

## RELEASE AND PROCESSING

To submit a request for FOIA, use POM Form 145, Request for FOIA. This form is available for download at <http://www.monterey.army.mil/hr/index.html> and click on the Administrative Services Division. You can also request this form by writing to us at our mailing address, giving us a call or sending us an email at [pres.asb@conus.army.mil](mailto:pres.asb@conus.army.mil).

Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a specific description and details of the desired record, which enables the Government to locate the record with a reasonable amount of effort.

### Upon receipt of a request by the FOIA Office

- \* Conducts a review to ensure it is proper or “perfected” FOIA request. A “perfected” FOIA request reasonably describes the records sought, should have a willingness to pay fees, and must be made in accordance with the Army regulations.
- \* Assigns a tracking number and entered into a tracking system.
- \* Assigns an action office familiar with the subject area of the requested record.
- \* Assigns a suspense date of 20 working days after receipt of the “perfected” request.

### Action Office will conduct an Adequate Search

- \* Agencies must undertake a search that is “reasonably” calculated to uncover all relevant documents.
- \* Must search everywhere it is reasonable that likely responsive records exist.
- \* Emails and other electronic records are treated the same as other records.
- \* Amount of search time provided free depends on fee status of requester.
- \* Records found and responsive documents will be forwarded to the FOIA office for review, hard copy or electronically.

### FOIA Office review records received from Action Office

- \* FOIA Office conducts a line-by-line review of the record(s) received from the Action Office and indicates exempt information that should be withheld.
- \* Forwards the FOIA request to the Staff Judge Advocate’s (SJA) office for legal review.

### Staff Judge Advocate for legal review

- \* Conducts legal review on the FOIA.
- \* Approves FOIA Office’s recommended redactions or provides additional guidance.
- \* Forwards FOIA request to FOIA Office for release.

### FOIA Office prepares response to the requester

- \* Release determinations are communicated to the requester in response letters.
- \* Documents must indicate deleted information with black/shaded areas and redacted areas must indicate applicable exemption(s).
- \* If applicable, instructions on how to pay processing fee will be included.
- \* Enters into a tracking system that the FOIA request has been completed.

## FEE PROCESSING

Fee processing reflects direct costs for search, review, and duplication of documents, collection of which is permitted by the FOIA.

Waivers or reductions in fees may be given if disclosing the information is in the public interest. Public interest is defined as information that significantly enhances the public’s knowledge of the operations and activities of the Army. Processing of fee is determined by categories:

- \* **Commercial:** Requesters who seek information for use or purpose that furthers their commercial trade, or profit interest. Commercial requesters pay all fees for search, review, and duplication.
- \* **Educational:** Institutions of education, including preschools, elementary or secondary schools, and institutions of higher learning. The records must be sought in furtherance of scholarly research. Educational requesters pay only duplication fees (the first 100 pages are provided at no cost) unless it is determined that fees are waived.
- \* **Non-Commercial Scientific:** Institution is solely for conducting scientific research. The records must be sought in furtherance of scientific research. These requesters pay only duplication fees (the first 100 pages are provided at no cost) unless it is determined that fees are waived.
- \* **News Media:** Any person or entity gathering information of potential interest to a segment of the public. Examples are television, radio, and publishers of periodicals. These requesters pay only duplication fees (the first 100 pages are provided at no cost) unless it is determined that fees are waived.
- \* **“Other” Requester:** Requesters who do not qualify in another category are considered “other” requesters, and normally make requests for agency records for their personal use. “Other” requester receives two hours search, all review costs, and the first 100 pages at no cost.

All requesters should submit a willingness to pay fees regardless of the fee category; however, this does not mean they will be charged fees. Except for commercial requesters whose fees total more than \$25.00, waivers are always considered.

UNITED STATES ARMY GARRISON

PRESIDIO OF MONTEREY



FREEDOM OF  
INFORMATION

ACT (FOIA)

INFORMATION GUIDE



Freedom of Information Act Office  
Administrative Services Branch  
Directorate of Human Resources

Please contact us for additional information  
Mailing address:

U.S. Army Garrison Presidio of Monterey  
ATTN: FOIA Officer  
373 Patton Avenue  
Monterey, California 93940  
(831) 242-6215/6319

<http://www.monterey.army.mil/hr/index.html>

## THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) is a Federal Law that establishes the public's right to request existing records from Federal Government agencies. The FOIA provides prompt, maximum release of Department of Defense (DoD) records to the public unless such requested records are specifically exempt from mandatory public disclosure under the FOIA.

The public has the 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.

### Who can submit a FOIA request?

Anyone can submit a FOIA request, including a member of the public (U.S. or foreign citizens), an organization, or a business, but not including a Federal Agency.

Soldiers and civilian employees of the Department of the Army (DA) may, as private citizens, request DA or other agencies' records under 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 the soldiers or civilian employees to go through the chain of command to request information under the FOIA.

### What is a record?

A record is the product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by the agency of the United States Government under Federal law in connection with the transaction of public business and in Army possession and control at the time the FOIA request is made.

### Referrals

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.

### 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.

## 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. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's privacy interest.

### EXEMPTION 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. 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.

### EXEMPTION 2

Those related solely to the internal personnel rules and practices of DoD or any of its Components. This exemption has two profiles, *high b2* and *low b2*.

- \* Records qualifying under *high b2* are those containing or constituting statutes, release, regulations, orders, manuals, directives and instructions the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the DoD.
- \* Records qualifying under the *low b2* profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit gained by release, and it would constitute an administrative burden to process the request in order to disclose these records.

### EXEMPTION 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:

- \* National Security Agency Information Exemption
- \* Patent Secrecy
- \* Restricted Data and Formerly Restricted Data
- \* Communication Intelligence
- \* Authority to Withhold from Public Disclosure Certain Technical Data
- \* Confidentiality of Medical Quality Records
- \* Qualified Immunity Participants
- \* Physical Protection of Special Nuclear Material
- \* Limitation on Dissemination of Unclassified Information Protection of Intelligence Sources and Methods.

### EXEMPTION 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 records 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.

### EXEMPTION 5

Those containing 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, or within or among DoD Components.

Also exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

### EXEMPTION 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. 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.

### EXEMPTION 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 applies to law enforcement investigations such as Inspector General investigations. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

### EXEMPTION 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.

### EXEMPTION 9

Those containing geological and geophysical information and data (including maps) concerning wells.