position fixing accuracy of 2 to 4 nautical miles, 95% of the time. In addition, the study provides information about anomalies and signal interference patterns in the region.

Dated: March 19, 1990.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90-6628 Filed 3-22-90; 8:45 am]

BILLING CODE 491-014-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 222; Revision 2]

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: The Assistant Commissioner (Criminal Investigation) and anyone acting for him/her is delegated authority to approve the making of application for court orders to monitor pagers and facsimile transceivers. The Chief, Criminal Investigation Division (District Directors in streamlined districts), the Director, Office of Enforcement (Criminal Investigation), National Office and anyone acting for these persons is delegated authority to approve the monitoring of tone-only pagers. The text of the delegation order appears below.

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Courtney Todd, CI:P:T, Room 2425, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone: (202) 566-3942 (not a toll-free number).

Authority to Approve the Use of Pen Registers and to Monitor Communications

Pursuant to the Authority vested in the Commissioner of Internal Revenue by Treasury Order 150-10 and 18 U.S.C. 2516, the authority to approve the use of pen registers; to authorize the application for issuance of a court order to monitor communications via display-pagers, facsimile transceivers and tone and voice pagers (non-aural portion of the communications); and to approve the monitoring of communications via tone-only pagers is delegated as follows:

1. The Assistant Commissioner (Criminal Investigation) and anyone acting for him/her is authorized to approve the use of pen registers in the investigations involving felony violations within the jurisdiction of Criminal Investigation, wagering violations and for locating fugitives from justice charged with a violation who were the subject of an investigation by Criminal Investigation. Authorization by the Assistant Commissioner (Criminal Investigation) for the use of a pen register is contingent upon the obtaining of a court order prior to installation of the pen register. This authority may not be redelegated.

2. The Assistant Commissioner (Criminal Investigation) and anyone acting for him/her is authorized to approve the application for issuance of a court order to monitor communications via display pagers, facsimile transceivers and tone and voice pagers (non-aural portion of the communications). This authority may not be redelegated.

3. The Chief, Criminal Investigation Division (District Directors in streamlined districts), the Director, Office of Enforcement (Criminal Investigation), National Office and anyone acting for these persons may authorize the monitoring of communications via tone-only pagers. This authority may not be redelegated.

4. Delegation Order No. 222, (Rev. 1), effective October 28, 1987, is superseded.

Dated: January 30, 1990.

Approved:

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 90-6604 Filed 3-22-90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 57
Friday, March 23, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, March 29, 1990 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes.
Notice of Proposed Rulemaking:
Computerized and General Election Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 90-6761 Filed 3-21-90; 11:24 am]
BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 20, 1990.

Amendment to Previously Announced Item

TIME AND DATE: 10:00 a.m., Wednesday, March 21, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Part Open/Part Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

1. *Utah Power & Light Company*, Docket No. WEST 89-161-R. (Issues include whether the judge erred in ruling that Utah Power violated 30 CFR 75.400.)

The Commission will consider and act upon the following in closed session:

2. *Greenwich Collieries, Division of Pennsylvania Mines Corporation*, Docket Nos. PENN 85-188-R, etc. (Issues include whether the judge erred in ruling that orders of withdrawal issued pursuant to section 104(d)(1) of the Mine Act were invalid.)

The Commissioners determined unanimously that this change was necessary and that no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90-6791 Filed 3-21-90; 12:50 pm]
BILLING CODE 6735-01-M

INTERSTATE COMMERCE COMMISSION

Open Special Conference

TIME AND DATE: 10:00 a.m., Friday, March 23, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS:

Short Notice of Open Special Conference

The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31505

Rio Grand Industries, Inc.—Purchase and related trackage rights—Soo Line Railroad Company between Kansas City, MO and Chicago, IL

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,
Secretary.

[FR Doc. 90-6785 Filed 3-21-90; 12:38 pm]
BILLING CODE 7035-01-M

RESOLUTION TRUST CORPORATION

Withdrawal of Agenda Item from Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "Discussion Agenda" of the open meeting of the Resolution Trust Corporation Board of Directors scheduled to be held at 2:30 p.m. on Tuesday, March 20, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC:

Memorandum re: RTC Early Assistance Policy

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr. Executive Secretary of the Corporation, at (202) 898-7102.

Dated: March 19, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 90-6736 Filed 3-21-90; 9:02 am]
BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 57
Friday, March 23, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-11

[FTR Amdt. 5]

RIN 3090-AD45

Federal Travel Regulations; Relocation Income Tax Allowance

Correction

In rule document 90-1060 beginning on page 1674 in the issue of Thursday, January 18, 1990, make the following correction:

On page 1675, in the table, in the fourth column, the rate for entry "45. Utah" should read "7.35".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amdt. 6]

Federal Travel Regulation; Maximum Per Diem Rates

Correction

In rule document 90-1061 beginning on page 1946 in the issue of Friday, January 19, 1990 make the following corrections:

1. On page 1948, in the table, in the fourth column, the M&IE rate for Chicago, Illinois should read "34".

Note: This correction was inaccurately published at 55 FR 5945, February 20, 1990 as item 1. in FTR Amendment 6.

2. On page 1952, in the parenthetical which follows "VIRGINIA", "see" was inadvertently capitalized.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-258L]

Presciption Drug Marketing Act of 1987; Latter Setting Forth Agency Policies; Availability

Correction

In notice document 90-4894 beginning on page 7778 in the issue of Monday, March 5, 1990, make the following correction:

On page 7778, in the third column, under **DATES**, in the first and second lines, "April 4, 1990" should read "May 4, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-00-4212-13; AZA-24207]

Realty Action; Exchange of Public Land, Maricopa County, Arizona

Correction

In notice document 89-30340 appearing on page 67 in the issue of Tuesday, January 2, 1990, make the following corrections:

In the 2nd column, under *Township 5 North, Range 1 West*, the 4th and 5th lines should read "sec. 4, SW¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼, E½SW¼SE¼SE¼,", and the 18th line should read "sec. 22, N½N½, SW¼NW¼."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-017101]

Proposed Continuation of Withdrawal, Idaho

Correction

In notice document 90-3555 appearing on page 5516 in the issue of Thursday, February 15, 1990, make the following correction:

In the 2nd column, under **BOISE MERIDIAN**, the 25th line should read "N.7°52'43"W., 3,530.72 ft. to Station No. 1402;".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-0528]

Proposed Continuation of Withdrawal; Idaho

Correction

In notice document 90-3556 beginning on page 5516 in the issue of Thursday, February 15, 1990, make the following correction:

On page 5517, in the first column, the fourth line under "Baumgartner Recreation Area" should read "SW¼ E¼; and SW¼E¼SE¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-38]

Proposed Revision of Transition Area; Clovis NM

Correction

In proposed rule document 89-25451 beginning on page 43971 in the issue of Monday, October 30, 1989, make the following correction:

§ 71.181 [Corrected]

On page 43972, in the first column, in the last line, "75 miles" should read "7.5 miles".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE25

Exchange Rates for Foreign Currencies

Correction

In rule document 90-5111 beginning on page 8140 in the issue of Wednesday,

March 7, 1990, make the following correction:

§ 3.32 [Corrected]

On page 8140, in the third column, in § 3.32 introductory text, in the second line, "pension of" should read "pension or".

BILLING CODE 1505-01-D

federal register

Friday
March 23, 1990

Part II

Department of Defense

Department of the Army

32 CFR Part 518

Release of Information and Records From Army Files; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

Release of Information and Records From Army Files

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This rule revises 32 CFR part 518, chapter V, (7-1-88) (Army Regulation 340-17), Release of Information and Records From Army Files, dated 1 October 1982. This final rule also changes the current name of the program and Army Regulation number to: Army Regulation 25-55, The Army Freedom of Information Act Program. Army Regulation 25-55 implements provisions for access and release of information from all Army information systems (automated and manual) in support of the Information Resources Management Program. It is published to promote uniformity on the DoD Freedom of Information Program. This revision removes DD Form 2086 and DD Form 2086-1 from the printed regulation. This revision establishes an Internal Control Review Checklist for management of the program.

EFFECTIVE DATE: April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Petrarca, HQDA (SAIS-PS), Washington, DC 20310-0107, Telephone: (202) 697-5796.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Army revises 32 CFR part 518 which is derived from Army Regulation 340-17 which implements within the Department of the Army the provisions of Department of Defense Directives 5400.7-R and 5400.7 series, Department of Defense Freedom of Information Act Program (32 CFR part 286) pertaining to action on requests for release of departmental records under the Freedom of Information Act (5 U.S.C. 552). This rule is being published by the Department of the Army for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 518.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 518

Freedom of Information Act.

32 CFR part 518 is revised as follows:

PART 518—THE ARMY FREEDOM OF INFORMATION ACT PROGRAM

Authority: 5 U.S.C. 551, 552, 552a, 5101–5108, 5110–5113, 5115, 5332–5334, 5341–5342, 5504–5509, 7154; 10 U.S.C. 130, 1102, 2320–2321, 2328, 18 U.S.C. 798, 3500; 31 U.S.C. 3710; 35 U.S.C. 181–188; 42 U.S.C. 2162; 44 U.S.C. 33; and Executive Order 12600.

Subpart A—General Provisions

References

§ 518.1 References.

(a) Title 5, United States Code, section 552.

(b) DoD Directive 5400.7, "DoD Freedom of Information Act Program," May 13, 1988.

(c) Title 50, United States Code, section 402, "National Security Information Exemption."

(d) DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982.

(e) DoD 5400.11–R, "Department of Defense Privacy Program," August 1983, authorized by DoD Directive 5400.11, June 9, 1982.

(f) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Commands," November 1, 1988.

(g) Title 5, United States Code, section 551, "Administrative Procedures Act."

(h) DoD 5200.1–R, "DoD Information Security Program Regulation," January 1987, authorized by DoD Directive 5200.1, June 7, 1982.

(i) Title 35, United States Code, section 181–188, "Patent Secrecy."

(j) Title 42, United States Code, Section 2162, "Restricted Data and Formerly Restricted Data."

(k) Title 18, United States Code, section 98, "Communication Intelligence."

(l) Title 18, United States Code, section 3500, "The Jencks Act."

(m) DoD Directive 5230.24, "Distribution Statements on Technical Documents," March 18, 1987.

(n) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978.

(o) DoD Directive 7650.1, "General Accounting Office Access to Records," August 26, 1982.

(p) ACP–121 (United States Supplement 1).

(q) Title 44, United States Code, Chapter 33, "Disposal of Records."

(r) DoD Instruction 7230.7, "User Charges, January 29, 1985.

(s) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.

(t) DoD Directive 7750.5, "Management and Control of Information Requirements," August 7, 1986.

(u) DoD Instruction 5000.22, "Guide to Estimating Costs of Information Requirements," October 17, 1974.

(v) DoD 7220.9–M, "Department of Defense Accounting Manual," October 1983, authorized by DoD Instruction 7220.9, October 22, 1981.

(w) DoD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984.

(x) DoD Directive 5230.9, "Clearance of DoD Information for Public Release," April 2, 1982.

(y) DoD Directive 7650.2, "General Accounting Office Audits and Reports," July 19, 1985.

(z) Title 10, United States Code, section 2328, "Release of Technical Data."

(aa) Title 10, United States Code, section 130, "Authority to Withhold from Public Disclosure Certain Technical Data."

(bb) Title 10, United States Code, section 2320–2321, "Rights in Technical Data."

(cc) Title 10, United States Code, section 1102, "Confidentiality of Medical Quality Records: Qualified Immunity Participants."

(dd) DoD Federal Acquisition Regulation Supplement (DFARS), 48 CFR subpart 227.4, "Technical Data, Other Data, Computer Software and Copyrights," May 18, 1987.

(ee) Executive Order 12600, "Predisclosure Procedures for Confidential Commercial Information," June 23, 1987.

(ff) Title 31, United States Code, section 3717.

(gg) Title 5, United States Code, section 552a, as amended, "The Privacy Act of 1974."

(hh) DoD 5000.12–M, "DoD Manual for Standard Data Elements," October 1986, authorized by DoD Instruction 5000.12, April 27, 1965.

(ii) DoD Instruction 5400.10, "OSD Implementation of DoD Freedom of Information Act Program," August 20, 1981.

§ 518.2 References (Army).

(a) *Publications.* Publications are available in the Army FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale, see § 518.18. Publications are also offered for sale to the general public through the National Technical Information Services, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(1) AR 1–20 (Legislative Liaison) (cited in §§ 518.40 and 518.42).

(2) AR 20–1 (Inspector General Activities and Procedures) (cited in §§ 518.4, 518.54 and Appendix B).

(3) AR 25–1 (The Army Information Resources Management Program) (cited in §§ 518.3 and 518.26).

(4) AR 25–9 (Army Data Management and Standards Program) (cited in § 518.94).

(5) AR 25–400–2 (The Modern Army Recordkeeping System (MARKS)) (cited in §§ 518.26, 518.47, 518.62, and Appendix B).

(6) AR 27–20 (Claims) (cited in §§ 518.4 and 518.47).

(7) AR 36–2 (Processing Internal and External Audit Reports and Follow-up on Findings and Recommendations) (cited in § 518.4).

(8) AR 40–66 (Medical Record and Quality Assurance Administration) (cited in § 518.14).

(9) AR 40–400 (Patient Administration) (cited in § 518.4).

(10) AR 105–31 (Record Communications) (cited in § 518.42).

(11) AR 195–2 (Criminal Investigation Activities) (cited in §§ 519–4 and 519.52).

(12) AR 340–21 (The Army Privacy Program) (cited in §§ 518.18, 518.33 and 518.52).

(13) AR 360–5 (Public Information) (cited in §§ 518.4 and 518.50).

(14) AR 380–5 (Department of the Army Information Security Program) (cited in §§ 518.4, 518.33, 518.49 and 518.52).

(15) AR 530–1 (Operations Security [OPSEC]) (cited in §§ 518.49 and 518.50).

(16) AR 600–85 (Alcohol and Drug Abuse Prevention and Control Program) (cited in §§ 518.4 and 518.50).

(b) *Related publications.* A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

(1) AR 5–3 (Installation Management and Organization).

(2) AR 10–series (Organization and Functions).

(3) AR 25–3 (Army Life Cycle Management of Information Systems).

(4) AR 27–10 (Military Justice).

(5) AR 27–40 (Litigation).

(6) AR 27–60 (Patents, Inventions, and Copyrights).

(7) AR 60–20 (Army and Air Force Exchange Service (AAFES) Operating Policies) (AFR 147–14).

(8) AR 70–31 (Standards for Technical Reporting).

(9) AR 190–45 (Military Police Law Enforcement Reporting).

(10) AR 380–10 (Department of the Army Policy for Disclosure of Information, Visits, and Accreditation of Foreign Nationals (U)).

(11) AR 381–45 (Investigative Records Repository (IRR)).

(12) AR 385–40 (Accident Reporting and Records).

(13) AR 640–10 (Individual Military Personnel Records).

(14) DA Pam 25–30 (Consolidated Index of Army Publications and Blank Forms).

(15) DA Pam 25–51 (The Army Privacy Program-Systems Notices and Exemption Rules).

(16) DA Pam 385–95 (Aircraft Accident Investigation and Reporting).

(17) DoD 4500.11–PH (Defense Privacy Board Advisory Opinions).

(18) Title 10, United States Code, section 128, "Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information".

(c) Prescribed forms.

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

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

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

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

Purpose and Applicability

§ 518.3 Purpose.

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

§ 518.4 Applicability.

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

(b) The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Title 50, United States Code, section 402 (reference (c)).

(c) This AR applies to—

(1) Active Army.

(2) Army National Guard.

(3) U.S. Army Reserve.

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

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

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

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

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

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

(2) AR 27–10 (military justice).

(3) AR 27–20 (claims reports).

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

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

(6) AR 36–2 (GAO audits).

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

(8) AR 70–31 (technical reports).

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

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

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

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

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

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

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

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

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

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

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

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

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

DoD Public Information

§ 518.5 Public information.

The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. (See § 518.32 for clarification.) In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request unless the requested records are in a system of records; such records in a system of records will not be released absent a written request under the FOIA, unless otherwise releasable under the Privacy Act. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

§ 518.6 Control system.

(a) A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act (reference (gg)), when the request is from the subject of the records requested (see § 518.18, and the records requested are in a system of records).

(b) A request under the Privacy Act of 1974 (5 U.S.C. 552a) for access to records should also be processed as a FOIA request. If any part of the requested material is to be denied, the substantive provisions of both the Privacy Act and the Freedom of Information Act must be considered. Any withholding of information from a system of records must be justified under an exemption in each act.

§ 518.7 [Reserved]

§ 518.8 FOIA request.

A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7 (reference (b)), this regulation, or DoD Component supplementing regulations or instructions. This regulation is the Department of the Army's supplementing regulation.

§ 518.9 Agency record.

(a) The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

(b) The following are not included within the definition of the word "record":

(1) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(2) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(3) Commercially exploitable resources and administrative tools by which records are created, stored, and retrieved, including but not limited to:

(i) Maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(ii) Computer software, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software).

(4) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(5) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(6) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(7) Information stored within a computer for which there is no existing computer program or printout. Within the Department of the Army, information stored in a computer for which there is no existing software program to extract the information or a printout of the information.

(c) A record must exist and be controlled by the Department of Defense at the time of the request to be considered subject to this regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

§ 518.10 DoD component.

An element of the Department of Defense, as defined in § 518.4, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or appellate authority, and general counsel. The Department of the Army is a DoD Component.

§ 518.11 Initial denial authority (IDA).

An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. The Department of the Army's Initial Denial Authorities are designated in § 518.54(d).

§ 518.12 Appellate authority.

The Head of the DoD Component or the Component head's designee having jurisdiction of this purpose over the record. The Department of the Army's

appellate authority is the Office of General Counsel.

§ 518.13 Administrative appeal.

A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

§ 518.14 Law enforcement investigation.

An investigation conducted by a command or agency for law enforcement purposes relating to crime, waste, or fraud or for national security reasons. Such investigations may include gathering evidence for criminal prosecutions and for civil or regulatory proceedings.

Policy

§ 518.15 Compliance with the FOIA.

DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

§ 518.16 Openness with the public.

The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(a) *Operations Security (OPSEC).* DA officials who release records under the FOIA must also consider OPSEC. The Army implementing directive is AR 530–1. Section 518.49 of this publication gives the procedure for FOIA personnel and the IDA to follow when a FOIA request appears to involve OPSEC.

(b) *DA Form 4948–R.* This form lists references and information frequently used for FOIA requests related to OPSEC. Persons who routinely deal with the public (by telephone or letter) on such requests should keep the form on their desks as a guide. DA Form 4948–R (Freedom of Information Act (FOIA)/ Operations Security (OPSEC) Desk Top Guide) will be locally reproduced on 8½ x 11-inch paper. A copy for reproduction purposes is located at the back of this regulation. The name and telephone number of the command FOIA/OPSEC adviser will be entered on the form.

§ 518.17 Avoidance of procedural obstacles.

DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this regulation and any supplemental regulations published by the DoD Components.

§ 518.18 Prompt action on requests.

When a member of the public complies with the procedures established in this regulation for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When a Component has a significant number of requests, e.g., 10 or more, the requests will be processed in order of receipt. However, this does not preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. Requests by individuals for access to records about themselves are processed under the provisions of the respective Act cited in the request (except as prescribed in § 518.6(a)). Requests that cite both Acts or neither Act are processed under both Acts, using the fee provisions of the Federal Privacy Act and the time limits of the FOIA. If access is controlled by another Federal statute, follow the provisions of the controlling statute and § 518.33(c), Number 3 of this regulation. For further details, see DoD 5400.11–R (reference (e)). Even though a request that invokes the FOIA is administratively processed under the Privacy Act (reference (gg)) procedures, no record shall be withheld that would be released under FOIA procedures.

(a) The 10-day period prescribed for review of initial requests under the FOIA (5 U.S.C. 552(a)(6)) starts only when the request—

(1) Is in writing.

(2) Reasonably describes the record requested.

(3) Does not fall in a category described in § 518.24, which requires an authentication seal.

(4) Is received by the proper official designated to answer the request (see Appendix B).

(5) Meets the procedural requirements of this regulation. (See § 518.81(b)(9)).

(b) All requests should refer explicitly or implicitly to the Freedom of Information Act, to ensure their prompt recognition as FOIA actions. Both the letter of request and the envelope in which it is sent should be clearly marked "FREEDOM OF INFORMATION ACT REQUEST."

(c) Members of the public who make FOIA requests should carefully follow the guidance in this regulation. They should send requests to the office that has the desired record or to a specific agency FOIA official for referral. The Army Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon, ATTN: ASQNS–OP–F, Room 1146, Hoffman Building I, Alexandria, VA 22331–0301 can supply correct addresses.

(d) See AR 340–21 for Privacy Act procedures.

§ 518.19 Use of exemptions.

(a) Records that may be withheld under the exemptions outlined in subpart C of this regulation shall be made available to the public when it is determined that no governmental interest will be jeopardized by their release. Determination of jeopardy to governmental interest is within the sole discretion of the Component (IDA), consistent with statutory requirements, security classification requirements, or other requirements of law.

(b) Parts of a requested record may be exempt from disclosure under the FOIA. The proper DA official may delete exempt information and release the remainder to the requester. The proper official also has the discretion under the FOIA to release exempt information; he or she must exercise this discretion in a reasonable manner, within regulations.

§ 518.20 Public domain.

Nonexempt records released under the authority of this Regulation are considered to be in the public domain. Nonexempt records maintained in a DoD Component's Public Reading Room, or which can be made available in the Public Reading Room within a short time frame (15 minutes or less) are considered to be in the public domain. Exempt records released pursuant to this Regulation or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Regulation apply if

the same individual seeks the records in a private or personal capacity.

§ 518.21 Creating a record.

A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this regulation. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create nor compile a record to satisfy an FOIA request. A DoD Component, 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 assessment for direct search, review (in the case of commercial requesters), and duplication associated with the request shall be in accordance with § 518.78. Requested records, or portions thereof, may be located at several Army offices. The official receiving the FOIA request will refer it to those other offices for direct reply if—

(a) The information must be reviewed for release under the FOIA; and

(b) Assembling the information would interfere materially with DA operations at the site first receiving the request.

§ 518.22 Description of requested record.

(a) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below in § 518.61(b). Components are not obligated to act on the request until the requester responds to the specificity letter. When practicable, Components 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 Act. DA officials will reply to unclear requests by letter. The letter will—

(1) Describe the defects in the request.

(2) Explain the types of information in paragraph (b) of this section, and ask the requester for such information.

(3) Explain that no action will be taken on the request until the requester replies to the letter.

(b) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(1) 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.

(2) 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.

(c) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the Component'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.

(d) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(e) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel with reasonable effort, the description is adequate.

§ 518.23 Referrals.

(a) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. In cases where the Component receiving the request has reason to believe that the existence or nonexistence of the record may in itself be classified, that Component will consult the DoD Component having cognizance over the record in question before referring the request. If the DoD Component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DoD Component originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. Within the Army, referrals will be made directly to offices that may have custody of requested records. If the office receiving the FOIA request does not know where the requested records are located, the request and an explanatory cover letter will be forwarded to The Army Freedom of Information and Privacy Act Division, Information Systems Command, Pentagon, ATTN: ASQNS–OP–F, Room 1146, Hoffman Building I, Alexandria, VA 22331–0301.

(b) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a Government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(c) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the Department of Defense, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(d) A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of

the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(e) Within the Department of Defense, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to the Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(f) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Regulation. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(g) Agencies outside the Department of Defense that are subject to the FOIA:

(1) A Component may refer an FOIA request for any record that originated in an agency outside the DoD 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 Component must respond to the request.

(2) A DoD Component shall not honor any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

(3) Notwithstanding anything to the contrary in § 518.23, a Component shall notify requesters seeking National Security Council (NSC) or White House documents that they should write directly to the NSC or White House for such documents. DoD documents in which the NSC or White House has a concurrent reviewing interest shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD (PA)), ATTN: Directorate For Freedom of Information and Security Review (DFOISR), which shall effect coordination with the NSC or White House, and return the documents to the originating agency after NSC review and determination. NSC or White House documents discovered in Components' files which are responsive to the FOIA request shall be forwarded to OASD (PA), ATTN: DFOISR, for subsequent coordination with the NSC or White House, and returned to the Component with a release determination.

(h) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(i) On occasion, the Department of Defense receives FOIA requests for Government Accounting Office (GAO) documents containing DoD information, either directly from requesters, or as referrals from the GAO. The GAO is outside the Executive Branch, and as such, all FOIA requests for GAO documents containing DoD information will be processed under the provisions of Security Review or Mandatory Declassification Review (MDR) Directives (references h and x). Requests received in DoD for unclassified GAO reports containing DoD information shall be transferred to the GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877-1450. Requests received in the Department of Defense for classified GAO documents (or documents unidentifiable as to classification) shall be referred to the GAO, Office of Security and Safety, Washington, DC 20548-0001. After internal review, the GAO shall refer the request and documents to Office of the Inspector General, Department of Defense (OIG, DoD), and that Component shall refer the action to the OASD (PA), ATTN: DFOISR, for processing under Security Review or MDR provisions. (See reference (y)). In DA, requests received for GAO documents that contain classified Army information will be handled by the Army Inspector General's Office.

§ 518.24 Authentication.

Records provided under this regulation 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. DoD Components may charge for the service at a rate of $5.20 for each authentication.

§ 518.25 Unified and Specified Commands.

(a) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (f)); it authorizes and requires the Unified Commands to process Freedom of Information (FOI) requests in accordance with DoD Directive 5400.7 (reference (b)) and this regulation. The Unified Commands shall forward directly to the OASD (PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A. For Army components of unified commands, if the requested records are joint documents, process the FOIA request through unified command channels. If the requested documents are Army-unique, process the FOIA request through Army channels.

(b) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

§ 518.26 Records management.

FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules. See AR 25-400-2. AR 25-1 contains Army policy for records management requirements in the life cycle management of information. Information access and release, to include potential electronic access by the public, will be considered during information systems design.

Supart B—FOIA Reading Rooms

Requirements

§ 518.27 Reading room.

Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of subpart F. The Army FOIA Reading Room is operated by The Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon. It is located in Room 1146, Hoffman Building I, 2461 Eisenhower Avenue, Alexandria, VA 22331-0301. It is open from 0800 to 1530, Monday through Friday, except holidays.

§ 518.28 Material availability.

The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOIA reading room for inspection and copying, unless such materials are published and copies are

offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (g)), that may be cited, used, or relied upon as precedents in future adjudications.

(b) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(c) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

Indexes

§ 518.29 "(a)(2)" Materials.

(a) Each DoD Component shall maintain in each facility prescribed in § 518.27, an index of materials described in § 518.4, that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 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, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this regulation.

(b) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it published in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Subpart F.

(c) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

§ 518.30 Other materials.

(a) Any available index of DoD Component 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 in DoD Component FOIA reading rooms. Army "(a)(2)" materials are published in DA Pam 25-30.

(b) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. 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.

Subpart C—Exemptions

General Provisions

§ 518.31 General.

Records that meet the exemption criteria in the exemption part of subpart C may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

§ 518.32 Jeopardy of Government interest.

An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no jeopardy to government interest would be served by release. It is appropriate for DoD Components to use their discretionary authority on a case-by-case in the release of given records. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this publication, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record. Further guidance on this issue may be found § 518.33(d) Number 4 and § 518.61.

Exemptions

§ 518.33 FOIA Exemptions.

The following types of records may be withheld by the IDA in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law.

(a) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1-R (reference (h)). Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1-R, section 2-204f., apply. The procedures in AR 380-5 apply to Army activities. Also, when the confirmation or denial of the existence of responsive records to a FOIA request may, in and of itself, reveal exempt information, an agency may respond to the request by refusing to confirm or deny whether such records exist. Such a response should be used only when clearly warranted.

(b) *Number 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

(1) Those operating rules, guidelines, and manuals for DoD (Army)

investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component (Army) to fulfill a legal requirement.

(2) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(3) Lists of DoD personnel names and duty addresses (civilian and military) created primarily for internal, trivial, housekeeping purposes for which there is no legitimate public interest or benefit. This exemption is appropriate when it would impose an administrative burden to process the request, and the requester is not seeking the information for the benefit of the general public (see also § 518.33(f)(3)).

(4) Negotiation and bargaining techniques, practices, and limitations.

(c) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(1) National Security Agency Information Exemption, 50 U.S.C. section 6 (reference (c)).

(2) Patent Secrecy, 35 U.S.C. 181–188 (reference (i)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(3) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (j)).

(4) Communication Intelligence, 18 U.S.C. 798 (reference (k)).

(5) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25 (references (w) and (aa)).

(6) Confidentiality of Medical Quality Records: Qualified Immunity.

(7) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(d) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), 48 CFR subpart 227.4 (references (bb) and (dd)). Technical data developed exclusively with Federal funds may be withheld under exemption (c) Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (reference (w)) (see § 518.33(c)(5)).

(e) *Number 5.* (1) Except as provided in § 518.33(e)(1) (ii) through (v), internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a)) or within or among DoD Components.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(F) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, State, or military court, as well as records that qualify for the attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual

litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interest of the agency in maintaining its confidentiality, then the record or document need not be made available under this Regulation.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion on preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request, but only to the extent that the purpose of the request assists in determining whether the information requested would shed light on the agency's performance of the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is lists of names and duty addresses of DoD personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists (see also § 518.33(b)(3). This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(3) Individual's personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (reference (d)). The Army implementing directive is AR 340-21.

(4) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(5) Requests for access to or release of records, before appellate review, of courts-martial or special courts-martial involving a bad conduct discharge should be addressed as in Appendix B, paragraph 5. This guidance does not preclude furnishing records of a trial to an accused.

(g) *Number 7.* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption also applies to law enforcement investigations such as Inspector General investigations.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(i) Could reasonably be expected to interfere with enforcement proceedings.

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(A) When the confirmation of the existence of responsive records to a FOIA request could, in and of itself, reveal personally private information, an agency may respond to the request by refusing to confirm or deny whether such records exist. However, such a response, if used at all, must be used consistently, not only when records actually exist that need to be withheld, but also when responding to a request for records that do not exist. Otherwise, a "no records" response when records do not exist and a "refusal to confirm or deny" when records do exist will only confirm to the requester that the records do exist.

(B) A response that refuses to confirm or deny the existence of records that do exist is justified only when there is a cognizable privacy interest at stake and there is insufficient public interest in disclosure to outweigh it. Refusal to confirm or deny should not be used when

(*1*) The person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights;

(*2*) The person whose personal privacy is in jeopardy is deceased, and the agency is aware of that fact; or

(*3*) The Government has already officially confirmed that the person was or is the subject of a law enforcement investigation.

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(v) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(vi) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(vii) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Examples include:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense (Army) when no indictment has been obtained nor

any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, reference (l)) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (reference (d)). The Army implementing directive is AR 340-21.

(5) Exclusions. Excluded from the above exemption are the following two situations applicable to the Department of Defense:

(i) Whenever a request is made which involves access to records or information compiled for law enforcement pruposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstances continues, treat the records or information as not subject to exemption 7 (the FOIA). In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to exemption 7 (the FOIA), unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7 (the FOIA), the response to the requester will state that no records were found.

(h) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

General Provisions

§ 518.34 General.

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

§ 518.35 Prior FOUO application.

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

§ 518.36 Historical papers.

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exeptions under the FOIA (reference (a)).

§ 518.37 Time to mark records.

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

§ 518.38 Distribution statement.

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 (reference (m)) shall bear that statement and shall not be marked FOUO.

Markings

§ 518.39 Location of markings.

(a) An unclassified document containing FOUO information shall be marked "For Official Use Only" in bold letters at least 3/16 of an inch high at the bottom on the outside of the front cover (if any), on the first page, and on the outside of the back cover (if any).

(b) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(c) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page. The paragraph(s) containing the "For Official Use Only" information should also be marked with the initials FOUO.

(d) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein. Markings on microfilm will conform to the requirements of paragraphs (b) and (c) of this section. As a minimum, each frame of a microform containing FOUO information will be marked "FOR OFFICIAL USE ONLY" at the bottom center of the appropriate page or frame. Classified or protective markings placed by a software program at both top and bottom of a page or frame of a computer-generated report are acceptable. Storage media (disk packs or magnetic tapes) containing personal information subject to the Privacy Act will be labeled "FOR OFFICIAL USE ONLY-Privacy Act Information."

(e) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer: "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions _____ apply."

(f) Permanently bound volumes need to be marked only on the outside of the front and back covers, title page, and first and last pages. Volumes stapled by office-type hand or electric staples are not considered permanently bound.

Dissemination and Transmission

§ 518.40 Release and transmission procedures.

Until FOUO status is terminated, the release and transmission instructions that follow apply:

(a) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(b) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only," and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(c) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (n)). Army implementing instructions are in section 518.52 and in AR 1–20. Release to the GAO is governed by DoD Directive 7650.1 (reference (o)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

§ 518.41 Transporting FOUO information.

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail. When material marked FOUO is removed from storage, attach DA Label 87 (For Official Use Only Cover Sheet).

§ 518.42 Electrically transmitted messages.

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP[EN]121 (US Supp 1) (reference (p)) for FOUO information. Army follows the procedures in AR 105–31.

§ 518.43 Telephone usage.

FOUO information may be discussed over the telephone lines with DoD and other Government agencies for official purposes.

Safeguarding FOUO Information

§ 518.44 During duty hours.

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel. When material marked FOUO is removed from storage, attach DA Label 87.

§ 518.45 During nonduty hours.

At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Public Law 86–36 (reference (c)) shall meet the safeguards outlined for that group of records. Army personnel handling National Security Agency (NSA) records will follow NSA instructions on storing and safeguarding those records.

Termination, Disposal and Unauthorized Disclosures

§ 418.46 Termination.

The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

§ 518.47 Disposal.

(a) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(b) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. chapter 33 (reference (q)), as implemented by DoD Component instructions concerning records disposal. Army implementing disposition instructions are in AR 5–400–2.

§ 518.48 Unauthorized disclosure.

The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act (reference (gg)) may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

General Provisions

§ 518.49 Public information.

(a) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD or Department of the Army record made under the FOIA may be denied only when:

(1) The record is subject to one or more of the exemptions in subpart 3, and the Government's interest will be jeopardized by its release.

(2) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(3) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(b) Individuals seeking DoD information should address their FOIA requests to one of the addresses listed in Appendix B.

(c) Release of information under the FOIA can have an adverse impact on OPSEC. The Army implementing directive for OPSEC is AR 530–1. It requires that OPSEC points of contact be named for all HQDA staff agencies and for all commands down to battalion level. The FOIA official for the staff agency or command will used DA Form 4948[EN]R to announce the OPSEC/FOIA advisor for the command. Persons named as OPSEC points of contact will be OPSEC/FOIA advisors. Command OPSEC/FOIA advisors should implement the policies and procedures in AR 530–1, consistent with this regulation and with the following considerations:

(1) Documents or parts of documents properly classified in the interest of national security must be protected. Classified documents may be released in response to a FOIA request only under AR 380–5, chapter III. AR 380–5 provides that if parts of a document are not classified and can be segregated with reasonable ease, they may be released, but parts requiring continued protection must be clearly identified.

(2) The release of unclassified documents could violate national security. When this appears possible, OPSEC/FOIA advisors should request a classification evaluation of the document by its proponent under AR 380–5, paragraphs 2–204, 2–600, 2–800, and 2–801. In such cases, other FOIA exemptions (paragraph 3–200) may also apply.

(3) A combination of unclassified documents, or parts of them, could combine to supply information that might violate national security if released. When this appears possible, OPSEC/FOIA advisors should consider classifying the combined information per AR 380–5, paragraph 2–211.

(4) A document or information may not be properly or currently classified when a FOIA request for it is received. In this case, the request may not be denied on the grounds that the document or information is classified except in accordance with Executive Order 12356, section 1.6(d), and AR 380–5, paragraph 2–204, and with approval of the Army General Counsel.

(d) OPSEC/FOIA advisors will—

(1) Advise persons processing FOIA requests on related OPSEC requirements.

(2) Help custodians of requested documents prepare requests for classification evaluations.

(3) Help custodians of requested documents identify the parts of documents that must remain classified under this paragraph and AR 380–5.

(e) OPSEC/FOIA advisors do not, by their actions, relieve FOIA personnel and custodians processing FOIA requests of their responsibility to protect classified or exempted information.

§ 518.50 Requests from private parties.

The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking information. Requests from private persons will be made in writing, and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter- and intra-agency coordination. Components are under no obligation to establish procedures to receive hand delivered requests. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in § 518.20. DA officials will release the following records, upon request, to the persons specified below, even though these records are exempt from release to the general public. The 10-day limit (§ 518.18) applies.

(a) *Medical records.* Commanders or chiefs of medical treatment facilities will release information.

(1) On the condition of sick or injured patients to the patient's relatives.

(2) That a patient's condition has become critical to the nearest known relative or to the person the patient has named to be informed in an emergency.

(3) That a diagnosis of psychosis has been made to the nearest known relative or to the person named by the patient.

(4) On births, deaths, and cases of communicable diseases to local officials (if required by local laws).

(5) Copies of records of present or former soldiers, dependents, civilian employees, or patients in DA medical facilities will be released to the patient or to the patient's representative on written request. The attending physician can withhold records if he or she thinks that release may injure the patient's mental or physical health; in that case, copies of records will be released to the patient's next of kin or legal representative or to the doctor assuming the patient's treatment. If the patient is adjudged insane, or is dead, the copies will be released, on written request, to the patient's next of kin or legal representative.

(6) Copies of records may be given to a Federal or State hospital or penal institution if the person concerned is an inmate or patient there.

(7) Copies of records or information from them may be given to authorized representatives of certain agencies. The National Academy of Sciences, the National Research Council, and other accredited agencies are eligible to receive such information when they are engaged in cooperative studies, with the approval of the Surgeon General of the Army. However, certain information on drug and alcohol used cannot be released. AR 600–85 covers the Army's alcohol and drug abuse prevention and control program.

(8) Copies of pertinent parts of a patient's records can be furnished to the staff judge advocate or legal officer of the command in connection with the Government's collection of a claim. If proper, the legal officer can release this information to the tortfeasor's insurer without the patient's consent.

Note: Information released to third parties under paragraphs (a) (5), (6), and (7) of this section must be accompanied by a statement of the conditions of release. The statement will specify that the information not be disclosed to other persons except as privileged communication between doctor and patient.

(b) *Military personnel records.* Military personnel records will be released under these conditions:

(1) DA must provide specific information about a person's military service (statement of military service) in response to a request by that person or with that person's written consent to his or her legal representative.

(2) Papers relating to applications for, designation of beneficiaries under, and allotments to pay premiums for, National Service Life Insurance or Serviceman's Group Life Insurance will be released to the applicant or to the insured. If the insured is adjudged insane (evidence of an insanity

judgment must be included) or dies, the records will be released, on request, to designated beneficiaries or to the next of kin.

(3) Copies of DA documents that record the death of a soldier, a dependent, or a civilian employee will be released, on request, to that person's next of kin, life insurance carrier, and legal representative. A person acting on behalf of someone else concerned with the death (e.g., the executor of a will) may also obtain copies by submitting a written request that includes evidence of his or her representative capacity. That representative may give written consent for release to others.

(4) Papers relating to the pay and allowances or allotments of a present or former soldier will be released to the soldier of his or her authorized representative. If the soldier is deceased, these papers will be released to the next of kin or legal representatives.

(c) *Civilian personnel records.* Civilian Personnel Officers (CPOs) with custody of papers relating to the pay and allowances or allotments of current or former civilian employees will release them to the employee or his or her authorized representative. If the employee is dead, these records will be released to the next of kin or legal representative. However, a CPO cannot release statements of witnesses, medical records, or other reports or documents pertaining to compensation for injuries or death of a DA civilian employee (Federal Personnel Manual, chapter 294). Only officials listed in § 518.54(d)(18) can release such information.

(d) *Release of information to the public concerning accused persons before determination of the case.* Such release may prejudice the accused's opportunity for a fair and impartial determination of the case. The following procedures apply:

(1) Information that can be released. Subject to paragraph (d)(2) of this section, the following information concerning persons accused of an offense may be released by the convening authority to public news agencies or media.

(i) The accused's name, grade or rank, unit, regular assigned duties, and other information as allowed by AR 340–21, paragraph 3–3a.

(ii) The substance or text of the offense of which the person is accused.

(iii) The identity of the apprehending or investigating agency and the length or scope of the investigation before apprehension.

(iv) The factual circumstances immediately surrounding the apprehension, including the time and place of apprehension, resistance, or pursuit.

(v) The type and place of custody, if any.

(2) Information that will not be released. Before evidence has been presented in open court, subjective observations or any information not incontrovertibly factual will not be released. Background information or information relating to the circumstances of an apprehension may be prejudicial to the best interests of the accused, and will not be released except under paragraph (d)(3)(iii) of this section, unless it serves a law enforcement function. The following kinds of information will not be released:

(i) Observations or comments on an accused's character and demeanor, including those at the time of apprehension and arrest or during pretrial custody.

(ii) Statements, admissions, confessions, or alibis attributable to an accused, or the fact of refusal or failure of the accused to make a statement.

(iii) Reference to confidential sources, investigative techniques and procedures, investigator notes, and activity files. This includes reference to fingerprint tests, polygraph examinations, blood tests, firearms identification tests, or similar laboratory tests or examinations.

(iv) Statements as to the identity, credibility, or testimony of prospective witnesses.

(v) Statements concerning evidence or argument in the case, whether or not that evidence or argument may be used at the trial.

(vi) Any opinion on the accused's guilt.

(vii) Any opinion on the possibility of a plea of guilty to the offense charged, or of a plea to a lesser offense.

(3) Other considerations.

(i) Photographing or televising the accused. DA personnel should not encourage or volunteer assistance to news media in photographing or televising an accused or suspected person being held or transported in military custody. DA representatives should not make photographs of an accused or suspect available unless a law enforcement function is served. Requests from news media to take photographs during courts-martial are governed by AR 360–5.

(ii) Fugitives from justice. This paragraph does not restrict the release of information to enlist public aid in apprehending a fugitive from justice.

(iii) Exceptional cases. Permission to release information from military personnel records other than as outlined in paragraph (b) of this section to public news agencies or media may be requested from The Judge Advocate General (TJAG). Requests for information from military personnel records other than as outlined in paragraph (b) of this section above will be processed according to this regulation.

(e) Litigation, tort claims, and contract disputes. Release of information or records under this paragraph is subject to the time limitations prescribed in § 518.58. The requester must be advised of the reasons for nonrelease or referral.

(1) Litigation. (i) Each request for a record related to pending litigation involving the United States will be referred to the staff judge advocate or legal officer of the command. He or she will promptly inform the Litigation Division, Office of the Judge Advocate General (OTJAG), of the substance of the request and the content of the record requested. (Mailing address: HQDA (DAJA–LT), WASH DC 20310–2210; telephone, AUTOVON 227–3462 or commercial (202) 697–3462.)

(ii) If information is released for use in litigation involving the United States, the official responsible for investigative reports (AR 27–40, paragraph 2–4) must be advised of the release. He or she will note the release in such investigative reports.

(iii) Information or records normally exempted from release (i.e., personnel and medical records) may be releasable to the judge or court concerned, for use in litigation to which the United States is not a party. Refer such requests to the local staff judge advocate or legal officer, who will coordinate it with the Litigation Division, OTJAG paragraph (a) of this section.

(2) Tort claims. (i) A claimant or a claimant's attorney may request a record that relates to a pending administrative tort claim filed against the DA. Refer such requests promptly to the claims approving or settlement authority that has monetary jurisdiction over the pending claim. These authorities will follow AR 27–20. The request may concern an incident in which the pending claim is not as large as a potential claim; in such a case, refer the request to the authority that has monetary jurisdiction over the potential claim.

(ii) A potential claimant or his or her attorney may request information under circumstances clearly indicating that it will be used to file a tort claim, though none has yet been filed. Refer such requests to the staff judge advocate or legal officer of the command. That authority, when subordinate, will

promptly inform the Chief, U.S. Army Claims Service, of the substance of the request and the content of the record. (Mailing address: U.S. Army Claims Service, ATTN: JACS-TCC, Fort George G. Meade, MD 20755-5360; telephone, AUTOVON 923-7860 or commercial (301) 677-7860.)

(iii) DA officials listed in § 518.54(d) who receive requests under paragraphs (a) or (b) of this section will refer them directly to the Chief, U.S. Army Claims Service. They will also advise the requesters of the referral and the basis for it.

(iv) The Chief, U.S. Army Claims Service, will process requests according to this regulation and AR 27-20, paragraph 1-10.

(3) Contract disputes. Each request for a record that relates to a potential contract dispute or a dispute that has not reached final decision by the contracting officer will be treated as a request for procurement records and not as litigation. However, the officials listed in §§ 518.50(a) and 518.54(d) will consider the effect of release on the potential dispute. Those officials may consult with the U.S. Army Legal Services Agency. (Mailing address: U.S. Army Legal Services Agency, ATTN: JALS-CA, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041-5013; telephone, AUTOVON 289-2023 or commercial (703) 756-2023.) If the request is for a record that relates to a pending contract appeal to the Armed Services Board of Contract Appeals or to a final decision that is still subject to appeal (i.e., 90 days have not lapsed after receipt of the final decision by the contractor), then the request will be—

(i) Treated as involving a contract dispute; and

(ii) Referred to the U.S. Army Legal Services Agency. (For address and phone number, see paragraph(e)(3) of this section.)

(f) Dissemination of unclassified information concerning physical protection of special nuclear material.

(1) Unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material, is prohibited under 10 U.S.C. 128 and paragraph 3-200, exemption number 3.

(2) This prohibition shall be applied by the Deputy Chief of Staff for Operations and Plans as the IDA, to prohibit the dissemination of any such information only if and to the extent that it is determined that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) Illegal production of nuclear weapons; or

(ii) Theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making such a determination, DOD personnel may consider what the likelihood of an illegal production, theft, diversion, or sabotage would be if the information proposed to be prohibited from dissemination were at no time available for dissemination.

(4) DOD personnel shall exercise the foregoing authority to prohibit the dissemination of any information described:

(i) So as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(ii) Upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a signficant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(A) Illegal production of nuclear weapons; or

(B) Theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(5) DoD employees shall not use this authority to withhold information from the appropriate committees of Congress.

(g) Release of names and duty addresses.

(1) Requests for release of personnel lists containing names and duty addresses will be denied under Exemption 2 of the FOIA. Coordinate all such requests with the appropriate IDA.

(2) Telephone directories, organizational charts, and/or staff directories published by installations or activities in CONUS and U.S. Territories will be released when requested under FOIA. In all such directories or charts, names of personnel assigned to sensitive units, routinely deployable units, or units stationed in foreign territories will be redacted and denied under Exemption 6 of the FOIA. By DoD policy, the names of general officers (or civilian equivalent) or public affairs officers may be released at any time. The sanitized copy will be redacted by cutting out or masking the names and reproducing the document. The IDA is the U.S. Army Information Systems Command-Pentagon, Freedom of Information and Privacy Act Division, ATTN: ASQNS-OP-F, Room 1146, Hoffman Building I, Alexandria, VA. 22331-0301.

(3) Public Affairs Offices may release information determined to have legitimate news value, such as notices of personnel reassignments to new units or installations within the continental United States, results of selection/promotion boards, school graduations/completions, and awards and similar personal achievements. They may release the names and duty addresses of key officials, if such release is determined to be in the interests of advancing official community relations functions.

§ 518.51 Requests from government officials.

Requests from officials of Federal, state, or local Governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

§ 518.52 Privileged release to officials.

(a) Subject to the provisions of DoD Regulation 5200.1-R (reference (h)), and AR 380-5, applicable to classified information, DoD Directive 5400.11 (reference (d)), and AR 340-21, applicable to personal privacy, or other applicable law, records exempt from release under section C, Exemptions, may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, State or Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(1) To Congress, in accordance with DoD Directive 5400.4 (reference (n)). The Army implementing directive is AR 1-20. Commanders or chiefs will notify the Chief of Legislative Liaison of all releases of information to members of Congress or staffs of congressional committees. Organizations that in the normal course of business are required to provide information to Congress may be excepted. Handle requests by members of Congress (or staffs of congressional committees) for inspection of copies of official records as follows:

(i) National security classified records. Follow AR 380-5.

(ii) Civilian personnel records. Members of Congress may examine official personnel folders as permitted by 5 CFR 297.503(i).

(iii) Information related to disciplinary action. This subparagraph refers to records of trial by courts-martial; nonjudicial punishment of military

personnel under the Uniform Code of Military Justice, Article 15; nonpunitive measures such as administrative reprimands and admonitions; suspensions of civilian employees; and similar documents. If the Department of the Army has not issued specific instructions on the request, the following instructions will apply. Subordinate commanders will not release any information without securing the consent of the proper installation commander. The installation commander may release the information unless the request is for a classified or "For Official Use Only" document. In that case the commander will refer the request promptly to the Chief of Legislative Liaison (see paragraph (d)) of this section for action, including the recommendations of the transmitting agency and copies of the requested records with the referral.

(iv) Military personnel records. Only HQDA can release information from these records. Custodians will refer all requests from Congress directly and promptly to the Chief of Legislative Liaison, Department of the Army, HQDA (SALL) WASH DC 20310–1600.

(v) Criminal investigation records. Only the Commanding General, U.S. Army Criminal Investigation Command (USACIDC), can release any USACIDC-originated criminal investigation file. For further information, see AR 195–2.

(vi) Other exempt records. Commanders or chiefs will refer requests for all other categories of exempt information under § 518.33 directly to the Chief of Legislative Liaison per paragraph (d) of this section. They will include a copy of the material requested and, as appropriate, recommendations concerning release or denial.

(vii) All other records. The commander or chief with custody of the records will furnish all other information promptly.

(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 DoD Component or designee.

(i) Disciplinary actions and criminal investigations. Requests for access to, or information from, the records of disciplinary actions or criminal investigations will be honored if proper credentials are presented. Representatives of the Office of Personnel Management may be given information from personnel files of employees actually employed at organizations or activities. Each such request will be considered on its merits. The information released will be the minimum required in connection with the investigation being conducted.

(ii) Other types of requests. All other official requests received by DA elements from agencies of the executive branch (including other military departments) will be honored, if there are no compelling reasons to the contrary. If there are reasons to withhold the records, the requests will be submitted for determination of the propriety of release to the appropriate addresses shown in Appendix B.

(4) To State and local officials, as determined by the head of a DoD Component or designee.

(b) DoD Components shall inform officials receiving records under the provisions of § 518.52(a), that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

§ 518.53 Required coordination.

Before forwarding a FOIA request to an IDA for action, records custodians will obtain an opinion from their servicing judge advocate concerning the releasability of the requested records. A copy of that legal review, the original FOIA request, two copies of the requested information (with one copy clearly indicating which portions are recommended for withholding, which FOIA exemptions support such withholding, and which portions, if any, have already been released), a copy of the interim response acknowledging receipt and notifying the requester of the referral to the IDA, and a cover letter containing a telephone point of contact will be forwarded to the IDA with the command's recommendation to deny a request in whole or in part.

Initial Determinations

§ 518.54 Initial Denial Authority (IDA).

(a) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. The DA officials in paragraph (d) of this section are designated as the Army's only IDAs. Only an IDA, his or her delegate, or the Secretary of the Army can deny FOIA requests for DA records. Each IDA will act on direct and referred requests for records within his or her area of functional responsibility. (See the proper AR in the 10-series for full discussions of these areas; they are outlined in paragraph (d) of this section.) Included are records created or kept within the IDA's area of responsibility; records retired by, or referred to, the IDA's headquarters or office; and records of predecessor organizations. If a request involves the areas of more than one IDA, the IDA to whom the request was originally addressed will normally respond to it; however, the affected IDAs may consult on such requests and agree on responsibility for them. IDAs will complete all required coordination at initial denial level. This includes classified records retired to the National Archives and Records Administration when a mandatory declassification review is necessary.

(b) The initial determination of whether to make a record availabe or grant a fee waiver upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this regulation is applicable and should be invoked. DAs may delegate all or part of their authority to an office chief or subordinate commander. Such delegations must not slow FOIA actions. If an IDA's delegate denies a FOIA or fee waiver request, the delegate must clearly state that he or she is acting for the IDA and identify the IDA by name and position in the written response to the requester. IDAs will send the names, offices, and telephone numbers of their delegates to the Director of Information Systems for Command, Control, Communications, and Computers. IDAs will keep this information current. (The mailing address is HQDA (SAIS–PS), WASH, DC 20310–0107).

(c) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media. A FOIA release or denial action, appeal, or court review may generate public or press interest. In such case, the IDA (or delegate) shoud consult the Chief of Public Affairs or the command or organization PAO. The IDA should inform the PAO contacted of the issue and obtain advice and recommendations on handling its public

affairs aspect. Any advice or recommendations requested or obtained should be limited to this aspect. Coordination must be completed within the 10-day FOIA response limit. (The point of contact for the Army Chief of Public Affairs is HQDA (SAPA-OSR), WASH, DC 20310-1500; telephone, AUTOVON 227-4122 or commercial (202) 697-4122). If the request involves actual or potential litigation against the United States, release must be coordinated with the Judge Advocate General. (See § 518.50(e)).

(d) The following officials are designated IDAs for the areas of responsibility outlined below:

(1) The Administrative Assistant to the Secretary of the Army is authorized to act for the Secretary of the Army on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities, except those specified in paragraph (d) (2) through (6) of this section, as well as requests requiring the personal attention of the Secretary of the Army.

(2) The Assistant Secretary of the Army (Financial Management) is authorized to act on requests for finance and accounting records.

(3) The Assistant Secretary of the Army (Research, Development, and Acquisition) is authorized to act on requests for procurement records other than those under the purview of the Chief of Engineers and the Commander, U.S. Army Materiel Command.

(4) The Director of Information Systems for Command, Control, Communications, and Computers (DISC4) is authorized to act on requests for records pertaining to the Army Information Resources Management Program (automation, telecommunications, visual information, records management, publications and printing, and libraries).

(5) The Inspector General is authorized to act on requests for all Inspector General records under AR 20-1.

(6) The Auditor General is authorized to act on requests for records relating to audits done by the U.S. Army Audit Agency under AR 10-2. This includes requests for related records developed by the Audit agency.

(7) The Deputy Chief of Staff for Operations and Plans is authorized to act on requests for records relating to strategy formulation; force development; individual and unit training policy; strategic and tactical command and control systems; nuclear and chemical matters; use of DA forces; and military police records and reports, prisoner confinement, and correctional records.

(8) The Deputy Chief of Staff for Personnel is authorized to act on requests for case summaries, letters of instruction to boards, behavioral science records, general education records, and alcohol and drug prevention and control records. Excluded are individual treatment/test records, which are a responsibility of the Surgeon General.

(9) The Deputy Chief of Staff for Logistics is authorized to act on requests for records relating to DA logistical requirements and determinations, policy concerning material maintenance and use, equipment standards, and logistical readiness.

(10) The Chief of Engineers is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of the U.S. Army Engineer divisions, districts, laboratories, and field operating agencies.

(11) The Surgeon General is authorized to act on requests for medical research and development records, and the medical records of active duty military personnel, dependents, and persons given physical examination or treatment at DA medical facilities, to include alcohol and drug treatment/test records.

(12) The Chief of Chaplains is authorized to act on requests for records involving ecclesiastical relationships, rites performed by DA chaplains, and nonprivileged communcations relating to clergy and active duty chaplains' military personnel files.

(13) The Judge Advocate General (TJAG) is authorized to act on requests for records relating to claims, courts-martial, legal services, and similar legal records. TJAG is also authorized to act on requests for records described elsewhere in this regulation, if those records relate to litigation in which the United States has an interest. In addition, TJAG is authorized to act on requests for records that are not within the functional areas of responsibility of any other IDA.

(14) The Chief, National Guard Bureau, is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and active Army National Guard military personnel, including technician personnel, unless such records clearly fall within another IDA's responsibility. This authority includes, but is not limited to, National Guard organization and training files; plans, operations, and readiness files; policy files; historical files; files relating to National Guard military support, drug interdiction, and civil disturbances; construction, civil works, and ecology records dealing with armories, facilities within the States, ranges, etc.; Equal Opportunity investigative records, aviation program records and financial records dealing with personnel, operation and maintenance, and equipment budgets.

(15) The Chief of Army Reserve is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, and all U.S. Army Reserve (USAR) records, unless such records clearly fall within another IDA's responsibility. Records under the responsibility of the Chief of Army Reserve include records relating to USAR plans, policies, and operations; changes in the organization status of USAR units; mobilization and demobilization policies; active duty tours; and the Individual Mobilization Augmentation program.

(16) The Commander, United States Army Materiel Command (AMC) is authorized to act on requests for the records of AMC headquarters and its subordinate commands, units, and activities that relate to procurement, logistics, research and development, and supply and maintenance operations.

(17) The Commander, USACIDC, is authorized to act on requests for criminal investigative records of USACIDC headquarters and its subordinate activites. This includes criminal investigation records, investigation-in-progress records, and military police reports that result in criminal investigation reports.

(18) The Commander, United States Total Army Personnel Command, is authorized to act on requests for military personnel files relating to active duty (other than those of reserve and retired personnel) military personnel matters, personnel locator, physical disability determinations, and other military personnel administration records; records relating to military casualty and memorialization activities; heraldic activities; voting; records relating to identification cards; naturalization and citizenship; commercial solicitation; Military Postal Service Agency and Army postal and unofficial mail service; civilian personnel records and other civilian personnel matters; and personnel administration records.

(19) The Commander, United States Army Community and Family Support Center, is authorized to act on requests for records relating to morale, welfare, and recreation activities; nonappropriated funds; child development centers, community life programs, and family action programs;

retired activities; club management; Army emergency relief; consumer protection; retiree survival benefits; and records dealing with DA relationships with Social Security, Veterans' Affairs, United Service Organization, U.S. Soldiers' and Airmen's Home, and American Red Cross.

(20) The Commander, United States Army Intelligence and Security Command, is authorized to act on requests for intelligence investigation and security records, foreign scientific and technological information, intelligence training, mapping and geodesy information, ground surveillance records, intelligence threat assessment, and missile intelligence data relating to tactical land warfare systems.

(21) The Commander, U.S. Army Safety Center, is authorized to act on requests for Army safety records.

(22) The General Counsel, Army and Air Force Exchange Service (AAFES), is authorized to act on requests for AAFES records, under AR 60-20/AFR 147-14.

(23) The Commander, Forces Command (FORSCOM), as a specified commander, is authorized to act on requests for specified command records that are unique to FORSCOM under § 518.25.

(24) Special IDA authority for time-event related records may be designated on a case-by-case basis. These will be published in the **Federal Register**. Current information on special delegations may be obtained from the Office of the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PSP, WASH, DC 20310-0107.

§ 518.55 Reasons for not releasing a record.

There are seven reasons for not complying with a request for a record:

(a) The request is transferred to another DoD Component, or to another federal agency.

(b) The request is withdrawn by the requester.

(c) The information requested is not a record within the meaning of the FOIA and this Regulation.

(d) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(e) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Regulation or DoD Component supplementing regulations.

(f) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is not considered a denial; therefore an appeal is not appropriate.)

(g) The record is denied in accordance with procedures set forth in the FOIA and this regulation.

§ 518.56 Denial tests.

To deny a requested record that is in the possession or control of a DoD Component, it must be determined that the denial meets the following tests:

(a) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in subpart C.

(b) The use of its discretionary authority is deemed unwarranted.

§ 518.57 Reasonably segregable portions.

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that is not to reasonable to segregate portions of the records for release.

§ 518.58 Response to requester.

(a) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond. The action command or office holding the records will date- and time-stamp each request on receipt. The 10-day limit will start from the date stamped.

(b) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(c) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component. The IDA will inform the requester of his or her right to appeal, in whole or part, the denial of the FOIA or fee waiver request and that the appeal must be sent through the IDA to the Secretary of the Army (ATTN: General Counsel). (See § 518.65).

(d) The response to the requester should contain information concerning the fee status of the request, consistent with the provisions of subpart F, of this regulation. Generally, the information shall reflect one or more of the following conditions:

(1) All fees due have been received.

(2) Fees have been waived because they fall below the automatic fee waiver threshold.

(3) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver was accepted.

(4) A request for waiver has been denied.

(5) Fees due in a specified amount have not been received.

(e) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this regulation. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(f) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

§ 518.59 Extension of time.

(a) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(1) The requested record is located in whole or in part at places other than the office processing the request.

(2) The request requires the collection and evaluation of a substantial number of records.

(3) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this regulation or should be released as a matter of discretion.

(b) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component, or in accordance with regulations of the DoD Component, or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted. The time may be extended only once during the initial consideration period. Only the responsible IDA can extend it, and the IDA must first coordinate with the Office of the Army General Counsel.

(c) In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with notification that he or she may treat the delay as an initial denial with a right to appeal, or with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Components are reminded that the requester still retains the right to treat this delay as a defacto denial with full administrative remedies.

(d) As an alternative to the taking of formal extensions of time as described in § 518.59(a), (b), and (c), the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

§ 518.60 Misdirected requests.

Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

§ 518.61 Records of non-U.S. government source.

(a) When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552 (reference (a)) exemption (b)(4)) subpart C, exemptions, § 518.33, Number 4, and reference (ee), this regulation) will be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(b) The coordination provisions of this paragraph also apply to any non-U.S. Government record in the possession and control of the Department of Defense from multi-national organizations, such as the North American Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through Department of State.

§ 518.62 File of initial denials.

Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records will be maintained in accordance with AR 25-400-2.

§ 518.63 Special mail services.

DoD Components 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.

§ 518.64 Receipt accounts.

The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts, except receipts for industrially-funded and non-appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. Industrially-funded and nonappropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(a) Receipt Account 3210 Sale of Publications and Reproductions, Freedom of Information Act. This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles. Deliver collections within 30 calendar days to the servicing finance and accounting office.

(b) Receipt Account 3210 Fees and Other Charges for Services, Freedom of Information Act. This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

Appeals

§ 518.65 General.

(a) If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(b) Appeals of denial of records made by Army IDAs must be made through

the denying IDA to the Secretary of the Army (ATTN: General Counsel). On receipt of an appeal, the IDA will—

(1) Send the appeal to the Office of the Secretary of the Army, Office of the General Counsel, together with a copy of the documents that are the subject of the appeal, marked to show the portions withheld; the initial denial letter; and any other relevant material.

(2) Assist the General Counsel as requested during his or her consideration of the appeal.

(c) Appeals of denial of records made by the General Counsel, AAFES, shall be made to the Secretary of the Army when the Commander, AAFES, is an Army officer.

§ 518.66 Time of receipt.

An FOIA appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

§ 518.67 Time limits.

(a) The requester should be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

(b) Final determinations on appeals normally shall be made within 20 working days after receipt.

§ 518.68 Delay in responding to an appeal.

(a) If additional time is needed due to the unusual circumstances described in § 518.59, above, 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.

(b) 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 identified in § 518.59, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

§ 518.69 Response to the requester.

(a) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, 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.

(b) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, at a minimum, shall include the following:

(1) 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 provisions of this regulation.

(2) 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.

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

(4) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

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

§ 518.70 Consultation.

(a) Final refusal, involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components, ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(b) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be provided to the Department of Justice, ATTN: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

Judicial Actions

§ 518.71 General.

(a) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(b) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this regulation.

§ 518.72 Jurisdiction.

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

§ 518.73 Burden of proof.

The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

§ 518.74 Actions by the Court.

(a) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(b) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(c) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit Systems Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD

Component is obligated to take the action recommended by the special counsel.

(d) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

§ 518.75 Non-United States Government source information.

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

§ 518.76 Litigation status sheet.

FOIA managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the OASD(PA), ATTN: DFOISR, with an information copy to the General Counsel, Department of Defense, ATTN: Office of Legal Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation. In the Department of the Army, HQDA TJAG (DAJA-LT), WASH DC 20310-2210 is responsible for preparing this report.

Subpart F—Fee Schedule

General Provisions

§ 518.77 Authorities.

The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (13 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et. seq.); the Defense Authorization Act for FY 87, section 954, (Pub. L. 99-661), as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100-26).

§ 518.78 Application.

(a) The fees described in this Subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (r)) (AR 37-60), which does not supersede the collection of fees under the FOIA. Nothing in this Chapter shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552 (a)(4)(A)(vi) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(b) The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, or example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed in the Collection of Fees and Fee Rates portions of this subpart. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(c) The term "search" includes all time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See § 518.78(e), for the definition of review, and § 518.86(b), for information pertaining to computer searches.

(d) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable by requesters. If it is not possible to provide copies which are clearly usable, the requester shall be notified that their copy is the best available and that the agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not

previously considered. The costs for such a subsequent review would be properly assessable.

§ 518.79 Fee restrictions.

(a) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(b) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(c) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(d) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ x 11" or "11 x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

(e) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time.

§ 518.80 Fee waivers.

(a) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in § 518.81 when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(b) When assessable costs for an FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(c) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(1) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."

(i) The subject of the request. Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

(ii) The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the subject of a request may contain information which concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(iv) The significance of the contribution to public understanding. In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the

current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(2) Disclosure of the information "is not primarily in the commercial interest of the requester."

(i) The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of § 518.81 apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefits must clearly override any personal or non-profit interest.

(ii) The primary interest in disclosure. Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(d) Components are reminded that the above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(e) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(1) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00–$30.00).

§ 518.81 Fee assessment.

(a) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(b) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(1) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the component will:

(i) Notify the requester that he should provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(ii) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(2) Requesters must submit a fee declaration appropriate for the below categories.

(i) Commercial. Requesters must indicate a willingness to pay all search, review and duplication costs.

(ii) Educational or Noncommercial Scientific Institution or News Media. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(iii) All Others. Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(3) If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

(4) In the situations described by § 518.81(b) (1) and (2). Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(5) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(6) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely

cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(7) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 (reference (ff)), and confirmed with respective Finance and Accounting Offices.

(8) After all work is completed on a request, and the documents are ready for release, Components may request payment prior to forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the provisions of § 518.81(b)(7), apply. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(9) When Components act under § 518.81, paragraphs (b) (1) through (7) of this section, the administrative time limits of the FOIA (i.e., 10 working days from receipt of initial requests, and 20 working days from receipt of appeals, plus permissible extensions of these time limits) will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(10) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request, or if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) Commercial Requesters. Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see § 518.22).

(1) The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(2) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(d) Educational Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the record sought (see § 518.22). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(e) Non-Commercial Scientific Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see § 518.22). The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in § 518.81(c), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(f) Components shall provide documents to requesters in § 518.81(d) and (e), for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(g) Representatives of the news media. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 518.22).

(1) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record

of a requester in making this determination.

(2) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (g)(1) of this section, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(h) All Other Requesters. Components shall charge requesters who do not fit into any of the above categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 518.22). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 (reference (gg)), which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under § 518.80(a). (See also § 518.81(c)(2). DD Form 2086 (Record of Freedom of Information (FOI) Processing Cost) will be used to annotate fees for processing FOIA information. The form is available through normal publications channels.

§ 518.82 Aggregating requests.

Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment or fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

§ 518.83 Effect of the Debt Collection Act of 1982 (Pub.L. 97-365).

The Debt Collection Act of 1982 (Pub.L. 97-365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717 (reference (ff)). Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

§ 518.84 Computation of fees.

The fee schedule in this chapter shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

Collection of Fees and Fee Rates

§ 518.85 Collection of fees.

Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see § 518.81).

§ 518.86 Search time.

(a) *Manual Search.*

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS/GM15.	25
Executive	07/GS/GM16/ES1 and above.	45

(b) *Computer Search.* Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph a above) for the computer opeartor/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

§ 518.87 Duplication.

The following table sets forth the fees that will be charged.

Type	Cost per page (cents)
Pre-Printed material	02
Office copy	15
Microfiche	25
Computer copies (tapes or printouts).	Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape)

§ 518.88 Review time (in the case of commercial requesters).

The following table sets forth fees charged for review time.

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS15	25
Executive	07/GS16/ES1 and above.	45

§ 518.89 Audiovisual documentary materials.

Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality. Army audiovisual materials are referred to as "visual information."

§ 518.90 Other records.

Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

§ 518.91 Costs for special services.

Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(a) Certifying that records are true copies.

(b) Sending records by special methods such as express mail, etc.

Collection of Fees and Fee Rates for Technical Data

§ 518.92 Fees for technical data.

(a) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this Section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under the Collection of Fees and Fee Rates portion of this subpart for other types of information released under the FOIA. DD Form 2086-1 (Record of Freedom of Information (FOI) Processing Cost for Technical Data) will be used to annotate fees for technical data. The form is available through normal publications channels.

(b) Waiver. Components shall waive the payment of costs required in § 518.92(a), which are greater than the costs that would be required for release of this same information under the Collection of Fees and Fee Rates portion of this subpart if:

(1) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(3) The Component determines in accordance with section 518.80(a), that such a waiver is in the interest of the United States.

(c) Fee Rates.

(1) Search Time

(i) Manual Search

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$13.25
(Minimum Charge)		8.30
Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates).		

(ii) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in § 518.92(c)(1)(i), for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(2) Duplication

Type	Cost
Aerial photographs, specifications, permits, charts, blueprints, and other technical documents	$2.50
Engineering data (microfilm)	
Aperture cards	
Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
35mm roll film, per frame	.50
16mm roll film, per frame	.45
Paper daprints (engineering drawings), each	1.50
Paper reprints of microfilm indices, each	.10

REVIEW TIME

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$13.25
(Minimum Charge)		8.30

Professional and Executive (To be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates.)

Other Technical Data Records

Charges for additional services not specifically provided in § 518.92(c), consistent with DoD Instruction 7230.7 (reference (r)), shall be made by Components at the following rates:

Minimum charge for office copy (up to six images)	$3.50
Each additional image	.10
Each typewritten page	3.50
Certification and validation with seal, each	5.20
Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

Reports Control

§ 518.93 General.

The reporting requirement outlined in this chapter is assigned Report Control Symbol DD-PA(A)1365. Prepare the annual report using the format in § 518.96. Section 518.97 provides a worksheet for preparing the annual report.

Annual Report

§ 518.94 Reporting time.

Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those

items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (reference (s)) (AR 25–9). The standard data elements are contained in DoD 5000.12–M (reference (hh)). The Army will follow guidelines below and submit the information to the Army Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon, ATTN: ASQNS–OP–F, Room 1146, Hoffman Building I, Alexandria, VA 22331–0301 by the second week of each January.

(a) Each reporting activity will submit the information requested in § 518.95 (a)(1), (2), (3), (i), (j), and (k). Data will be collected throughout the year on DD Form 2086.

(b) Each IDA will submit the information requested in § 518.95, excluding paragraphs (d) through (h).

(c) The Judge Advocate General, Army will submit the information requested in § 518.95(g).

(d) The Army General Counsel will submit the information requested in § 518.95 (d) through (f).

(e) The Information Systems Command[EN]Pentagon will compile the data submitted in the Department of the Army's annual Reporting of Freedom of Information Processing Costs (RCS DD–PA (A) 1365). This report will be sent through the DISC4 (SAIS–PS), WASH DC 20310–0107, to the Director of Freedom of Information and Security Review by 31 January each year.

§ 518.95 Annual report content.

The following instructions and attached format shall be used in preparing the annual report (see § 518.96):

(a) *Item 1.* (1) Completed Public Requests: Enter the total number of FOIA requests received and responded to during the reporting period.

(2) Completed Reportable Requests: Enter the number of actions taken on a completed public request. To arrive at this figure, count the number of blocks checked in item a. of the Annual Report Worksheet (see § 518.97) for each request processed. (**Note**: This figure will be equal to or greater than paragraph (a)(1) of this section.)

(3) Number of Requests Denied: Enter the number of FOIA requests which were denied in whole or in part based on one or more of the nine FOIA exemptions.

(4) Other Reason Responses: Enter the number of FOIA requests in which you were unable to provide the requested information based on an "Other Reason" response. (See paragraph (b)(3) of this section for an explanation of "Other Reason" responses).

(5) Total: Enter the sum of paragraphs (a)(3) and (a)(4) of this section.

(b) *Item 2.* (1) Exemptions Invoked on Initial Determinations: Identify the exemption(s) claimed for each request that was denied in whole or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than that of paragraph (a)(3) of this section.

(2) *(b)(c) exemption.* Statutes Invoked on Initial Determinations: Identify the statute(s) cited when you claimed a "(b)(3)" exemption. Cite the specific sections when invoking the Atomic Energy Act of 1954, or the National Security Act of 1947.

(3) Initial Request Other Reason Responses: Identify the "other reason" response cited when responding to an FOIA request and enter the number of times each was claimed.

(i) Transferred Requests: Enter the number of times a request was transferred to another DoD Component or Federal Agency for action.

(ii) Lack of Records: Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

(iii) Failure of Requester to Reasonably Describe Record: Enter the number of times an FOIA request could not be acted on since the requester failed to reasonably describe the record(s) being sought.

(iv) Other Failures by Requester to Comply with Published Rules and/or Directives: Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(v) Request/Appeal Withdrawn by Requester: Enter the number of times a requester withdrew a request and/or appeal.

(vi) Not an Agency Record: Enter the number of times a requester was provided a response indicating the requested information was not an agency record. Total: Enter the sum of columns 1 through 6. The total will be equal to or greater than paragraph (a)(4) of this section, since more than one other reason response may be claimed.

(c) *Item 3.* Initial denial authorities (IDAs by participation). (1) Total IDAs Authorized: Enter the total number of IDA's at your activity.

(2) Individuals Involved in Adverse Determinations: Enter the name, grade, activity and title of each individual who signed a partial and/or total denial response and cite the number of instances of participation.

(d) *Item 4.* Number of appeals and results. Number of Appeals: Enter the disposition of appeals under the appropriate category and then the total.

(e) *Item 5.* (1) Exemptions Invoked on Appeal Determinations: Identify the exemption(s) claimed for each appeal that is denied in whole or part. Since more than one exemption may be claimed when responding to a single appeal, this number will be equal to or greater than the total listed in paragraph (d) of this section.

(2) Statutes Invoked on Appeal Determinations: Identify the statute(s) cited when you claimed a "(b)(3)" exemption.

(3) Other Reasons Cited on Appeal Determinations: Identify the "other reason" response when responding to an appeal and enter the number of times each was claimed and the total.

(f) *Item 6.* Participation of Appellate Authorities (Those Responsible for Denials in Whole or in Part): Enter the name, grade, activity, and title of each individual who signed a partial and/or total denial response and cite the number of instances of participation.

(g) *Item 7.* Court Opinions and Actions Taken: Briefly describe the results of each completed court action the Judge Advocate General and/or the General Counsel participated in during the calendar year. There is no requirement to submit lengthy narratives, nor narratives for court actions pending a decision.

(h) *Item 8.* FOIA Implementation Rules or Regulations: List all changes or revisions of rules or regulations affecting the implementation of The FOIA Program, followed by the **Federal Register** reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each.

(i) *Item 9.* FOIA Instructional and Educational Efforts: Report what training and/or seminars your activity has given or attended during this reporting period.

(j) *Item 10.* (1) Cost of Routine Request: Some reporting activities shall find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised so that costs are comprehensive to include a 25 percent overhead, yet are not duplicated elsewhere in the report.

(2) Personnel Costs: (Civilian and Military)

(i) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade: Personnel costs are reported in two ways. This section uses a manyear/wage type of costing by grade. To achieve this computation, identify those individuals who are primarily involved in the planning, program management and/or administrative handling of FOIA requests. Use DoD 7220.9-M (reference (v)) for military personnel and Office of Personnel Management salary table for civilian personnel to identify salaries.

Table G-1 shows how the cost computation is made.

TABLE G-1.—SAMPLE COMPUTATION.

Grade	No. of personnel	Salary	Percentage of time	Costs
O-5	1	$50,000	10	$5,000
O-1	1	21,000	30	6,000
GS-12	1	35,000	50	17,500
GS-5	1	18,000	50	9,000

Notes: 1. To determine the manyear computation: Add the total percentage of time and divide the percentage by 100.
2. Sample Computation: Manyears=140% divided by 100=1.4 manyears.

(ii) Direct costs for other personnel involved in processing request not included above upon accumulation of total hourly data: This section accounts for all other personnel (not reported above) who are involved in processing FOIA requests. Enter the total hourly cost for each area. Only search, review, and reproduction costs may be recouped from the requester. Review costs may only be recouped from commercial requesters. In the case of collections resulting from release of technical data, all reasonable costs for search and reproduction may be recouped (See subpart F, Collection of Fees and Fee Rates for Technical Data).

(A) Search Time Cost. This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(B) Classification Review Costs. This includes all direct costs incurred during the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure; e.g. doing all that is necessary to excise them and otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(C) Coordination and Approval/Denial Decision Costs. This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(D) Correspondence and Form Preparation Costs. This includes all costs involved in typing responses, filling out forms and/or logbooks, supplies, etc., to respond to an FOIA request.

(E) Other Activity Costs—This includes all other processing costs not covered above, such as processing time by the mail room.

(F) Other Case Related Costs: Using the fee schedule, enter the total amounts incurred in each area to process FOIA requests.

(G) Other Operating Costs: Report all other costs which are easily identifiable, such as: per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(H) Summary: The summary data provides a total cost figure for administering the FOIA Program and a recap of the fees collected.

(iii) Application of Overhead. The overhead rate is 25% and includes the cost of supervision, space and administrative support. Add items 1 and 2, then multiply the sum by 25%.

(k) *Item 11.* Formal Time Extensions: Enter the total number of instances in which it was necessary to seek a formal 10 working day time extension, because of:

(1) Location: The need to search for and collect the requested records from another activity that was separate from the office processing the request.

(2) Volume: The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

(3) Consultation: The need for consultation with another agency having substantial interest in the material requested.

(4) Court Involvement: Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptional circumstances, report the number of instances the court allowed additional time because the Component was unable to comply with applicable time limits.

§ 518.96 Annual reporting format.

See § 518.94 for instructions to complete this report and for reporting times.

Item 1

Completed public requests	Completed reportable requests	Number of requests denied (partial and total)	Number of "other reasons" responses made	Total (C+D)
A	B	C	D	E

Item 2

A. Exemptions Claimed in Denial Letters:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Claimed Denial Letters:

List of "(b)(3)" statutes claimed	Number of times cited

C. "Other Reasons" Cited in Response to FOIA Requests	1	2	3	4	5	6	Total

Item 3—Denials and "other reason" responses

A. Total number of IDAs authorized to sign denial letters	

B. List of All Individuals Who Signed a Denial Response:

Name	Rank	Title	Number of instances of participation	
			Exemption	Other

Item 4

A. Number of appeals received and action taken:

Granted in full	Granted in part	Denied in full	Total
1	2	3	4

Item 5

A. Exemptions invoked on appeal determination:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes invoked on appeal determinations:

List of "(b)(3)" statutes invoked	Number of times cited

C. "Other reasons" cited on appeal determination	1	2	3	4	5	6	Total

Item 6

A. List of all individuals who signed an appeal determination response:

Name	Rank	Title	Number of instances of participation	
			Exemption	Other

Item 7

A. Court opinions and actions taken, for example:

J. Q. Public v. *Department of the Army,* CMI No. 87-2600 (S.D. Cal.)
On January 1, 1987, plaintiff filed suit seeking a CID investigation which was being reviewed by the United States Attorney for possible prosecution. Plaintiff is a former Army General attorney. Final order, May 1987, ordered release of majority of CID report of investigation.

Item 8

A. FOIA implementation rules or regulations (published during the reporting period):

Document identification	Federal register references		
	Number	Date	Page

Item 9

A. FOIA instructional and educational efforts:

Course	Sponsor	Date	Hours

Item 10

	Cost
A. Cost of Routine Requests Processed: (Number of reportable requests X cost factor per request.)	$
B. Personnel Costs (Civilian and Military):	
1. Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade. Total Manyears	
2. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:	
a. Search Time Costs	
b. Classification Review and Excising Action Costs	
c. Coordination/Approval/Denial Decision Costs	
d. Correspondence and Form Preparation Costs	
e. Other Activity Costs	
Total Manhour Costs	
3. Application of Overhead (Subtotal 1+2)×25% overhead	
Total of Personnel Costs	
C. Other Case Related Costs:	
1. Computer	
2. Office Copy Reproduction	
3. Microfiche Reproduction	
4. Cost of Printed Records	
Total of Other Costs	
D. Other Operating Costs:	
1. Reporting Costs	
a. Operational	
b. User	
c. Overhead: (a+b)×25%	
2. Other Costs as Directed or Which can be Reasonably Ascertained.	
Total Other Operating Costs (Subtotal 1+2)	
E. Summary:	
1. Total Costs of Sections 10A through 10D	
2. Amount Collected from Requesters during this Reporting Period:	
a. Search	
b. Copy	

c. Review.....
d. Total Collected.....

Item 11

A. Formal Time Limit Extension Taken:

Location	Volume	Consultation	Court involvement
1 B. Total_____	2	3	4

§ 518.97 Annual report worksheet.

See § 518.94 for instructions on completing this worksheet.

a. Action(s) taken on completed public request:

_____Granted in Full
_____Granted in Part
_____Denied
Other: _____Transferred to: _____
_____Lack of Records
_____Requester failed to reasonably describe the record
_____Requester failed to comply with established rules/directives
_____Requester withdrew request/appeal
_____Not an agency record

b. Completed reportable requests:_____
(Count the number of actions checked in a. and enter total)

c. Statutory FOIA exemptions invoked:_____
(Enter total number blocks checked below)

_____(b)(1)
_____(b)(2)
_____(b)(3)
_____(b)(4)
_____(b)(5)
_____(b)(6)
_____(b)(7)
_____(b)(8)
_____(b)(9)

d. List of (b)(3) statutes invoked:

_____
_____

e. Name, command and title of initial denial authority:

_____
_____
_____

f. Remarks:

_____
_____
_____
_____

Subpart H—Education and Training

Responsibility and Purpose

§ 518.98 Responsibility.

The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOIA requests, and should provide a thorough understanding of the procedures outlined in this regulation.

§ 518.99 Purpose.

The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

§ 518.100 Scope and principles.

Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this regulation. The program should be designed to accomplish the following objectives:

(a) Familiarize personnel with the requirements of the FOIA and its implementation by this regulation.

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

(c) 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.

(d) Advise personnel of the penalties for noncompliance with the FOIA.

§ 518.101 Implementation.

To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (PA).

§ 518.102 Uniformity of legal interpretation.

In accordance with DoD Directive 5400.7 (reference (b)), the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program. This regulation provides procedures for contacting the DOD General Counsel where required.

Appendix A to Part 518—Unified Commands-Processing Procedures for FOI Appeals

1. General

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Command are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program.

This policy represents an exception to the policies in DoD Directive 5100.3 (reference (f)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and DoD Instruction 5400.10 (reference (ii)) and to forward directly to the OASD (PA) all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

1. Responsibilities of Commands

Unified Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOIA requests for records.

b. Designate an office as the point-of-contact for FOIA matters.

c. Refer FOIA cases to the ASD (PA) for review and evaluation when the issues raised are of unusual significance, precedent setting.

or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized..

e. Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the ASD (PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Assistant Secretary of Defense (Public Affairs), the Pentagon, Washington, DC 20301-1400.

i. Upon request, submit to ASD (PA) a copy of the records that were denied. ASD (PA) shall make such requests when adjudicating appeals.

3. Fees for FOI Requests

The fees charged for requested records shall be in accordance with subpart F.

4. Communications

Excellent communication capabilities currently exist between the OASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOIA cases that are time sensitive.

5. Reporting Requirements

a. The Unified Commands shall submit to the ASD(PA) an annual report. The instructions for the report are outlined in subpart G.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA(A)1365.

Appendix B to Part 518—Addressing FOIA Requests

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Joint Staff, the Military Departments, the Unified Commands, the Defense Agencies, and the DoD Field Activities.

b. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOIA Requests[EH]

a. Office of the Secretary of Defense and the Joint Staff. Send all requests for records from the below listed offices to: Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, The Pentagon, Washington, DC 20301-1400.

(1) Executive Secretariat

(2) Under Seretary of Defense (Policy)

(a) Deputy Under Secretary of Defense (Policy)

(b) Deputy Under Secretary of Defense (Planning & Resources)

(c) Deputy Under Secretary of Defense (Trade Security Policy)

(3) Under Secretary of Defense (Acquisition)

(a) Assistant Secretary of Defense (Production & Logistics)

(b) Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)

(c) Assistant to the Secretary of Defense (Atomic Energy)

(d) Director of Defense Research and Engineering

(e) Director of Small and Disadvantaged Business Utilization

(f) Director, Program Integration

(4) Comptroller of the Department of Defense

(5) Assistant Secretary of Defense (Force Management & Personnel)

(6) Assistant Secretary of Defense (Health Affairs)

(7) Assistant Secretary of Defense (International Security Policy)

(a) Deputy Assistant Secretary of Defense (European & NATO Policy)

(b) Deputy Assistant Secretary of Defense (Negotiations Policy)

(c) Deputy Assistant Secretary of Defense (Nuclear Forces & Arms Control Policy)

(8) Assistant Secretary of Defense (International Security Affairs)

(a) Deputy Assistant Secretary of Defense (African Affairs)

(b) Deputy Assistant Secretary of Defense (East Asian & Pacific Affairs)

(c) Deputy Assistant Secretary of Defense (Inter-American Affairs)

(d) Deputy Assistant Secretary of Defense (Near East & South Asian Affairs)

(e) Deputy Assistant Secretary of Defense (Policy Analysis)

(9) Defense Security Assistance Agency

(10) Assistant Secretary of Defense (Legislative Affairs)

(11) Assistant Secretary of Defense (Public Affairs)

(12) Assistant Secretary of Defense (Program Analysis & Evaluation)

(13) Assistant Secretary of Defense (Reserve Affairs)

(14) Assistant to the Secretary of Defense (Intelligence Oversight)

(15) General Counsel, Department of Defense

(16) Director of Net Assessment

(17) Director of Operational Test and Evaluation

(18) Defense Advanced Research Projects Agency

(19) Strategic Defense Initiative Organization

(20) Defense Systems Management College

(21) National Defense University

(22) Armed Forces Staff College

(23) Department of Defense Dependents Schools

(24) Uniformed Services University of the Health Sciences

b. Department of the Army. Army records may be requested from those Army officials who are listed in 32 CFR part 518 (reference (jj)), Appendix B. Send requests to the Army Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon, ATTN: ASQNS-OP-F, Room 1146, Hoffman I, 2461 Eisenhower Avenue, Alexandria, VA 22331-0301 for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records. Send requests to particular installations or organizations as follows:

(1) Current publications and records of DA field commands, installations, and organizations.

(a) Send the request to the commander of the command, installation, or organization, to the attention of the Freedom of Information Act Official.

(b) Consult AR 25-400-12 for more detailed listings of all record categories kept in DA offices.

(c) Contact the installation or organization public affairs officer for help if you cannot determine the official within a specific organization to whom your request should be addressed.

(2) Department of the Army publications.

(a) Write to the U.S. Government Printing Office, which has many DA publications for sale. Address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001.

(b) Use the facilities of about 1,000 Government publication depository libraries throughout the United States. These libraries have copies of many DA publications. Obtain a list of these libraries from the Superintendent of Documents at the above address.

(c) Send requests for current administrative, training, technical, and supply publications to the National Technical Information Service, U.S. Department of Commerce, ATTN: Order Preprocessing Section, 5285 Port Royal Road, Springfield, VA 22151-2171; commercial telephone, (703) 487-4600. The National Technical Information Service handles general public requests for unclassified, uncopyrighted, and nondistribution-restricted Army publications not sold through the Superintendent of Documents.

(3) Military personnel records. Send requests for military personnel records of information as follows:

(a) Army Reserve personnel not on active duty and retired personnel—Commander, U.S. Army Reserve Personnel Center, 9700 Page Blvd., St. Louis, MO 63132-5200; commercial telephone, (314) 263-7600.

(b) Army officer personnel discharged or deceased after 1 July 1917 and Army enlisted

personnel discharged or deceased after 1 November 1912—Director, National Personnel Records Center, 9700 Page Blvd., St. Louis, MO 63132-5100.

(c) Army personnel separated before the dates specified in (ii) above—Textual Reference Division, Military Reference Branch, National Archives and Records Administration, Washington, DC 20408-0001.

(d) Army National Guard officer personnel—Chief, National Guard Bureau. Army National Guard enlisted personnel—Adjutant General of the proper States.

(e) Active duty commissioned and warrant officer personnel—Commander, U.S. Total Army Personnel Command, ATTN: TAPC-ALS, Alexandria, VA 22332-0405; commercial telephone, (703) 325-4053. Active duty enlisted personnel—Commander, U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-RF, Fort Benjamin Harrison, IN 46249-4701; commercial telephone, (317) 542-3643.

(4) Medical records.

(a) Medical records of non-active duty military personnel. Use the same addresses as for military personnel records.

(b) Medical records of military personnel on active duty. Address the medical treatment facility where the records are kept. If necessary, request locator service per (e) above.

(c) Medical records of civilian employees and all dependents. Address the medical treatment facility where the records are kept. If the records have been retired, send requests to the Director, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118-4199.

(5) Legal records.

(a) Records of general courts-martial and special courts-martial in which a bad conduct discharge was approved. For cases not yet forwarded for appellate review, apply to the staff judge advocate of the command having jurisdiction over the case. For cases forwarded for appellate review and for old cases, apply to the U.S. Army Legal Service Agency, ATTN: JALS-CC, Nassif Building, Falls Church, VA 22041-5013; AUTOVON 289-1888, commercial telephone, (202) 756-1888.

(b) Records of special courts-martial not involving a bad conduct discharge. These records are kept for 10 years after completion of the case. If the case was completed within the past 3 years, apply to the staff judge advocate of the headquarters where it was reviewed. If the case was completed from 3 to 10 years ago, apply to the National Personnel Records Center (Military Records), 9700 Page Blvd., St. Louis, MO 63132-5100. If the case was completed more than 10 year ago, the only evidence of conviction is the special courts-martial order in the person's permanent records. Request as in (3) above.

(c) Records of summary courts-martial. Locally maintained records are retired 3 years after action of the supervisory authority. Request records of cases less than 3 years old from the staff judge advocate of the headquarters where the case was reviewed. After 10 years, the only evidence of conviction is the summary courts-martial order in the person's permanent records.

Requests as in (3) above.

(d) Requests submitted under (b) and (c) above. These requests will be processed in accordance with chapter V. The IDA is the Judge Advocate General, HQDA (DAJA-CL), WASH DC 20310-2213; AUTOVON 225-1891, commercial telephone, (202) 695-1891.

(e) Administrative settlement of claims. Apply to the Chief, U.S. Army Claims Services, ATTN: JACS-TCC, Fort George G. Meade, MD 20755-5360; AUTOVON 923-7860, commercial telephone, (301) 677-7860.

(f) Records involving debarred or suspended contractors. Apply to HQDA (JALS-PF), WASH DC 20310-2217; AUTOVON 285-4278, commercial telephone, (202) 504-4278.

(g) Records of all other legal matters (other than records kept by a command, installation, or organization staff judge advocate). Apply to HQDA (DAJA-AL), WASH DC 20310-2212; AUTOVON 224-4316, commercial telephone, (202) 694-4316.

(6) Civil works program records. Civil works records include those relating to construction, operation, and maintenance for the improvement of rivers, harbors, and waterways for navigation, flood control, and related purposes, including shore protection work by the Army. Apply to the proper division or district office of the Corps of Engineer. If necessary to determine the proper office, contact the Commander, U.S. Army Corps of Engineers, ATTN: CECC-K, WASH DC 20314-1000; commercial telephone, (202) 272-0028.

(7) Civilian personnel records. Send requests for personnel records of current civilian employees to the employing installation. Send requests for personnel records of former civilian employees to the Director, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118-4199.

(B) Procurement records. Send requests for information about procurement activities to the contracting officer concerned or, if not feasible, to the procuring activity. If the contracting officer or procuring activity is not known, send inquiries as follows:

(a) Army Materiel Command procurement: Commander, U.S. Army Materiel Command, ATTN: AMCPA, 5001 Eisenhower Ave., Alexandria, VA 22333-0001.

(b) Corps of Engineers procurement: Commander, U.S. Army Corps of Engineers, ATTN: CECC-K, WASH DC 20314-1000; commercial telephone, (202) 272-0028.

(c) All other procurement: HQDA (DAJA-KL), WASH DC 20310-2208; AUTOVON 225-6209, Commercial telephone, (202) 695-6209.

(9) Criminal investigation files. Send requests involving criminal investigation files to the Commander, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 2301 Chesapeake Ave., Baltimore, MD 21222-4099; commercial telephone, (301) 234-9340. Only the Commanding General, USACIDC, can release any USACIDC-originated criminal investigation file.

(10) Personnel security investigation files and general Army intelligence records. Send requests for personnel security investigation files, intelligence investigation and security records, and records of other Army intelligence matters to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF-FI, Fort George G. Meade, MD 20755-5995.

(11) Inspector General records. Send requests involving records within the Inspector General system to HQDA (SAIG-ZXL), WASH DC 20310-1714. AR 20-1 governs such records.

(12) Army records in Government records depositories.

(a) Noncurrent Army records are in the National Archives of the United States, WASH DC 20408-0001; in Federal Records Centers of the National Archives and Records Administration; and in other records depositories. Requesters must write directly to the heads of these depositories for copies of such records.

(b) A list of pertinent records depositories is published in AR 25-400-2, table 6-1.

c. Department of the Navy. Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOIA request. Send requests to Chief of Naval Operations, Code OP-09B30, Room 5E521, Pentagon, Washington, DC 20350-2000, for records of the Headquarters, Department of the Navy, and to Freedom of Information and Privacy Act Office, Code MI-3, HQMC, Room 4327, Washington, DC 20308-0001, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. Department of the Air Force. Air Force records may be requested from the Commander of any Air Force installation, major command, or separate operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to Secretary of the Air Force, ATTN: SAF/AADS (FOIA), Washington, DC 20330-1000.

e. Defense Contract Audit Agency (DCAA). DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOIA requests to the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304-6178, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. Defense Communications Agency (DCA). DCA records may be requested from any DCA field activity or from its headquarters. Requesters should send FOIA requests to Defense Communications Agency, Code H104, Washington, DC 20305-2000.

g. Defense Intelligence Agency (DIA). FOIA requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: RTS-1B, Washington, DC 20340-3299.

h. Defense Investigative Service (DIS). All FOIA requests for DIS records should be send to the Defense Investigative Service, ATTN: V0020, 1900 Half St., SW, Washington, DC 20324-1700.

i. Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOIA requests to Defense Logistics Agency, ATTN:

DLA-XA, Cameron Station, Alexandria, VA 22304-6130.

j. Defense Mapping Agency (DMA). FOIA requests for DMA records may be sent to the Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031-2137.

k. Defense Nuclear Agency (DNA). FOIA requests for DNA records may be sent to the Defense Nuclear Agency, Public Affairs Office, Room 111, Washington, DC 20305-1000.

l. National Security Agency (NSA). FOIA requests for NSA records may be sent to the National Security Agency/Central Security Service, ATTN: Q-43, Fort George G. Meade, MD 20755-6000.

m. Office of the Inspector General, Department of Defense (IG, DoD). FOIA requests for IG, DoD records may be sent to the Department of Defense, Office of the Inspector General, Assistant Inspector General for Investigations, ATTN: FOIA Coordinator, 400 Army Navy Drive, Arlington, Virginia 22202.

3. Other Addresses

Although the below organizations are OSD and Joint Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated.

a. Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS). Director, OCHAMPUS, ATTN: Freedom of Information Officer, Aurora, CO 80045-6900.

b. Chairman, Armed Services Board of Contract Appeals (ASBCA). Chairman, Armed Services Board of Contract Appeals, Hoffman II, 200 Stovall Street, Alexandria, VA 22332-0002.

c. U.S. Central Command. U.S. Central Command/CCAG, MacDill Air Force Base, FL 33608.

d. U.S. European Command. Records Administrator, Headquarters, U.S. European Command/ECJ1-AR (FOIA), APO New York 9128-4209.

e. U.S. Southern Command. Attorney-Advisor (International), Headquarters U.S. Southern Command/SCSJA, APO Miami 34003-0007.

f. U.S. Pacific Command. Administrative & Security Programs Division (J147A), Joint Secretariat, CINCPAC, Box 28, Camp H. M. Smith, HI 96861-5025.

g. U.S. Special Operations Command. Freedom of Information Officer, ATTN: U.S. Special Operations Command, MacDill Air Force Base, FL 33608.

h. U.S. Atlantic Command. Commander-in-Chief, Atlantic Command, Code J008, Norfolk, VA 23511.

i. U.S. Space Command. Chief, Records Management Division, Directorate of Administration, United States Space Command, Peterson Air Force Base, CO 80914-5001.

4. National Guard Bureau

FOIA requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, (NGB-DAI), Pentagon, Room 2C362, Washington, DC 20310-2500.

5. Miscellaneous

If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, The Pentagon, Washington, DC 20301-1400.

Appendix C to Part 518—Litigation Status Sheet

1. Case Number (Number used by Component for reference ses. (for DA, use case name)
2. Requester
3. Document Title or Description
4. Litigation
a. Date Complaint Filed
b. Court
c. Case File Number
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
a. Court's Finding
b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
a. Date Complaint Filed
b. Court
c. Case File Number
d. Court's Finding
e. Disciplinary Action (as appropriate)

Appendix D to Part 518—Other Reason Categories

1. Transferred Requests.

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one Component to another, or to another Federal Agency.

2. Lack of Records.

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record.

This category is specifically based on section 552(a)(3)(a) of the FOIA (reference (a)).

4. Other Failures by Requesters to Comply with Published Rules or Directives.

This category is based on section 552(a)(3)(b) of the FOIA (reference a)) and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester.

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

6. Not an Agency Record.

This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this regulation.

Appendix E to Part 518—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/Joint Staff/United Commands, Defense Agencies, and the DoD Field Activities
Department of the Army
Department of the Navy
Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency
Office of the Inspector General, Department of Defense

Appendix F to Part 518—Internal Control Review Checklist (AR 25-55)

An Internal Control Review Checklist (ICRC) is the method used to identify the combination of internal controls required for a specific task or subtask based on an evaluation by the HQDA functional proponent of the general control environment, risk, control objectives, and cost factors. Assessable unit managers will use this checklist in testing to ensure specified internal controls are in place and working as intended.

TASK: Army Information Management
SUBTASK: Records Management
THIS CHECKLIST: Freedom of Information Act Program
ORGANIZATION:
ACTION OFFICER:
REVIEWER:
DATE COMPLETED:

ASSESSABLE UNIT: The specific managers responsible for using this checklist (e.g., at applicable FOA, MACOM, SIO, and TOE division headquarters) will be designated by the cognizant headquarters' staff functional principal. The responsible principal and mandatory schedule for using the checklist will be shown in the annual updated Management Control Plan.

EVENT CYCLE 1: Establish and Implement a Freedom of Information Act Program

RISK: If the prescribed policies, procedures, and responsibilities of the Freedom of Information Act Program are not followed the public would have the ability to obtain access to and release of Army records.

CONTROL OBJECTIVE: To ensure that prescribed policies, procedures, and responsibilities contained in 5 U.S.C. 552 are followed to allow access and release of Army records to the public.

CONTROL TECHNIQUE: The document used to accomplish the control objective is AR 25-55.

1. Ensure that a Freedom of Information Act Program is established and implemented.

2. Appoint an individual with Freedom of Information Act responsibilities and ensure designation of appropriate staff to assist him/her.

3. Appoint an individual with Operations Security (OPSEC) responsibilities, if required.

Test Questions:

1. Is a Freedom of Information Act Program established and implemented in your organization?

Response: Yes____ No____ NA____
Remarks: 1

2. Is an individual appointed Freedom of Information Act responsibilities?

Response: Yes____ No____ NA____

Remarks: 1

3. Is an individual appointed OPSEC responsibilities, if required?

Response: Yes___ No___ NA___

Remarks: 1

4. Is DA Form 4948-R, Freedom of Information Act (FOIA)/Operations Security (OPSEC) Desk Top Guide Used?

Response: Yes___ No___ NA___

Remarks: 1

5. Does DA Form 4948-R contain the current name and office telephone number of the FOIA/OPSEC advisor?

Response: Yes___ No___ NA___

Remarks: 1

6. Are provisions of AR 25-XX concerning the protection of OPSEC sensitive information regularly brought to the attention of managers resposible for responding to FOIA requests and those responsible for control of Army records?

Response: Yes___ No___ NA___

Remarks: 1

7. Are rules governing "For Official Use Only" information understood and properly applied by functional proponents?

Response: Yes___ No___ NA___

Remarks: 1

8. Are names and duty addresses of Army personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories being denied or forwarded to the proper initial denial authority (IDA) for denial?

Response: Yes___ No___ NA___

Remarks: 1

9. Is the format contained in AR 25-XX, paragraph 7-202, used when preparing the annual FOIA report?

Response: Yes___ No___ NA___

Remarks: 1

10. Is the worksheet contained in AR 25-XX, paragraph 7-203, used when preparing the annual FOIA report?

Response: Yes___ No___ NA___

Remarks: 1

11. Is the input for the annual FOIA report forwarded to Information Systems Command-Pentagon by the second week of each January?

Response: Yes___ No___ NA___

Remarks: 1

EVENT CYCLE 2: Processing FOIA Requests

Risk: Failure to process FOIA requests correctly and release non-exempt Army records to the public could subject the Department of the Army or individuals to litigation.

Control Objective: FOIA requests are processed correctly.

Control Technique:

1. Ensure FOIA requests are logged into a formal control system.

2. Ensure FOIA requests are answered promptly and correctly.

3. Ensure Army records are withheld only when they fall under the purview of one or more of the nine FOIA exemptions.

4. Ensure FOIA requests are denied by properly delegated/designated IDAs.

5. Ensure all appeals are forwarded to the Office of the Army General Counsel.

Test Questions:

1. Are FOIA requests logged into a formal control system?

Response: Yes___ No___ NA___

Remarks: 1

2. Are all FOIA requests date and time stamped upon receipt?

Response: Yes___ No___ NA___

Remarks: 1

3. Is the 10 working day time limit met when replying to FOIA requests?

Response: Yes___ No___ NA___

Remarks: 1

4. When more than 10 working days are required to respond, is the FOIA requester informed, explaining the circumstances requiring the delay and provided an approximate date for completion?

Response: Yes___ No___ NA___

Remarks: 1

5. Are Army records withheld only when they fall under one or more of the nine FOIA exemptions?

Response: Yes___ No___ NA___

Remarks: 1

6. Is the FOIA requester informed when a FOIA request is referred to another Army activity or organization?

Response: Yes___ No___ NA___

Remarks: 1

7. Do denial letters contain the name and title or position of the official who made the denial determination, explain the basis for the denial determination, cite the exemptions on which the denial is based, and advise the FOIA requester of his or her right to appeal the denial within 60 days to the Secretary of the Army (Office of the Army General Counsel)?

Response: Yes___ No___ NA___

Remarks: 1

8. Is the FOIA requester informed of the appellate procedures when an IDA denies a record in whole or in part?

Response: Yes___ No___ NA___

Remarks: 1

9. Is the Chief of Legislative Liaison notified of all releases of information to members of Congress or staffs of congressional committees?

Response: Yes___ No___ NA___

Remarks: 1

10. Are FOIA requests denied only by properly delegated/designated IDAs?

Response: Yes___ No___ NA___

Remarks: 1

11. Is the servicing judge advocate consulted prior to forwarding a FOIA request to an IDA for action?

Response: Yes___ No___ NA___

Remarks: 1

12. Are the following items included when forwarding a FOIA request to an IDA for a determination of releasibility?

a. A copy of the legal review provided by the local legal advisor?

Response: Yes___ No___ NA___

Remarks: 1

b. The original copy of the FOIA request?

Response: Yes___ No___ NA___

Remarks: 1

c. Copies of the requested information indicating portions recommended for withholding?

Response: Yes___ No___ NA___

Remarks: 1

d. A copy of the acknowledgement of receipt to the requester?

Response: Yes___ No___ NA___

Remarks: 1

e. A telephone point of contact?

Response: Yes___ No___ NA___

Remarks: 1

f. The recommendation FOIA exemption?

Response: Yes___ No___ NA___

Remarks: 1

g. Any recommendation to deny a request in whole or in part?

Response: Yes___ No___ NA___

Remarks: 1

13. Are all FOIA appeals forwarded to the Office of the General Counsel for a decision with a copy of denied and released records?

Response: Yes___ No___ NA___

Remarks: 1

14. Is a copy of the FOIA denial letter included when forwarding appeals to the Office of the General Counsel?

Response: Yes___ No___ NA___

Remarks: 1

15. Is DD Form 2086-R, Record of Freedom of Information (FOI) Processing Cost, used to record costs associated with the processing of a FOIA request?

Response: Yes___ No___ NA___

Remarks: 1

16. Is DD Form 2086-1-R, Record of Freedom of Information (FOI) Processing Cost for Technical Data, used to record costs associated with the processing of a FOIA request for technical data?

Response: Yes___ No___ NA___

Remarks: 1

17. Is the FOIA requester notified when charges will exceed $250.00?

Response: Yes___ No___ NA___

Remarks: 1

18. Are fees collected at the time the requester is provided the records?

Response: Yes___ No___ NA___

Remarks: 1

19. Are commercial requesters charged for all search, review, and duplication costs?

Response: Yes___ No___ NA___

Remarks: 1

20. Are educational institutions, noncommercial scientific institutions, or news media charged for duplication only, in excess of 100 pages, if more than 100 pages of records are requested?

Response: Yes___ No___ NA___

Remarks: 1

21. Are the first 2 hours of search time, and the first 100 pages of duplication provided without charge to all "other" category requesters?

Response: Yes___ No___ NA___

Remarks: 1

22. Are FOIA fees collected and delivered to the servicing finance and accounting office within 30 calendar days after receipt?

Response: Yes___ No___ NA___
Remarks: 1

23. Are FOIA fees collected for technical data retained by the organization providing the technical data?

Response: Yes___ No___ NA___
Remarks: 1

EVENT CYCLE 3: Records Maintenance

Risk: Valuable records needed for court actions are destroyed or cannot be located.

Control Objective: Records containing "For Official Use Only" information are correctly marked and FOIA requests are properly maintained throughout their life cycle.

Control Technique: Ensure the prescribed policies and procedures are followed during the life cycle of information.

Test Questions:

1. Are records that fall within the purview of Exemption 2 through 9 marked "For Official Use Only" at the time of creation?

Response: ___ Yes ___ No ___ NA___
Remarks:

2. Are unclassified documents containing "For Official Use Only" information marked "For Official Use Only" in bold letters at least 3/16 of an inch high at the bottom of the outside of the front cover (if any), on the first page, and on the outside of the backcover (if any)?

Response: ___ Yes ___ No ___ NA___
Remarks:

3. Are individual pages containing both "For Official Use Only" and classified information marked at the top and bottom with the highest security classification of information appearing on the page?

Response: ___ Yes ___ No ___ NA___
Remarks:

4. Are photographs, films, tapes, slides, and microform containing "For Official Use Only" information so marked "For Official Use Only" to ensure recipient or viewer is aware of the information therein?

Response: ___ Yes ___ No ___ NA___
Remarks:

5. Is "For Official Use Only" material transmitted outside the Department of the Army properly marked "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption _____ applies"?

Response: ___ Yes ___ No ___ NA___
Remarks:

6. Are permanently bound volumes of "For Official Use Only" information so marked on the outside of the front and back covers, title page, and first and last pages?

Response: ___ Yes ___ No ___ NA___
Remarks:

7. Is DA Label 87 (For Official Use Only Cover Sheet) affixed to "For Official Use Only" documents when removed from a file cabinet?

Response: ___ Yes ___ No ___ NA___
Remarks:

8. Do electrically transmitted messages contain the abbreviation "FOUO" before the beginning of the text?

Response: ___ Yes ___ No ___ NA___
Remarks:

9. Are "For Official Use Only" records stored properly during nonduty hours?

Response: ___ Yes ___ No ___ NA___
Remarks:

10. Are FOIA records maintained and disposed of in accordance with AR 25-400-2, The Modern Army Recordkeeping System (MARKS)?

Response: ___ Yes ___ No ___ NA___
Remarks:

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1. Explain rationale for YES responses or provide cross-reference where rationale can be found. For NO responses, cross-reference to where corrective action plans can be found. If response is NA, explain rationale.

I attest that the above-listed internal controls provide reasonable assurance that Army resources are adequately safeguarded. I am satisfied that if the above controls are fully operational, the internal controls for this subtask throughout the Army are adequate.

Director of Information Systems for Command, Control, Communications, and Computers

FUNCTIONAL PROPONENT

I have reviewed this subtask within my organization and have supplemented the prescribed internal control review checklist when warranted by unique environmental circumstances. The controls prescribed in this checklist, as amended, are in place and operational for my organization (except for the weaknesses described in the attached plan, which includes schedules for correcting the weaknesses).

OPERATING MANAGER (Signature)

Kenneth L. Denton,

Alternate Army Liaison Officer with the Federal Register.

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