

# ***SECNAVINST 5720.42F DON FREEDOM OF INFORMATION ACT (FOIA) PROGRAM***

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## ***NCR LN TRAINING STAND- DOWN***

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# ***OBJECTIVES***

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- To explain what FOIA means
- To describe who can submit, grant, and deny FOIA requests
- To understand FOIA request response times
- To review how FOIA requests are processed, and recognize FOIA exemptions to policy

## ***What is FOIA?***

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What Does FOIA stand for?

Freedom of Information Act

What is the FOIA Act?

5 U.S.C. §552

Meaning of FOIA:

Gives the public the right to access any DON records unless the information in those records is protected by one or more of the nine exemptions that qualify an Agency's need to withhold records from a requester, and there is a sound legal basis to withhold them

## ***What are the FOIA exemptions?***

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1. Classified Material
2. Internal Personnel Rules
3. Records Required to be Withheld by Another Statute
4. Confidential Commercial or Financial Information
5. Inter-Agency or Intra-Agency Documents
6. Personal Privacy
7. Records or Information Compiled for Law Enforcement Purposes
8. Records Relating to Supervision of Financial Institutions
9. Geological or Geophysical Information

# SEARCH

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- A thorough search of all locations in which responsive records could reasonably be expected to be located must be conducted and formally documented.
- A “no records” response must describe:
  1. types of files searched
  2. identifiers used in search (e.g., computer search words)
  3. dates of search
  4. name(s) of searcher(s)
  5. searcher contact info
  6. other relevant info
- A “no records” response must include appeal rights.

## ***Who can grant and deny FOIA requests?***

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- Initial Denial Authority (IDA)
- Typically GCMCA authority

## ***When must a FOIA requests be responded to?***

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- The proper recipient must respond within 20 working days to a perfected request
- Perfected request - contain request which meets the minimum requirements of the FOIA to be processed and is received by the DON activity having possession and control over the documents/information

# ***ACKNOWLEDGEMENT OF RECEIPT***

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- Occurs within 10 working days of receiving your request
- Request processed and requestor receives record(s) requested
- Notification that request was accepted, but additional time to process it is required
- Notification of specific actions needed to take so the request meets minimum FOIA requirements.



## ***EXEMPTION 1***

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- Applies to information which is currently and properly classified in the interest of National Defense
- Refer to the Classified Information Security SECNAVINST 5510.36A
- “Glomar” response may be appropriate when the fact of a record’s existence or nonexistence may be classified. (“We can neither confirm nor deny the existence of such records.”)

## ***EXEMPTION 2***

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- Applies solely to internal personnel rules and practices of an agency
- U.S. Supreme Court case, Milner v. Dept of Navy (2011) provided a three-part test:
  1. The information must be related to “personnel” rules and practices.
  2. The information must relate “solely” to those personnel rules and practices.
  3. The information must be internal.

(Examples: Records relating to employee relations and human resources, such as hiring and firing, work rules and discipline, compensation and benefits.)

## ***EXEMPTION 3***

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- Applies to records exempted from disclosure by statute.
- List of statutes used by the Navy may be found on the Navy FOIA portal

Examples:

1. 41 U.S.C. § 253b(m)(1) – Contract proposal not in contract
2. 10 U.S.C. § 2305(g) – Certain contract proposals
3. 10 U.S.C. § 130b – Personal information of personnel in overseas, sensitive or routinely deployable units

## ***EXEMPTION 4***

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- Applies to trade secrets and commercial or financial information obtained from a person or company and considered privileged or confidential
- Trade Secrets – A plan, formula, process, or device.
- Commercial or Financial Information - Intended to protect the interests of commercial entities that submit information to the Navy and the interests of the government in receiving continued access to such data.
  - Will release of info impair Govt.'s ability to obtain necessary info in the future?
  - Will release cause substantial harm to the competitive position of the person from whom info was obtained?
  - Will release of info cause some other harm to Govt. or submitter?

## ***EXEMPTION 5***

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- Applies to inter-agency or intra-agency memoranda that contains:
  - Deliberative process material – pre-decisional info, (e.g., drafts, opinions, recommendations)
  - Attorney work product – prepared by an attorney or under his/her direction in anticipation of litigation.
  - Attorney-client communications – commas between an attorney and their client.
  - Confidential commercial info – info that if released would be harmful to the Govt's bargaining position.
  - Other examples – safety mishap investigations.

## ***EXEMPTION 6***

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- Applies to personnel, medical, or similar files, release of which would cause a clearly unwarranted invasion of privacy
- Balancing test: private interests versus public interests
- Privacy interests – e.g., home addresses, home phone numbers, social security numbers, etc.
- No privacy interests – corporations, deceased individuals (except in very specific cases).
- Public interests – does release shed light on agency's performance of its duties.

## ***EXEMPTION 7***

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- Applies to records or information compiled for law enforcement purposes.
  - 7(A): could interfere with enforcement proceedings.
  - 7(B): could deprive a person to a fair, impartial hearing.
  - 7(C): could be an infringement of personal privacy
  - .
  - 7(D): could disclose the identity of a confidential source.
  - 7(E): could disclose techniques of law enforcement investigations.
  - 7(F): could endanger the life or physical safety of any individual.

## ***EXEMPTIONS 8 & 9***

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- Exemption 8 applies to records of agencies responsible for the regulation or supervision of a financial institution.
- Exemption 9 applies to records relating to any geological or geophysical info or data concerning wells.

\*Neither of these exemptions are used by the Coast Guard.



## ***RELEASE & DENIAL AUTHORITY***

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- Release authority is encouraged to be delegated to the lowest levels. Authorized to grant requests on behalf of the Office of the Secretary of the Navy for agency records under their possession and control for which no FOIA exemption applies.
- Delegations of the IDA authority should be reflected in the activity's supplementing FOIA instruction or by letter, with a copy to CNO as appropriate.
- Denial & partial denial letters can only be signed by the IDA.

## ***WHAT'S CONSIDERED A DENIAL?***

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- Withholding all or part of requested records or information
- Not granting a fee waiver or fee reduction
- Not granting a request for expedited processing
- The response letter must be signed by IDA and explain appeal rights.

## ***NEGOTIATED RELEASE***

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- Acceptable to “bargain” with requester on scope of information requested (e.g., withholding names and identifiers embedded within requested records).
- Info “withheld” under this negotiated agreement is not considered a denial of responsive info.
- Details of a negotiated release must be memorialized in your release letter to the requester.

## ***JUSTIFICATION MEMO***

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- Required for all decisions to deny disclosure of information
- Explains “sound legal basis” for each exemption cited to withhold information
- Must be approved by a JAG attorney

## ***FEES***

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- Fee assessment is not an option; must be uniform.
- 4 categories of requesters (i.e., commercial, educational, news media, all others)
- 3 types of fees (i.e., search, review, duplication).

## ***FOIA FEES TABLE***

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\* First 100 pages free.  
 \*\* First 2 hours of search free.

TYPE OF REQUESTER	SEARCH	REVIEW	DUPLICATE
COMMERCIAL	\$	\$	\$
EDU/SCI	FREE	FREE	\$*
NEWS MEDIA	FREE	FREE	\$*
ALL OTHERS	\$**	FREE	\$*

## ***FEES (cont'd)***

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- Fees payable to “Treasury of the United States”
- Payment sent to releaser of records, and then forwarded to Department of Treasury’s Lockbox in Atlanta, GA
- If “estimated” fees will exceed \$250, requester must be notified of the estimated amount.
- Fees totaling less than \$15 will be waived.

## ***FEE WAIVERS***

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- Anyone may request a waiver / reduction of fees.
- Granting waiver = public expense
- Requester must include justification(s).
- Criteria:
  1. Records must concern operations/activities of Gov't.
  2. Records must not already be in public domain
  3. Disclosure must contribute to understanding of general public – not a narrow segment of interested persons.
  4. Disclosure must significantly enhance public's level of understanding.
  5. Must demonstrate ability and intention to disseminate the records to the general public.



## ***EXPEDITED PROCESSING***

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- Anyone may request expedited processing.
- Reduces agency response time from 20 to 10 working days.
- Criteria:
  1. Must be a person primarily engaged in disseminating info & has an urgency to inform the public of actual or alleged Fed Govt. activity
  2. Must show that without expedited treatment, there is imminent threat to life or physical safety.
- If granted, process immediately.
- If denied, notify requester of right to appeal.

## ***PROCESSING FOIA REQUEST***

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- Receive FOIA / Enter in Law Manager / FOIA Control Number
- Determine custodian of records / Estimate FOIA fees
- If commercial info – notify submitting company - justification
- Search for records / Request 2 copies from custodian
- Review records / Make redaction recommendations
- Draft release letter or denial/partial denial letter and justification memo
- Initial Denial Authority signs letter / Make final redactions / Mail
- Track for FOIA fees / Close in Law Manager / Enter stats in Report

# ***FOIA HOMEPAGE***

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<http://www.secnav.navy.mil/foia/Pages/default.aspx>

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***Thank you/Questions?***