

WHAT YOU NEED TO KNOW TO MAKE FREEDOM OF INFORMATION ACT (FOIA) REQUESTS



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INTRODUCTION

This handbook is intended to assist you in making Freedom of Information Act (FOIA) requests for United States Transportation Command (USTRANSCOM) records. It will get you started and provide you with a brief description of your rights and the manner in which USTRANSCOM will respond to your requests. The information contained herein is not intended to be definitive or exhaustive.

REFERENCES

1. Title 5, United States Code (U.S.C.), Section 552, as Amended
2. Executive Order 13392, December 2005, Improving Agency Disclosure of Information
3. Department of Defense (DOD) Directive 5400.7, DOD Freedom of Information Act (FOIA) Program
4. DOD Regulation 5400.7, DOD Freedom of Information Act Program

HISTORY

The FOIA, Title 5, U.S.C., Section 552, as Amended, was signed into law on 4 July 1966 to provide the fullest possible disclosure of information to the public. Key concerns of the FOIA include:

1. All individuals have equal rights of access, while ensuring that information essential for adversaries to plan, prepare, or conduct terrorist or related hostile operations against the United States is denied.
2. The burden is on the Government to justify the withholding of a document, not on the person who requests it.
3. An individual denied access to documents has a right to seek relief in the courts.

The FOIA was amended in 1974 to encourage more disclosure than the original statute allowed, in 1986 to strengthen the language for investigations and establish various categories of requesters for the purpose of fee assessments, and in 1996 to align the original statute with technology.

DOD AND USTRANSCOM POLICY

For FOIA purposes, USTRANSCOM, a combatant command, is under responsibility of the DOD program which is directed and administered by the Office of the Assistant Secretary of Defense for Public Affairs (reference DOD 5400.7-R). USTRANSCOM is a designated DOD component, operates a FOIA Service Center, and responds directly to requests for USTRANSCOM records (reference USTRANSCOM Instruction 33-26). USTRANSCOM policy may be found on the World Wide Web (WWW) at <http://www.transcom.mil> and click on "FOIA Service Center." At the DOD link, you may review the "DOD FOIA Handbook," the "DOD FOIA Regulation, DOD 5400.7-R,

the Annual FOIA Reports to Congress,” the “DOD FOIA Briefing,” and the “Office of the Secretary of Defense/Joint Staff Electronic Reading Room.”

FOIA REQUESTS

Any “person” (a member of the public [U.S. or foreign citizen/entity], an organization, or a business, but not including a Federal agency or fugitive from the law), can file a FOIA request. The FOIA’s scope included Federal Executive Branch departments, agencies, and offices; Federal regulatory agencies; and Federal corporations. Congress, the Federal Courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments, likewise, are not subject to the Federal FOIA, but some states have their own equivalent access laws for state records. At USTRANSCOM, you may expect to find policy and planning information for the Defense Transportation System. FOIA requests for USTRANSCOM records should be addressed to:

USTRANSCOM/TCCS-IM (FOIA)
508 Scott Drive
Scott AFB IL 62225-5357

Label your request “Freedom of Information Act Request,” preferably within the request letter. State your willingness to pay applicable fees. If you request a fee waiver, provide justification for such a waiver. Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject, date of creation, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit an organized, non-random search. Requests by electronic mail (e-mail) to USTCCS-IM@ustranscom.mil and facsimile (fax) to 618-229-4711, are also acceptable. A sample request letter is attached.

RECORDS

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 an agency of the United States Government under Federal law in connection with the transaction of public business and in possession and control of the originating office at the time the FOIA request is made. The following are not included within the definition of the word “record.”

1. Objects or articles such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence.
2. Anything that is not a tangible or documentary record, such as an individual’s memory or oral communication.

3. Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

The FOIA does not require USTRANSCOM to answer questions, render opinions, or provide subjective evaluations. A FOIA request must ask for existing records, such as those mentioned above. For the purpose of the FOIA, the definition of an “Electronic Record” is: Records (including e-mail) that are created, stored, and retrieved by electronic means. The FOIA requires that records created on or after 1 November 1966 be made available electronically, as well as in hard copy, in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. The USTRANSCOM reading room is located in Building 1961, Room 120, Scott AFB IL. Telephone 618-229-3828 for an appointment.

REASONS FOR NOT RELEASING A RECORD

1. No Records. A reasonable search of files failed to identify responsive records.
2. Referrals. The request is transferred to another DOD component, or to another Federal agency.
3. Request Withdrawn. The requester withdraws the request.
4. Fee-Related. The requester is unwilling to pay fees associated with a request, the requester is past due in the payment of fees from a previous FOIA request, or the requester disagrees with the fee estimate.
5. Records not Reasonably Described. A record has not been described specifically enough to enable the DOD component to locate it by conducting a reasonable search.
6. Not a Proper FOIA Request for Other Reason. The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by agency policy.
7. Not an Agency Record. The information requested is not a record within the meaning of the FOIA and this handbook.
8. Duplicate Request. The request is a duplicate request (a requester asks for the same information more than once). This includes identical requests received via different means (e.g., e-mail, facsimile, mail, courier) at the same or different times.
9. Other (Specify). Any other reason a requester does not comply with published policy and procedures other than those outlined above.

EXEMPTIONS

Records (or portions of records) will be released unless that release harms an interest protected by an exemption cited in the Freedom of Information Act at 5 U.S.C. 552(b)(1) through (b)(9).

Exemption 1 (5 U.S.C. (b)(1)). *Records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under criteria established by Executive Order.*

Exemption 2 (5 U.S.C. (b)(2)). **Low 2:** *Records related solely to the internal personnel rules and practices of the respective agency of a relatively trivial nature.* **High 2:** *Records containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention and substantially hinder the effective performance of a significant function of the respective agency.*

Exemption 3 (5 U.S.C. 552(b)(3)). *Information in statutes specifically exempt from release 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.*

Exemption 4 (5 U.S.C. 552(b)(4)). *Records containing trade secrets or 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 that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data, 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 (5 U.S.C. 552(b)(5)). *Records containing information considered privileged in litigation, primarily under the deliberative process privilege. 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.*

Exemption 6 (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 requester, other than the person about whom the information is about, 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 (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 law: 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.*

Exemption 8 (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. Exemption 8 is not normally applicable to the DOD.*

Exemption 9 (5 U.S.C. 552(b)(9)). *Records containing geological and geophysical information and data (including maps) concerning wells. Exemption 9 is not normally applicable to the DOD.*

RELEASE AND PROCESSING PROCEDURES

Generally, USTRANSCOM will endeavor to provide a final response determination within the statutory 20 working days (excluding weekends and holidays). If a significant number of requests or the complexity of the requests prevents a final response determination within the statutory time period, USTRANSCOM will advise the requester of this fact in an interim response and explain how the request will be responded to within its multi-track processing system.

1. **Multi-track Processing:** When a response determination cannot be made within 20 working days, requests are processed in a multi-track processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing. DOD components must establish three processing tracks all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track for expedited processing. Each DOD component has the discretion of determining whether a request is simple or complex.

2. **Expedited Processing:** Shall be granted a requester upon request and demonstration of a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request that will determine whether to grant expedited processing. If expedited processing is granted, the request shall be processed as soon as practicable.

(1) **Compelling need** means that 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 of an individual.

(2) **Compelling need** also means that 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.

(3) **Urgently needed** means that 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.

(4) **Other reasons for expedited processing** are an imminent loss of substantial due process rights and humanitarian need.

APPEAL RIGHTS

If your FOIA request is initially denied in whole or in part under one or more of the FOIA exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal. Appeals must be submitted

within 60 days to the Directorate of Executive Services, Office of Freedom of Information, 1155 Defense Pentagon, Washington, D.C. 20301-1155.

FEES

FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Public interest is defined as “disclosure of the information is in the public interest because it is likely to contribute significantly to the public’s understanding of the operations or activities of the Government.” Assessable fees are as listed on Department of Defense (DD) Form 2086 (Attachment 2) and DD Form 2086-1, Technical Data, (Attachment 3). All requesters should submit a willingness to pay fees regardless of the fee category; however, this does not mean you will be charged fees. FOIA requires that requesters be placed into one of the following categories:

(1) Commercial Requester: Refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. Fees shall be limited to reasonable standard charges for document search, review, and duplication.

(2) Educational Institution Requester: Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research.

(3) Non-Commercial Scientific Institution Requester: Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research.

(4) News Media Requester: Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media.

(5) Other Requester: Requesters who do not fit into any of the categories described above, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(6) Aggregating Requests: Except for requests that are for a commercial use, there is no fee for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees.

If there is a reasonable belief that a requester or, on occasion, a group of requesters acting in concert, attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, USTRANSCOM may aggregate any such requests and charge accordingly.

JOLYNN J. BIEN
Chief, Information Management

Attachments

1. Sample FOIA Request Letter
2. DD Form 2086
3. DD Form 2086-1

SAMPLE FOIA REQUEST LETTER

TO: United States Transportation Command (date)
FOIA Service Center (TCCS-IM)
508 Scott Drive
Scott AFB IL 62225-5357

Dear FOIA Officer

This is a request under the Freedom of Information Act (5 U.S.C. 552, as amended). I am requesting all records pertaining to [identify the subject and/or records as specifically as possible. Provide as much information as known to facilitate records search.]

For fee purposes, my status is: (a) Commercial, (b) Educational Institution, (c) Non-commercial Scientific Institution, (d) News Media [Give name of newspaper, magazine, television station, etc. and this request is made as part of news gathering and not for commercial use.], (e) Other.

I am willing to pay fees for this request up to a maximum of [give dollar amount]. If fees exceed this amount, please notify me prior to proceeding with request. [I request consideration for a fee waiver since disclosure of the information is in the public interest and will contribute significantly to public understanding of the operations or activities] [provide justification for consideration for fee waiver including details of how the requested information will be disseminated to the general public].

[Provide your full name, address, telephone number, e-mail address, and company name, as applicable.]

[Sign your request.]