

SDDC Regulation 25-55

Information Management:

Freedom of Information Act (FOIA) Program

**Headquarters, Military Surface
Deployment and Distribution Command
1 Soldier Way
Scott AFB IL 62225-5006
8 June 2015**

UNCLASSIFIED

SUMMARY of CHANGE

SDDCR 25-55

Freedom of Information Act (FOIA) Program

This revision:--

- Updates the format to comply with Army Materiel Command standards.
- Adds sample completed DD Form 2086 (Appendix B)
- Adds sample “No Records” certificate (Appendix C)

DEPARTMENT OF THE ARMY
HEADQUARTERS, MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
1 SOLDIER WAY, SCOTT AIR FORCE BASE IL 62225-5006

SDDC REGULATION
NO. 25-55

8 June 2015

Information Management

FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

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1. Purpose:

a. This regulation establishes a commitment to full compliance with the law as stated in the Freedom of Information Act (FOIA), 5 United States Code (U.S.C.) § 552, regarding responsibilities, policies, and procedures for receiving, analyzing, and processing FOIA requests for the Military Surface Deployment and Distribution Command (SDDC).

b. The intent of this regulation is to instruct, assist, and guide SDDC command and staff personnel on FOIA processing procedures. It provides the internal processing guidelines to follow to ensure SDDC complies with its statutory responsibilities under the FOIA.

c. Federal law and DoD directives and regulations govern, and take precedence over, this regulation. This regulation will be used to facilitate compliance, specifically with 5 United States Code (U.S.C.) § 552, as amended, and DoD, and Army regulations.

*This regulation supersedes SDDCR 25-55, dated 10 August 2006

2. Applicability. This regulation applies to all military, civilian, and contractor personnel assigned or attached to Headquarters SDDC, subordinate units, and all other SDDC activities.

3. Policy:

a. SDDC 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 FOIA shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the FOIA is invoked.

b. The SDDC FOIA Officer shall ensure procedural matters do not unnecessarily impede a requester from obtaining SDDC records promptly. The FOIA Officer shall provide assistance to requesters to help them understand and comply with procedures established by this regulation or any other DoD or Army regulation governing FOIA.

4. Responsibilities:

a. The FOIA Officer for SDDC is located in the Deputy Chief of Staff for Information Management. The FOIA Officer:

(1) Is primarily responsible for ensuring command and staff personnel are properly trained and educated regarding their FOIA responsibilities and effectively and efficiently comply with the SDDC FOIA program.

(2) Will take action necessary to ensure the command is in compliance with governing FOIA laws, regulations, instructions, and guidance by ensuring, at a minimum, the following:

(a) Log all FOIA requests in the Army's Freedom of Information and Privacy Act Tracking System (FACTS) database.

(b) Determine office of primary responsibility (OPR) or the custodian of the records for requested records and/or records searches.

(c) Manage and coordinate requests for records that may exist throughout the various command and staff activities, directorates, or sections by identifying and coordinating actions of OPRs in each command or staff activity, directorate, or section.

(d) Review records received from the OPR. Consult with the OPR, if necessary, to determine which records or portions of records may be released and which records are exempt from mandatory disclosure. As the single point of contact in the command, the FOIA Officer may consult with the OPR, the Office of the Staff Judge Advocate (SJA), and any other command or staff element for advice, guidance, and assistance in making an initial determination as to release or partial release or a recommendation for denial to the Initial Denial Authority (IDA).

(e) Prepare and coordinate interim/final responses with SDDC command and staff elements and SJA or with other DoD or government agencies having an interest in the final decision.

(f) Take necessary action to ensure records deemed exempt from mandatory disclosure are processed to the IDA. Any proposed denial of records must be coordinated with SJA.

(g) Prepare, process, and organize all FOIA requests for review/signature of the IDA.

(h) Maintain case files for each FOIA request.

(i) Submit annual FOIA report to U.S. Army Materiel Command (AMC) G-6.

(j) Forward any FOIA appeals to HQ AMC for processing. (See paragraph 6.)

b. The OPR is the custodian of the record(s), i.e., the command or staff element that would more than likely be responsible for maintaining the requested record, if such record exists. The OPR will:

(1) Forward a copy of all records responsive to the FOIA request directly to the FOIA Officer via the SDDC FOIA mailbox, usarmy.scott.afb.sddc.foia-requests@mail.mil. The FOIA case file number will be included on all responses. If records do not exist, submit a “no records” certificate to the FOIA Officer detailing the search effort. (See appendix C for an example of a “no records” certificate.)

(2) Identify any releasable portions and provide input on the applicability of any FOIA exemptions. Consultation with the FOIA Officer may be necessary. FOIA exemptions are explained in appendix D.

(3) Provide the FOIA Officer with input on costs for search, review, and duplication fees as set forth in applicable DoD and Army FOIA regulations using DD Form 2086, Record of Freedom of Information (FOI) Processing Cost. All times will be entered to the nearest quarter hour (e.g., 1.25, 2.5, 4.75, or 5). See appendix B for an example of a completed DD Form 2086.

c. The AMC General Counsel has delegated authority to the SDDC SJA to act as the IDA for records pertaining to SDDC actions for which he/she is responsible. As the IDA, the SJA will:

(1) After consolidation by the FOIA Officer, conduct a legal review of all FOIA requests, release actions, or actions forwarding records deemed exempt from release.

(2) Provide a written legal opinion discussing the legal sufficiency of any proposed action to include legal advice and analysis regarding the applicability of FOIA exemptions.

(3) Sign denial and partial denial letters and return letters to the FOIA Officer. Denial and partial denial letters constitute the final response for release to the requester.

5. Prompt Action on Requests.

a. When a member of the public complies with the procedures established by DoD and Army FOIA regulations for obtaining DoD records, the request shall receive prompt attention. The FOIA Officer will dispatch a reply within 20 working days unless a delay is authorized.

b. The FOIA provides for extensions of initial time limits for three specific situations: (1) the need to search for and collect records from separate offices; (2) the need to examine a voluminous amount of records required by the request; and, (3) the need to consult with another agency or agency component. Further, determinations of administrative appeals are required to be made within 20 working days.

c. When the FOIA Officer has a significant number of requests, e.g., 10 or more, and finds he/she is unable to meet the 20-day requirement, or meet any granted extension of the initial time limits, the requests will be processed in order of receipt. In general, a practice of handling requests on a first-in, first-out basis should be followed, particularly for backlogged requests. However, the FOIA Officer may assign priorities as appropriate consistent with the underlying intent and purposes of the FOIA.

d. An SDDC command or staff element may expedite action on a request regardless of its ranking within the order of receipt upon a showing by the requestor of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the command or staff element processing the request.

e. The 20-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(s) requested.
- (3) Is received by the proper official designated to answer the request.
- (4) Meets the procedural requirements of governing FOIA regulations.

f. All requests should refer explicitly or implicitly to the Freedom of Information Act to ensure their prompt recognition as FOIA actions.

6. Appeals:

a. If the SDDC IDA declines to provide a record because it is exempt under one or more of the exemptions of the FOIA, the requester may appeal that decision but must do so in writing to the designated appellate authority. The designated appellate authority for SDDC is the Army Materiel Command Commanding General.

b. The FOIA Officer will submit all appeal packages to HQ AMC for processing to the Office of General Counsel. The appeal package will include the following:

- (1) Requester's appeal letter.
- (2) Signed IDA denial or partial denial letter.
- (3) Redacted version of released record(s).
- (4) Unredacted version of released record(s).
- (5) Original request.
- (6) Any additional information relevant to the FOIA case.

Supplementation of this regulation is prohibited. The proponent of this regulation is the DCS for Information Management/CIO. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to HQ SDDC G-6, Attn: AMSSD-IMO-BR, 1 Soldier Way, Scott AFB IL 62225-5006.



SUSAN A. DAVIDSON
Major General, USA
Commanding

**Appendix A
References**

**Section I
Required Publications**

DoD 5400.7-R
DoD FOIA Program

AR 25-55
The Department of the Army Freedom of Information Act Program

**Section II
Related Publications**

DOJ Guide to the FOIA
(available at: <http://www.justice.gov/oip/doj-guide-freedom-information-act-0>)

**Section III
Prescribed Forms**

This section contains no entries.

**Section IV
Referenced Forms**

DD Form 2086
Record of Freedom of Information (FOI) Processing Cost

Appendix B
DD Form 2086, Record of Freedom of Information (FOIA) Processing Cost (Sample)

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST				REPORT CONTROL SYMBOL	
<i>Please read instructions on back before completing form.</i>				DD-DA&M(A)1365	
1. REQUEST NUMBER FP-15-000679		2. TYPE OF REQUEST (X one) <input checked="" type="checkbox"/> a. INITIAL <input type="checkbox"/> b. APPEAL		3. DATE COMPLETED (YYYYMMDD) 20141112	
				4. ACTION OFFICE AMSSD-OP	
5. CLERICAL HOURS (E-9/GS-8 and below)			FEE CODE	(1) TOTAL HOURS	(2) HOURLY RATE
a. SEARCH			1	0.50	10.00
b. REVIEW/EXCISING			2	2.25	45.00
c. OTHER ADMINISTRATIVE COSTS			3	0.75	15.00
6. PROFESSIONAL HOURS (O-1 - O-6/GS-9-GS-15)/CONTRACTOR			(1) TOTAL HOURS	(2) HOURLY RATE	(3) COST
a. SEARCH			1	0.50	22.00
b. REVIEW/EXCISING			2	1.00	44.00
c. OTHER/COORDINATION/DENIAL			3	1.50	66.00
7. EXECUTIVE HOURS (O-7 - ES 1 and above)			(1) TOTAL HOURS	(2) HOURLY RATE	(3) COST
a. SEARCH			1		0.00
b. REVIEW/EXCISING			2		0.00
c. OTHER/COORDINATION/DENIAL			3	0.75	56.25
8. COMPUTER SEARCH			(1) TOTAL TIME	(2) RATE	(3) COST
a. MACHINE TIME (Not PC, desktop, laptop)			4	25.00	0.00
b. PROGRAMMER/OPERATOR TIME (Human)					
(1) Clerical Hours			1	\$20.00/hr	0.00
(2) Professional Hours			1	\$44.00/hr	0.00
9. OFFICE MACHINE COPY REPRODUCTION			(1) NUMBER	(2) RATE	(3) COST
a. PAGES REPRODUCED FOR FILE COPY			3	125	18.75
b. PAGES RELEASED			5	125	18.75
10. PRE-PRINTED PUBLICATIONS			(1) TOTAL PAGES	(2) RATE	(3) COST
a. PAGES PRINTED			5	.02	0.00
11. COMPUTER PRODUCT OUTPUT/ACTUAL COST CHARGES			(1) NUMBER	(2) ACTUAL COST	(3) COST
a. TAPE/DISC/CD			6		0.00
b. PAPER PRINTOUT			3		0.00
12. OTHER ADMINISTRATIVE FEES			(1) NUMBER	(2) ACTUAL COST	(3) COST
a. ALL POSTAGE/ADMINISTRATIVE (See instructions)			3		0.00
13. AUDIOVISUAL MATERIALS			(1) NUMBER	(2) ACTUAL COST	(3) COST
a. MATERIALS REPRODUCED			4		0.00
14. SPECIAL SERVICES			(1) NUMBER	(2) ACTUAL COST	(3) COST
a. ALL SPECIAL SERVICES (See instructions)			6		0.00
15. MICROFICHE REPRODUCED			5	.25	0.00
FEE CODES 1 Chargeable to "commercial" requesters. Chargeable to "other" requesters after deducting 2 hours. 2 Chargeable to "commercial" requesters only. 3 Not chargeable to any fee category. 4 Chargeable to "commercial". Chargeable to "other" after deduction of the equivalent of 2 hours. (Example: deduct \$88.00 professional rate.) 5 Chargeable to all fee categories after deduction of 100 pages (DOES NOT include "commercial"). 6 Chargeable to all fee categories. No deductions.			16. FOR FOI OFFICE USE ONLY a. TOTAL COLLECTABLE FEES \$121.00 b. TOTAL PROCESSING FEES \$295.75 c. TOTAL CHARGED \$121.00 d. FEES WAIVED/REDUCED (X one) e. FEES NOT APPLICABLE (X one)		
			d. FEES WAIVED/REDUCED (X one)		Yes No
			e. FEES NOT APPLICABLE (X one)		Yes No
<i>See Chapter 6, Fee Schedule, DoD 5400.7-R, to determine appropriate assessment of fees.</i>					

DD FORM 2086, JAN 2003

PREVIOUS EDITION IS OBSOLETE.

Reset

Adobe Professional 7.0

Appendix C
Sample No Records Certificate

NO RECORDS CERTIFICATION

I hereby certify that after making a good faith effort and conducting a thorough search of our records using methods which may reasonably be expected to produce the information requested, the [name of office] has no further records pertaining to [name of requestor, date of request] Freedom of Information Act (FOIA) request for the following information: [state requested information in detail.] We have already provided the responsive information we have to the requester.

This search included a physical and visual check of the records and files maintained by the [name of office]. The search also encompassed a check of [name of database(s), etc. A search may include searching in a specific office and/or a specific set of files or filing cabinet.]

Name
Title/Office

Date

Appendix D

FOIA Exemptions

The following list is provided for information and guidance to the FOIA Officer and other SDDC command and staff personnel in conducting an initial review of records for release. Final release assessments or the applicability of any of these exemptions must be made with SJA review and concurrence. It is SDDC policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions summarized here and specifically delineated in the governing FOIA law and regulations.

(1) Exemption 1 (5 U.S.C. § 552(b)(1)). This exemption applies to records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized by Executive Order.

(2) Exemption 2 (5 U.S.C. § 552(b)(2)). This exemption applies to records related solely to the internal personnel rules and practices of an agency. Specifically, exemption 2 applies to records that are 1) personnel-related rules and practices; 2) that are “related solely” to such rules and practices; and 3) that are “internal” to the agency.

(3) Exemption 3 (5 U.S.C. § 552(b)(3)). This exemption allows for withholding of information prohibited from disclosure by another federal statute provided the statute either (a) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (b) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Exemption 4 (5 U.S.C. § 552(b)(4)). Records containing trade secrets, commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the respective agency and the offeror or the party that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(5) Exemption 5 (5 U.S.C. § 552(b)(5)). Records containing information considered privileged in litigation, primarily under the deliberative process privilege, are exempt from release. In order to qualify for this exemption, records must be both deliberative in nature as well as part of a decision-making process. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

(6) Exemption 6 (5 U.S.C. § 552(b)(6)). Records containing information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requestor, other than the person whom the information is about, would result in a clearly unwarranted invasion of personal privacy, are exempt from release. Release of information about an individual contained in a Privacy Act System of Records that would constitute a clearly unwarranted invasion of privacy is prohibited and could subject the releaser to civil and criminal penalties.

(7) Exemption 7 (5 U.S.C. § 552(b)(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 laws, are exempt from release. Information that, if released, could constitute an unwarranted invasion of personal privacy of a living person, including surviving family members and/or could reasonably be expected to endanger the life or physical safety of an individual, is denied under this exemption.

(8) Exemption 8 (5 U.S.C. § 552(b)(8)). Records containing information relating to the 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 are exempt from release. (This exemption is not normally applicable to DoD.)

(9) Exemption 9 (5 U.S.C. § 552(b)(9)). Records containing geological and geophysical information and data (including maps) concerning wells are exempt from release. (This exemption is not normally applicable to DoD.)

Glossary

Section I Abbreviations

AMC

U.S. Army Materiel Command

DCS

Deputy Chief of Staff

DoD

Department of Defense

FACTS

Freedom of Information and Privacy Act Tracking System

FOIA

Freedom of Information Act

IDA

Initial Denial Authority

OPR

office of primary responsibility

SDDC

Surface Deployment and Distribution Command

SJA

Staff Judge Advocate

USTRANSCOM

U.S. Transportation Command

Section II

Terms

This section contains no entries

Section III

Special Terms and Abbreviations

This section contains no entries