

DEPARTMENT OF THE ARMY
Pacific Ocean Division, Corps of Engineers
Fort Shafter, Hawaii 96858-5440

PODR 25-1-5

CEPOD-OC

Regulation
No. 25-1-5

21 April 1998

Information Management
FREEDOM OF INFORMATION ACT

1. Purpose. To standardize responsibilities and procedures to process requests for information under the Freedom of Information Act (FOIA) within the U.S. Army Corps of Engineers, Pacific Ocean Division (POD).
2. Applicability. This regulation applies to all elements of POD, including its Division Headquarters, its Districts, and all Divisional/District elements in those organizations.
3. References.
 - a. 32 C.F.R. Part 286, DOD Freedom of Information Act Program Regulation. 22 May 1997
 - b. Army Regulation 25-55, 14 April 1997, The Department of the Army Freedom of Information Act Program.
 - c. Memorandum, CEPOD-OC, Subject: Freedom of Information Act (FOIA) Administration - Delegation of Initial Denial Authority, 8 April 1997.
 - d. The Freedom of Information Act (5 U.S.C. § 552), as amended by the Freedom of Information Reform Act of 1986. 27 Oct 1986
 - e. Memorandum, CECC-T, Subject: FOIA Administration Reorganization (Delegation of Initial Denial Authority), 17 May 1995.
 - f. 32 C.F.R. Part 518, The Army Freedom of Information Act Program. 31 Oct 1991
4. Responsibilities.
 - a. **Division Commander and District Commanders**. Ensure their commands comply with all requirements under References 3a-f and this regulation; and that their respective Offices of Counsel receive appropriate support to carry out their FOIA functions.

This regulation supersedes PODR 25-1-5, 1 June 1993.

b. The Division Counsel.

(1) Is the proponent for this regulation. The Division Counsel works with the POD Director of Information Management to ensure that this regulation is maintained and updated, as needed.

(2) Disseminates, as needed, FOIA-related guidance and information received from outside the Division throughout POD.

(3) In his dual-hatted capacity as HED District Counsel, provides FOIA processing services from his Office, to the Division Headquarters, as needed.

(4) Has delegated the position of FOIA Officer for both POD Headquarters and POH to the POH Deputy District Counsel (to avoid the appearance of an institutional conflict of interest).

(5) Acts (for appropriate FOIA actions) as Initial Denial Authority (IDA) for Division Headquarters and POH.

c. The District Counsel.

(1) Advise their respective Commander on their obligations, and coordinate their response to requests for information under the FOIA.

(2) Act as FOIA Officers for their respective Districts.

(3) Act as IDA for their respective Districts.

d. The Division/District Directors/Chiefs, Information Management (IM).

(1) Oversee and guide their respective Division/District records management programs. Ensure that records and other information, potentially releasable under the FOIA, are properly maintained and accounted for by appropriately designated records custodians.

(2) Assist their respective Division/District Counsel in publishing and maintaining Division/District FOIA guidance, including this regulation, as appropriate.

e. Alternate Freedom of Information Act Officers (AFOIAOs). Work under the guidance of the Division/District Counsel to process responses to requests for information under the FOIA, in accordance with References 3a-f and this regulation.

f. **Supervisors in all elements within POD.** Cooperate at all times with the AFOIAOs and the Division and District Counsel to successfully implement the POD FOIA program, IAW References 3a-f and this regulation.

5. Processing Requests under the FOIA -- General.

a. Processing a request under the FOIA begins with receipt of a request for information or records. Regardless of whether the request states it is being made under the FOIA, initially process all requests as a FOIA request. Some requests for information may be processed under different laws or regulations than the FOIA. Counsel will advise whether that is appropriate.

b. Legibly date-stamp the FOIA request and transmit a legible copy to the appropriate AFOIAO or Division/District Office of Counsel within one working day of receipt.

c. Refer all telephoned requests for information under or about the FOIA to the appropriate AFOIAO or Division/District Office of Counsel for response.

d. Respond to all requests for information under the FOIA within the time and in the manner prescribed by the applicable law or regulations referenced in this regulation. Ensure that delays in response are justifiable and authorized under law and regulations.

e. Ensure that only the Division or District Office of Counsel responds to parties requesting information under the FOIA.

f. Consider operational Security (OPSEC) requirements (See AR 530-1) when processing FOIA requests involving OPSEC. (See AR 25-55, paragraph 5-100 for procedures).

g. Division and District Commanders, following the advice of their respective Counsel, shall appoint one or more AFOIAOs, as appropriate, to process requests for information made under the FOIA. AFOIAO duties may be considered "Other Duties as Assigned" for the Division or District employee who is appointed AFOIAO. The AFOIAO may be a non-attorney, civilian or military employee; but should possess sufficient grade or rank, and experience, so as to successfully coordinate FOIA response efforts among the appropriate Division/District elements. An AFOIAO, assigned to an element, other than Counsel, should be capable of closely working with the Division/District Counsel. In those Districts in which an AFOIAO is not appointed, the District Counsel will perform the functions of the AFOIAO, as described in this regulation.

6. Processing Requests under the FOIA --Counsel's ACTIONS UPON RECEIPT.

a. The functions described in this paragraph will normally be delegated to the appropriate AFOIAO.

b. Upon receipt of a FOIA request, Counsel enters the request in a formal records control system designed to ensure compliance with Reference 3d. This includes entry of the FOIA request in an official log and establishing a separate file identified by name and a sequential numbering system.

c. Counsel tasks the appropriate Division/District elements to provide records or other information that appears to be pertinent to the FOIA request. Counsel acts "For The Commander" during such taskings. Division/District elements must respond to such taskings within the time given them and must treat response as a priority matter. Except when previously arranged with Counsel, Division/District elements must provide all search and reproduction services in response to the FOIA request. Produce and transmit, as expeditiously as possible, legible duplicate copies of original documents or other records to Counsel. Do not transmit original documents or records to Counsel, unless previous arrangements have been made. It is not the element's function to determine what information, if any, may or may not be released to a requester. Provide all information requested to Counsel. Counsel can arrange for alternate methods of release of information, such as the requester reviewing and copying records on site.

d. An attorney must review all documents or other records, assembled during the course of response to a FOIA request, to determine whether the documents or records may be released under applicable FOIA standards and provisions. Counsel shall prepare (for an attorney's review) an appropriate response to the FOIA request. Process "No Record" responses, or partial or complete denials of FOIA requests, in accordance with paragraph 7 of this regulation.

e. The Division/District element that is tasked to respond to the FOIA request must charge costs of search and reproduction of documents and other records in response to a FOIA request (and all other costs attributable to the FOIA request) to its overhead account. Elements provide a record of the costs for search and reproduction, in the form required, to Counsel. Counsel compiles and maintains all applicable costs of search, reproduction, review, excising and any other reportable costs, in response to a FOIA request.

f. Counsel, in the course of processing the FOIA request:

(1) Determines the appropriate fee chargeable, and advises the requester of the amount and manner of payment appropriate for the processing of the FOIA request.

(2) Directs requesters, needing to submit payments, to make checks payable to: "the "Finance and Accounting Officer, US Army Honolulu Engineer District."

(3) Instructs the requester to annotate its check with the phrase: "Payment for FOIA Request."

(4) Instructs the requester to send its payment to the appropriate Office of Counsel's address.

g. Upon receipt of payment, Counsel forwards the requester's payment and transmittal documentation to the appropriate Division/District Finance and Accounting Officer (F&AO). The transmittal documentation must designate the Federal Treasury Account in which the requester's payment is to be deposited. Division Headquarters and the Districts need to determine, in consultation with their respective F&AO, the appropriate accounts and methods for deposit. Counsel documents costs and maintains historical records for each FOIA request by using DD Form 2086 (Freedom of Information (FOI) Processing Cost).

h. If records are released to a requester under the FOIA, and the requester does not make the payment requested in a reasonable time, Counsel sends a letter to the requester, reminding the requester of its obligation to pay. The letter will state that future FOIA requests will not be honored until payment has been made. If the requester still fails to make payment, Counsel, will take steps to insure that the requester does not receive further releases of information under FOIA within the Division. Forward information about delinquent FOIA bills to the Division Counsel for central record keeping. The Division Counsel may forward information about the requester's payment delinquency to HQ, USACE.

7. Denial of a FOIA Request.

a. Reference 3e delegates to the Division Counsel the authority to serve as Initial Denial Authority (IDA) for POD. The Division Counsel has further delegated his authority to each District Counsel within POD.

b. Denials of FOIA requests and appeal procedures are generally covered under Reference 3d.

c. Responses to FOIA requests which inform the requester that no records have been located that are responsive to the request ("no records" responses) must be handled in accordance with procedures established following decision of Oglesby vs. Department of the Army, 920 F.2d 57 (D.C. Cir. 1990). In that case, the Court opined that a "no records" response is an adverse determination, since the requester does not receive the document requested. Therefore, a "no records" response requires the requester be notified of the right to submit an appeal. Process "no records" responses in the following manner:

(1) Division/District elements unable to locate any records responsive to a FOIA request must timely advise Counsel about this fact.

(2) The Division/District Counsel, as Initial Denial Authority, notifies the requester in writing, that the request has found "no records," and must be deemed to be denied. Include appropriate language concerning appeal rights in the notification.

(3) If Counsel receives an appeal from the "no records" denial, Counsel notifies the records custodian of the element that was not able to locate any records that an appeal has been made. Counsel directs the element to make a second search for the records.

(4) If a second search for records discovers no records, the element's records custodian must certify, in writing, that a second search was conducted and that no records responsive to the request were located. The element's records custodian sends the written certification to Counsel.

(5) The written certification must declare that a second records search was conducted and that the office conducting the search "made a good faith effort to conduct a search for the requested records, using methods which were reasonably expected to produce the information requested." To meet this standard, the certification must describe the records searched and the search methods employed.

(6) After the records custodian has completed the certification procedure and signed the certification, the IDA forwards the certification and the appeal to the Office of the Chief Counsel, U.S. Army Corps of Engineers, Washington, D.C.

8. Reports. POD Counsel will prepare the annual report, DD Form 2564 "Annual Report Freedom of Information Act." Each District Counsel will provide applicable information to Division to complete the report.

FOR THE COMMANDER:



JAMES K. LIGH

Director, Information Management

DISTRIBUTION (List 98-1):

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