



ADMINISTRATION AND
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

08 FEB 2006

MEMORANDUM FOR DOD FOIA OFFICES

Subject: FOIA Policy on Privacy Protection in Investigations

It is the policy of DoD to protect the privacy of individuals to the fullest extent possible when releasing information under the FOIA. With regard to investigations, the accused individual has an overriding privacy interest in not having the details of the matter disclosed. This privacy interest includes any information identifying the accused. Generally, courts have observed that the minimal amount of information of interest to the public revealed by a single incident or investigation does not shed enough light on an agency's conduct to overcome the subject's privacy interest in his/her records.

When components process requests for investigative material under the FOIA wherein another individual is accused, components shall not release information revealing the details of the accusations (whether substantiated or not), punishment or administrative actions, or the identities of those involved, including the accused. This applies even if the requester made the accusation which began the investigation, is familiar with the incident, or gave a statement. The requester's own statement must be given out but sensitive information relating to others will be redacted from that statement. If the FOIA requester is the subject of the investigation, components shall withhold all information that could identify other individuals mentioned within or provided statements to the investigation. This information must be withheld pursuant to 5 USC § 552(b)(6) and (b)(7)(C). Of course, since this substantial privacy interest must be weighed against the public interest, it may be the case that personally identifying information may be released concerning the investigations of senior government officials.

Components are reminded that requests that mention the person investigated by name (e.g. "the investigation into the misconduct of Mr. John Smith") shall be answered with a neither confirm nor deny ("Glomar") response.

If the Privacy Act requires the record be released, FOIA exemptions do not apply and the record is processed solely under the provisions of the Privacy Act. My point of contact for this is Jim Hogan, (703) 696-4689.

Will Kammer

Will Kammer
Chief
Defense Freedom of Information Policy Office

