

Freedom of Information Act Requests

Six Keys to Handling Them

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When I worked at an Air Force major command, I noticed that receiving a Freedom of Information Act (FOIA) request consistently caused program and contracting personnel to become distracted from their mission. Today, the risk of distraction has increased alarmingly. Money and effort have been diverted from accomplishing tasks. According to the Department of Defense (DoD) *Chief FOIA Officer's Reports for Fiscal Years 2013 and 2014*, the DoD spent \$166,542,828 (\$166.5 million) to process 127,000 FOIA requests.

In hindsight, it now is clear to me that the distraction at the program and contracting offices was attributable to a lack of familiarity with such requests—people simply did not understand what an FOIA request represented or how to handle the request. Here are the keys to avoiding FOIA-induced distractions.

Recognize What an FOIA Request Represents

We work in a democracy and, as federal employees, we are answerable to the people. The first key is to recognize that the FOIA is a federal law that represents a mechanism for individuals to ask questions of the gov-

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ernment and federal agencies, such as the DoD. When those questions concern the manner in which DoD accomplishes its missions or how the DoD spends taxpayer dollars, then individuals are entitled by law to receive an answer. This is the essence of transparency and open government.

A DoD FOIA request is a written request for DoD records that reasonably describes the record sought and it may be made by any person, including a member of the public (U.S. or foreign citizen or entity), an organization or a business, that either explicitly or implicitly invokes the FOIA. Written requests may be received by postal mail or other commercial delivery means, by fax or electronically. The request is considered received and the 20-day clock to respond starts when the request arrives at the FOIA office of the component that is in possession of the records.

A Duty to Send the Request Forward

The second key is that program and contracting personnel have a duty to get the request to the FOIA office. I will admit that the location of that office is not always clear to someone buried deeply within a program or contracting office. As a result, I always have advised recipients of FOIA requests to get the requests to their servicing legal offices so that the lawyers can forward the requests to the relevant FOIA offices. Thus far, that advice has proven to be 100 percent accurate and effective.

Who Can Decide Against Release

Recognize that records requested under FOIA sometimes may be withheld from release. However, the decision to withhold records is not made in the program or contracting office.

The third key is that making decisions to withhold records is reserved for Initial Denial Authorities (IDA)—officials occupying specified positions within the DoD. The decision to withhold is proper only if one of nine exemptions apply to the records in question:

- They currently and properly are classified in the interest of national security.



- They relate solely to the internal personnel rules and practices of the DoD or any of the DoD Components.
- They are protected by another law that specifically exempts the information from public release.
- They include trade secrets and commercial or financial information obtained from a private source, and their disclosure would cause substantial competitive harm to the source.
- They are internal records that are deliberative in nature and are part of the decision-making process and contain opinions and recommendations.
- Their release would result in a clearly unwarranted invasion of personal privacy.
- They are investigatory records or information compiled for law-enforcement purposes.
- They are for the use of any agency responsible for the regulation or supervision of financial institutions.
- They contain geological and geophysical information (including maps) concerning wells.

When records are withheld, an FOIA requester can appeal the decision through administrative procedures within the DoD. Ultimately, the FOIA requester can sue in federal court and ask the judge to force the DoD to release the records. In making that determination, a federal judge will examine the process by which program or contracting personnel handled the FOIA request.

Recognize How to Handle a Request

For those of us in the DoD, FOIA requests are managed in accordance with DoD Directive 5400.07 "Department of Defense Freedom of Information Act Program," which establishes overall DoD FOIA policy and dictates the FOIA roles and responsibilities of DoD components. The actual procedural guidance concerning the processing of FOIA requests within the DoD is found in DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program." The fourth key is to follow these two guides faithfully. Doing so should greatly minimize the expense and effort spent on handling an FOIA request.

Typically, the FOIA manager or legal officer will send an email to all members of an organization directing that they search their electronic and paper files and forward any records subject to a particular FOIA request.

Take the FOIA Direction Seriously

It is imperative that you conduct a thorough search of files under your control as the fifth key so that the DoD can affirm in court that a complete search was performed.

To review files manually or by automated means is the essence of the term "search." The goal is to scrub DoD files for the purpose of locating those records responsive to the FOIA request. The search must be reasonably calculated to uncover all relevant documents. Again, agencies and individuals have a duty to search.

Figure 1. Department of Defense Chief FOIA Officer's Report to the Department of Justice Highlights

	FY 2013	FY 2014
Requests processed	67,679	59,321
Requests granted in full	24,368	20,888
Partial release	15,396	13,577
Program costs (including litigation)	\$83,461,793	\$83,081,035
Fees collected from requesters	\$769,096	\$545,414
Requests denied	5,183	3,267

Note: For requests denied Exemptions 6 & 7(c) were the most common exemptions. Exemption 6 protects information about individuals in personnel and medical files and similar files, while 7(c) protects personal information in law enforcement records.

<http://open.defense.gov/Transparency/FOIA/DoDAnnualReportstoAG.aspx>

Redaction of Sensitive Information

The final and sixth key is to recognize that, although you may believe that a record should be withheld because it contains exempt information, the IDA very likely will segregate or redact the exempt information and release the remainder of the record. Unless it is found that indicating the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information will be indicated on the released portion of paper records by use of brackets or darkened areas indicating that removal. Some organizations refer to this type of segregation as "redacting" information—but the result is the same. Finally, the FOIA requester is provided with a response letter that contains:

- Identification of responsive records
- Volume estimates of information withheld
- Identification of exemptions asserted
- Releasable records provided in the form requested "if readily reproducible"
- Administrative appeal rights

Responding to requests under the FOIA is an important part of your duties as members of the DoD workforce. Ensuring that you compile timely and complete responses not only serves the democracy that you defend but also reduces the risk that precious time and money will be diverted from your crucial mission tasks. Understanding and using the six steps and keys provided above will free you from FOIA-induced distractions. &

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