

# DEPARTMENT OF DEFENSE



## FREEDOM OF INFORMATION ACT PROGRAM CY 1986

### SUMMARY OF THE REPORT TO CONGRESS

PREPARED BY:  
OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
(PUBLIC AFFAIRS)  
DIRECTORATE FOR FREEDOM OF INFORMATION  
AND SECURITY REVIEW

**CY 1986 FREEDOM OF INFORMATION ACT  
ANNUAL REPORT  
Highlights**

A total of 91,040 public requests for records under the Freedom of Information Act (FOIA) were processed during 1986 by the Department of Defense. This compares with an average annual case load of 72,059 for the years 1975-1985, the reporting period since the act was amended, and is roughly 26% above average. Nine thousand two hundred and twenty-four cases required time limit extensions — 324 for location, 7079 for volume, 1,813 for consultation, and eight due to court involvement.

The Department of Defense initially granted approximately 80% of the requests. There were 7,435 requests denied on the basis of FOIA exemptions. Of these initially denied requests, 1 of 10 was because continued classification was warranted; 1 of 30 was because the record requested was an internal memorandum; 1 of 33 was because of statutory exemption; 1 of 5 was because the information requested was considered proprietary data; 1 of 5 was because the record requested involved investigatory data; and 1 of 5 was because information requested involved personal privacy. An additional 10,889 requests could not be fulfilled in whole or in part for other reasons, such as lack of record requested, transferral to another agency, or lack of specificity sufficient to identify the requested records. There were 759 appeals of denied requests, 91 appeals were fully granted, 292 partially granted, and 376 again rejected.

Administrative costs associated with these requests were approximately \$11,747,421, somewhat more than the \$8,121,403 average for the 1975-1985 period. The average cost of processing a single case during 1986 was approximately \$130. Fee collections for records provided to the public amounted to \$2,147,692.

Questions regarding this report should be addressed to the Director, Freedom of Information and Security Review, OASD (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301-1400.

**Department of Defense  
Reporting Agencies under the Freedom of Information Act**

<u>Agency Abbreviation</u>	<u>Agency</u>	<u>Agency Head</u>
OSD/OJCS	Office of the Secretary of Defense (Including the Organization of the Joint Chiefs of Staff)	Hon Caspar W. Weinberger
Dept. Army	Secretary of the Army	Hon John O. Marsh, Jr.
Dept. Navy	Secretary of the Navy	Hon John Lehman
Dept. Air Force	Secretary of the Air Force	Hon Edward C. Aldridge, Jr.
DCA	Defense Communications Agency	LTG Winston D. Powers, USAF
DCAA	Defense Contract Audit Agency	Mr. William H. Reed
DIA	Defense Intelligence Agency	LTG Leonard H. Perroots, USAF
DIS	Defense Investigative Service	Mr. Thomas J. O'Brien
DLA	Defense Logistics Agency	LTG Vincent M. Russo, USA
DMA	Defense Mapping Agency	MGEN Robert A. Rosenberg, USAF
DNA	Defense Nuclear Agency	LTG John L. Pickitt, USAF
NSA/CSS	National Security Agency Central Security Service	LTG William E. Odom, USA

**Department of Defense  
FOI Appeal and Program Officials**

<u>Agency Abbreviation</u>	<u>Appellate Authority</u>	<u>Program Official</u>
OSD/OJCS	Hon Robert B. Sims Asst SecDef Public Affairs	Mr. William M. McDonald Director, FOI and Security Review, OASD/PA
Dept. Army	General Counsel Secretary of the Army	Mr. J.R. Edgington Chief, Information Access Branch of DAIM-FAR-RA
Dept. Navy	Judge Advocate General/ General Counsel for Secretary of the Navy	Mrs. Gwendolyn R. Aitken PA/FOIA Coordinator Naval Records Division OPNAV
Dept. Air Force	Mr. Robert J. McCormick Admin Asst to the Secretary of the Air Force	Ms. Ann Turner OPR for Freedom of Information Documentation Systems Division
DCA	LTG W.D. Powers, USAF Director	Mr. John T. Whealen General Counsel
DCAA	Mr. John H. van Santen Asst Director, Resources	Mrs. Connie Miller Records Administrator
DIA	LTG Leonard A. Rosenberg, USAF Director	Mr. Robert C. Hartzog FOIA Officer
DIS	Mr. Thomas J. O'Brien Director	Mr. Dale L. Hartig Chief, Information/Public Affairs
DLA	LTG Vincent M. Russo, USA Director	COL G.A. White, USAF Staff Director, Administration
DMA	Mr. Edward Obloy General Counsel	Mr. Del Malkie Director, Public Affairs
DNA	LTG John L. Pickitt USAF, Director	LTC Carlton W. Brown, Jr., USA Public Affairs Officer
NSA/CSS	Mr. Robert E. Rich Deputy Director	Ms. Julia B. Wetzel Director of Policy

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Item 1

**Initial Determinations Resulting in not  
Providing all or a Portion of Record Requested**

Reporting Activity	Total Demands		Reasons		
	Completed Public Requests	Completed Reportable Requests*	Statutory Exemptions	+ Other	= Total
OSD/OJCS	2,168	3,402	382	915	1,297
DEPT ARMY	22,986	30,852	2,665	1,624	4,289
DEPT NAVY	25,578	28,329	1,312	3,801	5,113
DEPT AF	23,178	25,296	2,202	3,666	5,868
DCA	555	555	35	0	35
DCAA	257	368	70	160	230
DIA	2,152	1,621	250	155	405
DIS	258	258	47	78	125
DLA	13,975	13,975	213	204	417
DMA	208	208	17	42	59
DNA	160	161	16	43	59
NSA/CSS	465	511	226	201	427
<b>DoD Totals</b>	<b>91,040</b>	<b>105,536</b>	<b>7,435</b>	<b>10,889</b>	<b>18,324</b>

\*A reportable request is that portion of an FOI request resulting in a single record or group of records pertaining to one general subject area being acted upon by one Initial Denial Authority (IDA) who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests.

Item 2(a)

**Exemptions Invoked on Initial Determinations**

**Exemptions by Number (552(b))**

Reporting Activity	1	2	3	4	5	6	7	8	9	Total*
OSD/OJCS	158	7	10	48	97	66	87	0	0	473
DEPT ARMY	337	45	1	577	757	842	902	0	0	3,461
DEPT NAVY	89	44	27	210	322	589	296	0	1	1,578
DEPT AF	177	108	49	879	1,106	352	438	0	0	3,109
DCA	10	0	0	24	0	1	0	0	0	35
DCAA	0	22	1	13	21	2	11	0	0	70
DIA	191	2	16	8	12	21	0	0	0	250
DIS	0	2	2	1	5	36	5	0	0	50
DLA	1	5	1	94	89	14	9	0	0	213
DMA	2	0	0	11	5	2	0	0	0	20
DNA	4	1	0	11	0	0	0	0	0	16
NSA/CSS	112	11	195	8	6	25	0	0	0	357
<b>DoD Totals</b>	<b>1,081</b>	<b>247</b>	<b>302</b>	<b>1,884</b>	<b>2,420</b>	<b>1,950</b>	<b>1,748</b>	<b>0</b>	<b>1</b>	<b>9,630</b>
<b>Percent of Total</b>	<b>11%</b>	<b>3%</b>	<b>3%</b>	<b>19%</b>	<b>25%</b>	<b>20%</b>	<b>18%</b>	<b>0%</b>	<b>1%</b>	<b>100%</b>

\*Totals may not agree with Item 1 because of cases where two or more exemptions were cited.

Item 2(b)

**Statutes Invoked on Initial Determinations**

Statute	Number of Times by Agency									DoD Total*
	OSD/JCS	DEPT ARMY	DEPT NAVY	DEPT AF	DCAA	DIA	DIS	DLA	NSA/CSS	
10 USC 140c, as added by Public Law 98-94, Section 1217			27	34					2	63
10 USC 2487				1						1
12 USC 3403							1			1
18 USC 793				1						1
18 USC 794				1						1
18 USC 798				1					33	34
18 USC Section 1905		1		1						2
20 USC Section 1232G	1									1
28 USC 1498								1		1
42 USC 2162	7			4						11
50 USC 402 note, Section 6, Public Law 86-36	1			4	1	3	1		130	140
50 USC 403d(3)				2		13			83	98
National Security Act of 1947, Section 102(d)(3), CIA Act of 1949	1			1						2
<b>Agency Totals</b>	<b>10</b>	<b>1</b>	<b>27</b>	<b>50</b>	<b>1</b>	<b>16</b>	<b>2</b>	<b>1</b>	<b>248</b>	<b>356</b>

\*Total may not agree with 552(b)(3) exemptions because of cases where two or more statutes were cited.



Item 2(c)

**Other Reasons Cited on Initial Determinations**

Reporting Activity	Category*					Total
	1	2	3	4	5	
OSD/OJCS	414	259	68	114	66	921
DEPT ARMY	656	629	145	151	43	1,624
DEPT NAVY	2,104	867	223	219	470	3,883
DEPT AF	497	1,868	317	598	386	3,666
DCA	0	0	0	0	0	0
DCAA	114	34	6	0	6	160
DIA	6	135	12	2	0	155
DIS	0	59	0	17	2	78
DLA	109	222	84	64	126	605
DMA	20	17	0	0	5	42
DNA	18	24	0	0	1	43
NSA/CSS	23	72	0	102	4	201
<b>DoD Totals</b>	<b>3,961</b>	<b>4,186</b>	<b>855</b>	<b>1,267</b>	<b>1,109</b>	<b>11,378</b>

\*Types of Categories

1. Transferred Request
  2. Lack of Records
  3. Failure of Requester to Reasonably Describe Record
  4. Other Failures by Requesters to Comply with Published Rules and/or Directives
  5. Request Withdrawn by Requester
- (See following page for description of each category)

## **"OTHER REASONS" DESCRIBED**

**1. Transferred Request (Appeal):**

This category applies when responsibility for making a determination or a decision on categories listed below is shifted from one Component to another Component/Agency.

**2. Lack of Records:**

This category covers situations wherein the requester is advised the agency has no record, or has no statutory obligation to create a record.

**3. Failure of Requester to Reasonably Describe Record:**

This category is specifically based on Section 552 (a)(3)(A) of the FOIA.

**4. Other Failures by Requesters to Comply with Published Rules and/or Directives:**

This category is based on Section 552 (a)(3)(B) of the FOIA and includes instances of failure to follow published rules concerning time, place, fees and procedures.

**5. Request (Appeal) Withdrawn by Requester:**

This category covers situations when the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

Item 3

**Initial Denial Officials by Participation  
(Agency Reports List Names and Titles)**

**A. Exemption Denials**

Agency	Number of Officials Categorized by Instances of Participation							Total Officials*
	Officials Authorized	1	2-3	4-5	6-10	11-40	41+	
OSD/OJCS	119	18	13	4	10	3	2	50
DEPT ARMY	23	0	2	0	4	8	10	24
DEPT NAVY	315	54	29	6	19	19	5	132
DEPT AF	141	13	10	4	2	13	10	52
DCA	1	0	0	0	1	1	0	2
DCAA	7	3	3	0	1	1	0	8
DIA	1	0	0	3	2	2	1	8
DIS	1	0	0	0	0	0	1	1
DLA	47	10	7	1	5	5	0	28
DMA	11	3	1	0	0	0	0	4
DNA	1	1	0	1	0	0	0	2
NSA/CSS	1	0	0	0	0	0	1	1
<b>DoD Totals</b>	<b>668</b>	<b>102</b>	<b>65</b>	<b>19</b>	<b>42</b>	<b>52</b>	<b>30</b>	<b>312</b>

\*Total officials may exceed number authorized due to personnel turnover.

Item 3

**Initial Denial Officials by Participation  
(Agency Reports List Names and Titles)  
(Cont'd)**

**B. Other Authority Denials\***

Agency	Number of Officials Categorized by Instances of Participation						Total Officials*
	Number of Instances						
	1	2-3	4-5	6-10	11-40	41+	
OSD/OJCS	3	6	8	7	7	2	33
DEPT ARMY	0	1	0	3	9	5	18
DEPT NAVY	68	65	26	16	33	17	225
DEPT AF	0	1	0	2	1	9	13
DCA	0	0	0	0	0	0	0
DCAA	0	0	0	2	4	1	7
DIA	0	0	0	0	0	1	1
DIS	0	0	0	0	0	1	1
DLA	0	0	0	0	0	0	0
DMA	2	0	0	1	2	0	5
DNA	0	0	0	0	2	0	2
NSA/CSS	0	0	0	0	0	0	0
<b>DoD Totals</b>	<b>73</b>	<b>73</b>	<b>34</b>	<b>31</b>	<b>58</b>	<b>36</b>	<b>305</b>

\*Other category determination processing is not limited to statutory exemption denial authorities.

Item 4

**Number of Appeals and Results**

**Number of Appeals**

Reporting Activity	Granted	Granted in Part	Denied	Total
<b>OSD/OJCS</b>	3	21	12	36
<b>DEPT ARMY</b>	13	105	86	204
<b>DEPT NAVY</b>	19	72	80	171
<b>DEPT AF</b>	52	73	149	274
<b>DCA</b>	0	3	8	11
<b>DCAA</b>	1	2	1	3
<b>DIA</b>	0	5	34	39
<b>DIS</b>	0	0	0	0
<b>DLA</b>	3	9	5	17
<b>DMA</b>	0	1	1	2
<b>DNA</b>	0	1	1	2
<b>NSA/CSS</b>	0	0	9	9
<b>DoD Totals</b>	91	292	386	769

Item 5(a)

**Exemptions Invoked on Appeal Determinations**

**Exemptions by Number (552(b))**

Reporting Activity	1	2	3	4	5	6	7	8	9	Total*
OSD/OJCS	23	0	2	1	11	4	13	0	0	54
DEPT ARMY	13	5	1	14	78	29	33	0	0	173
DEPT NAVY	16	19	2	12	57	48	41	0	0	195
DEPT AF	28	8	11	91	166	36	27	0	0	367
DCA	5	0	0	6	0	0	0	0	0	11
DCAA	0	2	0	2	3	0	1	0	0	8
DIA	35	0	2	0	2	1	0	0	0	40
DIS	0	0	0	0	0	0	0	0	0	0
DLA	0	2	0	3	8	1	1	0	0	15
DMA	1	0	0	1	0	1	0	0	0	3
DNA	0	0	0	1	0	0	0	0	0	1
NSA/CSS	7	0	7	0	0	2	0	0	0	16
<b>DoD Totals</b>	<b>128</b>	<b>36</b>	<b>25</b>	<b>131</b>	<b>325</b>	<b>122</b>	<b>116</b>	<b>0</b>	<b>0</b>	<b>883</b>
<b>Percent of Total</b>	<b>15%</b>	<b>4%</b>	<b>3%</b>	<b>15%</b>	<b>37%</b>	<b>14%</b>	<b>13%</b>	<b>0</b>	<b>0</b>	<b>100</b>

\*Totals do not agree with Item 4 because of cases where two or more exemptions were cited.

Item 5(b)

**Statutes Invoked on Appeal Determinations**

Statute	Number of Times by Agency						DoD Total*
	OSD/OJCS	DEPT ARMY	DEPT NAVY	DEPT AF	DIA	NSA/CSS	
10 USC 140c, as added by Public Law 98-94, Section 1217			2	9			11
18 USC 798						5	5
18 USC 3403 Sect 1905		1					1
42 USC 2162	1						1
42 USC 2163	1						1
50 USC 402 <u>note</u> , Section 6, Public Law 86-36						7	7
50 USC 403d(3)				2	2	5	9
<b>Agency Totals</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>11</b>	<b>2</b>	<b>17</b>	<b>35</b>

\*Total may not agree with 552(b)(3) exemptions because of cases where two or more statutes were cited.

Item 5(c)

**Other Reasons Cited on Appeal Determinations**

Reporting Activity	Category*					Total
	1	2	3	4	5	
OSD/OJCS	0	0	0	0	2	2
DEPT ARMY	8	2	2	4	4	20
DEPT NAVY	18	8	2	29	6	61
DEPT AF	0	0	0	8	0	8
DCA	0	0	0	0	0	0
DCAA	0	0	0	0	0	0
DIA	1	0	0	0	0	1
DIS	0	0	0	0	0	0
DLA	0	0	0	1	0	1
DMA	0	0	0	0	0	0
DNA	0	0	0	2	0	2
NSA/CSS	0	0	0	1	0	1
<b>DoD Totals</b>	<b>27</b>	<b>10</b>	<b>4</b>	<b>45</b>	<b>10</b>	<b>96</b>

**\*Types of Categories**

1. Transferred Appeal
  2. Lack of Records
  3. Failure of Requester to Reasonably Describe Record
  4. Other Failures by Requesters to Comply with Published Rules and/or Directives
  5. Request Withdrawn by Requester.
- See Page 5 for full description of "other reasons".



## Item 6

**PARTICIPATION OF APPELLATE AUTHORITIES**  
**(Those Responsible for Denials in Whole or in Part)**

Name	Title	No. of Instances of Participation	
		Exemption	Other
<b>OSD/OJCS</b>			
Robert B. Sims	Assistant Secretary of Defense (Public Affairs)	9	0
Fred S. Hoffman	Principal Deputy ASD (Public Affairs)	9	0
<b>DEPT ARMY</b>			
Susan J. Crawford	General Counsel	173	18
<b>DEPT NAVY</b>			
T.E. Flynn (RADM, USN)	Judge Advocate General	36	1
H.D. Campbell (RADM, USN)	Judge Advocate General	7	1
L. Slater RADM, USN	Acting Judge Advocate General	52	1
L. Hoffman CAPT, USN	Acting Judge Advocate General	5	0
W.A. Kjos	Deputy Judge Advocate General (Litigation)	0	31
A.R. Philpott CDR, USN	Acting Deputy JAG (Litigation)	0	13
W.W. Skallerup, Jr.	General Counsel	39	8
H. O'Neill SES	Acting General Counsel	13	6
<b>DEPT AF</b>			
Steven A. Thompson	Dep Administrative Asst Secretary of the Air Force	224	0
<b>DCA</b>			
Lt Gen Winston D. Powers	Director	11	0

## Item 6

**PARTICIPATION OF APPELLATE AUTHORITIES  
(Those Responsible for Denials in Whole or in Part)  
(Cont'd)**

Name	Title	No. of Instances of Participation	
		Exemption	Other
<b>DCAA</b>			
John Van Santen	Assistant Director, Resources	8	4
<b>DMA</b>			
Edward J. Obloy	General Counsel	2	0
<b>DIA</b>			
R.W. Schmidt RADM, USN	USN Deputy Director	38	0
<b>DLA</b>			
MG D.P. Litke MG, USAF	Deputy Director	3	3
MG. S.R. Musser MG, USAF	Deputy Director	5	6
<b>DNA</b>			
LTG John L. Pickitt LTG, USAF	Director, Defense Nuclear Agency	2	0
<b>NSA/CSS</b>			
Robert E. Rich	Deputy Director, NSA/CSS FOI Appeals Authority	2	0
MG Thomas J. Flynn Acting FOI Appeals Authority	Chief of Staff, NSA/CSS	1	0
C.R. Lord	Deputy Director, NSA/CSS FOIA Appeals Authority	6	1

## Item 7

### Court Opinions and Action Taken

#### **OSD/OJCS**

Kurz-Kasch v. DoD, Civil Case No. C-3-86-316 (Southern Dist. of Ohio, Western Div). Plaintiff sought DoD records concerning on-going criminal investigation of plaintiff's activities. Government motion for summary judgment granted on 17 January 1987.

#### **DEPT NAVY**

Stokwitz v. Department of the Navy, Civil No. 85-2532 G(CM) (S. D. Cal.). Plaintiff sought a copy of a reopened Naval Investigative Service (NIS) investigation concerning his discharge as Navy OGC attorney. Portions of the report were withheld to protect the privacy of third parties mentioned in the report. The plaintiff filed a motion to compel discovery by taking depositions of NIS agents. Government motions in opposition to discovery and for summary judgment were granted. Plaintiff's motion for reconsideration was denied on 29 October 1986. Appeal period has expired.

Quarles v. Department of the Navy, Civil No. 85-3395 (D.D.C.). Plaintiff seeks all information submitted to the Secretary of the Navy concerning his decision on Gulf Coast Homeporting. Government motion for summary judgment was filed 23 December 1985. Plaintiff filed a motion to compel a Vaughn index of all information considered by the Navy in making the decision. He asserted that the Navy unilaterally narrowed his request. Case awaiting decision since March 1986.

Falzone v. Department of the Navy, No. 85-3862 (D.D.C.). Plaintiff, a real estate agent from Pensacola, Florida, challenged DoD and Department of the Navy FOIA policy that mandates withholding of names and duty addresses of active duty service-members stationed overseas or with deployable or sensitive units. On 16 October 1986, the court granted the Government's motion for summary judgment recognizing that the potential for terrorist attacks and threats against those service members justifies such withholding. On 21 November 1986, the court denied plaintiff's motion to amend the decision and reemphasized that, considering the threat potential to service members, release of the requested information would constitute an unwarranted invasion of their privacy. Falzone filed a notice of appeal on 1 December 1986.

Offutt v. Department of the Navy, Civil Action No. R86=796 (D.MD.). Plaintiff sought an injunction directing the Navy to cease withholding portion of a personal injury/death report regarding a fatal accident at David N. Taylor Naval Ship R&D Center, (i.e., the accident investigator's assessment of cause factors, discussion of possible case factors, and recommendations to prevent future accidents). Access was denied under exemption (b)(5), since disclosure would reveal the deliberative process of the investigator. Cross-motions for summary judgment are pending.

Wallace-Hoskins Corp. v. Department of the Navy, Cv-86-7707 TJH (Kx) (C.D. Cal.). Plaintiff sought an injunction directing the Navy to cease withholding portions of a personal injury/death report regarding a 1981 industrial accident at Long Beach Naval Shipyard, (i.e., the accident investigator's assessment of cause factors and recommendations). Access was denied under exemption (b)(5), since disclosure would reveal the deliberative process of the investigator. Defendant's motion for summary judgment is pending.

Kimberlin v. Department of the Navy, No. IP82=1507C (S.D. Ind.). Plaintiff, an inmate at the Federal Penitentiary in Terre Haute, Indiana, brought suit under the FOIA, seeking a document consisting of two pages which pertained to him. The information in the document was gathered by the FBI and furnished to the Naval Security and agencies. Plaintiff is not now, and has not been, the subject of a NIS investigation. The information was withheld at the request of the FBI, as they do have an ongoing investigation regarding the plaintiff, and the information on the two-page document is also contained in their investigatory files. Plaintiff filed suit against the FBI seeking their files. The suit was filed in the same court and on the same day as the suit against the Navy. The Navy should be dismissed as a party defendant since the record is not a Navy "agency record". A motion for summary judgment was granted. Plaintiff has appealed to the seventh circuit from the Entry and Memorandum of Decision entered on 21 September 1983. The appeal is pending seventh circuit action.

Guy T. Black v. Department of Labor, No. C812530 (N.D. Ohio). Plaintiff brought suit against the Navy and other agencies seeking investigatory records about himself. Upon receipt of the original FOIA request, Black was informed that the Navy maintained no such files. He viewed the response as a denial of his request and he then filed suit. A motion for summary judgment was filed by the Navy and the case is currently pending. The court has indicated that upon Black's receipt of documents from the Department of Labor, the case will be dismissed.

Hayes International Corp. v. Department of the Navy, No. 86-T-1129-S (MD Ala). Plaintiff brought action against Navy on 1 October 1986 seeking release of various documents related to an aviation mishap. We contend that plaintiff failed to show that he had appealed and exhausted his administrative remedies. Settlement talks are ongoing. Motion for protective order has been filed to prevent discovery.

Lind v. Department of the Navy, No. 80-033 (D. HI.). Plaintiffs, representatives of various public interest groups, seek three Navy Weapons Evaluation Facility, Albuquerque, NM, reports of accidents and incidents involving nuclear weapons. Navy maintains they are classified and exempt from disclosure. In February 1984, the Navy moved for summary judgment. This motion was denied in April 1985 and the case was set for trial in November. In September 1985, after additional review by the Navy of the requested documents, portions were released and a motion was made to vacate trial date. This motion, along with summary judgment as to a segment of the material, was granted in October 1985. Navy was ordered to prepare a detailed Vaughn index of the reports, indicating application of FOIA Systems Command authorized total release and Navy entered into a settlement agreement. Upon further review Naval Sea Systems Command authorized total release and Navy entered into a settlement agreement. Upon further review by the Vice Chief of Naval Operations, documents were deemed still to be classified and the Navy attempted to rescind the settlement. On 18 December 1985, plaintiff moved for specific performance. On 10 February 1986, the court denied plaintiff's motion and allowed the Navy to rescind the settlement. In June 1986, the court granted, in part, the Navy's motion for summary judgment and required additional submission concerning remainder of the document. Plaintiffs have moved for award of attorney's fees. Decision on both motions is currently pending.

Lacy v. Department of the Navy, No. M83-2727 (D. Md.). Plaintiffs sought an injunction directing the Navy to cease withholding from them certain photographs relating to an aircraft accident involving Bureau Number 138929, which crashed near Patuxent River, MD, on 26 January 1980. The photographs are contained within the Mishap Investigation Report (MIR). The Naval Safety Center denied access to the photographs under (b)(5), since disclosure would reveal the deliberative or decision-making process of the investigator/photographer. On 6 July 1984, a Memorandum and Order in favor of plaintiff was issued. The amount of attorney's fees is still unresolved. Plaintiff is not actively pursuing this case.

Badhwar v. United States Air Force, et. al., Civil No. 84-0154 (D.D.C.). Case involves a Freedom of Information Act request by associates of columnist Jack Anderson, who seek a large quantity of a Mishap Investigation Report (MIR) related to information from the military services. At issue is the obligation to release three particular portions of the MIR: (1) statements of witnesses, (2) findings, conclusions, and recommendations, and (3) segregable factual material from documents found to be otherwise exempt.

Vietnam Veterans of America et. al., v. Department of Navy et. al., No. 86-0357 (D.D.C.). FOIA litigation commenced by two veterans organizations (represented by Bart Stichman) against Navy and Army. Action seeks publication or indexing of JAG opinions promulgated since 4 July 1967 that are subject to 5 U.S.C. 552(a)(1) or (a)(2). Plaintiffs contend that certain opinions are either statements of general policy, final opinions, or policy and interpretations that have been adopted by the Navy/Army and, therefore, under that statute, must be published in the Federal Register or made available in a public reading room.

A motion for summary judgment was filed 27 October 1986, contending that only documents promulgated concerning subject matters under the JAG's specific cognizance can be subject to FOIA (a)(1) or (a)(2). Of those categories of documents, most opinions are predecisional, internal, and advisory, having no precedential or authoritative value. Cognizant JAG divisions have reviewed their documents to extract those that are subject to the provision. Discovery has been stayed. At a hearing on 11 December 1986, the court indicated its inclination to deny our motion for summary judgment. After oral argument, however, the matter was taken under advisement, and presently remains decisional, as to both discovery and summary judgment.

Newport Aeronautical Sales v. Department of the Navy, D.D.C. No. 86-3409, filed 11 December 1986. Plaintiff brought suit alleging improper denials of various FOIA requests by the Naval Sea Systems Command. Plaintiff contends that technical manuals were not properly classified and were improperly withheld under Exemption (b)(3) as they are not subject to withholding under 10 U.S.C. 140c, the Technical Data Act.

Solar Turbines, Inc. v. Department of the Navy, D.D.C. No. 86-2284, filed 19 August 1986. Plaintiff brought suit because the Naval Sea Systems Command failed to issue a timely response. On 20 November 1986, the court granted a stay until 31 July 1987 to allow NAVSEA an opportunity to furnish the administrative processing of the request.

Aerojet Techsystems Co. v. Department of the Navy, D.D.C. No. 86-1635, filed 12 June 1986. Plaintiff brought suit because the Naval Sea Systems Command failed to issue a timely response. Stipulation of voluntary dismissal dated 8 October 1986.

Todd Shipyards Corp. v. Defense Contract Audit Agency, et al., D.D.C. 86-1157, filed 25 April 1986. Plaintiff filed suit to compel release of an audit report, alleging agency failure to respond in a timely manner. Pending decision.

Daniels Manufacturing Corp. v. Department of the Navy, ND CA 85-291-Civ-T-10. Exemption (b)(4) - whether qualified products lists (QPL) documents submitted by company were commercial information submitted in confidence which would result in competitive harm if released. Court order of 2 June 1986 sustained government's denial in part and granted plaintiff's request in part. Court concluded neither party prevailed and therefore awarded no costs.

Electro-Methods Inc. v. Department of the Navy, D.D.C. 84-2100. Exemption (b)(3), 22 CFR 125, USDRE memo of 31 March 1980, and 10 U.S.C. 140c. Whether unclassified drawings fell under the FOIA or instead are subject to Arms Export Control Act. Action dismissed with prejudice on 28 January 1986, but plaintiff granted attorney fees of \$7,600.

Teresa Falcone v. John Lehman, D. Mass. CA 85-3264WD. Plaintiff filed suit 25 August 1985 after receiving a "no records" response to her FOIA and PA request. The Department of the Navy has filed a motion to have the case dismissed. We are awaiting the court's decision.

Dale E. Boyce v. Department of the Navy (United States Marine Corps), No. 86-2211 (C.D. CA). Filed 8 April 1986. Plaintiff filed suit under the FOIA seeking access to a transcript of an arbitration hearing. The motion for summary judgment argued January 1987. Pending decision.

## Item 8

**FOIA IMPLEMENTATION RULES OR REGULATIONS**

Agency	Document Identification	CFR Ref.
<b>OSD/OJCS</b>	DoD Directive 5400.7, 24 Mar 1980	32 CFR 286 1 July 1980
	DoD Regulation 5400.7R, Dec 1980 Change 2, 28 Sep 1982; Change 3, 6 Dec 1982	32 CFR 286 1 July 1980
<b>DEPT ARMY</b>	AR 340-17, 1 Oct 1982	32 CFR 518 1 July 1980
<b>DEPT NAVY</b>	SECNAVINST 5720.42C, 1 Oct 1982	32 CFR 701 1 July 1980
<b>DEPT AF</b>	AFR 12-30, 15 Dec 1982	32 CFR 806 1 July 1980
<b>DCA</b>	DCA Instruction 210-225-1, 19 Dec 1980	32 CFR 287 1 July 1980
<b>DCAA</b>	DCAA Regulation 4510.5, 29 Aug 1977, Change 1	32 CFR 290 1 July 1980
	DCAA Instruction 5410.8, 27 Aug 1981	32 CFR 290 1 July 1980
<b>DIA</b>	DIA Regulation 12-39, 24 Aug 1981	32 CFR 292 1 July 1985
<b>DIS</b>	DIS Regulation 01-12, 2 Oct 1981	32 CFR 298 1 July 1985
<b>DLA</b>	DLA Regulation 5400.14, 2 Feb 1981	32 CFR 1285 6 April 1987
<b>DMA</b>	DMA Instruction 5400.7, 22 Apr 1981	32 CFR 295 1 July 1985
<b>DNA</b>	DNA Instruction 5400.7, 29 July 1980	32 CFR 291 1 July 1985
<b>NSA/CSS</b>	NSA/CSS Regulation 10-9, 9 Feb 1982	32 CFR 299 1 July 1985

Item 9

**FEE SCHEDULE AND FEES  
COLLECTED**

The fee schedule on pages 19 and 20, reprinted from Chapter 6, DoD Regulation 5400.7-R, December 1980, establishes standard costs collectible by Department of Defense Agencies.

\$2,147,692 was collected from the public for making records available during the year 1986 (see Item 10B, Page 22, for Agency totals).

**CHAPTER VI**  
**FEE SCHEDULE**  
**Section 1**  
**GENERAL PROVISIONS**

**6-100 Application**

The fees described in this chapter apply to FOIA requests. They reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (q)).

**6-101 Fee Assessment**

- a. Minimum fees shall not be charged.
- b. When direct search and duplication costs for a single FOIA request total less than \$30.00, fees should be waived automatically. The DoD Components, however, may set aside the automatic waiver provision when, on the basis of good evidence, the Component can demonstrate that waiver of fees is not in the public interest. Multiple requests from a single requester or from those acting in behalf of a single requester in an effort to take advantage of the waiver may create a situation in which waiver should be denied by the Component.
- c. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. The following circumstances, however, describe the most common circumstances in which waiver or reduction of fees are most likely to be warranted.
  1. No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.
  2. A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records including additional information not requested.
  3. The records are to be made available in response to a news media requester whose requests under this regulation are reasonable in scope and frequency.
  4. The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.
  5. A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

**6-102 Computation of Fees**

The fee schedule contained in this chapter is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

**Section 2**  
**COLLECTION OF FEES AND FEE RATES**

**6-200 Collection of Fees**

Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more practical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees that were owed an agency or component.



**6-201 Search Fees**

**a. Manual Search**

<u>Type</u>	<u>Grade</u>	<u>Hourly Rate (\$)</u>
Clerical	E9/GS8 and below	8
Professional	01-06/GS9-GS-15	16
Executive	07/GS16/ES1 and above	26

b. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

c. Actual cost of transporting records or personnel to the search site may be included.

**6-202 Duplication Fees**

<u>Type</u>	<u>Cost per Page (¢)</u>
Printed Material	01
Office Copy	10
Microfiche	25

**6-203 Audiovisual Documentary Materials**

Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

**6-204 Other Records**

Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

Item 10A

**Availability of Records**  
**(New Categories or segregable portions of records now being released)**

**NONE**

Item 10 B

**Calendar Year Costs and Fees Collected**

<b>Reporting Activity</b>	<b>Annual Cost*</b>	<b>Annual Fees Collected</b>
<b>OSD/OJCS</b>	<b>614,152</b>	<b>9,530</b>
<b>DEPT ARMY</b>	<b>3,252,441</b>	<b>167,679</b>
<b>DEPT NAVY</b>	<b>2,712,264</b>	<b>1,644,961</b>
<b>DEPT AF</b>	<b>3,606,039</b>	<b>151,616</b>
<b>DCA</b>	<b>39,289</b>	<b>3,822</b>
<b>DCAA</b>	<b>44,173</b>	<b>1,286</b>
<b>DIA</b>	<b>240,625</b>	<b>1,470</b>
<b>DIS</b>	<b>13,420</b>	<b>1,652</b>
<b>DLA</b>	<b>824,124</b>	<b>164,963</b>
<b>DMA</b>	<b>28,856</b>	<b>713</b>
<b>DNA</b>	<b>32,559</b>	<b>0</b>
<b>NSA/CSS</b>	<b>339,479</b>	<b>0</b>
<b>DoD Totals</b>	<b>11,747,421</b>	<b>2,147,692</b>

\*Based on reporting procedures established March 16, 1977, to capture a "best estimate" cost of administering FOIA as amended. The cost outline on the following pages provides a breakdown by DoD reporting agencies.

# CALENDAR YEAR COSTS AND FEES COLLECTED BY DOD REPORTING AGENCIES

COST OUTLINE	OSD/OJCS	DEPT ARMY	DEPT NAVY	DEPT AF	DCA	DCAA	DIA
<b>I Personnel Costs</b>							
A. Estimated Manyears*	8.28	74.53	64.28	86.063	.50	.33	5.00
B. Manyear Costs (Grades Considered)	308,931	\$1,975,313	\$1,656,408	\$1,857,965	16,000	33,003	143,321
C. Estimated Manhour Costs by Category (Fee Schedule Rates)**							
(1) Search Time	14,711	120,521	97,544	163,968	5,445	2,123	5,264
(2) Review & Excising	23,779	79,128	89,023	178,401	3,069	0	16,824
(3) Coordination & Approval	14,468	58,800	67,861	265,569	1,126	0	7,022
(4) Correspondence/Forms Preparation	4,752	85,016	49,746	90,593	2,040	0	2,741
(5) Other Activities	11,743	73,251	42,928	46,537	157	0	2,509
<b>MANHOUR COST TOTAL</b>	<b>57,598</b>	<b>416,716</b>	<b>347,102</b>	<b>745,068</b>	<b>11,837</b>	<b>2,123</b>	<b>34,412</b>
D. Total IB and IC	352,626	2,392,030	2,003,510	2,603,033	27,837	35,126	177,733
E. Overhead (Computed at 25%)	88,156	598,007	500,877	650,758	6,959	8,782	44,433
F. Total Personnel Costs	447,782	2,990,037	2,504,387	3,253,791	34,796	43,908	222,166
<b>II. Other Case-Related Costs</b>							
A. Computer Search Time	4267	83,441	21,034	82,635	354	0	7,294
B. Reproduction	7990	110,827	113,753	103,369	4,139	265	8,657
C. Microfiche Reproduction	275	23,781	718	8,197	0	0	91
D. Printed Records	244	3,498	20,822	6,332	0	0	417
E. Total of Other Case-Related Costs	12,784	221,547	196,326	200,533	4,493	265	16,459
<b>III Reporting/Other Costs</b>							
A. Reporting Costs							
(1) Operational	288	12,520	24,931	26,899	0	0	1,600
(2) User	1472	954	10,639	1,350	0	0	0
(3) Overhead (Computed at 25%)	440	3,369	8,993	7,062	0	0	400
B. Other Operating Costs (Voluntary Reporting of items such as postage, travel, computer, etc.)	71,377	24,015	17,031	116,404	0	0	0
C. Total Reporting/Other Costs	73,577	40,858	61,594	151,715	0	0	2,000
<b>IV Summary</b>							
A. Total Costs, Sections I thru III	614,152	3,252,441	2,712,264	3,606,039	39,289	44,173	240,625
B. Amount Collected from the Public	9,530	167,679	1,644,961	151,616	3,822	1,286	1,470

\*Personnel assigned full-time or part-time FOI duties.  
 \*\*Personnel other than IB.

Note: Figures may not add due to rounding.

**CALENDAR YEAR COSTS AND FEES COLLECTED BY DOD REPORTING AGENCIES**  
(Cont'd)

COST OUTLINE	DIS	DLA	DMA	DNA	NSA/CSS	Total
<b>I Personnel Costs</b>						
A. Estimated Manyears*	.00	12.25		.25	.75	258.33
B. Manyear Costs (Grades Considered)	0	361,471		12,864	20,115	6,538,037
C. Estimated Manhour Costs by Category (Fee Schedule Rates)**						
(1) Search Time	1,145	134,695		2,216	826	560,447
(2) Review & Excising	2,805	38,382		1,905	1,242	433,626
(3) Coordination & Approval	1,545	42,145		2,963	1,527	463,135
(4) Correspondence/Forms Preparation	792	22,051		1,858	650	261,101
(5) Other Activities	2,665	9,087		1,223	1,223	195,036
<b>MANHOUR COST TOTAL</b>	<b>8,952</b>	<b>236,360</b>		<b>9,090</b>	<b>5,468</b>	<b>1,193,345</b>
D. Total IB and IC	8,952	552,831		21,954	25,583	8,451,382
E. Overhead (Computed at 25%)	2,238	138,207		5,489	6,396	2,112,846
F. Total Personnel Costs	11,190	691,038		27,443	31,979	10,564,228
<b>II Other Case-Related Costs</b>						
A. Computer Search Time	759	82,541		181	137	392,655
B. Reproduction	115	15,035		282	443	366,705
C. Microfiche Reproduction	0	25,715		4	0	58,781
D. Printed Records	956	25,811		1	0	25,068
E. Total of Other Case-Related Costs	1,830	126,102		468	580	843,209
<b>III Reporting/Other Costs</b>						
A. Reporting Costs						
(1) Operational	320	3,850		664	0	71,220
(2) User	0	333		82	0	14,830
(3) Overhead (Computed at 25%)	80	1,046		187	0	21,514
B. Other Operating Costs (Voluntary Reporting of items such as postage, travel, computer, etc.)	0	1,755		12	0	231,964
C. Total Reporting/Other Costs	400	6,984		945	0	339,984
<b>IV Summary</b>						
A. Total Costs, Sections I thru III	13,420	824,124		28,856	32,559	11,747,421
B. Amount Collected from the Public	1,652	164,963		713	0	2,147,692

\*Personnel assigned full-time or part-time FOI duties.

\*\*Personnel other than IB.

Note: Figures may not add due to rounding.

Item 10 C

**Time Limit Extensions by Agency**

Reporting Activity	I Unusual Circumstances			II & III Court	TOTAL
	Location	Volume	Consultation	Involvement	
OSD/OJCS	94	30	1273	1	1398
DEPT ARMY	0	5117	131	4	5252
DEPT NAVY	57	1735	83	0	1875
DEPT AF	47	134	153	0	334
DCA	0	0	0	0	0
DCAA	2	3	1	1	7
DIA	0	0	0	0	0
DIS	22	5	11	1	38
DLA	100	50	151	1	302
DMA	2	5	10	0	17
DNA	0	0	0	0	0
NSA/CSS	0	0	0	0	0
<b>DoD Totals</b>	<b>324</b>	<b>7079</b>	<b>1813</b>	<b>8</b>	<b>9223</b>

Item 10 D

**Internal Memoranda  
(Including Directives not Published in Federal Register)**

<b>Reporting Activity</b>	<b>No. of Memoranda</b>	<b>No. Available to Public</b>
<b>OSD/OJCS</b>	<b>2</b>	<b>1</b>
<b>DEPT ARMY</b>	<b>2</b>	<b>2</b>
<b>DEPT NAVY</b>	<b>20</b>	<b>18</b>
<b>DEPT AF</b>	<b>0</b>	<b>0</b>
<b>DCA</b>	<b>0</b>	<b>0</b>
<b>DCAA</b>	<b>0</b>	<b>0</b>
<b>DIA</b>	<b>0</b>	<b>0</b>
<b>DIS</b>	<b>0</b>	<b>0</b>
<b>DLA</b>	<b>0</b>	<b>0</b>
<b>DMA</b>	<b>1</b>	<b>1</b>
<b>DNA</b>	<b>0</b>	<b>0</b>
<b>NSA/CSS</b>	<b>0</b>	<b>0</b>
<b>DoD Totals</b>	<b>25</b>	<b>22</b>

Item 10E (Optional)

**Other Information (Opinions) or Recommendations on  
Administering FOIA**

Of the 2,062 requests completed in the Office of the Secretary of Defense, the following table categorizes the requesters by percentage of total case load:

<u>Category</u>	<u>Percentage</u>
<b>Business Firms</b>	18
<b>Congress</b>	2
<b>Foreign</b>	2
<b>Individual</b>	32
<b>Law Firms</b>	15
<b>News Media</b>	13
<b>Research</b>	1
<b>Special Interest</b>	14
<b>Students</b>	1
<b>Other</b>	2
	<hr/>
	100



## FOIA INSTRUCTIONAL AND EDUCATIONAL EFFORTS

### DoD

The lack of funds for a Department-wide training/educational program continues as a major concern and hampers the overall effectiveness and management of the DoD FOIA Program. The programmed rotation of personnel in key positions and normal rotation of other personnel demand constant training/educational efforts. Components are directed, within their available resources, to conduct their own training/educational programs. The educational programs are to be targeted toward all members of the Component, developing a general understanding and appreciation of the DoD FOIA program, whereas the training programs are to be focused toward those personnel who are involved in the day-to-day processing of FOI requests. The overall training/educational objective, when considering the limitation of funds, is adequate and the Components' efforts are essential in maintaining the level of expertise to efficiently administer the Defense program.

### OSD/OJCS

Newly assigned personnel in the FOIA Program Director's Office routinely attend conferences sponsored by OPM and other organizations. Briefings, orientations, and staff visits between Component Agencies encourage the participation of FOI personnel to attend FOI conferences, symposia and seminars presented by Federal and private organizations. During April 1986, the Directorate for Freedom of Information and Security Review, OASD (Public Affairs) conducted two four-hour training sessions on FOIA statutory provisions and request processing requirements for all OSD/OJCS Components.

### DEPT ARMY

The Department of the Army FOIA coordinators inform Army personnel of the provisions of the Act on a continual basis. FOIA points of contact are available throughout the Army at all times to answer questions, provide guidance and resolve problems concerning the Act. Personnel responsible for administering the FOIA Program attend FOIA seminars and workshops throughout the year.

### DEPT NAVY

A representative from OP-09B30, in conjunction with a member of the Defense Privacy Board, conducted PA/FOIA training sessions during the year at naval activities in Seattle, Washington and for commands in the Washington, DC area. Naval activities in the Washington, DC area report attendance at FOIA training seminars sponsored by the Chief of Naval Operations, American Society for Access Professionals, Government Affairs Institute, Office of Personnel Management, and the Department of Justice. Several naval commands have conducted FOIA training designed specifically to their needs. For example, the Naval Security and Investigative Command conducts periodic training for students attending the NIS Special Agent School; the Navy Finance Center conducts periodic FOIA overviews/seminars for its disbursing officers and clerical personnel; and the Naval Military Justice School periodically presents a one-hour orientation on PA/FOIA. Additionally, many naval activities are including PA/FOIA training for new employees in indoctrination classes and through supervisor training classes.

### DEPT AF

Air Force has a 24-minute film designed to create an interest in and an understanding of the Freedom of Information Act. The film has received wide viewing throughout the Air Force and will continue to be viewed. Personnel attend FOIA Workshops sponsored by OPM and major air commands. The FOIA is the subject of briefings at various conferences throughout the Air Force.

**FOIA INSTRUCTIONAL AND EDUCATIONAL EFFORTS  
(Cont'd)**

**DCAA**

Responsible individuals in all regional offices and Headquarters principal staff elements have access to Headquarters FOIA program manager for purposes of clarifying/understanding Agency-wide policies and procedures, obtaining additional guidance, as well as discussing real or hypothetical situations for purposes of expanding knowledge. In addition, all field audit managers have access to responsible individuals in regional offices and Headquarters FOIA program manager for purposes of clarifying/understanding Headquarters policy and procedures, obtaining additional guidance, as well as discussing real or hypothetical situations for purposes of expanding knowledge. Field Audit Offices visited by Regional FOIA Officers to discuss the requirements of the FOIA with the FAO Managers, FAO FOIA Monitors, and key office personnel.

**DIA**

The briefing and training of new coordinators and analysts directly involved in administering actions connected with the FOIA is accomplished on an "as requested" basis.

**DIS**

New agents receive formal instruction regarding the provisions of FOIA and its implementation by DIS. Headquarters personnel have received detailed on-the-job training and present training programs to other field and staff elements as needed. Extensive formal training has not been necessary due to the centralized organization of the FOIA mission in DIS.

**DLA**

Headquarters and field elements attended numerous training programs which included seminars by the Department of Justice, DoD Legal Education Institute, USDA Graduate School, American Society for Access Professionals, and the Defense Logistics Agency.

**DMA**

DMA attorneys attended a seminar in July. The seminar was conducted by the American Society of Access Professionals.

**DNA**

FOIA briefings are held annually for DNA personnel involved in FOIA requests. Additionally, a FOIA briefing is given to new personnel.

**NSA/CSS**

An FOI/PA seminar was held by NSA/CSS to update the Agency focal points on the requirements of the laws. In addition, two NSA/CSS case workers and an attorney attended the Legal Education Institute's FOIA Annual Update Seminar.