

BY ORDER OF THE COMMANDER

STRATEGIC INSTRUCTION (SI) 900-06

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General Administrative and Management

**FREEDOM OF INFORMATION
ACT (FOIA) PROGRAM**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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The purpose of this SI is to issue United States Strategic Command (USSTRATCOM) instruction to implement a FOIA program within the per Department of Defense Directive (DoDD) 5400.7, *DoD Freedom of Information Act (FOIA) Program* and to supplement Department of Defense Manual (DoDM) 5400.07, *DoD Freedom of Information Act (FOIA) Program*. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) – USSTRATCOM Command FOIA Manager (CFM). Ensure all records created as a result of processes prescribed in this publication are maintained and disposed of in accordance with Chairman Joint Chiefs of Staff Manual (CJCSM) 5760.01A, *Joint Staff and Combatant Command Records Management, Volume I--Procedures* and CJCSM 5760.01A, *Joint Staff and Combatant Command Records Management Manual: Volume II--Disposition Schedule*. **Attachment 1** contains a glossary of references and supporting information.

SUMMARY OF REVISIONS

This SI has been substantially revised and must be completely reviewed.

1. Historical Summary: Section 552 of Title 5, United States Code, *Freedom of Information Act (FOIA)*, was enacted on 4 July 1966 to ensure the public's right to access information concerning the activities of the U.S. Government (USG). As such, the public has the right to access USSTRATCOM records. A responsive record will not be withheld from the public unless the FOIA exempts the record, or parts of it, from disclosure.

2. USSTRATCOM FOIA Processing Requirement: All FOIA actions will be processed through the Command FOIA Manager (CFM), USSTRATCOM/J006. Only the USSTRATCOM/CFM is authorized to interact with FOIA requesters. Offices and components under USSTRATCOM, (other than USSTRATCOM/J006) receiving a FOIA request via mail, e-mail, or fax, must forward it to the USSTRATCOM/CFM immediately. Recipients will not communicate receipt of the request to the requester.

3. The USSTRATCOM Command FOIA Manager (CFM)

The USSTRATCOM/CFM acts under the direction of the Commander, USSTRATCOM (CDRUSSTRATCOM), to ensure FOIA requests are processed as expeditiously as possible and according to applicable Federal statutes and Department of Defense (DoD) FOIA policy. The FOIA requires the USG respond to FOIA requests within 20 workdays. This does not necessarily mean a responsive document must be in the hands of the requester within 20 workdays; it means the USSTRATCOM/CFM must provide the requester an estimated date of when they may likely receive responsive documents within 20 workdays of receiving a perfected request. A FOIA requester may exercise their right to appeal a lack, or delay of response to the DoD Office of Freedom of Information Appeals Office, or file a lawsuit in any United States (U.S.) district court if they do not receive a response within this timeframe. Not only does the USSTRATCOM/CFM ensure the Command's FOIA program operates pursuant to the FOIA, DoD policy, and individual Service requirements, the USSTRATCOM/CFM coordinates and processes all requests pertaining to USSTRATCOM and its components.

4. USSTRATCOM/CFM Responsibilities

4.1. Ensures the USSTRATCOM FOIA Requester Service Center (RSC) is established and maintained according to DoD and Department of Justice (DoJ) guidelines.

4.2. Evaluates requests to determine acceptance; and when required, aids requesters in perfecting their requests.

4.3. Ensures requests are properly logged into the USSTRATCOM FOIA Log and administrative files are created.

4.4. Determines the responsible directorate to task for search and/or document review. The USSTRATCOM/CFM will identify a Subject Matter Expert (SME) and task him/her directly when possible. This direct approach to FOIA tasking is necessary to shorten the amount of coordination time and eases the burden on Directorate/Division leadership. **Note:** The USSTRATCOM/CFM will determine on a case-by-case basis the level of formality when tasking SMEs. The Command Task Management Tool (TMT) will not be used at this stage in the process. The USSTRATCOM/CFM will dictate when a FOIA tasking is initiated in TMT. Limited use of TMT in the initial stage positively impacts FOIA timeliness.

4.5. Notifies the USSTRATCOM Staff Judge Advocate and USSTRATCOM, Chief of Staff of requests for records of a controversial or sensitive nature, and will include the USSTRATCOM Office of Public Affairs (J020) in the notification if the news media is, or may become involved. DoD FOIA reporting guidance will be strictly followed for a FOIA request qualifying as a "significant FOIA request."

4.6. Conducts initial reviews of all responsive documents. This initial review eases the burden on the SME and is also a valuable training tool. One-on-one FOIA training with SMEs at this initial 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 at what level in the directorate the SME response is expected.

4.7. Reviews Directorate/Division/SME response for FOIA compliance. When necessary, the USSTRATCOM/CFM will re-task if a FOIA Exemption was misapplied, if there appears to

be an over-use of an exemption, if a reasonable search was not conducted, or there was no effort to reasonably segregate releasable from non-releasable information. **Note:** A line-by-line review must be conducted when determining whether or not it is reasonable to segregate responsive information contained within a classified document.

4.8. Obtains legal review, executes redactions, creates Initial Denial Authority (IDA) package, and sends responses to requesters.

4.9. Retains copies of FOIA requests and related correspondence, reports, etc., per records disposition schedule.

4.10. Ensures releasable documents requested by two or more individual FOIA requesters are posted to the USSTRATCOM Public FOIA Electronic Reading Room.

4.11. Processes document referrals to, and requests FOIA consultations from other USG and DoD agencies.

4.12. Processes FOIA appeals at the direction of the DoD Office of Freedom of Information Appeals Office.

4.13. Processes, under DoD Office of General Counsel (OGC) guidance, FOIA litigation cases, including, but not limited to creating Vaughn Indexes, declarations, case file organization, and other correspondence as directed.

4.14. Maintains access to the CommVault Compliance Search Web Console to ensure access authority is maintained for electronic searches of journaled (historical) senior leader's electronic mail; and

4.15. Executes quarterly and annual reports as directed by DoD Office of Freedom of Information.

5. Subject Matter Expert (SME) Responsibilities: The SME is instrumental to the FOIA process and is required to dedicate the necessary time to complete FOIA taskings as directed by the USSTRATCOM/CFM within an acceptable timeframe. Understanding real world events/taskings may take precedent, it is imperative that any delays in FOIA processing are relayed to the USSTRATCOM/CFM. Upon receipt of a FOIA tasking, the SME will:

5.1. Review the seven (7) FOIA exemptions (Exemptions 1 through 7) the DoD routinely invokes to protect non-releasable information. One-on-one familiarization training will be provided by the USSTRATCOM/CFM on an as needed basis.

5.2. Conduct a reasonable search of electronic and physical files most likely to contain the requested records, when required. A reasonable search can be accomplished when sufficient information is contained within a FOIA request that allows for an organized, non-random search based on USSTRATCOM's records filing plans and existing retrieval systems. The Command Records Manager (USSTRATCOM/J010) may be able to assist in key search term based electronic searches of Command records. The Command Historian (USSTRATCOM/J012) may be able to assist in searches for historic documents citing original classification authorities and specific subject matter reference materials.

5.3. Provide an estimated completion date to the USSTRATCOM/CFM within 10 calendar days of receipt of the FOIA tasking. For requesters seeking “expedited processing,” the SME must respond within five (5) calendar days of receipt of the FOIA tasking. Understanding an estimated completion date may change as a request is processed, it is imperative that any change to the estimated date is relayed to the USSTRATCOM/CFM. If this is not accomplished, it opens up USSTRATCOM for an appeal, or lawsuit.

5.4. Coordinate reviews of documents with other directorates/divisions/branches when it is determined their equities are contained in the documents. It is the owner of the document who must ensure all reviews are executed. This is **NOT** the USSTRATCOM/CFM’s responsibility. Notify the USSTRATCOM/CFM after all internal reviews are completed if an external agency’s equities are present.

5.5. Respond to the USSTRATCOM/CFM at the appropriate level, ensuring withholding recommendations are marked as directed by the USSTRATCOM/CFM and that they are fully supported by appropriately citing the applicable FOIA exemption, an applicable Security Classification Guide or other source document, citing the applicable section of Executive Order 13526, *Classified National Security Information*, and citing an applicable Federal statute, if applicable. The USSTRATCOM/CFM maintains a listing of congressionally approved FOIA related Federal statutes.

5.6. Complete the DD Form 2086, *Record of Freedom of Information (FOI) Processing Cost*.

6. Denial Recommendations: Denial recommendations, no-record responses, or a determination USSTRATCOM or one of its subordinate organizations does not have release/denial authority can be made by a SME, with Division/Branch Chief concurrence. The USSTRATCOM/CFM will direct the manner in which the response is made by the Division/Branch. Keeping in mind that timeliness of response is the key to program success, responses to the USSTRATCOM/CFM should be allowed at the lowest level, barring a determination that a response warrants the involvement of Directorate leadership.

7. Denial Authorities: The CDRUSSTRATCOM, USSTRATCOM Deputy Commander (J0CD), USSTRATCOM Chief of Staff (J0CS), USSTRATCOM Deputy (J0CSA), USSTRATCOM Inspector General (IG) and USSTRATCOM/CFM are the only officials authorized to act as IDA to deny access to records, regardless of partial denial, total denial, no records responses and denial of expedited processing. The USSTRATCOM/J0CS will act as primary IDA. The USSTRATCOM/J0CSA will act as IDA when the USSTRATCOM/J0CS is not available or when directed by the USSTRATCOM/J0CS. The Inspector General may only act as IDA for Inspector General related documents for O6 personnel and below. The Deputy Commander acts on Inspector General related documents for O7 personnel and above. The USSTRATCOM/CFM may act as IDA only when responding to requesters with a “no-records” response. IDA requested by Commanders of subordinate USSTRATCOM Components will be evaluated on a case-by-case basis and will be denied/approved by the USSTRATCOM/J0CS. Although IDA may be delegated to a subordinate organization, only the USSTRATCOM/CFM is authorized to interact with requesters.

8. Release Authorities: Total Release authority for records within their jurisdiction is delegated to directors, their deputies, division chiefs, their deputies within a directorate, chiefs of Command support staff offices, and their deputies in USSTRATCOM and to organizational commanders, deputy commanders, and Chiefs of Staff of subordinate organizations assigned to USSTRATCOM. Remember, only the USSTRATCOM/CFM is authorized to interact with requesters. As such, subordinate organizations will ensure the USSTRATCOM/CFM is provided releasable documents for passing to requesters. Documents should be provided electronically to the USSTRATCOM/CFM when possible.

9. Form Prescribed

9.1. DD Form 2086, *Record of Freedom of Information (FOI) Processing Cost*, must be accomplished by all personnel involved in processing each request.

9.2. Processing costs are reported in the Annual FOIA Report to Congress.

JOHN E. HYTEN
General, USAF
Commander

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

CJCSM 5760.01A, *Joint Staff and Combatant Command Records Management Manual: Volume I – Procedures*, 13 July 2009

CJCSM 5760.01A, *Joint Staff and Combatant Command Records Management Manual: Volume II – Disposition Schedule*, 13 July 2013, (current as of 15 September 2014)

DoDM 5400.07, *DoD Freedom of Information Act (FOIA) Program*, 25 January 2017

DoDD 5400.7, *DoD Freedom of Information Act (FOIA) Program*, 2 January 2008

Executive Order 13526, *Classified National Security Information*, 5 January 2010

Section 552 of Title 5, United States Code, *Freedom of Information Act*, 1 January 1996

Abbreviations and Acronyms

SME—Subject Matter Expert

CDRUSSTRATCOM—USSTRATCOM Commander

CFM—Command FOIA Manager

DoD—Department of Defense

DoD FOIA—Department of Defense, Freedom of Information Office

DoDM—Department of Defense Manual

DoJ—Department of Justice

FOIA—Freedom of Information Act

IDA—Initial Denial Authority

J0CS—USSTRATCOM Chief of Staff

J0CSA—USSTRATCOM Deputy Chief of Staff

J020—USSTRATCOM Public Affairs

USG—United States Government

TMT—Task Management Tool

USSTRATCOM—United States Strategic Command

Terms

Command FOIA Manager—The person responsible for managing the command FOIA program at HQ USSTRATCOM and its subordinate components.

Denial—A determination made by an IDA not to 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 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 (U.S.) 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 categories of records exempt from mandatory disclosure.

Partial Denial—A determination that any portion of a requested record may be withheld.

Perfect FOIA Request—A FOIA request that arrives at the FOIA Requester Service Center of the DoD Component who maintains 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 activity within an agency authorized by higher authority to receive and process FOIA requests.

Significant FOIA Request—A FOIA request received 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 releasability.

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.