# ANNUAL FOIA REPORT INSTRUCTIONS

**NOTE: Operational Aviation Squadrons and Units Afloat who have not received and/or responded to any FOIA Requests during the reporting period are exempt from this reporting requirement. Negative reports are not required.**

## 1. Background

a. The Freedom of Information (FOIA) Annual Report is mandated by statute and must be reported on a fiscal year basis. It is designed to provide statistical information regarding the amount of time and monies expended by the DON in managing its FOIA program.

b. To ensure accurate and timely reporting, naval activities are encouraged to use Form DD 2086 [enclosure (5)], Form DD 2086-1 [enclosure (6)], the FOIA Case Worksheet [enclosure (9)], and the Annual Report Compilation Worksheet [enclosure (10)] to collect information as each FOIA request is processed, completed, and closed. Additionally, due to the magnitude of the statistical data required for reporting, naval activities are encouraged to maintain case processing data in an electronic environment (i.e., MS Access, MS Excel, Oracle, etc.) to allow for automated compilation of the required reporting elements.

## 2. Responsibility

a. DON Echelon 2 Initial Denial Authorities (IDAs) and CMC (ARAD) are responsible for ensuring that reports are collected from subordinate activities by 25 October following the close of the fiscal year reporting period.

b. Consolidated reports will then be submitted on the current edition of Form DD 2564 [enclosure (7)] by the Echelon 2 IDAs to the Head, DON PA/FOIA Policy Branch (N09B30), Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350-2000, no later than the following 10 November. In turn, N09B30 will submit a consolidated report to the Director, Freedom of Information and Security Review, DoD, by 30 November. The DON's consolidated report will be placed on the Navy's FOIA website.

c. All reporting activities shall ensure that the name of their FOIA coordinator or officer, complete postal service mailing address, telephone and telefax numbers (both commercial

and DSN), email address, and Internet FOIA website address are printed on a plain sheet of paper and attached to their report.

d. Questions about and/or assistance in preparing the report may be obtained by calling N09B30 at (202) 685-6545 or DSN 325-6545.

3. **Report Control Symbol**: DD-PA(A)1365 (5720), Freedom of Information Act Report to Congress.

4. **Instructions for Completing Form DD 2564:**

a. **Initial Determinations** (Note: Initial Privacy Act requests which are also processed as initial FOIA requests are to be reported in this report as "FOIA" requests and on the Annual Privacy Act Report as "Privacy Act" requests.

(1) Total Requests: Enter into block 1a the total number of FOIA requests completed during the fiscal year reporting period. (This number can include requests received in the previous reporting period but responded to in the current reporting period.)

(2) Granted in Full: Enter into block 1b the total number of completed FOIA requests that were granted in full during the fiscal year reporting period. (This may include requests granted in full by your activity but requiring additional action by another activity.)

(3) Denied in Part **(Only IDAs Will Report Here)**: Enter into block 1c the number of completed FOIA requests that were denied in part based on one or more of the nine FOIA exemptions. **(DO NOT REPORT FEE WAIVER DENIALS HERE)**

(4) Denied in Full **(Only IDAs Will Report Here)**: Enter into block 1d the number of completed FOIA requests that were denied in full based on one or more of the nine FOIA exemptions. **(DO NOT REPORT FEE WAIVER DENIALS HERE)**

(5) "Other Reasons": Enter into block 1e the total number of FOIA requests in which you were unable to provide all or part of the requested information for one or more of the "Other Reasons" described in paragraph 2b below.

(6) Total Actions: Enter into block 1f the total number of FOIA actions taken during the reporting period by summing the numbers contained in blocks 1b through 1e. (NOTE: This sum will be equal to or greater than the number contained in block 1a.

**b. Denials/Other Reason Responses**

(1) Exemptions Invoked on Initial Determinations **(Only IDAs Will Report Here)**: Enter into blocks 2a(b)(1) through 2a(b)(9) the number of times an exemption was claimed for each initial request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, the sum of blocks 2a(b)(1) through 2a(b)(9) will be equal to or greater than the sum of 1c and 1d. [NOTE: Exemption (b)(7) is now broken down to its six subcategories (b)(7)(A) through (b)(7)(F)].

(2) "Other Reasons" claimed on Initial Determinations: The following describes the circumstances when a FOIA request is not processed due to "Other Reasons":

(a) No Records: Enter into block 2b(1) the number of times a reasonable search of files failed to identify records responsive to an initial FOIA request.

(b) Referrals: Enter into block 2b(2) the number of times a request was referred to another DON activity, DoD component, or Executive Branch Agency for action.

(c) Request Withdrawn: Enter into block 2b(3) the number of times a request was withdrawn by a requester.

(d) Fee-Related Reason: Enter into block 2b(4) the number of times a FOIA request could not be processed because the requester was unwilling to pay fees associated with the request, was past due in payment of fees from a previous request, or disagreed with the fee estimate.

(e) Records Not Reasonably Described: Enter into block 2b(5) the number of times a FOIA request could not be acted upon because a desired record had not been described with sufficient particularity to enable a knowledgeable DON official to locate it by conducting a reasonable search.

(f) Not a Proper FOIA Request for Some Other Reason: Enter into block 2b(6) the number of times the requester failed

unreasonably to comply with procedural requirements, other than those fee-related issues discussed in paragraph 2b(4) above, imposed by this instruction and/or other published rules or directives.

(g) Not an Agency Record: Enter into block 2b(7) the number of times a requester was provided a response indicating that the requested information was "not an agency record" within the meaning of the FOIA and this instruction.

(h) Duplicate Request: Enter into block 2b(8) the number of files closed because the requests were duplicative of other requests already completed or currently in process, and a response to the requester is unnecessary. (This number includes identical requests received via different means (e.g., electronic mail, facsimile, postal service /mail, courier) at the same or different times.)

(i) Other (Specify): Enter into block 2b(9) the number of times a FOIA request could not be processed because the requester did not comply with published rules, other than for those reasons described in paragraphs 2b(1) through 2b(8) above. A statement explaining how the requester failed to comply with published rules must be detailed on a plain sheet paper and attached to the Form DD 2564.

(j) Total: Enter into block 2b(10) the sum of blocks 2b(1) through 2b(9). This sum will be equal to or greater than the number reported in block 1e since more than one "Other Reason" may be claimed on a FOIA request.

**c. (b)(3) Statutes Invoked on Initial Determinations (Only IDAs Will Report Here):** Report here information about each statute cited to support a (b)(3) denial, in whole or in part, of a responsive document. Ensure that, when citing to a (b)(3) statute, you include the specific sections of the statute that are invoked. See enclosure (3) for a sampling of (b)(3) statutes. NOTE: The sum of the total number of instances in which (b)(3) statutes were invoked will be equal to or greater than the number contained in block 2a(b)(3).

(1) (b)(3) Statute Claimed: Enter into block 2.c under "(b)(3) STATUTE CLAIMED" the title of the (b)(3) statute claimed to support each (b)(3) exemption invoked in response to a FOIA request.

(2) Number of Times Statute Claimed: Enter into block 2c under "NUMBER OF INSTANCES" the number of times each (b)(3) statute is claimed.

(3) (b)(3) Statute Upheld in Court?: Enter into block 2c under "COURT-UPHELD? (Yes or No)" a notation as to whether the statute has been upheld in a court hearing.

(4) Description of Withheld Material: Enter into block 2c under "CONCISE DESCRIPTION OF MATERIAL WITHHELD" a detailed description of the material withheld in each instance of the statute's use.

**d. Appeal Determinations (Only OGC and JAG Will Report Here)**

(1) Total Requests: Enter into block 3a the total number of FOIA appeals completed during the fiscal year reporting period. (This number can include appeals received in the previous reporting period but responded to in the current reporting period.)

(2) Granted in Full: Enter into block 3b the total number of completed FOIA appeals that were granted in full during the fiscal year reporting period.

(3) Denied in Part: Enter into block 3c the number of completed FOIA appeals that were denied in part based on one or more of the nine FOIA exemptions. (DO NOT REPORT FEE WAIVER DENIALS HERE.)

(4) Denied in Full: Enter into block 3d the number of completed FOIA appeals that were denied in full based on one or more of the nine FOIA exemptions. (DO NOT REPORT FEE WAIVER DENIALS HERE.)

(5) "Other Reasons": Enter into block 3e the total number of FOIA appeals in which you were unable to provide all or part of the requested information for one or more of the reasons described in item 4b below.

(6) Total Actions: Enter into block 3f the total number of FOIA appeal actions taken during the reporting period by summing the numbers contained in blocks 3b through 3e. (NOTE: This sum will be equal to or greater than the number contained in block 3a.

**e. Appeal Denials/Other Reason Responses (Only OGC and JAG Will Report Here)**

(1) Exemptions Invoked on Appellate Determinations. Enter into blocks 4a(b)(1) through 4a(b)(9) the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single appeal, the sum of blocks 4a(b)(1) through 4a(b)(9) will be equal to or greater than the sum of 3c and 3d. (NOTE: Exemption (b)(7) is now broken down to its six subcategories (b)(7)(A) through (b)(7)(F)].

(2) "Other Reasons" claimed on Appellate Determinations: The following describes the circumstances when a FOIA appeal is not processed due to "Other Reasons":

(a) No Records: Enter into block 4b(1) the number of times a reasonable search of files failed to identify records responsive to a FOIA appeal.

(b) Referrals: Enter into block 4b(2) the number of times a FOIA appeal was referred to another DON activity, DoD component, or Executive Branch Agency for action.

(c) Request Withdrawn: Enter into block 4b(3) the number of times an appeal was withdrawn by an appellant.

(d) Fee-Related Reason: Enter into block 4b(4) the number of times a FOIA appeal could not be processed because the appellant was unwilling to pay fees associated with the appeal, was past due in payment of fees from a previous request/appeal, or disagreed with the fee estimate.

(e) Records Not Reasonably Described: Enter into block 4b(5) the number of times a FOIA request could not be acted upon because a desired record had not been described with sufficient particularity to enable a knowledgeable DON official to locate it by conducting a reasonable search.

(f) Not a Proper FOIA Request for Some Other Reason: Enter into block 4b(6) the number of times the appellant failed unreasonably to comply with procedural requirements, other than those fee-related issues discussed in paragraph 4b(4) above, imposed by this instruction and/or other published rules or directives.

(g) Not an Agency Record: Enter into block 4b(7) the number of times a requester was provided a response indicating that tne requested information was "not an agency record" within the meaning of the FOIA and this Instruction.

(h) Duplicate Appeal: Enter into block 4b(8) the number of files closed because the appeals were duplicative of another appeal already completed or currently in process, and a response to the appellant is unnecessary. (This number includes identical appeals received via different means (e.g., electronic mail, facsimile, postal service mail, courier) at the same or different times.)

(i) Other (Specify): Enter into block 4b(9) the number of times a FOIA appeal could not be processed because the appellant did not comply with published rules, other than for those reasons described in paragraphs 4b(1) through 4b(8) above. A statement explaining how the appellant failed to comply must be detailed on a plain sheet paper and attached to the Form DD 2564.

(j) Total: Enter into block 4b(10) the sum of blocks 4b(1) through 4b(9). This sum will be equal to or greater than the number reported in block 4e since more than one "Other Reason" may be claimed on a FOIA appeal.

(3) (b)(3) Statutes Invoked on Appellate Determinations: Report here information about each statute cited to support a (b)(3) denial, in whole or in part, of a responsive document on appeal. Ensure that, when citing to a (b)(3) statute, you include the specific sections of the statute that are invoked. NOTE: The sum of the total number of instances in which (b)(3) statutes were invoked will be equal to or greater than the number contained in block 4a(b)(3).

(a) (b)(3) Statute Claimed: Enter into block 4c under "(b)(3) STATUTE CLAIMED" the title of the (b)(3) statute claimed to support each (b)(3) exemption invoked in response to a FOIA appeal.

(b) Number of Times Statute Claimed: Enter into block 4c under "NUMBER OF INSTANCES" the number of times each (b)(3) statute is claimed.

(c) (b)(3) Statute Upheld in Court?: Enter into block 4c under "COURT-UPHELD? (Yes or No)" a notation as to whether the statute has been upheld in a court hearing.

(d) Description of Withheld Material: Enter into block 4c under "CONCISE DESCRIPTION OF MATERIAL WITHHELD" a detailed description of the material withheld in each instance of the statute's use.

**f. Number and Median Age of Pending Initial Request Files.** The median age of pending requests shall be calculated using the number of days from request receipt to the end of the reporting period.

(1) Example of Median Calculation: If given five cases aged 10, 25, 35, 65, and 100 days from date of receipt, the total number of requests pending is five and the median age is the middle number (not the average) in this set of numbers (i.e., "35"). NOTE: If the number of pending cases equals an even number, the median age is then the average of the two middle numbers.

(2) Mean (average) Values: If an activity believes that "average" (mean) processing time is a better measure of performance, that activity is encouraged to report the "mean" value as a separate attachment to the Form DD 2564. This report, however, does not negate the requirement to report the median value as well. However, the mean value will not be included in the consolidated DON report to DoD unless all Echelon 2 activities and CMC (ARAD) report it.

(3) Accuracy of Calculations: Activities must ensure the accuracy of calculations. As a backup, the raw data used to perform calculations should be recorded and preserved. This will enable recalculation of median and mean values as necessary. N09B30 or Echelon 2 activities may require subordinates to forward raw data, as deemed necessary and appropriate.

(4) Number of Initial FOIA Cases Pending:

(a) Enter into block 5a(1) the total number of open, pending initial FOIA requests on file with your activity at the start of the reporting period. (NOTE: The number of pending requests at the beginning of the current reporting period should be the same as the number of pending requests at the end of the previous reporting period).

(b) Enter into block 5a(2) the total number of open, pending initial FOIA requests on file with your activity at the end of the reporting period.

(5) Median Age of Pending Request Files:

(a) Enter into block 5b(1) the median age (in days, including holidays and weekends) of pending initial FOIA requests on file with your activity at the start of the reporting period. (NOTE: The median age of pending requests at the beginning of the current reporting period should be the same as the median age of pending requests at the end of the previous reporting period).

(b) Enter into block 5b(2) the median age (in days, including holidays and weekends) of pending initial FOIA requests on file with your activity at the end of the reporting period.

**g. Total Number of Initial Requests Received During the Current Reporting Period.** Enter into block 6 the total number of initial FOIA requests received during the current reporting period. (NOTE: This should not be the same number as that reported in block 1a which recorded the number of completed requests.)

**h. Types of Initial Requests Processed and Median Age.** Information is reported for three types of initial requests completed during the reporting period by type (simple, complex, and expedited processing). The following items of information are to be reported for each category of requests:

(1) Total Number of Initial Requests (Simple). Enter into block 7a under "TOTAL NUMBER OF CASES" the number of initial requests processed as "simple" and completed during the reporting period.

(2) Total Number of Initial Requests (Complex). Enter into block 7a under "TOTAL NUMBER OF CASES" the number of initial requests processed as "complex" and completed during the reporting period.

(3) Total Number of Initial Requests (Expedited Processing). Enter into block 7a under "TOTAL NUMBER OF CASES" the number of initial requests processed as "expedited processing" and completed during the reporting period.

(4) Median Age (Simple). Enter into block 7a under the heading "MEDIAN AGE (DAYS)" the median number of calendar days (including weekends and holidays) required to process those "Simple" requests completed during the reporting period.

(5) Median Age (Complex). Enter into block 7a under the heading "MEDIAN AGE (DAYS)" the median number of calendar days (including weekends and holidays) required to process those "Complex" requests completed during the reporting period.

(6) Median Age (Expedited Processing). Enter into block 7a under the heading "MEDIAN AGE (DAYS)" the median number of calendar days (including weekends and holidays) required to process those "Expedited Processing" requests completed during the reporting period.

i. **FOIA Fees Collected From the Public.** Enter into block 8 the total amount of FOIA processing fees collected from the public during the reporting period.

j. **FOIA Program Costs**

(1) Number of Full Time Staff: Enter into block 9a the number of personnel dedicated to working FOIA full time during the fiscal year, expressed in work-years (manyears).

(2) Salary Costs of Full Time Staff: Total the salary costs of each full time staff member reported in paragraph 9a. Military personnel salary costs will be calculated using the Composite Rate Chart prepared by DoD each fiscal year. Civilian personnel salary costs will be calculated using the OPM salary table for their grade with 16 percent added for benefits. NOTE: This figure will be used to calculate the Total Program Cost reported in block 9d of Form DD 2564.

(3) Number of Part Time Staff: Enter into block 9b the number of work-years (manyears) for part-time staff and incidental hourly personnel utilized for FOIA processing during the fiscal year. One work-year (manyear) is comprised of 2,080 hours. See sample table in paragraph 9e below.

(4) Salary Costs of Part Time Staff: Enter the total salary costs of part-time and incidental hourly personnel reported in paragraph 9c. Part-time employee salary costs will be calculated using the Composite Rate Chart for military personnel and the OPM salary table for their grade plus 16 percent for civilian employees. Incidental hourly employee

salary costs will be calculated by totaling items 4 through 7 from applicable Forms DD 2086 and DD 8086-1. For example: total search costs plus total review/excising costs plus total correspondence and forms preparation costs plus total coordination of approval/denial costs plus total other activity costs equals total incidental hourly employee salary costs (by hours) which are then translated to work-years. NOTE: This figure will be used to calculate the Total Program Cost reported in block 9d of Form DD 2564. See sample table in paragraph 9e below.

(5) Sample Table: A sample table to calculate hours and salaries for part-time and incidental hourly personnel follows:

| Employee | # Hrs Worked | Work Years | Salary | Note |
|---|---|---|---|---|
| J.Q. Public | | .33 | $13,386.78 | GS-9 paralegal working in legal office who dedicates 1/3 of his work hours daily to FOIA processing. |
| H.S. Student | | .25 | $4,640.87 | GS-2 after-school, part-time employee working in FOIA office who dedicates 2 hours daily to FOIA processing. |
| CPL U.S. Marine | | .25 | $6,621.25 | E-4 military enlisted working in mailroom who dedicates 1/4 of his work hours daily to FOIA processing. |
| RADM I.D. Authority | | .01 | $1,122.60 | O-7 military officer IDA who dedicates 1 percent of his work hours daily to FOIA issues. |
| Incidental Hrs. (Clerical @ $12.00/hr) | 7,180* | 3.45 | $86,160.00 | ** |
| Incidental Hrs. (Professional $25.00/hr) | 13,693* | 6.58 | $342,325.00 | ** |
| Incidental Hrs. (Executive $45.00/hr) | 987* | .47 | $44,415.00 | ** |

* NOTE: total search hours plus total review hours plus total correspondence preparation hours plus total coordination of approval/denial hours plus total other activity hours equals total incidental hours worked.

** NOTE: Indidental hours information taken from items 4 through 7 of Forms DD 2086 and DD 2086-1 for incidental employees who work FOIAs hourly by specific tasking.

(6) Estimated Litigation Costs: Enter into block 9c your best estimate of litigation costs for the fiscal year, both at the administrative and appellate levels.

(7) Total Cost of FOIA Program Operation: The total cost for FOIA program operation shall be determined as follows.

Step 1: Sum total costs calculated in paragraphs 9b, 9d, and 9f.

Step 2: Sum items 8 through 12 of applicable Forms DD 2086 and DD 2086-1.

Step 3: Add sums from steps 1 and 2. Multiply total by 25 percent to obtain overhead calculation.

Step 4: (OPTIONAL) Total of routine costs processed. Activities which process routine kinds of requests may find it economical to develop an average cost factor for processing repetitive routine requests, rather that tracking individual costs of each request processed. Care should be exercised so that routine request costs are comprehensive to include a 25 percent overhead.

Step 5: Enter into block 9d the sum of the totals for steps 1, 2, 3, and 4.