



Department of Defense

DIRECTIVE

NUMBER 5400.07

January 2, 2008

Incorporating Change 1, July 28, 2011

DA&M

SUBJECT: DoD Freedom of Information Act (FOIA) Program

- References:
- (a) DoD Directive 5400.07, "DoD Freedom of Information Act (FOIA) Program," October 28, 2005 (hereby cancelled)
 - (b) Section 552 of title 5, United States Code
 - (c) DoD 5400.7-R, "DoD Freedom of Information Act Program," September 4, 1998
 - (d) Executive Order 13392, "Improving Agency Disclosure of Information," December 19, 2005
 - (e) through (j), see Enclosure 1

1. PURPOSE

This Directive:

- 1.1. Reissues Reference (a) to update policies and responsibilities for implementing the DoD FOIA Program in accordance with Reference (b) (commonly known as the "FOIA").
- 1.2. Continues to authorize Reference (c) to implement the FOIA Program.
- 1.3. Implements Reference (d) within the Department of Defense.
- 1.4. Continues to delegate authorities and responsibilities for the effective administration of the FOIA Program consistent with DoD Directive 5105.53 (Reference (e)).

2. APPLICABILITY

This Directive applies to:

- 2.1. The Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff *and the Joint Staff*, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

2.2. National Security Agency/Central Security Service records, unless the records are exempt according to section 402 of title 50, United States Code (U.S.C.) (Reference (f)).

2.3. Defense Intelligence Agency, National Reconnaissance Office, and National Geospatial-Intelligence Agency records, unless the records are exempt according to section 403-5e of Reference (f); sections 424 and 455 of title 10, U.S.C. (Reference (g)); or other applicable law.

3. POLICY

It is DoD policy to:

3.1. Promote *transparency and accountability by adopting a presumption in favor of disclosure in all decisions involving the FOIA; responding promptly to requests in a spirit of cooperation; and by taking affirmative steps to make public trust by making* the maximum amount of information available to the public, ~~in both hard copy and electronic formats, on the operation and activities of the Department of Defense,~~ consistent with the DoD responsibility to protect national security and other sensitive DoD information.

3.2. Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOIA.

3.3. Make available, according to the procedures established by Reference (c), DoD records requested by a member of the public who explicitly or implicitly cites the FOIA.

3.4. Answer promptly all other requests for DoD information and records under established procedures and practices.

3.5. Release DoD records to the public unless those records are exempt from disclosure as outlined in Reference (b).

3.6. Process requests by individuals for access to records about themselves contained in a Privacy Act system of records according to the procedures set forth in DoD 5400.11-R (Reference (h)) and this Directive, as amplified by Reference (c).

3.7. Provide FOIA requesters with citizen-centered ways to learn about the FOIA process, about DoD records that are publicly available, and about the status of a FOIA request and appropriate information about the DoD response.

3.8. Work with the Office of Government Information Services to resolve disputes between FOIA requesters and DoD.

4. RESPONSIBILITIES

4.1. The Director, Administration and Management, (DA&M) shall:

4.1.1. Serve as the DoD Chief FOIA Officer in accordance with Reference (~~ab~~).

4.1.2. Direct and oversee the DoD FOIA Program to ensure compliance with the policies and procedures that govern administration of the program.

4.1.3. Designate the FOIA Public Liaisons for the Department of Defense in accordance with Reference (e**b**). The FOIA Public Liaisons for OSD, the Office of the Chairman of the Joint Chiefs of Staff, and the Combatant Commands shall be appointed from the Defense Freedom of Information Policy Office (DFOIPO).

4.1.4. Prepare and submit to the Attorney General the DoD Annual Freedom of Information Act Report as required by Reference (b) and other reports as required by Reference (d).

4.1.5. Serve as the appellate authority for appeals to the decisions of the respective Initial Denial Authorities within OSD, the Office of the Chairman of the Joint Chiefs of Staff, the DoD Field Activities (listed in Reference (c)), and the Combatant Commands. The DA&M may delegate this responsibility to an appropriate member of the DA&M or Washington Headquarters Services (WHS) staff.

4.1.6. Prepare and maintain a DoD issuance and other discretionary information to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

4.1.7. Provide input to the DoD Open Government Plan as required by paragraph 3.a.vi. of Office of Management and Budget Memorandum M-10-06 (Reference (i)).

4.2. The Director, WHS, under the authority, direction, and control of the DA&M, shall administer the FOIA Program, inclusive of training, for OSD and the Office of the Chairman of the Joint Chiefs of Staff.

4.3. The General Counsel of the Department of Defense shall:

4.3.1. Provide uniformity in the legal interpretation of this Directive.

4.3.2. Ensure affected OSD legal advisors, public affairs officers, and legislative affairs officers are aware of releases through litigation channels that may be of significant public, media, or Congressional interest or of interest to senior DoD officials.

4.3.3. Establish procedures to centralize processing of FOIA litigation documents when deemed necessary.

4.4. The Under Secretary of Defense for Intelligence shall establish uniform procedures regarding the declassification of national security information made pursuant to requests invoking the FOIA.

4.5. The Heads of the DoD Components shall:

4.5.1. Internally administer the DoD FOIA Program; publish any instructions necessary for the administration of this Directive within their Components that are not prescribed by this Directive or by other DA&M issuances in the Federal Register.

4.5.2. Serve as, or appoint another Component official as, the FOIA appellate authority for the Component.

4.5.3. Establish one or more FOIA Requester Service Centers as prescribed by Reference (d).

4.5.4. Submit names of personnel to the DA&M for designation as FOIA Public Liaisons.

4.5.5. Ensure that their respective chains of command, affected legal advisors, public affairs officers, and legislative affairs officers are aware of releases through the FOIA, inclusive of releases through litigation channels, that may be of significant public, media, or Congressional interest or of interest to senior DoD officials *and that their FOIA offices provide DFOIPO with information copies of significant FOIA requests and advance notification of proposed responses.*

4.5.6. Conduct training on the provisions of this Directive and References (b) and (c) for officials and employees who implement the FOIA.

4.5.7. *Ensure their FOIA Public Liaisons* submit to *the DA&M, through* DFOIPO, *DoD Component* inputs to the DoD FOIA Annual Report prescribed in References (c) ~~and (d)~~ *and other reports or data requested by the DA&M.*

4.5.8. Make the records specified in section 552(a)(2) of Reference (b), unless such records are published and copies are offered for sale, available for public inspection and copying in an appropriate facility or facilities according to rules published in the Federal Register. These records shall be made available to the public in both hard copy and electronic formats.

4.5.9. Maintain and make current indices of all records available for public inspection and copying as required by section 552(a)(2) of Reference (b).

5. INFORMATION REQUIREMENTS

The reporting requirements of Reference (c) have been assigned Report Control Symbol DD-DA&M(A)1365 in accordance with DoD 8910.1-M (Reference (i)).

6. RELEASABILITY. UNLIMITED. This Directive is approved for public release. ~~Copies may be obtained through~~ *and is available on* the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE

This Directive is effective immediately.

A handwritten signature in black ink that reads "Gordon England". The signature is written in a cursive style with a large, looped "G" and "E".

Gordon England

Enclosure

E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD Directive 5105.53, "Director of Administration and Management (*DA&M*)," ~~November 23, 1998~~ *February 26, 2008*
- (f) Sections 402 and 403-5e of title 50, United States Code
- (g) Sections 424 and 455 of title 10, United States Code
- (h) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
- (i) *Office of Management and Budget Memorandum M-10-06, "Open Government Directive," December 8, 2009*
- (j) DoD 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 30, 1998