



UNITED STATES SPACE COMMAND INSTRUCTION (SPI)

OPR: J006

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FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

References: Enclosure C

1. Purpose. This Space Command Instruction (SPI) implements a Command Freedom of Information Act (FOIA) program per Department of Defense Directive (DoDD) 5400.7, *DoD FOIA Program* and supplements Department of Defense Manual (DoDM) 5400.07, *DoD FOIA Program*.
2. Superseded/Cancellation. This is the initial publication.
3. Applicability. This instruction applies to all United States Space Command (USSPACECOM) personnel and Component Command personnel, at all levels, who participate in responding to requests for information under the FOIA.
4. Procedures. Detailed procedures and instructions are contained in the enclosures.
5. Records Management. Maintain and dispose of records created as a result of prescribed processes in accordance with (IAW), Title 44 United States Code (U.S.C.) 3101, *Presidential and Federal Records Acts Amendments of 2014*, Title 44 U.S.C. 3102, *Establishment of Program of Management*, Title 44 U.S.C. 3103, *Transfer of Records to Records Center*, Title 44 U.S.C. 3104, *Certification and Determination on Transferred of Records*, Title 44 U.S.C. 3105, *Safeguards*, Title 44 U.S.C. 3106, *Unlawful Removal, Destruction of Records*. The Chairman Joint Chiefs of Staff Manual (CJCSM) 5760.01A, *Joint Staff and Combatant Command Records Management Manual: Volume I*, 13 July 2009 – *Procedures* and CJCSM 5760.01A, *Joint Staff and Combatant Command Records Management Manual: Volume II – Disposition Schedule*, 13 July 2012.
6. Summary of Changes. This is a new instruction.

7. Releasability. This SPI is approved for public release; distribution is unlimited on Non-Secure Internet Protocol Router Network (NIPRNET.) DoD Components, other Federal agencies, and USSPACECOM personnel may obtain copies of this instruction through the Internet via the USSPACECOM SharePoint Publications Electronic Library.

8. Effective Date. This instruction is effective upon receipt.

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Enclosures

- A - Roles and Responsibilities
- B - Freedom of Information (FOIA) Request Flow Chart
- C - References
- GL - Glossary of Acronyms and Terms

ENCLOSURE A

ROLES AND RESPONSIBILITIES

1. General. The public has a right to information concerning the activities of the United States Government (USG). The FOIA gives any person access to government records, without regard to motives or need for the records, unless legally exempt. The Assistant to the Secretary of Defense (ATSD) for Privacy, Civil Liberties, and Transparency (PCLT), is responsible for establishing FOIA policy within the DoD. The DoD Privacy, Civil Liberties and Freedom of Information Directorate (PCLFD) (<https://dpclld.defense.gov>) implements the FOIA program through advice, monitoring, official reporting, and training.

2. USSPACECOM Command FOIA Manager (CFM) Responsibilities.

a. The CFM, located within the USSPACECOM Office of the Staff Judge Advocate (USSPACECOM/SJA), establishes the USSPACECOM FOIA Requester Service Center according to DoD and Department of Justice (DoJ) guidelines IAW DoDM 5400.07.

b. The CFM serves as the Office of Primary Responsibility managing the FOIA program for USSPACECOM and its Components. Additionally, only the CFM is authorized to interact with FOIA requesters.

c. The CFM evaluates requests to determine acceptance; and when required, assists requesters in perfecting their requests.

d. The CFM logs requests into the USSPACECOM FOIA Log and creates administrative files.

e. The CFM assigns Offices of Coordinating Responsibility (OCR) tasks to conduct record searches and/or document reviews. The OCR will identify a Subject Matter Expert (SME) and the CFM will task them directly. **See Enclosure B for FOIA Request Flow Chart.**

(1) This direct approach to FOIA tasking is necessary to shorten the amount of coordination time and ease the burden on Directorate/Division leadership.

(2) Enterprise Task Management Software Solution (ETMS2) will not be used at this stage in the process. The CFM will dictate when a FOIA tasking is entered into ETMS2. Limited use of ETMS2 in the initial stage improves FOIA timeliness.

f. The CFM notifies the USSPACECOM Chief of Staff (USSPACECOM/CoS) and the USSPACECOM/SJA when:

(1) Requests for records are of a controversial or sensitive nature.

(2) News media is involved.

(3) When a significant FOIA request is received. A FOIA request is considered significant when it seeks records involved in litigation or of interest to DoD leadership. The DoD PCLFD office maintains a list of topics considered significant.

g. The CFM conducts initial reviews of all responsive documents.

(1) This initial review eases the burden on the SME.

(2) One-on-one FOIA training with SMEs at this stage of processing ensures a clear understanding of the FOIA Exemptions DoD typically invokes, records search requirements, redaction requirements and techniques, internal and external staffing requirements, and the expected format for Directorate-level response.

(a) The FOIA requires a USG response to FOIA requests within 20 workdays of receiving a perfected request. When a final response is not possible within this timeframe, the CFM will provide the requester an estimated completion date.

(b) A FOIA requester may appeal a lack, or delay of response to the DoD Freedom of Information Appeals Division or file a lawsuit in any United States District Court if they do not receive a response within the stated timeframe.

h. The CFM reviews OCR responses for FOIA compliance.

(1) The CFM will re-task a SME if:

(a) The FOIA Exemption is applied incorrectly.

(b) There appears to be an over-use of an exemption.

(c) A reasonable search is not conducted.

(d) The SME fails to reasonably segregate releasable from non-releasable information.

(2) The SME must conduct a line-by-line review when determining whether or not it is reasonable to segregate releasable from non-releasable information within classified documents.

i. The CFM submits a completed FOIA package to the Initial Denial Authority (IDA) for approval via ETMS2 when records are withheld. If records are sensitive or contain Privacy Act concerns, the CFM will deliver a hard copy FOIA package directly to the IDA's office.

j. CFM Additional Duties:

(1) Draft legal reviews for Senior Attorney Advisor, execute redactions, create IDA packages, sign responses on behalf of the IDA, and send responses to requesters.

(2) Post releasable documents requested by two or more individual FOIA requesters to the USSPACECOM Public FOIA Reading Room, located on the USSPACECOM FOIA website, <https://www.spacecom.mil/Support/Freedom-of-Information-Act/>.

(3) Refer responsive records to other USG and DoD agencies for processing when the records do not fall under the purview of USSPACECOM.

(4) Request FOIA consultations from other USG and DoD agencies when responsive records fall under USSPACECOM purview but contain other agency equities.

(5) Process FOIA appeals at the direction of the ATSD PCLT Appellate Authority.

(6) Process, with DoD Office of General Counsel guidance, FOIA litigation cases, to include the creation of Vaughn Indexes, declarations, and case file organization.

(7) Maintain access to the Defense Information Systems Agency CommVault Compliance Search Web Console to maintain access authority for electronic searches of journaled (historical) senior leader's electronic mail; and

(8) Prepare and submit quarterly status reports as directed by PCLFD. Utilizes DD Form 2564, *Annual Freedom of Information Act Report*, to submit USSPACECOM data for inclusion into the ATSD PCLT consolidated report to the United States Attorney General and United States Congress.

3. Directorate Responsibilities.

a. SMEs complete one-on-one FOIA familiarization training, provided by the CFM, as needed and dedicate the necessary time to complete FOIA taskings. With the understanding that real world events/duties may take precedence, the OCR will relay any processing delays to the CFM.

b. Upon receipt of a FOIA tasking, the SME will:

(1) Review the seven (7) FOIA exemptions (Exemptions 1 through 7) routinely invoked by the DoD to protect non-releasable information IAW DoDM 5400.07.

(2) Conduct a reasonable search of electronic and physical files most likely to contain responsive records. A reasonable search will be accomplished when sufficient information is contained within a FOIA request that allows for an organized, non-random search of USSPACECOM's records filing plans and existing retrieval systems.

(3) Provide an estimated completion date to the CFM within ten (10) calendar days of receipt of the tasking. When expedited processing is requested, the SME will respond within five (5) calendar days of receipt of the tasking. The CFM will approve requests for expedited processing when the requirements of Title 32, Code of Federal Regulation (CFR), Part 286.8 are met.

(4) Coordinate reviews of documents with other directorates, divisions, or branches when their equities are contained within responsive documents.

(a) The document owner ensures all reviews are executed. This is not the CFM's responsibility.

(b) Notify the CFM after all internal reviews are complete.

(5) Provide a memorandum with a release recommendation of full release, partial release, or total denial for all responsive documents. Denial recommendations, to include a no-record response, can be made by a SME, with Division/Branch Chief concurrence. The SME, with the same level of concurrence, may also determine if USSPACECOM or one of its subordinate organizations does not have release/denial authority of the located records.

(a) Total Release authority, for records within their purview, is delegated to Directors, their Deputies, and Division Chiefs. Organizational Commanders, Deputy Commanders, and Chiefs of Staff of subordinate organizations assigned to USSPACECOM have release authority of records within their jurisdiction when approved by USSPACECOM/CoS. Because the CFM is the only person authorized to interact with requesters, Directorates and subordinate organizations will provide electronic copies of releasable documents to the CFM.

(b) SME recommendations to the CFM will be made at the lowest level, unless the response warrants Directorate leadership involvement. The SME recommendation will be kept with the FOIA case file. The CFM will provide a recommendation template to the SME to document the recommendation.

(6) Mark withholding recommendations with appropriately cited FOIA exemptions, an applicable Security Classification Guide (i.e. Executive Order 13526, *Classified National Security Information*), or other applicable Federal

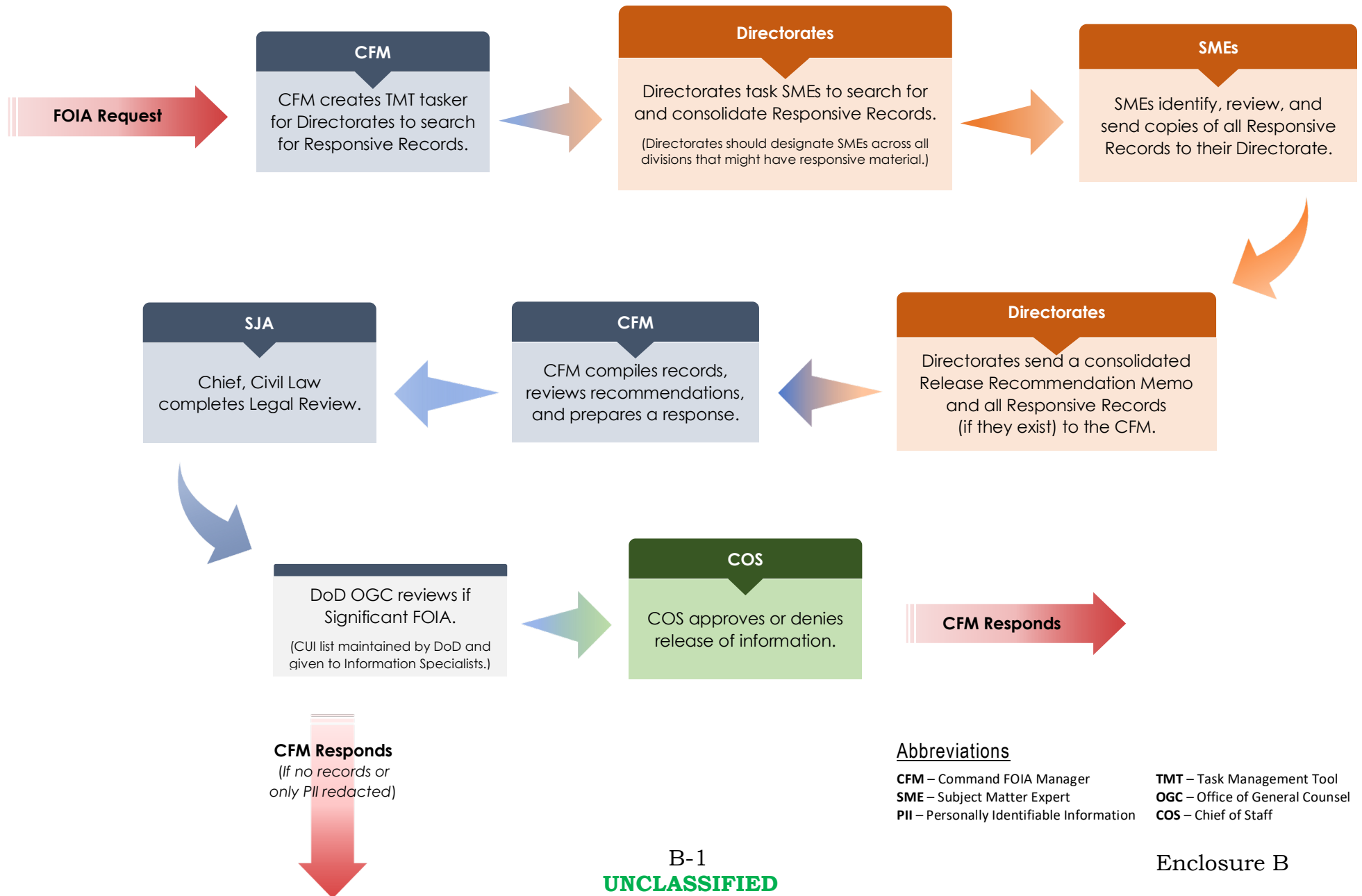
statute. **Note: The CFM maintains a listing of congressionally approved FOIA related Federal statutes.**

(7) Complete DD Form 2086, *Record of Freedom of Information (FOI) Processing Cost*, which documents all processing costs for personnel involved in the request. **Note: Processing costs are reported in the Annual FOIA Report to Congress.**

4. Initial Denial Authority (IDA) Responsibilities. An IDA is an official who has been granted authority to withhold information (partial denial, total denial or assert no records) on behalf of the Command. The CDRUSSPACECOM, USSPACECOM Deputy Commander (DCDRUSSPACECOM), USSPACECOM/CoS, USSPACECOM Deputy Chief of Staff (USSPACECOM/DCoS), USSPACECOM Inspector General (USSPACECOM/IG), and the CFM are the only officials authorized to act as IDA. They may also deny requests for expedited processing, when appropriate.

- a. The USSPACECOM/CoS will act as the primary IDA.
- b. The USSPACECOM/DCoS will act as the IDA when the USSPACECOM/CoS is not available or when directed by the USSPACECOM/CoS.
- c. The USSPACECOM/IG will act as the IDA for Inspector General (IG) related documents for O6 personnel and below.
- d. The DCDRUSSPACECOM will act as the IDA on IG related documents for O7 personnel and above. Additionally, the DCDRUSSPACECOM will serve as the IDA when a conflict of interest exists for the USSPACECOM/CoS.
- e. The CFM acts as the IDA when responding to requesters with a no-records response and when the only information withheld pertains to personally identifiable information.
- f. IDA requested by Commanders of subordinate USSPACECOM Components will be evaluated on a case-by-case basis and will be denied/approved by the USSPACECOM/CoS. Although IDA may be delegated to subordinate organizations, only the CFM is authorized to interact with requesters.

ENCLOSURE B
Freedom of Information Act (FOIA) Request Flow Chart



ENCLOSURE C

REFERENCES

- a. CJCSM 5760.01A, *Joint Staff and Combatant Commands Records Management Manual: Volume I – Procedures*, 1 February 2003
- b. CJCSM 5760.01A, *Joint Staff and Combatant Commands Records Management Manual: Volume II – Disposition Schedule*, 13 July 2012
- c. Title 32 CFR Part 286.08, *DoD Freedom of Information Act (FOIA) Program*, 5 January 2017
- d. DoDD 5400.7, *DoD Freedom of Information Act (FOIA) Program*, 5 April 2019
- e. DoDM 5400.07, *DoD Freedom of Information Act (FOIA) Program*, 25 January 2017
- f. Executive Order 13526, *Classified National Security Information*, 5 January 2010
- g. Title 5 United States Code, Section 552, *Freedom of Information Act*, 6 September 1966, as amended, 30 June 2016
- h. Title 44 U.S.C. 3101, *Presidential and Federal Records Acts Amendments of 2014*, as originally established in 1964
- i. Title 44 U.S.C. 3102, *Establishment of Program of Management*, as originally established in 1964
- j. Title 44 U.S.C. 3103, *Transfer of Records to Records Center*, as originally established in 1964
- k. Title 44 U.S.C. 3104, *Certification and Determination on Transferred of Records*, as originally established in 1964
- l. Title 44 U.S.C. 3105, *Safeguards*, as originally established in 1964
- m. Title 44 U.S.C. 3106, *Unlawful Removal, Destruction of Records*, as originally established in 1964
- n. USSPACECOM SOP-1-1, *Enterprise Task Management Software Solution (ETMS2), Formerly Task Management Tool (TMT), Workflow Process*, 13 January 2022

ENCLOSURE GL

GLOSSARY OF ABBREVIATIONS AND TERMS

PART 1 – Acronyms

A

ATSD Assistant to the Secretary

C

CDRUSSPACECOM Commander, USSPACECOM
CFM Command FOIA Manager
CJCSM Chairman of the Joint Chiefs of Staff Manual

D

DCDRUSSPACECOM Deputy Commander, USSPACECOM
DoD Department of Defense
DoDD Department of Defense Directive
DoDM Department of Defense Manual
DoJ Department of Justice

E

ETMS2 Enterprise Task Management Software Solution

F

FOIA Freedom of Information Act

I

IAW In Accordance With
IDA Initial Denial Authority
IG Inspector General

N

NIPRNET Non-Secure Internet Protocol Network

O

OCR Office of Coordinating Responsibility

P

PCLFD Privacy, Civil Liberties, and Freedom of Information
Directorate
PCLT Defense for Privacy, Civil Liberties, and
Transparency

S

SME	Subject Matter Expert
SPI	Space Command Instruction

U

U.S.C.	United States Code
USG	United States Government
USSPACECOM	United States Space Command
USSPACECOM/CoS	USSPACECOM Chief of Staff
USSPACECOM/DCoS	USSPACECOM Deputy Chief of Staff
USSPACECOM/IG	USSPACECOM Inspector General
USSPACECOM/SJA	USSPACECOM Staff Judge Advocate
USSPACECOM/PA	USSPACECOM Public Affairs

PART 2 - Terms

Command FOIA Manager — the person responsible for managing the FOIA program at USSPACECOM and its subordinate components.

Denial — a determination to not disclose requested records or portions of requested records.

Expedited Processing — a request requiring processing ahead of other requests when the requester invokes expedited processing and demonstrates a compelling need as to why the request should be processed under this FOIA provision.

FOIA Request — a written request for DoD records, made by any person, including a member of the public (United States or foreign citizen), an organization or a business, but not including a Federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, reference DoDD 5400.7 and DoDM 5400.07; or DoD component supplementing regulations or instructions, or addresses or infers the letter or envelope is intended for the FOIA manager or program.

Initial Denial Authority (IDA) — an official who has been granted authority by the head of a DoD component to withhold records under the FOIA for one or more of the nine (9) categories of records exempt from mandatory disclosure.

Partial Denial — a determination to withhold a portion of a requested record.

Perfected FOIA Request — a reasonably described FOIA request that arrives at the FOIA Requester Service Center of the DoD Component maintaining the requested records. The statutory time limit for responding to a FOIA request does not begin until the request is perfected.

Referral — the process of formally transferring the FOIA request, through FOIA channels, to another agency for action and direct response to the requester.

Requester Service Center — the office within an agency authorized by higher authority to receive and process FOIA requests.

Significant FOIA Request — a FOIA request for records, the release of which may be of interest to DoD leadership.

Statutory Time Limits — the 20 workdays allowed by the FOIA to make the initial decision on record release.

Subject Matter Expert — an individual with a deep understanding of a particular job, directorate/division, process, function, or technology.

Vaughn Index — an itemized index, correlated each withheld document (or portion) with a specific FOIA exemption(s) and the relevant part of the nondisclosure justification.

PART 3 – Forms

DD Form 2086, *Record of Freedom of Information (FOI) Processing Cost*, August 2019

DD Form 2564, *Annual Freedom of Information Act Report*, September 2018