

# UNCLASSIFIED



National Geospatial-Intelligence Agency

## INSTRUCTION

NUMBER 5750.1  
2 December 2015

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SUBJECT: Freedom of Information Act Program

References: See Enclosure 1.

1. PURPOSE. This NGA Instruction (NGAI):

a. Establishes policy, assigns responsibilities, and implements procedures for the management of a uniform process to respond to Freedom of Information Act (FOIA) requests received by NGA in accordance with (IAW) the authorities listed in References (a) through (i).

b. Incorporates and cancels NI 5750.2R7, "NGA Instruction for Freedom of Information Act Program." (Reference (k))

2. APPLICABILITY. This NGAI applies to:

a. All NGA civilian employees, military service members, personnel from other Government agencies permanently assigned to NGA, and contractors.

b. NGA records, even though the records may be exempt according to section 403-5e of Reference (e); sections 424 and 455 of Reference (f); or other applicable law, will be processed.

c. This instruction applies to all NGA organizations. For complete guidance, this instruction must be used in conjunction with Reference (h).

3. DEFINITIONS. See Glossary.

4. POLICY. It is NGA policy:

a. To promote transparency and accountability by adopting a presumption in favor of disclosure in all decisions involving the FOIA; to respond promptly to requests in a spirit of cooperation; and to take affirmative steps to make the maximum amount of information available to the public, consistent with the NGA responsibility to protect national security and other sensitive Department of Defense (DoD) information.

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b. To promptly answer all other requests for NGA information and records under established procedures and practices.

c. To release NGA records to the public unless those records are exempt from disclosure as outlined in Reference (c).

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. EFFECTIVE DATE. This NGAI is effective on the date of signature.



Harry E. Mornston  
Chief of Staff

Enclosures

1. References
2. Responsibilities
3. FOIA Procedures
4. Relationship Between the FOIA and the Privacy Act (PA)

Glossary

ENCLOSURE 1

REFERENCES

- (a) Executive Order 13526, "Classified National Security Information," 29 December 2009
- (b) Executive Order 13392, "Improving Agency Disclosure of Information," 14 December 2005
- (c) Title 5 United States Code (U.S.C.) Section 552, "Freedom of Information Act"
- (d) Title 5 USC Section 552a, "The Privacy Act of 1974"
- (e) Title 50 U.S.C. Section 403-5e, "Responsibilities of Secretary of Defense Pertaining to National Intelligence Program"
- (f) Title 10 U.S.C. Sections 424 and 455, "Disclosure of Organizational and Personnel Information: Exempted for Specified Intelligence Agencies," and "Maps, Charts, and Geodetic Data: Public Availability; Exceptions"
- (g) 32 Code of Federal Regulations (CFR) Part 286, "DoD Freedom of Information Act Program Regulation," 1 July 2011
- (h) DoD 5400.7-R, "DoD Freedom of Information Act Program," 4 September 1998
- (i) Department of Defense Directive (DoDD) 5400.07, "Department of Defense Freedom of Information Act (FOIA) Program," 2 January 2008
- (j) NGA Directive 7410, "Inspector General Operations," 2 June 2014
- (k) NGA Instruction (NI) 5750.2R7, "NGA Instruction for Freedom of Information Act Program," 7 August 2007 (hereby rescinded)
- (l) NI 8040.1, "NGA Instruction for Records and Information Life-Cycle Management," 22 April 2010
- (m) "NGA Table of Delegated Authorities," 12 November 2015

ENCLOSURE 2

RESPONSIBILITIES

1. Director, NGA (D/NGA).

a. Ensures that the agency's FOIA process adheres to the principle of openness in government IAW References (c) and (d).

b. Appoints the Chief of Staff (CoS) as the FOIA appellate authority (AA) for the NGA FOIA program IAW References (g) and (m).

c. Designates the Office of Corporate Communications (OCC) Primary Public Release Officer, or any designated alternates, to act as the Initial Denial Authority (IDA) IAW References (g) and (m).

d. Delegates administration of the NGA FOIA Program to the Director, Security and Installations (D/SI).

2. CoS serves as the FOIA AA.

3. D/SI.

a. Administers internally the NGA FOIA Program and publishes any further instructions required for the administration of the NGAI within the agency.

b. Designates Chief/Computer Investigation and Awareness Division (C/SISC) as the FOIA Public Liaison for the NGA FOIA Program IAW Reference (g).

c. Submits names of personnel to the Director, Administration and Management (DA&M) within DoD, for designation as FOIA Public Liaisons IAW Reference (i).

d. Ensures the FOIA Public Liaison submit to the DA&M, through the Defense Freedom of Information Policy Office (DFOIPO), NGA inputs to the DoD FOIA Annual Report prescribed in Reference (g) and other reports or data requested by the DA&M IAW Reference (i).

e. Designates SISC as the FOIA Program Office and/or Requester Service Center as prescribed by Reference (b).

f. Ensures that senior NGA, DoD, and Intelligence Community (IC) officials, affected legal advisors, and public affairs officers are aware of releases through the FOIA, inclusive of releases through litigation channels that may be of significant public, media, or Congressional interest and that their FOIA offices provide DFOIPO with informational copies of significant FOIA requests and advance notifications of proposed responses IAW Reference (i).

4. General Counsel (GC) provides legal advice and guidance on FOIA requests, appeals, and litigation and acts as the NGA focal point on all judicial actions.

5. Chief, SISC.

a. Serves as the FOIA Public Liaison.

b. Manages NGA's FOIA Program and directs the FOIA Program Office to handle FOIA requests to the agency.

6. FOIA Program Office/Requester Service Center.

a. Processes all requests for mandatory declassification review in response to requests for declassification IAW Reference (a).

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

c. Maintains and compiles current indices of all records available for public inspection and copying as required by section 552(a) of Reference (c).

d. Conducts training on the provisions of this NGAI for officials and employees who implement the FOIA IAW References (c), (h), and (i).

7. Inspector General (IG) processes and manages requests for NGA Office of Inspector General (OIG) records and provides OIG records to SISC for posting to the NGA electronic reading room. The IG designates an IDA and serves as the AA for requests for OIG records. (Reference (j))

8. Director, Office of Corporate Communications, (OCC), coordinates and holds primary responsibility for all news media requests unless the request specifically cites FOIA which then defers to SISC. All Congressional inquiries, regardless of subject matter, should be referred to OCC for action.

9. Component and Office Directors, regarding the search for records.

a. Appoint a primary and alternate organization point of contact (POC) to whom SISC can direct FOIA requests and who serves as the direct liaison to SISC. Any training requirements for the POC will be handled through the FOIA Program Office as described in 5.d above.

b. Forward, through the POC, the FOIA request from SISC to the organization most likely to hold or maintain the records being requested.

c. Direct, through the POC, that a search for the records be completed in a timely manner, not to exceed 20 working days. The search results will be reported to SISC for further action.

d. Ensure that all records, regardless of format or medium, are maintained and managed IAW Reference (l) to ensure proper maintenance, use, accessibility, and preservation.

ENCLOSURE 3

FOIA PROCEDURES

1. SISC receives all FOIA requests for NGA. Once the FOIA request is received, it is entered into the FOIAXpress tracking tool database to initiate the record search. The requestor is simultaneously advised that under the Multi-Track processing system a response may take longer than the statutory time requirement of 20 working days.

2. FOIA requests for OIG records will be processed by the OIG, which is obligated to report the receipt of the request promptly to SISC to be entered into the database. OIG will be under the same statutory time frame to process the request. (Reference (j))

3. As part of the administration FOIA process, the FOIA Program Office/Requester Service Center will:

a. Collect fees for costs associated with processing FOIA requests; fees collected are forwarded through the Financial Management (FM) Directorate to the US Treasury. SISC will also approve or deny requests for fee waivers.

b. Approve or deny requests for expedited processing.

c. Send a “no records” response to FOIA requesters should a records search reveal that no agency records exist that are responsive to the FOIA request.

d. Provide training within NGA on the FOIA law and agency processing procedures.

e. Conduct periodic reviews of NGA’s FOIA program.

f. Maintain an “electronic” reading room for agency records, an index for frequently requested records, a FOIA handbook, and other material as required by the FOIA on a public Internet website.

g. Coordinate with other DoD components, other members of the IC, or the Department of Justice (DOJ), prior to releasing any records under the FOIA that may also be pertinent to litigation pending against the United States.

h. Prepare the Annual Report—FOIA (DD Form 2564) and forward the report to the Directorate for Freedom of Information and Security Review, Washington Headquarters Services.

i. Coordinate requests and responses to all news media requests and congressional inquiries with OCC

j. Coordinate denials of access to agency records with NGA’s IDA and AA and prepare responsive documents with a recommendation for release or denial of the record.

k. Maintain FOIA case files in and any associated records IAW Reference (l).

4. SISC forwards a copy of the FOIA request to the appropriate Component and/or Office POC. The POC forwards the request to the organization most likely to hold or maintain the records being requested.

a. The organization conducts a search for records responsive to the FOIA request. All organizations promptly conduct searches to locate records responsive to a FOIA request, even if the search is likely to reveal classified, sensitive, or UNCLASSIFIED//FOR OFFICIAL USE ONLY records. A reasonable search includes the search of all activities and locations most likely to have the records that have not been transferred to the National Archives and Records Administration.

b. If a reasonable search does not identify or locate records responsive to the request, the organization must provide SIS with a “no records” response.

c. If a reasonable search identifies or locates records responsive to the request, the organization must send two copies of the responsive record to SIS and provide a recommendation regarding releasability of the record. Any objection to release of the record must be based on one or more of the FOIA exemptions. The organization must also complete and forward DD Form 2086 or DD Form 2086-1, as appropriate, detailing the time and cost incurred in the search, review, and copying of the responsive records.

d. UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO) records. When an organization has identified U//FOUO records responsive to a FOIA request, the record must be evaluated to determine whether any FOIA exemptions are applicable to withhold either the entire record or portions of the record from release. Unless the requested record falls clearly into one or more of the FOIA exemptions, a U//FOUO marking will not prevent a record from being released to the FOIA requester.

e. All organizations will forward promptly or return any misaddressed FOIA requests to SIS.

5. Mandatory declassification review. When a request for a declassification review is received, or when an organization has identified classified records responsive to a FOIA request and has forwarded copies to SIS, SIS provides a copy of the record to the mandatory declassification officer (MDO) for a declassification review.

a. The MDO works with the declassification POC to determine if the record in question is currently and properly classified, and if any information contained in the record may be segregated for release to the FOIA requester.

b. The MDO forwards the results of the declassification review to SIS, in writing, along with any recommendations on whether information in the record can be reasonably segregated and released to the FOIA requester.

6. Withholding agency records from public release. If the requested record is not releasable because it is currently and properly classified or falls within another FOIA



exemption, SISC will prepare a rationale for denying the record. SISC will also prepare an initial denial letter to be sent to the FOIA requester along with applicable records. The package will be reviewed by classification management (SISC) to ensure the proper release of information. OGC will then review the package for legal sufficiency before the package is signed by the IDA.

a. The agency IDA reviews the FOIA request and rationale for withholding the record and, if he or she concurs, signs the letter prepared by SIS.

b. The letter signed by the agency IDA advises the FOIA requester that the records, or a subset of the requested records, are being withheld from release providing the FOIA exemptions supporting the denial. Additionally, the letter advises the requester of their appeal rights and the procedures for submitting an appeal.

c. SIS will maintain a copy of all initial denial letters in the individual's FOIA file.

7. Glomar response. A response to a federal FOIA request from an agency refusing to confirm or deny the existence of records. Glomar responses are most typically invoked when requests for information related to classified national security records are made, but sometimes also used for records in which the government claims a personal privacy right exists.

8. Appeal rights of FOIA requesters.

a. If a FOIA requester appeals the initial denial decision of the agency IDA, SIS processes the appeal for review by the agency AA.

(1) The AA reviews the initial FOIA request, SIS's rationale, and the denial decision made by the IDA. The AA has the authority to either uphold the IDA's decision, and withhold the requested records from release, or reverse the IDA's decision and release all or a portion of the records requested.

(2) SIS prepares the written response to the FOIA requester for the AA's signature. If the AA makes a final determination to uphold the agency IDA's decision, the final agency response includes the basis for the decision and advises the FOIA requester of the right to seek judicial review.

b. In addition to denials of information, a FOIA requester also has a right to appeal initial SIS assessments regarding fee categories, fee waivers, fee estimates, requests for expedited processing, no record determinations, failure to meet the statutory time limits, or any determination found to be adverse by the requester. The authority to uphold or reverse initial SIS assessments in these areas is the agency AA. The decision of the AA is final.

ENCLOSURE 3, APPENDIX 1

FREEDOM OF INFORMATION ACT EXEMPTIONS TO RELEASE OF INFORMATION  
– 5 U.S.C. § 552(b) THROUGH (b)(9)

- (b)(1) – records currently and properly classified in the interest of national security.
- (b)(2) – records that relate solely to the internal personnel rules and practices of an agency.
- (b)(3) – records protected by another law that specifically exempts the information from public release. (For example, the sources and methods provision of the National Security Act or the CIA Information Act.)
- (b)(4) – trade secrets and commercial or financial information obtained from a private source that would cause substantial competitive harm to the source if disclosed.
- (b)(5) – internal records that are pre-decisional and deliberative in nature, or exempt as attorney-client or attorney-work product privileged records.
- (b)(6) – records that if released would result in a clearly unwarranted invasion of personal privacy.
- (b)(7) – investigatory records or information compiled for law enforcement purposes.
- (b)(8) – records used by agencies responsible for the regulation or supervision of financial institutions.
- (b)(9) – records containing geological and geophysical information regarding wells.

ENCLOSURE 4RELATIONSHIP BETWEEN THE FOIA AND THE PRIVACY ACT (PA)

C1.5.13. Not all requestors are knowledgeable of the appropriate statutory authority to cite when requesting records, *nor are all of them aware of appeal procedures*. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the below guidelines are provided to ensure that requestors receive the greatest amount of access rights under both Acts.

C.1.5.13.1. If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the Privacy Act applies only to U.S. citizens and aliens admitted for permanent residence.

C.1.5.13.2. Requesters who seek records about themselves contained in a PA system of records and who cite or imply only the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) (reference (d)) *and if the records, or any portion thereof, are exempt under the FOIA*, the requester shall be so advised with the appropriate PA *and FOIA* exemption. *Appeals shall be processed under both Acts.*

C.1.5.13.3. Requesters who seek records about themselves not contained in a PA system of records and who cite or imply the PA will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records. *Appeals shall be processed under the FOIA.*

C.1.5.13.4. Requesters who seek records about themselves contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) (reference (d)) *and if the records, or any portion thereof, are exempt under the FOIA*, the requester shall be so advised with the appropriate PA *and FOIA* exemption. *Appeals shall be processed under both Acts.*

C.1.5.13.5. Requesters who seek access to Agency records not part of a PA system of records, and who cite or imply the PA and FOIA, will have their requests processed under the FOIA since the PA does not apply to these records. *Appeals shall be processed under the FOIA.*

C.1.5.13.6. Requesters who seek access to Agency records and who cite or imply the FOIA will have their requests *and appeals* processed under the FOIA.

C.1.5.13.7. Requesters shall be advised in *the* final response *letter* that Act(s) was (were) used, *inclusive of appeal rights as outlined above.*

GLOSSARY

DEFINITIONS

Administrative Appeal	A request by a member of the general public, made under the FOIA, asking the AA to reverse a decision; to withhold all or part of a requested record; to deny a fee category claim by a requester; to deny a request for waiver or reduction of fees; to deny a request to review an initial fee estimate; to deny a request for expedited processing due to demonstrated compelling need; to confirm that no records were located during the initial search. Requestors also may appeal the failure to receive a response determination within the statutory time limits and any determination that the requester believes is adverse in nature. References (g) and (h).
Appellate Authority	An agency person who is granted authority to review the decision of the IDA that has been appealed by a FOIA requester and make the appeal determination for the agency on whether the records in question are releasable. References (g) and (h).
Complex Request	A FOIA request that an agency places in a slower track of a multi-track process based on the volume and/or complexity of records requested. References (g) and (h).
Compelling Need	The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety on an individual. Or, the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public. References (g) and (h).

Denial in Full	An agency decision not to release any part of a record or records in response to a FOIA request because all of the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (e.g., no record is located in response to a FOIA request). References (g) and (h).
Denial in Part	An agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part. References (g) and (h).
Expedited Processing	An agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records warranting prioritization of his or her request over other requests were made earlier. References (g) and (h).
FOIA Request	Freedom of Information Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. References (g) and (h).
FOIAXpress	A searchable tracking tool that FOIA and PA requests. (definition developed by NGA for NGA purposes only)
Granted in Full	An agency decision to disclose all records in full in response to a FOIA request. References (g) and (h).
Glomar response	A response to a federal FOIA request from an agency refusing to confirm or deny the existence of records. Glomar responses are most typically invoked when requests for information related to classified national security records are made, but sometimes also used for records in which the government claims a personal privacy right exists. References (g) and (h).
Initial Denial Authority (IDA)	An agency person granted authority to make an initial determination for the agency that records requested in a FOIA request should be withheld from disclosure or release. References (g) and (h).
Initial Request	A request to a federal agency for access to records under the FOIA. References (g) and (h).

Mandatory Declassification Officer	A senior agency official granted authority to perform mandatory declassification reviews for NGA. (definition developed by NGA for NGA purposes only)
Multi-track Processing	A system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing. References (g) and (h).
“Perfected” Request	A FOIA request for records that adequately described the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees. References (g) and (h).
Privacy Act of 1974	Establishes a Code of Fair Information Practice that governs the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in systems of records by federal agencies. The Privacy Act prohibits the disclosure of information from a system of records absent the written consent of the subject individual, unless the disclosure is pursuant to one of twelve statutory exceptions. The Act also provides individuals with a means by which to seek access to and amendment of their records, and sets forth various agency record-keeping requirements. (Pub.L. 93–579, 88 Stat. 1896, enacted December 31, 1974, 5 U.S.C. § 552a).
Simple Request	A fast-track based on the volume and/or simplicity of records requested that an agency using multi-track processing places on a (non-expedited) FOIA request. References (g) and (h).

- Record** Records include all recorded information, regardless of physical form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the US Government or because of the informational value of the data in them. Reference 44 U.S.C., Chapter 33.
- Time Limits** The time period in the FOIA for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request). References (g) and (h).
- Urgently Needed** The information has a particular value that will be lost if not disseminated quickly. Ordinarily, this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information. References (g) and (h).