

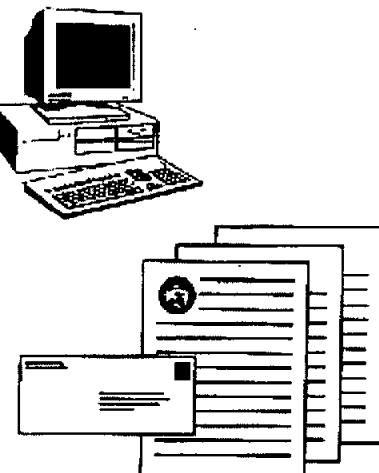
Department of Defense (DoD)

Freedom of Information Act

Program Report

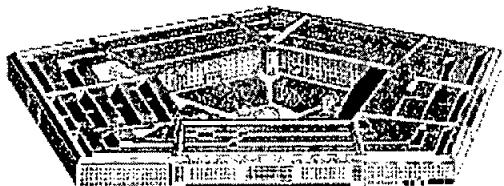
for

Fiscal Year (FY) 2001



Prepared By:

**The Directorate for Freedom of Information
and Security Review (DFOISR)**



**FREEDOM OF INFORMATION ACT
ANNUAL REPORT
FISCAL YEAR 2001**

(Report Period: October 1, 2000 through September 30, 2001)

EXECUTIVE SUMMARY

During fiscal year (FY) 2001, a total of 80,357 public requests for records under the Freedom of Information Act (FOIA) were completed by the Department of Defense (DoD). In the processing of these cases, the Department of Defense fully denied 2,172 and partially denied 11,371 out of 80,357 requests on the basis of FOIA exemptions. Of those exemptions, 6% were for classified information; 7% for internal rules and practices; 6% for statutory exemptions; 6% for proprietary data; 9% for deliberative material; 37% for privacy information; and 29% for law enforcement investigations. Twenty three thousand, five hundred and sixteen (23,516) requests could not be filled in whole or in part for other reasons, such as lack of records, referral to another agency, or lack of specificity sufficient to identify the requested records. There were 927 actions taken on appeals of denied requests (34 granted, 176 partially denied, 436 fully denied, and 281 not filled for other reasons, as mentioned earlier).

The total DoD operating cost associated with the processing of requests during this report period was \$39,712,317. The average cost of processing a single case during this period was approximately \$494.20. Fee collections for records provided to the public amounted to \$652,515.53 (1.6% of total program cost).

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Item I.

Basic Information Regarding the Report

- A. Title, address, and telephone number of person to be contacted with questions about the report:

Write to: Chief, Program Management Division (PMD)
Directorate for Freedom of Information & Security Review
1155 Defense Pentagon
Washington, DC 20301-1155

Telephone: (703) 695-4773

Name of Incumbent Chief, PMD: LTC J. F. Deming, U. S. Army

- B. The electronic address (Universal Resource Line, URL) for this report is:

<http://www.defenselink.mil/pubs/foi/01report/>

- C. You may obtain a paper copy of DoD's Annual FOIA Report for Fiscal Year 2001 by writing to the above address and asking for a copy. A FOIA request is not necessary. Please include a mailing address.

Item II.

How to Make a FOIA Request

The Department of Defense (DoD) Freedom of Information Act Handbook provides basic information about how to make a Freedom of Information Act (FOIA) request and general information about the Freedom of Information Act Program within the Department of Defense (DoD). This document also contains DoD component addresses, a brief description of response times, and the reason why some requests are not granted. The DoD Freedom of Information Act Handbook can be found at:

<http://www.defenselink.mil/pubs/foi/foiapam3.pdf>

Item III.

Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms.

1. The Military Departments.

- a. The Department of the Army: Dept Army.
- b. Department of the Navy: Dept Navy. The United States Marine Corps, USMC, is a part of the Department of the Navy.
- c. Department of the Air Force: Dept Air Force.

2. Other Defense Agencies and Activities.

- a. Defense Contract Audit Agency: DCAA.
 - b. Defense Finance and Accounting Service: DFAS.
 - c. Defense Information Systems Agency: DISA.
 - d. Defense Intelligence Agency: DIA.
 - e. Defense Logistics Agency: DLA.
 - f. Defense Security Service: DSS. Formerly Defense Investigative Service, DIS.
 - g. Defense Threat Reduction Agency: DTRA. Formerly Defense Special Weapons Agency, DSWA.
 - h. National Imagery and Mapping Agency: NIMA. Formerly Defense Mapping Agency, DMA.
 - i. National Security Agency/Central Security Service: NSA/CSS or NSA.
 - j. National Reconnaissance Office: NRO.
 - k. Office of the Inspector General, Department of Defense: OIG, DoD.
3. Office of the Secretary of Defense, Chairman of the Joint Chiefs of Staff, Combatant Commands, and Defense Agencies/Activities not listed above: OSD/JS.

4. "Other Reasons" Cited on Initial and Appeal Determinations.

- a. No Records. A reasonable search of files failed to identify records responsive to the request.
- b. Referrals. The request was referred to another DoD Component or Federal Agency for action.
- c. Withdrawn. The request was withdrawn by the requester.
- d. Fee-Related Reason. The requester is unwilling to pay fees associated with the request; the requester is past due in the payment of fees associated with a previous FOIA request; or the requester disagrees with a fee estimate.
- e. Records not Reasonably Described. The request could not be acted upon since the record had not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.
- f. Not a Proper FOIA Request for Some Other Reason. The requester has failed unreasonably to comply with legitimate procedural requirements which are not fee-related.
- g. Not an Agency Record. The requested information was not a record within the meaning of the FOIA.
- h. Duplicate Request. A request for the same information by the same requester. This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.
- i. Other. Any other reason a requester does not comply with published rules, other than those mentioned above.

B. Basic terms, expressed in common terminology.

1. Freedom of Information Act/Privacy Act (FOIA/PA) request: A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests.
2. Initial Request: A request to a federal agency for access to records under the Freedom of Information Act (FOIA).
3. Appeal: A request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other adverse FOIA determination.

4. Processed Request or Appeal: A request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. Multi-track processing: A system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first out basis. A requester who has a compelling need for records may request expedited processing (see below).
6. Expedited processing: An agency will process a FOIA request on an expedited basis when a requester has shown a compelling need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple request: A FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.
8. Complex request: A FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant: An agency decision to disclose all records in full in response to a FOIA request.
10. Partial grant: An agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.
11. Denial: An agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
12. Time limits: The time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. "Perfected" request: A FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 statute: A separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. Median number: The middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. Average number: The number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

Item IV.
Exemption 3 Statutes Invoked

Court Upheld?	Statute	Types of Material Withheld Under Statute
No	5 USC §574(j)	Administrative Dispute Resolution Act
No	10 USC §128	Authority to Withhold Unclassified Special Nuclear Weapons Information
Yes ¹	10 USC §130	Authority to Withhold Unclassified Technical Data with Military or Space Application
No	10 USC §130(b)	Personnel in Overseas, Sensitive or Routinely Deployable Units
No	10 USC §130(c)	Nondisclosure of Information: Certain Sensitive Information on Foreign Governments and International Organizations
No	10 USC §424	Protection of Organizational and Personnel Information for DIA, NRO, and NIMA
No	10 USC §618(f)	Action on Reports of Selection, Generally for Promotion, Boards
No	10 USC §1102	Confidentiality of Medical Records
No	10 USC §1506(f)	Debriefing of a Missing Person Returned to U.S. Control During the Period Beginning on July 8, 1959, and ending on February 10, 1996
No	10 USC §2305(g)	Protection of Contractor Proposals
No	10 USC §2371(i)	Research Projects: Transactions Other Than Contracts and Grants
No	12 USC §3403	Confidentiality of Financial Records
No	16 USC §470w-3	National Historic Preservation
Yes ²	18 USC §798(a)	Communications Intelligence
Yes ³	18 USC §5038	Interviews of Juveniles in Criminal Defense
No	22 USC §2778(e) Sec 38(e) of the Arms Export Control Act	Control of Arms Exports
No	31 USC §3729(d)	False Claims Act

Court Upheld?	Statute	Types of Material Withheld Under Statute
No	31 USC §3730(b)(2)	Civil Actions for False Claims (specifies that materials related to civil complaints filed by private individuals on behalf of the U. S. Government under the False Claims Act will remain under seal for at least 60 days and shall not be served on a defendant until the court so orders).
No	41 USC §423	Procurement Integrity
No	42 USC §290dd-2	Confidentiality of Patient Records
Yes ⁴	42 USC §2162(a)	Restricted Data (Atomic Energy), Atomic Energy Act of 1954
No	42 USC §2168(a)(1)(C)	Formerly Restricted Data (Atomic Energy), Atomic Energy Act of 1954
Yes ⁵	50 USC §402 Note Sec 6, P.L. 86-36	NSA Functions and Information
Yes ⁶	50 USC §403-3(c)(6) National Security Act of 1947, Subsection 102(d)(3), as amended	Intelligence Sources and Methods
Yes ⁷	50 USC §403(g), Section 6 of the CIA Act of 1949	CIA Functions and Information
No	50 USC §435 Note Sec 1082, P.L. 102-190	Disclosure of Information Concerning US Personnel Classified as POW/MIA During Vietnam Conflict (McCain "Truth Bill")

Item IV. Endnotes

¹ Chenkin v. Department of the Army, No. 93-494, 1994 U.S. Dist. LEXIS 20907, at *8 (E.D. Pa. Jan. 14, 1994), aff'd, 61 F.3d 894 (3d Cir. 1995) (unpublished table decision); Colonial Trading Corp. v. Department of the Navy, 735 F. Supp. 429, 431 (D.D.C. 1990); see also American Friends Serv. Comm. v. DOD, No. 83-4916, 1986 WL 10659, at *4 (E.D. Pa. Sept. 25, 1986), rev'd on other grounds, 831 F.2d 441 (3d Cir. 1987).

² Winter v. NSA, 569 F. Supp. 545, 548 (S.D. Cal. 1983); see also Gilmore v. NSA, No. C 92-3646, 1993 U.S. Dist. LEXIS 7694, at **26-27 (N.D. Cal. May 3, 1993) (finding that information on cryptography currently used by NSA "integrally related" to function and activity of intelligence gathering and thus protected).

³ McDonnell v. United States, 4 F.3d 1227, 1251 (3d Cir. 1993) (holding state juvenile delinquency records outside scope of statute).

⁴ Meeropol v. Smith, No. 75-1121, slip op. at 53-55 (D.D.C. Feb. 29, 1984), aff'd in relevant part & remanded in part sub nom. Meeropol v. Meese, 790 F.2d 942 (D.C. Cir. 1986). But see General Elec. Co. v. NRC, 750 F.2d 1394, 1401 (7th Cir. 1984) (concluding that provision concerning technical information furnished by license applicants lacked sufficient specificity to qualify as Exemption 3 statute).

⁵ Founding Church of Scientology v. NSA, 610 F.2d 824, 828 (D.C. Cir. 1979); Hayden v. NSA, 452 F. Supp. 247, 252 (D.D.C. 1978), aff'd, 608 F.2d 1381 (D.C. Cir. 1979).

⁶ CIA v. Sims, 471 U.S. 159, 167 (1985); see also Minier v. CIA, 88 F.3d 796, 801 (9th Cir. 1996) (finding that agency properly refused to confirm or deny existence of records concerning deceased person's alleged employment relationship with CIA); Maynard v. CIA, 986 F.2d 547, 554 (1st Cir. 1993) (stating that under § 403(d)(3) it is

responsibility of Director of CIA to determine whether sources or methods should be disclosed); Krikorian v. Department of State, 984 F.2d 461, 465 (D.C. Cir. 1993) (same); Fitzgibbon v. CIA, 911 F.2d 755, 761 (D.C. Cir. 1990) (same); Hunt v. CIA, 981 F.2d 1116, 1118 (9th Cir. 1992) (upholding agency's "Glomar" response to request on foreign national, because acknowledgement of any records would reveal sources and methods); Knight v. CIA, 872 F.2d 660, 663 (8th Cir. 1989) (same); Levy v. CIA, No. 95-1276, slip op. at 14-17 (D.D.C. Nov. 16, 1995) (same), aff'd, No. 96-5004 (D.C. Cir. Jan. 15, 1997); Roman v. Dailey, No. 97-1164, 1998 U.S. Dist. LEXIS 6708, at **10-11 (D.D.C. May 11, 1998) (concluding that agency properly refused to confirm or deny existence of records pertaining to agency personnel and spy satellite programs); Blazy v. Tenet, 979 F. Supp. 10, 23-24 (D.D.C. 1997) (protecting intelligence sources and methods located in requester's personnel file), summary affirmance granted, No. 97-5330 (D.C. Cir. May 12, 1998); Andrade v. CIA, No. 95-1215, 1997 WL 527347, at **3-5 (D.D.C. Aug. 18, 1997) (holding intelligence methods used in assessing employee fitness protectible); Earth Pledge Found. v. CIA, 988 F. Supp. 623, 627 (S.D.N.Y. 1996) (finding agency's "Glomar" response proper because acknowledgement of records would generate "danger of revealing sources"), aff'd per curiam, 128 F.3d 788 (2d Cir. 1997) (unpublished table decision); Campbell v. United States Dep't of Justice, No. 89-CV-3016, 1996 WL 554511, at *6 (D.D.C. Sept. 19, 1996) ("CIA director is to be afforded 'great deference' by courts determining the propriety of nondisclosure of intelligence sources"); cf. Linder v. DOD, 133 F.3d 17, 25 (D.C. Cir. 1998) ("[C]ourts must give 'great deference' to the Director of Central Intelligence's determination that a classified document could reveal intelligence sources and methods and endanger national security.") (non-FOIA case).

⁷ Minier, 88 F.3d at 801; Roman, 1998 U.S. Dist. LEXIS 6708, at **10-11; Blazy, 979 F. Supp. at 23-24; Earth Pledge Found., 988 F. Supp. at 627-28; Campbell, 1996 WL 554511, at *6; Kronisch v. United States, No. 83-2458, 1995 WL 303625, at **4-6 (S.D.N.Y. May 18, 1995); Hunsberger v. CIA, No. 92-2186, slip op. at 3 (D.D.C. Apr. 5, 1995); Rothschild v. CIA, No. 91-1314, 1992 WL 71393, at *2 (D.D.C. Mar. 25, 1992); Lawyers Comm. for Human Rights v. INS, 721 F. Supp. 552, 567 (S.D.N.Y. 1989); Pfeiffer v. CIA, 721 F. Supp. 337, 341-42 (D.D.C. 1989).

Item V.

Initial FOIA/PA Access Requests

A. Numbers of initial requests.¹

1. Number of requests pending as of end of preceding fiscal year (1 Oct 00): 11,371²
2. Number of requests received during current fiscal year (FY 2001): 81,682
3. Number of requests processed during current fiscal year (FY 2001): 80,357
4. Number of requests pending as of end of current fiscal year (30 Sep 01): 12,696

B. Disposition of initial requests.

1. Number of grants: 44,531

2. Number of partial grants: 11,371

3. Number of denials: 2,172

a. Number of times each FOIA exemption used (counting each exemption once per request).

- (1) Exemption 1: 1,184
- (2) Exemption 2: 1,219
- (3) Exemption 3: 1,141
- (4) Exemption 4: 1,119
- (5) Exemption 5: 1,723
- (6) Exemption 6: 6,729
- (7) Exemption 7(A): 480
- (8) Exemption 7(B): 36
- (9) Exemption 7(C): 4,064

¹ Due to the September 11, 2001 attack on the Pentagon, some Army FOIA records were destroyed.

² The Annual Report for FY 2000 (Line V.A.4) noted 11,630 pending requests. During the preparation of this report, two hundred fifty nine pending requests were over reported for FY 2000 due to some defense agencies conversion to automated tracking systems. They have been deducted this year in this line item.

(10) Exemption 7(D):	357
(11) Exemption 7(E):	117
(12) Exemption 7(F):	83
(13) Exemption 8:	0
(14) Exemption 9:	0

4. Other reasons for nondisclosure (total):

a. No records:	6,787
b. Referrals:	9,174
c. Request withdrawn:	2,238
d. Fee-related reason:	827
e. Records not reasonably described:	1,037
f. Not a proper FOIA request for some other reason:	621
g. Not an agency record:	702
h. Duplicate request:	744
i. Other ³ (specify):	1,386

Item VI.

Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

1. Number of appeals received during fiscal year (FY 2001): 823
2. Number of appeals processed during fiscal year (FY 2001): 927

B. Disposition of appeals.

³ Other reasons are: electronic referral, insufficient address/info, lacked 3rd party waiver, and publicly sold documents.

1. Number denied in full:	436
2. Number denied in part:	176
3. Number completely reversed (granted):	34
a. Number of times each FOLA exemption used (counting each exemption once per appeal).	
(1) Exemption 1:	70
(2) Exemption 2:	44
(3) Exemption 3:	70
(4) Exemption 4:	16
(5) Exemption 5:	159
(6) Exemption 6:	171
(7) Exemption 7(A):	23
(8) Exemption 7(B):	0
(9) Exemption 7(C):	126
(10) Exemption 7(D):	14
(11) Exemption 7(E):	13
(12) Exemption 7(F):	5
(13) Exemption 8:	0
(14) Exemption 9:	0
4. Other reasons for nondisclosure (total):	
a. No records:	131
b. Referrals:	22
c. Appeal withdrawn:	194
d. Fee-related reason:	16
e. Records not reasonably described:	2

f. Not a proper FOIA request for some other reason:	9
g. Not an agency record:	4
h. Duplicate request:	1
i. Other ⁴ (specify):	9

Item VII.

Compliance With Time Limits/Status of Pending Requests

A. Median processing time for requests processed during the year (FY 2001).

1. Simple requests.

a. Number of requests processed:	62,593
b. Median number of days to process:	23

2. Complex requests.

a. Number of requests processed:	17,182
b. Median number of days to process:	84

3. Requests accorded expedited processing.

a. Number of requests processed:	582
b. Median number of days to process:	3

B. Status of pending requests (as of: 30 Sep 00).

1. Number of requests pending:	12,696
2. Median age of above cases in days:	55

⁴ Other reason was appeals not submitted within required time frame.

Item VIII.

Comparison With Previous Year **(Optional, Not Used)**

Item IX.

Costs/FOIA Staffing

A. Staffing levels (expressed in work-years).

- | | |
|------------------------------------------------------------------|--------|
| 1. Number of full-time FOIA personnel: | 306 |
| 2. Number of personnel with part-time or occasional FOIA duties: | 564.77 |
| 3. Total number of personnel: | 870.77 |

B. Total costs (including staff and all resources).

- | | |
|-----------------------------------------------|-----------------|
| 1. FOIA processing (including appeals): | \$39,497,106.00 |
| 2. Litigation-related activities (estimated): | \$215,211.00 |
| 3. Total costs: | \$39,712,317.00 |

Item X.

Fees

- A. Total amount of fees collected by the agency for processing requests: \$652,515.53
- B. Percentage of total costs: 1.6%

Item XI.

FOIA Regulations (Including Fee Schedule)

- A. The Department of Defense (DoD) Freedom of Information Act Program Regulation, DoD 5400.7-R, September 4, 1998, which provides guidance regarding administration of the Freedom of Information Act (FOIA) Program within the Department of Defense (DoD), can be found at:

<http://web7.whs.osd.mil/html/54007r.htm>

- B. The Fee Schedule is Chapter 6 of the above regulation.
- C. Additional Department of Defense FOIA documents and hyperlinks can be found by accessing the following Universal Resource Locator (URL):

<http://www.defenselink.mil/pubs/foi/>