies does not waive a FOIA exemption.

(4) Unauthorized Disclosures. Exempt records disclosed without authorization by the appropriate DON official do not lose their exempt status.

(5) Official versus Personal Disclosures. While authority may exist to disclose records to individuals in their official capacity, the provisions of this instruction apply if the same individual seeks the records in a private or personal capacity.

(6) Distributing Information. DON activities are encouraged to enhance access to information by distributing information on their own initiative through the use of electronic information systems, such as the Government Information Locator Service (GILS).

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g. Honor Form or Format Requests. DON activities shall provide the record in any form or format requested by the requester, if the record is readily reproducible in that form or format. DON activities shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, DON activities shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the DON activities' automated information system. Such determinations shall be made on a case-by-case basis.

h. Authenticate Documents. Records provided under this instruction shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DON activities may charge for the service at a rate of \$5.20 for each authentication.

**9. Reading Rooms.** The FOIA requires that (a) (2) records created on or after 1 November 1996, be made available electronically (starting 1 November 1997) as well as in hard copy, in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. Reference (c) requires that each DoD Component provide an appropriate facility or facilities where the public may inspect and copy or have copied the records held in their reading rooms. To comply, the Navy FOIA website includes links that assist members of the public in locating Navy libraries, online documents, and Navy electronic reading rooms maintained by SECNAV/CNO, CMC, OGC, JAG and Echelon 2 commands. Although each of these activities will maintain their own document collections on their own servers, the Navy FOIA website provides a common gateway for all Navy online resources. To this end, DON activities shall:

a. Establish their reading rooms and link them to the Navy FOIA Reading Room Lobby which is found on the Navy FOIA website.

b. Ensure that responsive documents held by their subordinate activities are also placed in the reading room. [Note: SECNAV/ASN and OPNAV offices shall ensure that responsive documents are provided to CNO (N09B30) for placement in the reading room.]

c. Ensure that documents placed in a reading room are properly excised to preclude the release of personal or contractor-submitted information prior to being made available to the public. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record which is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, a DON activity may publish in the Federal Register a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submitters. In appropriate cases, the DON activity may refer to this description rather than write a separate justification for each deletion. DON activities may remove (a)(2)(D) records from their electronic reading room when the appropriate officials determine that access is no longer necessary.

d. Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, DON activities shall process the FOIA request. However, DON activities have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2)(A), (B), and (C) [reference (a)] records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

e. DON activities may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with FOIA fee guidelines [see enclosure (3)].

f. DON activities shall maintain an index of all available documents. A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically by 31 December 1999. To comply with this requirement, DON activities shall establish a GILS record for each document it places in a reading room. No "(a)(2)" materials issued or adopted after 4 July 1967, that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued or adopted before 4 July

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1967, need not be indexed, but must be made available upon request if not exempted under this instruction.

g. An index and copies of unclassified Navy instructions, forms, and addresses for DON activities (i.e., the Standard Navy Distribution List (SNDL) are located on the Navy Electronics Directives System (<http://neds.nebt.daps.mil/>)).

h. DON material published in the Federal Register, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available by JAG in their FOIA reading room and electronically to the public.

i. Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials may, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

**10. Relationship Between the FOIA and PA.** Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure requesters receive the greatest amount of access rights under both Acts:

a. If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to U.S. citizens and aliens admitted for permanent residence. Reference (f) implements the DON's Privacy Act Program.

b. Requesters who seek records about themselves contained in a PA system of records and who cite or imply only the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

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c. Requesters who seek records about themselves that are not contained in a PA system of records and who cite or imply the PA will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

d. Requesters who seek records about themselves that are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

e. Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the PA and FOIA, will have their requests processed under FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

f. Requesters who seek access to agency records and who cite or imply the FOIA will have their requests and appeals processed under the FOIA.

g. Requesters shall be advised in final responses which Act(s) was (were) used, inclusive of appeal rights.

h. The time limits for responding to the request will be determined based on the Act cited. For example, if a requester seeks access under the FOIA for his or her personal records which are contained in a PA system of records, the time limits of the FOIA apply.

i. Fees will be charged based on the kind of records being requested (i.e., FOIA fees if agency records are requested; PA fees for requesters who are seeking access to information contained in a PA system of record which is retrieved by their name and/or personal identifier).

**11. Processing FOIA Requests.** Upon receipt of a FOIA request, DON activities shall:

a. Review the request to ensure it meets the minimum requirements of the FOIA to be processed.

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(1) Minimum Requirements of a FOIA Request. A request must be in writing; cite or imply FOIA; reasonably describe the records being sought so that a knowledgeable official of the agency can conduct a search with reasonable effort; and if fees are applicable, the requester should include a statement regarding willingness to pay all fees or those up to a specified amount or request a waiver or reduction of fees.

(2) If a request does not meet the minimum requirements of the FOIA, DON activities shall apprise the requester of the defect and assist him/her in perfecting the request. [Note: The statutory 20 working day time limit applies upon receipt of a "perfected" FOIA request.]

b. When a requester or his/her attorney requests personally identifiable information in a record, the request may require a notarized signature or a statement certifying under the penalty of perjury that their identity is true and correct. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject's attorney.

c. Review Description of Requested Record(s)

(1) The FOIA requester is responsible for describing the record he/she seeks so that a knowledgeable official of the activity can locate the record with a reasonable amount of effort. In order to assist DON activities in conducting more timely searches, a requester should endeavor to provide as much identifying information as possible. When a DON activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect in writing. The requester should be asked to provide the type of information outlined below. DON activities are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DON activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the FOIA. The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(a) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

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(b) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(2) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non random search based on the DON activity's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(3) The following guidelines deal with requests for personal records: Ordinarily, when personal identifiers are provided solely in connection with a request for records concerning the requester, only records in Privacy Act system of records that can be retrieved by personal identifiers need be searched. However, if a DON activity has reason to believe that records on the requester may exist in a record system other than a PA system, the DON activity shall search the system under the provisions of the FOIA. In either case, DON activities may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the PA. If the records are required to be released under the FOIA, the PA does not bar its disclosure.

(4) The previous guidelines notwithstanding, the decision of the DON activity concerning reasonableness of description must be based on the knowledge of its files. If the description enables the DON activity personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle a DON activity to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the staff to reasonably ascertain and locate which records are being requested.

d. Review Request to Determine if FOIA Fees May Be Applicable

(1) FOIA fee issues shall be resolved before a DON activity begins processing a FOIA request.

(2) FOIA fees shall be at the rates prescribed at enclosure (3).

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(3) If fees are applicable, a requester shall be apprised of what category of requester he/she has been placed and provided a complete breakout of fees to include any and all information provided before fees are assessed [e.g., first two hours of search and first 100 pages of reproduction have been provided without charge.]

(4) Forms DD 2086 [for FOIA requests] and 2086-1 [for FOIA requests for technical data] serve as an administrative record of all costs incurred to process a request; actual costs charged to a requester [i.e., search, review, and/or duplication and at what salary level and the actual time expended]; and as input to the Annual FOIA Report. Requesters may request a copy of the applicable form to review the time and costs associated with the processing of a request.

(5) Final response letters shall address whether or not fees are applicable or have been waived. A detailed explanation of FOIA fees is provided at enclosure (3).

e. Control FOIA Request. Each FOIA request should be date stamped upon receipt; given a case number; and entered into a formal control system to track the request from receipt to response. Coordinators may wish to conspicuously stamp, label, and/or place the request into a brightly colored folder/cover sheet to ensure it receives immediate attention by the action officer.

f. Enter Request into Multitrack Processing System. When a DON activity has a significant number of pending requests that prevents a response determination being made within 20 working days, the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing.

(1) DON activities may establish as many queues as they wish, however, at a minimum three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request: one track for simple requests, one track for complex requests, and one track for expedited processing. Determinations as to whether a request is simple or complex shall be made by each DON activity.

(2) DON activities shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing), an opportunity to limit in writing by

hard copy, facsimile, or electronically the scope of the request in order to qualify for the fastest queue.

(3) This multitrack processing system does not obviate the activity's responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(4) Referred requests shall be processed according to the original date received by the initial activity and then placed in the appropriate queue.

(5) Establish a separate queue for expedited processing. A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the office which will determine whether to grant expedited access. Once the determination has been made to grant expedited processing, DON activities shall process the request as soon as practicable. Actions by DON activities to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review.

(a) *Compelling need* means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(b) *Compelling need* also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

(c) *Urgently needed* means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public

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interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(d) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(e) Other reasons that merit expedited processing by DON activities are an imminent loss of substantial due process rights and humanitarian need. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. Humanitarian need means that disclosing the information will promote the welfare and interests of mankind. A demonstration of humanitarian need shall also be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. Both statements mentioned above must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for either of these reasons, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(7) These same procedures also apply to requests for expedited processing of administrative appeals.

g. Respond to Request within FOIA Time Limits. Once an activity receives a "perfected" FOIA request, it shall inform the requester of its decision to grant or deny access to the requested records within 20 working days. Activities are not necessarily required to release records within the 20 working days, but access to releasable records should be granted promptly thereafter and the requester apprised of when he/she may expect to receive a final response to his/her request. Naturally, interim releases of documents are encouraged if appropriate. Sample response letters are provided on the Navy FOIA website.

(1) If a significant number of requests, or the complexity of the requests prevents a final response

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determination within the statutory time period, DON activities shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system. A final response determination is notification to the requester that the records are released, or will be released by a certain date, or the records are denied under the appropriate FOIA exemption(s) or the records cannot be provided for one or more of the "other reasons" (see paragraph 10m). Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged; however, such actions do not constitute a final response determination under FOIA.

(2) Formal Extension. In those instances where a DON activity cannot respond within the 20 working day time limit, the FOIA provides for extension of initial time limits for an additional 10 working days for three specific situations: the need to search for and collect records from separate offices; the need to examine a voluminous amount of records required by the request; and the need to consult with another agency or agency component. In such instances, naval activities shall apprise requesters in writing of their inability to respond within 20 working days and advise them of their right to appeal to the appellate authority. [Note: Formal extension letters require IDA signature.]

(3) Informal Extension. A recommended alternative to taking a formal extension is to call the requester and negotiate an informal extension of time with the requester. The advantages include the ability to agree on a mutually acceptable date to respond that exceeds a formal extension of an additional 10 working days, and the letter of confirmation does not require the signature of an IDA. Additionally, it does not impact on the additional days the appellate authority may take when responding to a FOIA appeal.

#### h. Conduct a Search for Responsive Records

(1) Conduct a search for responsive records, keeping in mind a test for reasonableness [i.e., file disposition requirements set forth in reference (g)]. This includes making a manual search for records as well as an electronic search for records. Do not assume that because a document is old, it does not exist. Rather, ensure that all possible avenues are considered before making a determination that no record could be

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found [i.e., such as determining if the record was transferred to a federal records center for holding].

(2) Requesters Can Appeal "Adequacy of Search." To preclude unnecessary appeals, you are encouraged to detail your response letter to reflect the search undertaken so the requester understands the process. It is particularly helpful to address the records disposal requirements set forth in reference (g) for the records being sought.

i. Review Documents for Release. Once documents have been located, the originator or activity having possession and control is responsible for reviewing them for release and coordinating with other activities/agencies having an interest. The following procedures should be followed:

(1) Sort documents by originator and make necessary referrals [see paragraph 12].

(2) Documents for which the activity has possession and control should be reviewed for release. If the review official determines that all or part of the documents requested require denial, and the head of the activity is an IDA, he/she shall respond directly to the requester. If, however, the activity head is not an IDA, then the request, a copy of the responsive documents (unexcised), proposed redacted copy of the documents, and a detailed explanation regarding their release must be referred to the IDA for a final release determination and the requester shall be notified in writing of the transfer.

(3) Documents for which the activity does not have possession and control, but has an interest, should be referred to the originator along with any recommendations regarding release [see paragraph 12].

j. Process Non-Responsive Information in Responsive Documents. DON activities shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should DON activities desire to withhold non-responsive information, the following steps shall be accomplished:

(1) Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

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(2) If the responsive record is unclassified and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information which is not exempt. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempted [state the appropriate exemption(s).] Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) If the responsive record is classified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all unclassified responsive and non-responsive information which is not exempt. If the non-responsive information is exempt, follow the procedures provided above. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552 (b)(1) and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

k. Withholding/Excising Information

(1) DON records may only be withheld if they qualify for exemption under one or more of the nine FOIA exemptions/three exclusions and it is determined that a foreseeable harm to an interest protected by those exemptions would result if the information is released. There are nine FOIA exemptions. See enclosure (4) for the scope of each exemption.

(2) Although a FOIA exemption may apply, DON activities are encouraged to consider discretionary disclosures of information when an exemption permits such disclosure [see paragraph 8f(1).]

(3) Excising Documents. The excision of information within a document should be made so that the requester can readily identify the amount of information being withheld and the reason for the withholding. Accordingly, ensure that any deletion of information is bracketed and all applicable exemptions listed. In those instances, where multiple pages of

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documents are determined to be exempt from disclosure in their entirety, indicate the number of pages being denied and the basis for the denial.

l. Reasonably Segregable Information. DON activities must release all "reasonably segregable information" when the meaning of these portions is not distorted by deletion of the denied portions, and when it reasonably can be assumed that a skillful and knowledgeable person could not reasonably reconstruct excised information. When a record is denied in whole, the response to the requester will specifically state that it is not reasonable to segregate portions of the record for release.

m. Making a Discretionary Disclosure. A discretionary disclosure to one requester may preclude the withholding of similar information under a FOIA exemption if subsequently requested by the same individual or someone else [see paragraph 8f(1).] The following suggested language should be included with the discretionary disclosure of any record that could be subject to withholding: "The information you requested is subject to being withheld under section (b)( ) of the FOIA. The disclosure of this material to you by the DON is discretionary and does not constitute a waiver of our right to claim this exemption for similar records in the future."

n. Other Reasons. There are 10 reasons for not complying with a request for a record under FOIA:

(1) No Record. The DON activity conducts a reasonable search of files and fails to identify records responsive to the request. [Note: Requester must be advised that he/she may appeal the adequacy of search and provided appeal rights. Response letter does not require signature by IDA.]

(2) Referral. The request is referred to another DoD/DON activity or to another executive branch agency for their action. [Note: Referral does not need to be signed by IDA.]

(3) Request Withdrawn. The requester withdraws request. [Note: Response letter does not require signature by IDA.]

(4) Fee-Related Reason. Requester is unwilling to pay fees associated with the request; is past due in payment of fees from a previous request; or disagrees with the fee estimate. [Note: Requester must be advised that he/she may appeal the fee estimate. Response letter does not require signature by IDA.]

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(5) Records Not Reasonably Described. A record has not been described with sufficient particularity to enable the DON activity to locate it by conducting a reasonable search. [Note: Response letter does not require signature by IDA.]

(6) Not a Proper FOIA Request for Some Other Reason. When the requester fails unreasonably to comply with procedural requirements, other than those fee-related issues described above, imposed by this instruction and/or other published rules or directives. [Note: Response letter does not require signature by IDA.]

(7) Not an Agency Record. When the requester is provided a response indicating that the requested information was "not an agency record" within the meaning of the FOIA and this instruction. [Note: Response letter does not require signature by IDA.]

(8) Duplicate Request. When a request is duplicative of another request which has already been completed or currently in process from the same requester. [Note: Response letter does not require signature by IDA.]

(9) Other (Specify). When a FOIA request cannot be processed because the requester does not comply with published rules, other than for those reasons described above. DON activities must document the specific discrepancy. [Note: Response letter does not require signature by IDA.]

(10) Denial of Request. The record is denied in whole or in part in accordance with procedures set forth in references (a) and (c) and this instruction. [Note: The requester is advised that he/she may appeal the determination and response letter must be signed by IDA.]

o. Writing a Response Letter. FOIA response letters should contain the following information:

(1) The date of the request; when it was received; if records were not located, where the search was conducted and what the records disposal requirements are for those records.

(2) Cut-off Dates. Normally, DON activities shall consider the date of receipt of a FOIA request as the cut-off date for a records search. Where a DON activity employs a particular cut-off date, however, it should give notice of that date in the response letter to the requester.

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(3) If a request is denied in whole or in part, the denial response letter should cite the exemption(s) claimed; if possible, delineate the kinds of information withheld (i.e., social security numbers, date of birth, home addresses, etc.) as this may satisfy the requester and thus eliminate an appeal; provide appeal rights, and be signed by an IDA. However, there is no requirement that the response contain the same documentation necessary for litigation (i.e., FOIA requesters are not entitled to a Vaughn index [see definition at enclosure (2)] during the administrative process.

(4) The fees charged or waived; if fees were charged, what category was the requester placed in and provide a breakout of the fees charged (i.e., the first 2 hours of search were waived and so you are being charged for the remaining 4 hours of search at \$25 per hour, or \$100; the first 100 pages of reproduction were waived and the remaining 400 pages being provided were charged at \$.15 per page, resulting in \$60 in reproduction fees, for a total of \$160). These figures are derived from Form DD 2086 (FOIA Fees) or Form DD 2086-1 (Technical Data Fees).

(5) Sample response letters are provided on the Navy FOIA website.

p. Press Responses. Ensure responses being made to the press are cleared through public affairs channels.

q. Special Mail Services. DON activities are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

## 12. Referrals

a. The DoD/DON FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DON activity receives a request for records originated by another DoD/DON activity, it should contact the activity to determine if it also received the request, and if not, obtain concurrence to refer the request. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed.

b. While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DON activities from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. Should this situation occur, DON activities should coordinate with the originator of the information prior to making a release determination.

c. A request received by a DON activity having no records responsive to a request shall be referred routinely to another DoD/DON activity, if the other activity has reason to believe it has the requested record. Prior to notifying a requester of a referral to another DoD/DON activity, the DON activity receiving the initial request shall consult with the other DoD/DON activity to determine if that activity's association with the material is exempt. If the association is exempt, the activity receiving the initial request will protect the association and any exempt information without revealing the identity of the protected activity. The protected activity shall be responsible for submitting the justifications required in any litigation.

d. Any DON activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DON activities making referrals of requests or records shall include with the referral, a point of contact by name, a telephone number (commercial and DSN), and an e-mail address (if available).

e. A DON activity shall refer a FOIA request for a record that it holds but was originated by another Executive Branch agency, to them for a release determination and direct response to the requester. The requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements.

f. A DON activity may refer a request for a record that it originated to another activity or agency when the activity or agency has a valid interest in the record, or the record was created for the use of the other agency or activity. In such situations, provide the record and a release recommendation on the record with the referral action. DON activities should include a point of contact and telephone number in the referral letter. If that organization is to respond directly to the requester, apprise the requester of the referral.

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g. Within the DON/DoD, a DON activity shall ordinarily refer a FOIA request and a copy of the record it holds, but that was originated by another DON/DoD activity or that contains substantial information obtained from that activity, to that activity for direct response, after direct coordination and obtaining concurrence from the activity. The requester shall be notified of such referral. In any case, DON activities shall not release or deny such records without prior consultation with the activity, except as provided in paragraph 12c.

h. Activities receiving a referred request shall place it in the appropriate processing queue based on the date it was initially received by the referring activity/agency.

i. Agencies outside the DON that are subject to the FOIA

(1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request. (Note: DON activities shall not refer documents originated by entities outside the Executive Branch of Government (e.g., Congress, State and local government agencies, police departments, private citizen correspondence, etc.), to them for action and direct response to the requester, since they are not subject to the FOIA).

(2) A DON activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DON for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DON activity may only respond directly to the requester after coordination with the outside agency.

### **13. Processing Requests Received from Governmental Officials**

a. Members of Congress. Many constituents seek access to information through their Member of Congress. Members of Congress who seek access to records on behalf of their constituent are provided the same information that the constituent would be entitled to receive. There is no need to verify that the individual has authorized the release of his/her

record to the Congressional member, since the Privacy Act's "blanket routine use" for Congressional inquiries applies.

b. Privileged Release to U.S. Government Officials. DON records may be authenticated and released to U.S. Government officials if they are requesting them in their official capacity on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial. To ensure adequate protection of these documents, DON activities shall inform officials receiving records under the provisions of this subparagraph that those records are exempt from public release under FOIA. DON activities shall also mark the records as "Privileged" and "Exempt from Public Disclosure" and annotate any special handling instructions on the records. Because such releases are not made under the provisions of the FOIA, they do not impact on future decisions to release/deny requests for the same records to other requesters. Examples of privileged releases are:

(1) In response to a request from a Committee or Subcommittee of Congress, or to either House sitting as a whole.

(2) To the Federal Courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(3) To other Federal agencies, both executive and administrative, as determined by the head of a DON activity or designee.

c. State or Local Government Officials. Requests from State or local government officials for DON records are treated the same as any other requester.

d. Non-FOIA Requests from Foreign Governments. Requests from foreign governments that do not invoke the FOIA shall be referred to the appropriate foreign disclosure channels and the requester so notified. See paragraph 14c regarding processing FOIA requests from foreign governments and/or their officials.

**14. Processing Specific Kinds of Records.** DON activities that possess copies or receive requests for the following kinds of records shall promptly forward the requests to the officials named below and if appropriate apprise the requester of the referral:

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a. Classified Records. Executive Order 12,958 governs the classification of records.

(1) Glomar Response. In the instance where a DON activity receives a request for records whose existence or nonexistence is itself classifiable, the DON activity shall refuse to confirm or deny the existence or non-existence of the records. This response is only effective as long as it is given consistently. If it were to be known that an agency gave a "Glomar" response only when records do exist and gave a "no records" response otherwise, then the purpose of this approach would be defeated. A Glomar response is a denial and exemption (b)(1) is cited and appeal rights are provided to the requester.

(2) Processing classified documents originated by another activity. DON activities shall refer the request and copies of the classified documents to the originating activity for processing. If the originating activity simply compiled the classified portions of the document from other sources, it shall refer, as necessary, those portions to the original classifying authority for their review and release determination and apprise that authority of any recommendations they have regarding release. If the classification authority for the information cannot be determined, then the originator of the compiled document has the responsibility for making the final determination. Records shall be identified consistent with security requirements. Only after consultation and approval from the originating activity, shall the requester be apprised of the referral. In most cases, the originating activity will make a determination and respond directly to the requester. In those instances where the originating activity determines a Glomar response is appropriate, the referring agency shall deny the request.

b. Courts-Martial Records of Trial. The release/denial authority for these records is the Office of the Judge Advocate General (Code 20), Washington Navy Yard, Building 111, Washington, DC 20374-1111. Promptly refer the request and/or documents to this activity and apprise the requester of the referral.

c. Foreign Requests/Information

(1) FOIA requests received from foreign governments/foreign government officials should be processed as follows:

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(a) When a DON activity receives a FOIA request for a record in which an affected DoD/DON activity has a substantial interest in the subject matter, or the DON activity receives a FOIA request from a foreign government, a foreign citizen, or an individual or entity with a foreign address, the DON activity receiving the request shall provide a copy of the request to the affected DON activity.

(b) Upon receiving the request, the affected activity shall review the request for host nation relations, coordinate with Department of State as appropriate, and if necessary, provide a copy of the request to the appropriate foreign disclosure office for review. Upon request by the affected activity, the DON activity receiving the initial request shall provide a copy of releasable records to the affected activity. The affected activity may further release the records to its host nation after coordination with Department of State if release is in the best interest of the United States Government. If the record is released to the host nation government, the affected DON activity shall notify the DON activity which initially received the request of the release to the host nation.

(c) Such processing must be done expeditiously so as not to impede the processing of the FOIA request by the DON activity that initially received the request.

(2) Non-U.S. Government Records (i.e., records originated by multinational organizations such as the North Atlantic Treaty Organization (NATO), the North American Air Defense (NORAD) and foreign governments which are under the possession and control of DON shall be coordinated prior to a final release determination being made. Coordination with foreign governments shall be made through the Department of State.

d. Government Accounting Office (GAO) Documents

(1) On occasion, the DON receives FOIA requests for GAO documents containing DON information, either directly from requesters or as referrals from GAO. Since the GAO is outside of the Executive Branch and therefore not subject to FOIA, all FOIA requests for GAO documents containing DON information will be processed by the DON under the provisions of the FOIA.

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(2) In those instances when a requester seeks a copy of an unclassified GAO report, DON activities may apprise the requester of its availability from the Director, GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877-1450 under the cash sales program.

e. Judge Advocate General Manual (JAGMAN) Investigative Records. These records are no longer centrally processed. Accordingly, requests for investigations should be directed to the following officials:

(1) JAGMAN Investigations conducted prior to 1 Jul 95 - to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374-5066.

(2) Command Investigation - to the command that conducted the investigation.

(3) Litigation-Report Investigation - to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374-5066.

(4) Court or Board of Inquiry - to the Echelon 2 commander over the command that convened the investigation.

f. Mailing Lists. Numerous FOIA requests are received for mailing lists of home addresses or duty addresses of DON personnel. Processing of such requests is as follows:

(1) Home addresses are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters' addresses without the occupant's name [i.e., exemption (b)(6) applies].

(2) Disclosure of lists of names and duty addresses or duty telephone numbers of persons assigned to units that are stationed in foreign territories, routinely deployable, or sensitive, has also been held by the courts to constitute a clearly unwarranted invasion of personal privacy and must be withheld from disclosure under 5 U.S.C. 552(b)(6). General officers and public affairs officers information is releasable. Specifically, disclosure of such information poses a security threat to those service members because it reveals information about their degree of involvement in military actions in support of national policy, the type of Navy and/or Marine Corps units to which they are attached, and their presence or absence from

households. Release of such information aids in the targeting of service members and their families by terrorists or other persons opposed to implementation of national policy. Only an extraordinary public interest in disclosure of this information can outweigh the need and responsibility of the DON to protect the tranquility and safety of service members and their families who repeatedly have been subjected to harassment, threats, and physical injury. Units covered by this policy are:

(a) Those located outside of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands, and American Samoa.

(b) Routinely deployable units - Those units that normally deploy from homeport or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises. This includes routinely deployable ships, aviation squadrons, operational staffs, and all units of the Fleet Marine Force (FMF). Routinely deployable units do not include ships undergoing extensive yard work or those whose primary mission is support of training, e.g., yard craft and auxiliary aircraft landing training ships.

(c) Units engaged in sensitive operations. Those primarily involved in training for or conduct of covert, clandestine, or classified missions, including units primarily involved in collecting, handling, disposing, or storing of classified information and materials. This also includes units engaged in training or advising foreign personnel. Examples of units covered by this exemption are nuclear power training facilities, SEAL Teams, Security Group Commands, Weapons Stations, and Communications Stations.

(3) Except as otherwise provided, lists containing names and duty addresses of DON personnel, both military and civilian, who are assigned to units in the Continental United States (CONUS) and U.S. territories shall be released regardless of who has initiated the request.

(4) Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (ARAD) prior to responding to requests, including those from Members of Congress. The foregoing policy should be considered when weighing the releasability of the address or telephone number of a specifically named individual.

(5) DON activities are reminded that e-mail addresses that identify an individual who is routinely deployable,

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overseas, or assigned to a sensitive unit should not be made available. Additionally, organizational charts for these kinds of units and activities that identify specific members should not be placed on the Internet.

g. Medical Quality Assurance Documents. The Chief, Bureau of Medicine and Surgery (BUMED) is the release/denial authority for all naval medical quality assurance documents as defined by Title 10, United States Code, Section 1102. Requests for medical quality assurance documents shall be promptly referred to BUMED and the requester notified of the referral.

h. Mishap Investigation Reports (MIRs). The Commander, Naval Safety Center (NAVSAFECEN) is the release/denial authority for all requests for mishap investigations or documents which contain mishap information. All requests or documents located which apply shall be promptly referred to the Commander, Naval Safety Center, Code 503, 375 A Street, Norfolk, VA 23511-4399 for action. Telephonic liaison with NAVSAFECEN is encouraged. The requester shall be notified of the referral.

i. National Security Council (NSC)/White House

(1) DON activities that receive requests for records of NSC, the White House, or the White House/Military Office (WHMO) shall process the requests.

(2) DON records in which the NSC or the White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DON activity files, shall be forwarded to CNO (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000. N09B30, in turn, will coordinate the request directly with DFOISR, so DFOISR can coordinate the request with NSC, White House, or WHMO. After coordination, the records will be returned to the DON activity for their direct response to the requester. During the interim, DON activities should notify the requester that they are coordinating their request and a response will therefore be delayed.

j. Naval Attache Documents/Information. The Director, Defense Intelligence Agency (DIA) has the responsibility for reviewing for release/denial any naval attache-originated documents/information. Accordingly, FOIA requests for naval attache documents or copies of the documents located in DON files or referred in error to a DON activity shall be promptly referred to the Chief, Freedom of Information Act Staff, Defense Intelligence Agency (SVI-1), Washington, DC 20340-5100 for

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action and direct response to the requester. Please ensure that the requester is notified in writing of the transfer to DIA.

k. Naval Audit Service Reports. The Director, Naval Audit Service is the release/denial authority for their reports. All requests or documents located which apply shall be promptly referred to the Director, Naval Audit Service, 5611 Columbia Pike, NASSIF Building, Falls Church, VA 22041-5080 for action. The requester shall be notified of the referral.

l. Naval Criminal Investigative Service (NCIS) Reports. The Director, NCIS is the release/denial authority for all NCIS reports/information. All requests for and copies of NCIS reports located in DON activity files shall be promptly referred to the Director, NCIS (Code OOJF), Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388-5380 for action and, if appropriate, the requester so notified. Telephonic liaison with NCIS Headquarters is strongly encouraged.

m. Naval Inspector General (NAVINGEN) Reports

(1) NAVINGEN is the release/denial authority for all investigations and inspections conducted by or at the direction of NAVINGEN and for any records held by any command that relate to Navy hotline complaints that have been referred to the NAVINGEN. Accordingly, such actions shall be promptly referred to the Naval Inspector General (Code OOL), Building 200, Room 100, Washington Navy Yard, 901 M Street, SE, Washington, DC 20374-5006 for action and, if appropriate, the requester so notified.

(2) Requests for local command inspector general reports which have not been referred to NAVINGEN should be processed by the command that conducted the investigation and NAVINGEN advised as necessary.

(3) The Deputy Naval Inspector General for Marine Corps Matters (DNIGMC) is the release/denial authority for all investigations conducted by the DNIGMC. Requests for local Marine Corps command Inspector General reports shall be coordinated with the DNIGMC.

n. Naval Nuclear Propulsion Information (NNPI). The Director, Naval Nuclear Propulsion Program [CNO (NOONB)/NAVSEA (08)] is the release/denial authority for all information and requests concerning NNPI. Naval activities receiving such

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requests are responsible for searching their files for responsive records. If no documents are located, the naval activity shall respond to the requester and provide CNO (NOONB) with a copy of the request and response. If documents are located, the naval activity shall refer the request, responsive documents, and a recommendation regarding release to the Director, Naval Nuclear Propulsion Program (NOONB), 2000 Navy Pentagon, Washington, DC 20350-2000, who will make the final release determination to the requester, after coordinating the release through DoD activities.

o. Naval Telecommunications Procedures (NTP) Publications. The Commander, Naval Computer and Telecommunications Command is the release/denial authority for NTP publications. All requests or documents located which apply shall be promptly referred to the Commander, Naval Computer and Telecommunications Command (Code NOOJ), 4401 Massachusetts Avenue, NW, Washington, DC 20394-5460 for action and direct response to the requester.

p. News Media Requests

(1) Respond promptly to requests received from news media representatives through public information channels, if the information is releasable under FOIA. This eliminates the requirement to invoke FOIA and may result in timely information being made available to the public.

(2) In those instances where records/information are not releasable, either in whole or in part, or are not currently available for a release consideration, Public Affairs Officers shall promptly advise the requester of where and how to submit a FOIA request.

(3) DON activities receiving and processing requests from members of the press shall ensure that responses are cleared through their public affairs channels.

q. Records Originated by Other Government Agencies

(1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the cognizant agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request.

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(2) A DON activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DON for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DON activity may only respond directly to the requester after coordination with the outside agency.

r. Submitter Documents

(1) When a request is received for a record containing confidential commercial information that was submitted to the Government, the requirements of E.O. 12600 shall apply. Specifically, the submitter shall be notified of the request (telephonically, by letter, or by facsimile) and afforded a reasonable amount of time (anywhere from 2 weeks to a month depending on the circumstances) to present any objections concerning release, unless it is clear there can be no valid basis for objection. For example, the record was provided with actual or presumptive knowledge of the submitter that it would be made available to the public upon request.

(2) The DON activity will evaluate any objections and negotiate with the submitter as necessary. When a substantial issue has been raised, the DON activity may seek additional information from the submitter and afford the submitter and requester reasonable opportunities to present their arguments in legal and substantive issues prior to making an agency determination.

(3) The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official at least equivalent in rank to the IDA and the submitter advised that he or she may seek a restraining order or take court action to prevent the release. The submitter is given 10 days to take action.

(4) Should the submitter take such action, the requester will be notified and no action will be taken on the request until the outcome of the court action is known.

s. Technical Documents Controlled by Distribution Statements B, C, D, E, F, or X shall be referred to the controlling DoD office for review and release determination.

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**15. FOIA Appeals/Litigation**

a. Appellate Authorities. SECNAV has delegated his appellate authority to the JAG and the DONGC to act on matters under their cognizance. Their responsibilities include adjudicating appeals made to SECNAV on: denials of requests for copies of DON records or portions thereof; disapproval of a fee category claim by a requester; disapproval of a request to waive or reduce fees; disputes regarding fee estimates; reviewing determinations not to grant expedited access to agency records, and reviewing "no record" determinations when the requester considers such responses adverse in nature. They have the authority to release or withhold records, or portions thereof; to waive or reduce fees; and to act as required by SECNAV for appeals under reference (a) and this instruction. The JAG has further delegated this appellate authority to the Assistant Judge Advocate General (Civil Law). The DONGC has further delegated this appellate authority to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

(1) In their capacity, appellate authorities will serve as principal points of contact on DON FOIA appeals and litigation; receive and track FOIA appeals and ensure responses are made in compliance with references (a), (b), (c) and this instruction; complete responsive portions of the Annual FOIA Report that addresses actions on appeals and litigation costs during the fiscal year and submit to CNO (N09B30); provide CNO (N09B30) with a copy of all appeal determinations as they are issued; and keep CNO (N09B30) informed in writing of all FOIA lawsuits as they are filed against the DON. Appellate authorities shall facsimile a copy of the complaint to CNO (N09B30) for review and provide updates to CNO (N09B30) to review and disseminate to DFOISR.

(2) OGC's cognizance: Legal advice and services to SECNAV and the Civilian Executive Assistants on all matters affecting DON; legal services in subordinate commands, organizations, and activities in the areas of business and commercial law, real and personal property law, intellectual property law, fiscal law, civilian personnel and labor law, environmental law, and in coordination with the JAG, such other legal services as may be required to support the mission of the Navy and the Marine Corps, or the discharge of the General Counsel's responsibilities; and conducting litigation involving the areas enumerated above and oversight of all litigation affecting the DON.

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(3) JAG's cognizance: In addition to military law, all matters except those falling under the cognizance of the DONGC.

b. Appellants may file an appeal if they have been denied information in whole or in part; have been denied a waiver or reduction of fees; have been denied/have not received a response within 20 working days; or received a "no record" response or wish to challenge the "adequacy of a search" that was made. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disputes regarding fee estimates, review of an expedited basis determination not to grant expedited access to agency records, or any determination found to be adverse in nature by the requester.

c. Action by the Appellate Authority

(1) Upon receipt, JAG (34) or Assistant to the General Counsel (FOIA) will promptly notify the IDA of the appeal. In turn, the IDA will provide the appellate authority with the following documents so that a determination can be made: a copy of the request, responsive documents both excised and unexcised, a copy of the denial letter, and supporting rationale for continued withholding. IDAs shall respond to the appellate authority within 10 working days.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When the appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system based, at a minimum, on the three processing tracks established for initial requests.

(3) If the appeal is received by the wrong appellate authority, the time limits do not take effect until it is received by the right one. If, however, the time limit for responding cannot be met, the appellate authority shall advise the appellant that he/she may consider his/her administrative remedies exhausted. However, he/she may await a substantive response without prejudicing his/her right of judicial remedy. Nonetheless, the appellate authority will continue to process the case expeditiously, whether or not the appellant seeks a court order for release of records. In such cases, a copy of the response will be provided to the Department of Justice (DOJ).

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## d. Addresses for Filing Appeals:

(1) General Counsel of the Navy, 720 Kennon Street SE, Room 214, Washington, DC 20374-5012, or

(2) Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

e. Appeal Letter Requirements. The appellant shall file a written appeal with the cognizant appellate authority (i.e., DONGC or JAG). The appeal should include a copy of the DON response letter and supporting rationale on why the appeal should be granted.

## f. Consultation/Coordination

(1) The Special Assistant for Naval Investigative Matters and Security [CNO (N09N)] may be consulted to resolve inconsistencies or disputes involving classified records.

(2) Direct liaison with officials within DON and other interested Federal agencies is authorized at the discretion of the appellate authority, who also coordinates with appropriate DoD and DOJ officials.

(3) SECNAV, appropriate Assistant or Deputy Assistant Secretaries, and CNO (N09B30) shall be consulted and kept advised of cases with unusual implications. CHINFO shall be consulted and kept advised on cases involving public affairs implications.

(4) Final refusal involving issues not previously resolved or that the DON appellate authority knows to be inconsistent with rulings of other DoD components ordinarily should not be made before consultation with the DoD Office of General Counsel (OGC).

(5) Tentative decisions to deny records that raise new and significant legal issues of potential significance to other agencies of the Government shall be provided to the DoD OGC.

g. Copies of Final Appeal Determinations. Appellate authorities shall provide copies of final appeal determinations to the activity affected and to CNO (N09B30) as appeals are decided.

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h. Denying an Appeal. The appellate authority must render his/her decision in writing with a full explanation as to why the appeal is being denied along with a detailed explanation of the basis for refusal with regard to the applicable statutory exemption(s) invoked. With regard to denials involving classified information, the final refusal should explain that a declassification review was undertaken and based on the governing Executive Order and implementing security classification guides (identify the guides), the information cannot be released and that information being denied does not contain meaningful portions that are reasonably segregable. In all instances, the final denial letter shall contain the name and position title of the official responsible for the denial and advise the requester of the right to seek judicial review.

i. Granting an Appeal. The appellate authority must render his/her decision in writing. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the releasable records should be promptly forwarded to the requester after compliance with any procedural requirements, such as payment of fees.

j. Processing Appeals Made Under PA and FOIA. When denials have been made under the provisions of PA and FOIA, and the denied information is contained in a PA system of records, the appeal shall be processed under both PA and FOIA. If the denied information is not maintained in a PA system of records, the appeal shall be processed under FOIA.

k. Response Letters

(1) When an appellate authority makes a final determination to release all or a portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response at a minimum shall include the following:

(a) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under the provisions of the FOIA, and with respect to other issues appealed for which an adverse determination was made.

(b) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(c) The final denial shall include the name and title or position of the official responsible for the denial.

(d) In the case of appeals for total denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.

(e) When the denial is based upon an exemption (b)(3) statute, the response, in addition to citing the statute relied upon to deny the information, shall state whether a court has upheld the decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld.

(f) The response shall advise the requester of the right to judicial review.

#### 1. Time Limits/Requirements

(1) A FOIA appeal has been received by a DON activity when it reaches the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(2) The requester shall be advised to file an appeal so that it is postmarked no later than 60 calendar days after the date of the initial denial letter. If no appeal is received, or if the appeal is postmarked after the conclusion of the 60 day period, the case may be considered closed. However, exceptions may be considered on a case-by-case basis.

(3) In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the date of the final response. Requests and responsive records that are denied shall be retained for a period of 6 years to meet the statute of limitations requirement.

(4) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DON appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum on the three processing tracks established for initial requests. [See paragraph 11f(2)].

(5) If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request.

(6) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The appellate authority shall continue to process the case expeditiously.

(m) FOIA litigation: The appellate authority is responsible for providing CNO (N09B30) with a copy of any FOIA litigation filed against the DON and any subsequent status of the case. CNO (N09B30) will, in turn, forward a copy of the complaint to DFOISR for their review.

## **16. Annual FOIA Report**

a. Background. The Annual FOIA Report is compiled on a fiscal year basis (1 October through 30 September).

b. DON activities shall use enclosure (5) for FOIA fee/time computations and enclosure (6) for technical data fee/time computations.

c. The Report Control System (RCS) for this report is DD-DA&M(A)1365(5720). A copy of DD 2564 and the Annual FOIA Report Instructions are provided at enclosures (7) and (8).

d. Enclosures (9) and (10) are provided for use in compiling the Annual FOIA Report. The DoD Composite Rate Schedule, which is used to compute military personnel costs, is

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published annually and will be posted on the Navy FOIA website for use in compiling statistics.

e. Report dates. CNO (N09B30) is required to submit the consolidated DON report to DFOISR by 30 November of each year. To facilitate the compilation and analysis of the DON feeder reports, the following schedule is established:

(1) By 25 October of each year: IDAs subordinate to CMC and Echelon 2 commands will submit their feeder reports on DD 2564 to CMC or the Echelon 2 command (as applicable). The report may be faxed. At the discretion of the Echelon 2 command, negative responses may be submitted verbally, by fax, or e-mail.

(2) By 10 November of each year: CMC (ARAD), Echelon 2, JAG, and OGC will submit their consolidated reports on DD 2564 for their headquarters and subordinate activities to CNO (N09B30). The report may be faxed. (NOTE: items 3 and 4 will be responded to by the appellate authorities: JAG and DONGC.)

(3) Exempt from reporting. Units afloat and aviation squadrons who have not received or responded to any FOIA requests during the reporting period are exempt from reporting. Negative reports are not required.

f. Electronic Publication. The consolidated DON Annual FOIA Report will be made available to the public in either paper or electronic format. The electronic format will be posted on the Navy FOIA website. DON activities may place their individual FOIA report submission on their website.

## **17. Education and Training**

a. CNO (N09B30), CMC (ARAD), JAG, OGC, and Echelon 2 FOIA coordinators are responsible for ensuring their personnel have a general understanding and appreciation of the DON FOIA Program. The purpose of educational and training programs is to promote a positive attitude among DON personnel and raise the level of understanding and appreciation of the DON FOIA Program, thereby improving the interaction with members of the public and improving the public trust in DON. Training programs should be designed to fit the particular requirements of personnel and dependent upon their degree of involvement in the implementation of this instruction. The program should be designed to accomplish the following objectives:

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(1) Familiarize personnel with the requirements of the FOIA and its implementation by this instruction;

(2) Instruct personnel who act in FOIA matters concerning the provisions of this instruction, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information;

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities; and,

(4) Apprise personnel of the penalties of noncompliance with the FOIA.

b. FOIA coordinators must initially receive specialized training on the FOIA. Thereafter, it is recommended they attend yearly updates to keep abreast of the changes to the FOIA program. Training is available from both government and non-governmental sources. Consult the Navy FOIA website for a current schedule of available training, training sources, yearly updates, and sample training packages.

c. Coordinate with CNO (N09B30) and CMC (ARAD), as appropriate, to avoid duplication and to obtain maximum distribution and effectiveness. CNO (N09B30) and CMC (ARAD) are available to assist in coordinating, formulating, providing, or identifying FOIA training sources.

d. Resource materials

(1) The Navy FOIA website has downloadable training materials.

(2) "Freedom of Information Act Guide and Privacy Act Overview" published annually by DOJ, provides an in-depth analysis of the FOIA supported by case law. See Navy FOIA website.

(3) "FOIA Update" is a quarterly newsletter published by the DOJ which addresses major FOIA issues, has a "Questions and Answers" column, and highlights upcoming training. This publication is available on the DOJ FOIA website, which is linked from the Navy FOIA website.

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18. Records Retention. FOIA records are maintained by fiscal year and are not permanent records. Reference (g) [See Standard Subject Identification Code (SSIC) 5720] sets forth the approved records disposal schedule for FOIA records.

19. Action

a. Echelon 2 Commands and Headquarters Marine Corps: Within 180 days, issue a supplementing instruction that implements this instruction. The supplementing instruction need not duplicate the SECNAVINST, but rather highlight those matters unique to the activity (i.e., designate the activity's FOIA Coordinator, highlight activity processing procedures and reporting requirements, address FOIA fee remittance and receipt procedures, etc.).

b. All Addressees: Designate a FOIA coordinator who has responsibility for the FOIA program. Ensure his/her name, complete mailing address, telephone and fax numbers (commercial and DSN) are provided to the Echelon 2 or CMC (ARAD) FOIA manager. Echelon 2 and CMC (ARAD) shall ensure that addresses for their FOIA offices are posted on their FOIA websites. [Note: For individuals overseas, routinely deployable, or in sensitive units, list "FOIA Coordinator" in place of the name.]

20. Report and Forms

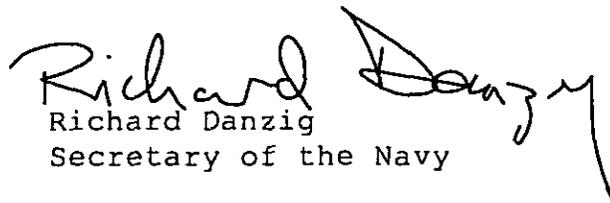
a. The Annual FOIA Report is assigned report control symbol DD-PA(A)1365 (5720) and is approved per SECNAVINST 5214.2B. Because the report is mandated by statute, DON activities shall continue collecting statistics until notification that the report has been eliminated.

b. DD 2086, Record of Freedom of Information (FOI) Processing Cost, Jul 1997, enclosure (5); DD 2086-1, Record of Freedom of Information Act (FOI) Processing Cost for Technical Data, Jul 1997, enclosure (6); DD 2564, Annual Report Freedom of Information Act, Aug 1998, enclosure (7); FOIA Case Worksheet, enclosure (9); and Annual Report Compilation Worksheet,

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enclosure (10) are downloadable from the Navy FOIA website and may be locally reproduced.

  
Richard Danzig  
Secretary of the Navy

Distribution:

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