



National Geospatial-Intelligence Agency

INSTRUCTION

NUMBER 5750.1

6 July 2018

SI

SUBJECT: Freedom of Information Act / Privacy Act Requests / Mandatory
Declassification Review Program

References: See Enclosure 1.

1. PURPOSE. This Instruction:

a. Establishes policy, assigns responsibilities, and provides procedures for the management of a uniform process to respond to Freedom of Information Act (FOIA) requests, Privacy Act (PA) requests, and Mandatory Declassification Reviews (MDRs) received by NGA in accordance with (IAW) References (a) through (m).

b. Is used in conjunction with detailed procedures found in References (k), (l), and (m) as applicable.

c. Rescinds NGA Instruction (NGAI) 5750.1, "Freedom of Information Act Program," 02 December 2015.

2. APPLICABILITY. This Instruction applies to:

a. NGA civilian employees, military service members, personnel from other Government agencies permanently assigned to NGA, and contractors, hereinafter referred to as *personnel*.

b. NGA records, even though the records may be exempt according to sections 424 and 455 of Reference (e), section 432(a) of Reference (g), or other applicable law; these records will be processed IAW Reference (c).

3. DEFINITIONS. See Glossary.

4. POLICY. It is NGA policy to:

a. Promote transparency and accountability involving FOIA:

(1) To respond promptly to requests in a spirit of cooperation; and

(2) To take affirmative steps to make the maximum information available to the public, consistent with the NGA responsibility to protect national security and other sensitive Department of Defense (DoD) information IAW References (a) through (j).

b. Promptly respond to PA requests for notification as to the existence of, access to, or amendment of records pertaining to that individual IAW References (d), (i), and (k).

c. Process MDR requests for classified information originating within NGA IAW Reference (l).

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosures 3–5.

7. EFFECTIVE DATE. This Instruction is effective on the date of signature.



Robert Cardillo
Director

Enclosures

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CHANGE LOG

Change Type	Change Date	Revised By	Pages Affected	Change Description

ENCLOSURE 1

REFERENCES

- (a) Executive Order (EO) 13392, "Improving Agency Disclosure of Information," 14 December 2005
- (b) EO 13526, "Classified National Security Information," 29 December 2009
- (c) Title 5 United States Code (USC) Section 552, "Freedom of Information Act"
- (d) Title 5 USC Section 552a, "The Privacy Act of 1974"
- (e) Title 10 USC Sections 424 and 455, "Disclosure of Organizational and Personnel Information: Exempted for Specified Intelligence Agencies" and "Maps, Charts, and Geodetic Data: Public Availability; Exceptions"
- (f) Title 44 USC Chapter 33, "Disposal of Records"
- (g) Title 50 USC Chapter 15, "National Security"
- (h) Title 32 Code of Federal Regulations (CFR) Part 286, "DoD Freedom of Information Act (FOIA) Program," 05 January 2017
- (i) Title 32 CFR Part 310, "DoD Privacy Act Program," 01 July 2016
- (j) Department of Defense Directive (DoDD) 5400.07, "Department of Defense Freedom of Information Act (FOIA) Program," 02 January 2008
- (k) DoD Regulation 5400.11-R, "Department of Defense Privacy Program," 14 May 2007
- (l) DoD Manual (DoDM) 5230.30, "DoD Mandatory Declassification Review (MDR) Program," 22 December 2011
- (m) DoDM 5400.07, "Department of Defense Freedom of Information Act (FOIA) Program," 25 January 2017
- (n) NGA Directive 7410, "Inspector General Operations," 02 June 2014
- (o) NGA Instruction 8040.1, "Records and Information Lifecycle Management: Records Management Program," 30 March 2016

ENCLOSURE 2

RESPONSIBILITIES

1. Director, NGA (D/NGA).

a. Ensures that the Agency's FOIA/PA/MDR response processes adhere to the principle of openness in government IAW References (a) through (m).

b. Appoints the Executive Director (EXDIR/NGA) as the Appellate Authority (AA) for NGA FOIA/PA requests IAW References (j) and (k).

c. Appoints NGA Original Classification Authorities (OCAs) as the AA for MDRs in their area of security classification cognizance IAW Reference (l).

d. Designates the Director, Security and Installations (D/SI), as the administrator of the NGA FOIA/PA/MDR Program.

e. Designates the Inspector General (IG) as the AA for FOIA/PA requests of Office of Inspector General (OIG) records IAW References (j) and (k).

f. Designates the Assistant to the IG as the Initial Denial Authority (IDA) for FOIA/PA requests of OIG records IAW References (h) and (i).

g. Designates the Director, Office of Corporate Communications (D/OCC), as the primary FOIA IDA IAW References (h) and (i).

h. Designates the Chief, Office of Corporate Communications, Plans and Operations Division (C/OCCP), as the alternate FOIA IDA IAW References (h) and (i).

i. Designates the SI Office of Security Information Management Division (SISMD) the FOIA Program Office/Requester Service Center as prescribed by Reference (a).

j. Designates SISMD as the NGA Office of Primary Responsibility (OPR) for all NGA FOIA/PA/MDR requests.

k. Designates NGA Directorate Heads and Agency Element (AE) Leads as Collaborators (Collabs) for FOIA/PA/MDR requests and directs that NGA responses are coordinated through the OPR within prescribed timelines IAW References (c) through (g).

2. EXDIR/NGA.

a. Serves as the FOIA/PA AA.

b. Reviews FOIA/PA appeals and provides a decision in writing IAW References (j) and (k).

3. OCAs. Serve as the AA for MDRs in their area of security classification cognizance IAW Reference (l).

4. D/Sl.

a. Administers the NGA FOIA Program and publishes any further instructions required for the administration of this Instruction within the Agency.

b. Designates the Chief, Information Management Division (C/SISM), as the FOIA Public Liaison for the NGA FOIA Program IAW Reference (j).

c. Submits names of personnel to the Director, Administration and Management (DA&M) within DoD, for designation as FOIA Public Liaisons IAW Reference (j).

d. Ensures that the FOIA Public Liaison submits to the DA&M, through the Defense Freedom of Information Policy Office (DFOIPO), NGA's inputs to the DoD FOIA Annual Report prescribed in References (h) and (j), and other reports or data requested by the DA&M IAW Reference (k).

e. Designates qualified SISMD personnel as NGA Central Electronic Routing and Tasking System (N-CERTS) Suspense Coordinators for FOIA/PA/MDR requests.

f. Ensures that senior NGA, DoD, and Intelligence Community (IC) officials, affected legal advisors, and public affairs officers are aware of releases through the FOIA, inclusive of releases through litigation channels, that may be of significant public, media, or Congressional interest.

5. D/OCC.

a. Serves as the primary FOIA IDA IAW References (h) and (i).

b. Coordinates and holds primary responsibility for news media requests unless the request specifically cites FOIA and then defers to SISMD.

6. Division Chief, OCCP.

a. Serves as the alternate FOIA IDA IAW References (h) and (i).

b. Coordinates and holds primary responsibility for news media requests unless the request specifically cites FOIA and then defers to SISMD.

7. Division Chief, SISM.

a. Serves as the FOIA Public Liaison.

(1) Ensures that the FOIA Program Office/Requester Service Center's website complies with requirements in Section 286.7 of Reference (h) and Paragraph 3.3.b of Reference (m).

(2) Assists in the reduction of any delays in responding to requests.

(3) Increases transparency and understanding of request statuses.

(4) Assists in dispute resolution.

b. Manages NGA's FOIA/PA/MDR Program and directs the FOIA Program Office to handle FOIA/PA/MDR requests to the Agency.

c. Ensures that SISMD personnel receive N-CERTS Suspense Coordinator training prior to processing FOIA/PA/MDRs notifications in N-CERTS.

8. Branch Chief, SISMD FOIA/PA.

a. Processes requests for FOIA/PA reviews IAW this Instruction and References (k) and (m).

b. Processes requests for MDR IAW this Instruction and References (b) and (l).

c. Makes the records specified in section 552(a) of Reference (c) available for public inspection and copying in an appropriate facility or facilities, unless such records are published and copies are offered for sale, according to the rules published in the Federal Register. These records are made available to the public in both hard copy and electronic formats.

d. Maintains and compiles current indices of records available for public inspection and copying as required by section 552(a) of Reference (c).

e. Maintains the FOIA Program Office/Requester Service Center's website and ensures compliance with the requirements in Paragraph 3.3.b of Reference (m).

f. Conducts training on the provisions of this Instruction for officials and employees who implement the FOIA IAW Reference (j).

g. Ensures that all personnel assigned as FOIA/PA Specialists execute the NGA FOIA/PA Specialist Responsibility Acknowledgement Form (Appendix 3 in this enclosure) prior to assuming FOIA/PA Specialist duties.

9. IG.

a. Serves as the FOIA/PA AA for OIG records.

b. Reviews FOIA/PA appeals and provides a decision in writing IAW References (j) and (k).

10. Assistant to the IG.

a. Serves as the FOIA/PA IDA for OIG records.

b. Reviews FOIA/PA packages for legal sufficiency.

c. Oversees processing and management of requests for NGA OIG records IAW Reference (n) and provides OIG records to FOIA Program Office/Requester Service Center for posting to the NGA electronic reading room.

11. General Counsel.

a. Provides legal advice and guidance on FOIA requests, appeals, and litigation and acts as the NGA focal point on judicial actions.

b. Reviews FOIA packages for legal sufficiency before the IDA signs them.

c. Reviews MDR appeal packages for legal sufficiency before the AA signs them.

12. Directorate Heads and AE Leads serve as Collabs for FOIA/PA/MDR requests for subjects under their purview and ensure Directorate responses are coordinated through their FOIA/PA Points of Contact (POCs) and the OPR within prescribed timelines IAW References (c) through (g).

13. Directorate and AE FOIA/PA/MDR POCs coordinate FOIA/PA/MDR requests from start to finish between the Directorate/AE and SISMD.

14. Chief Financial Executive processes the receipt of FOIA fees IAW Reference (m).

ENCLOSURE 3

PROCEDURES FOR FOIA REQUESTS

1. NGA ordinarily responds to FOIA requests on a first-in/first-out basis according to SISMD's order of receipt. In instances involving misdirected requests that are re-routed pursuant to § 286.23(g) of Reference (h), the response time commences on the date SISMD receives the request, but in any event no later than 10 working days after the request is first received.
2. SISMD receives FOIA requests for NGA. Upon receipt, SISMD enters the request into the case management tracking tool database and N-CERTS to initiate the record search. SISMD simultaneously advises the requester that, under the Multi-Track processing system, a response may take longer than the statutory time requirement of 20 working days.
3. OIG processes FOIA requests for OIG records. OIG is obligated to report the receipt of the request promptly to SISMD so that SISMD can enter it into the case management tool database. OIG is under the same statutory timeframe to process requests. (Reference (h))
4. As part of the administrative FOIA process, SISMD:
 - a. Collects fees for costs associated with processing FOIA requests and forwards them through the Financial Management (FM) Directorate to the US Treasury. Branch Chief, SISMD approves or denies requests for fee waivers.
 - b. Approves or denies requests for expedited processing.
 - c. Sends a "no records" response to FOIA requesters should a records search reveal that "no agency records exist" that are responsive to the FOIA request.
 - d. Provides training within NGA on the FOIA law and agency processing procedures.
 - e. Conducts periodic reviews of NGA's FOIA program.
 - f. Maintains an "electronic" reading room for agency records, an index for frequently requested records, a FOIA handbook, and other material as required by the FOIA on a public Internet website.
 - g. Coordinates with other DoD components, other members of the IC, or the Department of Justice prior to releasing any records under the FOIA that may be pertinent to litigation pending against the United States.

h. Prepares the Annual Report—FOIA (DD Form 2564) and forwards the report to the Directorate for Freedom of Information and Security Review, Washington Headquarters Services.

i. Coordinates requests and responses to news media requests and congressional inquiries with OCC.

j. Coordinates denials of access to agency records with the appropriate NGA IDA and AA, and prepares responsive documents with recommendations for release or denial of the record.

k. Maintains FOIA case files and any associated records IAW Reference (o).

5. SISMD assigns the appropriate Directorate/AE, lists the FOIA/PA POCs for that Directorate AE as a Collab in N-CERTS, and provides the agency suspense date.

6. Directorate/AE FOIA/PA POC assigns the FOIA request to the Office or Division (hereinafter referred to as *organization*) within the Directorate that is likely to hold or maintain the requested records.

a. Assigned organizations promptly conduct searches to locate records responsive to a FOIA request, even if the search is likely to reveal classified, sensitive, or UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO) records. A reasonable search includes the search of activities and locations most likely to have the records that have not been transferred to the National Archives and Records Administration (NARA).

b. If a reasonable search does not identify or locate records responsive to the request, the Directorate/AE FOIA/PA POC provides SISMD with a “no records” response by the Collab suspense date.

c. If a reasonable search identifies or locates records responsive to the request, the organization emails a copy of the responsive record(s) and provides a recommendation on the FOIA/PA/MDR response form (ENCLOSURE 3 APPENDIX 2) regarding release of the record(s) to SISMD. Any objection to releasing the record is based on one or more of the FOIA exemptions (ENCLOSURE 3, APPENDIX 1). The organization completes and emails the DD Form 2086 or DD Form 2086-1, as appropriate, detailing the time and cost incurred in the search, review, and copying of the responsive records to SISMD.

d. When an organization identifies U//FOUO records responsive to a FOIA request, the record is evaluated by the SISMD FOIA/PA specialist to determine whether any FOIA exemptions are applicable to withhold either the entire record or portions of the record from release. Unless the requested record falls clearly into one or more of the FOIA exemptions, a U//FOUO marking does not prevent a record from being released to the FOIA requester.

e. Organizations promptly respond in N-CERTS and notify SISMD of any misaddressed FOIA requests.

7. When an organization has identified classified records responsive to a FOIA request, the records are processed IAW Enclosure 5 of this Instruction.

8. If the requested record is not releasable because it is currently and properly classified or falls within another FOIA exemption, SISMD prepares a staff package that states the rationale for denying the record and includes an initial denial letter to be sent to the FOIA requester with any applicable records. OGC reviews the package for legal sufficiency before the IDA signs the package.

a. The Agency IDA reviews the FOIA request and rationale for withholding the record and, if in agreement, signs the letter prepared by SISMD.

b. The letter signed by the Agency IDA advises the FOIA requester that the records, or a subset of the requested records, are being withheld from release providing the FOIA exemptions supporting the denial. Additionally, the letter advises the requester of their appeal rights and the procedures for submitting an appeal.

c. SISMD maintains a copy of the initial denial letter in the requester's FOIA file.

9. FOIA requesters have the right to appeal certain decisions.

a. If a FOIA requester appeals the initial denial decision of the Agency IDA, SISMD processes the appeal for review by the Agency AA.

(1) The AA reviews the initial FOIA request, SISMD's rationale, and the denial decision made by the IDA. The AA has the authority to either uphold the IDA's decision and withhold the requested records from release or reverse the IDA's decision and release all or a portion of the records requested.

(2) SISMD prepares the written response to the FOIA requester for the AA's signature. The AA makes a final determination on whether or not to uphold the Agency IDA's decision. The final Agency response includes the basis for the decision and advises the FOIA requester of the right to seek judicial review. The signed response will be retained IAW Reference (o).

b. In addition to denials of information, a FOIA requester also has a right to appeal initial SISMD assessments regarding fee categories, fee waivers, fee estimates, requests for expedited processing, no record determinations, failure to meet the statutory time limits, or any determination found to be adverse by the requester. The authority to uphold or reverse initial SISMD assessments in these areas is the Agency AA. The decision of the AA in the form of a written and signed response is final.

ENCLOSURE 3, APPENDIX 1

FOIA EXEMPTIONS TO RELEASE OF INFORMATION – 5 U.S.C. § 552(b)(1)
THROUGH (b)(9)

(b)(1) – records currently and properly classified in the interest of national security.

(b)(2) – records that relate solely to the internal personnel rules and practices of an agency.

(b)(3) – records protected by another law that specifically exempts the information from public release. (For example, the sources and methods provision of the National Security Act or the Central Intelligence Agency Information Act.)

(b)(4) – trade secrets and commercial or financial information obtained from a private source that would cause substantial competitive harm to the source if disclosed.

(b)(5) – internal records that are pre-decisional and deliberative in nature, or exempt as attorney-client or attorney-work product privileged records.

(b)(6) – records that if released would result in a clearly unwarranted invasion of personal privacy.

(b)(7) – investigatory records or information compiled for law enforcement purposes.

(b)(8) – records used by agencies responsible for the regulation or supervision of financial institutions.

(b)(9) – records containing geological and geophysical information regarding wells.

ENCLOSURE 3, APPENDIX 2

FOIA/PA/MDR RESPONSE FORM



NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY

7500 GEOINT Drive
Springfield, Virginia 22150

NAME OF AGENCY/Requester
NAME
ADDRESS
CITY, STATE ZIP CODE

SUBJECT: FOIA/PA/MDR Response Form

This determination is in response to the FOIA/PA/MDR Request #____ (both NGA and requester number), submitted to the National Geospatial-Intelligence Agency (NGA) by your organization on MONTH DAY, YEAR.

After a careful review of the classified portions of the attached document(s), we have determined that the information in the document is Denied In Full/Released in Part/Released In Full.

For further questions or concerns, contact FOIANGA@nga.mil or NGADeclassification@nga.mil.

Sincerely,

_____,
NGA FOIA/PA/MDR Branch Chief

Enclosures:
1. Request Letter
2. Document(s)

ENCLOSURE 3, APPENDIX 3

NGA FOIA/PA SPECIALIST RESPONSIBILITY ACKNOWLEDGEMENT FORM

From: _____
(Printed Full Name)

To: Declassification/FOIA/PA (SISMD) Branch Chief, National Geospatial-Intelligence Agency (NGA)

Subj: FOIA Responsibility Acknowledgement

References:

- (a) Title 5 USC § 552a, "The Privacy Act of 1974"
- (b) Title 5 USC § 552a(j), "Records maintained on Individuals"
- (c) 32 CFR Part 286, "DoD Freedom of Information Act"
- (d) 32 CFR Part 310, "DoD Privacy Act Program"
- (e) Department of Defense Manual 5400.07, "Department of Defense Freedom of Information Act (FOIA) Program," 25 January 2017
- (f) Department of Defense Regulation 5400.11-R, "Department of Defense Privacy Program," 14 May 2007
- (g) NGA Instruction (NGAI) 5750.1, "Freedom of Information Act Program," 02 December 2015
- (h) NGAI 8040.1, "Records and Information Lifecycle Management: Records Management Program," 30 March 2016

1. I hereby acknowledge that I received, read, and understand References (a) through (h).
2. I assume full responsibility for the proper handling, storage, accounting, and release of the Freedom of Information Act/Privacy Act (FOIA/PA) material held in my custody and/or used by me. If at any time I am in doubt as to the proper handling of FOIA/PA material that I am responsible for, I will immediately contact the SISMD FOIA Program Manager or Branch Chief and request guidance.
3. I understand that it is illegal to disseminate PA information to anyone not entitled to receive such information and that Reference (a) provides for criminal penalties in accordance with Reference (b). I have been provided a copy of Reference (b) by the SISMD Branch Chief.
4. Within one working week prior of an extended absence from the Agency (i.e., permanent transfer, end of contract, or leave/TAD/TDY in excess of 30 days) I will report to the SISMD Branch Chief and be relieved of responsibility for all FOIA/PA material in my possession.

Employee Signature _____ Date _____

SISMD Branch Chief Name _____

SISMD Branch Chief Signature _____ Date _____

Note: Retain this form in accordance with Reference (f).

5 USC 552a - Records maintained on individuals § 552a.

(i)(1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

ENCLOSURE 4

PROCEDURES FOR PA REQUESTS

1. PA requests to access NGA personnel records cite the Privacy Act of 1974 and reference the type of request being made. Refer to ENCLOSURE 4, APPENDIX 1 if there is any question as to the type of request. PA requests require:

- a. The name and signature of the individual making the request;
- b. The name of the PA System of Record (SOR) from where the information is being sought, if known;
- c. Additional documentation (e.g., driver's license, passport, government ID, etc.) to verify the identity of the requester.

2. SISMD receives PA requests for NGA. Upon receipt, SISMD enters the request into the case management tool database and notifies the affected Directorate/Agency Element via N-CERTS to initiate the record search. No later than 10 days after receiving the request, SISMD advises the requester that, under the Multi-Track processing system, a response may take longer than the statutory time requirement of 20 working days.

3. As part of the administrative PA process, the SISMD:

- a. Collects fees for costs associated with processing PA requests and forwards them through the FM Directorate to the US Treasury. SISMD approves or denies requests for fee waivers.
- b. Approves or denies requests for expedited processing.
- c. Sends a "no records" response to PA requesters should a records search reveal that no responsive agency records exist for the PA request.
- d. Provides training within NGA on the PA and agency processing procedures.
- e. Conducts periodic reviews of NGA's PA request procedures.
- f. Coordinates denials of access to agency records with NGA's IDA and AA, and prepares responsive documents with a recommendation for release or denial of the record.
- g. Maintains PA case files and any associated records IAW Reference (o).

4. SISMD assigns the appropriate Directorate, lists the FOIA/PA POC for that Directorate as a Collab in N-CERTS, and provides the agency suspense date.

5. Directorate FOIA/PA POC assigns the PA request to the Office or Division (hereinafter referred to as *organization*) within the Directorate that is most likely to hold or maintain the requested records.

a. The assigned organization promptly conducts a search for records responsive to the PA request, even if the search is likely to reveal classified, sensitive, or U//FOUO records. A reasonable search includes the search of activities and locations most likely to have records that have not been transferred to the NARA.

b. If a reasonable search does not identify or locate records responsive to the request, the Directorate FOIA/PA POC provides a “no records” response to SISMD by the Collab suspense date.

c. If a reasonable search identifies or locates records responsive to the request, the Directorate FOIA/PA POC emails a copy of the responsive record and provides a recommendation on the FOIA/PA/MDR Response Form (ENCLOSURE 3 APPENDIX 2) regarding release of the record(s) to the SISMD FOIA/PA specialist. Any objection to release of the record must be based on one or more of the FOIA/PA exemptions cited in Reference (k).

d. When an organization has identified U//FOUO records responsive to a PA request, the record is evaluated by the SISMD FOIA/PA specialist to determine whether any FOIA/PA exemptions are applicable to withhold the entire record or portions of the record from release. Unless the requested record falls clearly into one or more of the FOIA/PA exemptions, a U//FOUO marking does not prevent a record from being released to the PA requester.

e. Organizations promptly notify their FOIA/PA POC of any misaddressed PA requests.

6. When an organization has identified classified records responsive to a PA request, the records are processed IAW Enclosure 5 of this Instruction and Reference (k).

7. If the requested record is not releasable because it is currently and properly classified or falls within another PA exemption, SISMD prepares an initial denial letter to be sent to the PA requester. SISC reviews the package to ensure proper classification. OGC reviews the package for legal sufficiency prior to the IDA signing the letter.

a. The agency IDA reviews the PA request and rationale for withholding the record, and if in agreement, signs the letter prepared by SISMD.

b. The letter signed by the agency IDA advises the PA requester that the records, or a subset of the requested records, are being withheld from release providing the FOIA/PA exemptions supporting the denial. Additionally, the letter advises the requester of their appeal rights and the procedures for submitting an appeal.

c. SISMD maintains a copy of the initial denial letter in the requestor's PA file.

8. PA requesters have the right to appeal certain decisions.

a. If a PA requester appeals the initial denial decision of the Agency IDA, SISMD processes the appeal for review by the Agency AA.

(1) The AA reviews the initial PA request, SISMD's rationale, and the denial decision made by the IDA. The AA has the authority to uphold the IDA's decision and withhold the requested records from release or reverse the IDA's decision and release all, or a portion, of the records requested.

(2) SISMD prepares the written response to the PA requester for the AA's signature. If the AA makes a final determination to uphold or reverse the Agency IDA's decision, the final Agency response includes the basis for the decision and advises the PA requester of the right to seek judicial review. The signed response will be retained IAW Reference (o).

b. In addition to denials of information, a PA requester also has a right to appeal initial SISMD assessments regarding fee categories, fee waivers, fee estimates, requests for expedited processing, no record determinations, failure to meet the statutory time limits, or any determination found to be adverse by the requester. The authority to uphold or reverse initial SISMD assessments in these areas is the Agency AA. The decision of the AA in the form of a written and signed response is final.

ENCLOSURE 4, APPENDIX 1

RELATIONSHIP BETWEEN THE FOIA AND THE PA

1. Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records or of the appropriate appeal procedures. In some instances, they may not cite either Act but will imply one or both Acts.

2. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

a. If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to US citizens and aliens admitted for permanent residence.

b. Requesters who seek Agency records about themselves that are contained in a PA SOR and who cite or imply only the PA will have their requests processed under the provisions of both the PA and the FOIA. If the PA SOR is exempt from the provisions of 5 USC 552a(d)(1) (Reference (d)) and if the records, or any portion thereof, are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

c. Requesters who seek Agency records about themselves that are not contained in a PA SOR and who cite or imply the PA will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

d. Requesters who seek Agency records about themselves that are contained in a PA SOR and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA SOR is exempt from the provisions of 5 USC 552a(d)(1) (Reference (d)) and if the records, or any portion thereof, are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

e. Requesters who seek access to Agency records that are not part of a PA SOR and who cite or imply the PA and FOIA will have their requests processed under the FOIA since the PA does not apply to these records. Appeals shall be processed under the FOIA.

f. Requesters who seek access to Agency records and who cite or imply the FOIA will have their requests and appeals processed under the FOIA.

g. Requesters shall be advised in the final response letter which Act(s) applied, inclusive of appeal rights as outlined above.

ENCLOSURE 5

PROCEDURES FOR MDR REQUESTS

1. NGA processes MDR requests from the public for classified NGA records originating within the Agency IAW References (b) and (l). Records not subject to review for public release under the MDR include:

a. Unclassified records or previously classified records that were declassified before the receipt of the MDR request. These records must be requested under the provisions of References (c) and (m)

b. Records reviewed for declassification within two years preceding the date of receipt of the MDR request. If the request is for such records, the requester is provided the records as previously released and advised of the right to appeal to the FOIA/PA/MDR AA within 60 days unless the records are already under appeal to the Interagency Security Classification Appeals Panel (ISCAP).

c. Records containing information exempted from search and review by statute IAW Chapter 15, sections 431, 432, 432a, and 432b, and Chapter 44, subchapter V, Section 3146 of Reference (g).

d. Records originated by the incumbent President; the incumbent President's White House Staff; committees, commissions, or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President.

e. Records containing information marked as Restricted Data or Formerly Restricted Data.

f. Records that are the subject of pending litigation.

2. Members of the public seeking the declassification of classified NGA records under the provisions of section 3.5 of Reference (b) and section 401, part 1, 1.3(b)(9) of Reference (g) shall:

a. Identify the requested record with sufficient specificity to enable NGA to locate it with a reasonable amount of effort. Information that would provide the sufficient specificity include a record identifier such as originator, date, title, subject, the NARA accession number, or other applicable unique document identifying number. Broad or topical MDR requests for records on a particular subject, such as "any and all documents concerning" a subject do not meet this standard.

b. Include a correct return mailing address with the request.

c. Include a statement specifying that the requester understands NGA may collect fees for costs associated with processing MDR requests; fees collected are forwarded through the FM Directorate to the US Treasury. SISMD approves or denies requests for fee waivers.

3. SISMD receives MDR requests for NGA. Upon receipt, SISMD enters the MDR request into the case management tracking tool database and makes every effort to provide a response to the requester within one year from the date of receipt.

a. SISMD Declassification Officers conduct line-by-line reviews of records responsive to an MDR request to determine whether the information contained within them continues to adhere to the standards for classification according to Reference (b). This line-by-line review takes into account the unique sensitivity of Foreign Government Information (FGI) as outlined in section 7 of Enclosure 2 of Reference (l). IAW section 3.6(b) of Reference (b), see appendix 1 of this Enclosure, classified information originating with another US Government agency contained in NGA records will be referred to the originating agency for a declassification and release determination. Likewise, classified NGA information in a DoD component's records originating from NGA is referred to NGA. It is the responsibility of the DoD component originally receiving the MDR request to manage these referrals and to incorporate other agencies' or DoD Components' determinations when preparing the final decision on the request. The review of each record determines whether the record:

(1) No longer meets the standards for classification as established by Reference (b) and is therefore declassified in full.

(2) Contains portions still meeting the standards for classification as established by Reference (b) and is therefore declassified in part and denied in part.

(3) Still meets the standards for classification as established by Reference (b) in its entirety and is therefore denied in full.

b. For records meeting the criteria of subparagraphs 3.a.(1) and 3.a.(2), NGA does not release any unclassified information exempt from public release pursuant to Exemptions 2 through 9 of the FOIA. Reference (m) provides a more detailed explanation of the FOIA exemptions.

c. When this process is complete, SISMD redacts the information, both classified and unclassified, that has been determined to be exempt from release as warranted under applicable law and authority. SISMD promptly provides the information that has been determined to be publicly releasable to the requester.

d. MDR requests for information under 25 years old are staffed to the appropriate Original Classification Authority for a final determination.

4. SISMD is aware of possible requests under both the MDR and the FOIA. IAW Reference (l), if a requester asks for the same information record under the FOIA and the MDR, SISMD asks the requester to select only one process. If the requester does not select a process, SISMD processes the requested record under the FOIA procedures in Enclosure 3.

5. Denial of Information.

a. When classified information is denied, SISMD advises the requester, in writing:

(1) That information currently and properly classified has been partially or entirely denied IAW the appropriate sections of Reference (b).

(2) Of the right to appeal the denial to NGA within 60 days of receipt of the denial.

(3) Of the mailing address for the NGA AA.

b. When unclassified information is withheld because it is determined to be exempt from release pursuant to Exemptions 2 through 9 of the FOIA (whether or not classified information was also withheld within the same document record), NGA advises the requester that:

(1) Section 3.5(c) of Reference (b) allows for the denial of information when withholding it is authorized and warranted under applicable law.

(2) Unclassified information exempt from public release pursuant to one or more exemptions of the FOIA has been withheld.

c. For the denial of unclassified information, the requester is not given MDR appeal rights because the MDR applies only to the denial of classified information and because the request was not processed under the FOIA.

d. NGA is not required to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified pursuant to Reference (b).

6. MDR appeals are for the denial of classified information only. The NGA AA makes an appellate decision within 60 working days of receipt of an MDR appeal. If additional time is required to make a determination, the AA notifies the requester of the additional time needed and provides the requester with the reason for the extension. When the appellate review is complete, the AA notifies the requester in writing of the final determination and of the reasons for any denial. If the AA determines that some information remains classified under the provisions of Reference (b), the requester is advised of the right to appeal the final decision to the ISCAP within 60 days of the final NGA decision, IAW section 5.3 of Reference (b).

ENCLOSURE 5, APPENDIX 1

E.O. 13526, SECTION 3.3(b) AUTOMATIC DECLASSIFICATION

An agency head may exempt from automatic declassification under paragraph (a) of this section specific information, the release of which should clearly and demonstrably be expected to:

(1) reveal the identity of a confidential human source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a nonhuman intelligence source; or impair the effectiveness of an intelligence method currently in use, available for use, or under development;

(2) reveal information that would assist in the development, production, or use of weapons of mass destruction;

(3) reveal information that would impair US cryptologic systems or activities;

(4) reveal information that would impair the application of state-of-the art technology within a U.S. weapon system;

(5) reveal formally named or numbered US military war plans that remain in effect, or reveal operational or tactical elements of previous plans that are contained in such active plans;

(6) reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States;

(7) reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;

(8) reveal information that would seriously impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, or infrastructures relating to the national security; or

(9) violate a statute, treaty, or international agreement that does not permit the automatic or unilateral declassification of information at 25 years.

GLOSSARY

Administrative Appeal	A request by a member of the public, made pursuant to the FOIA, asking the appellate authority of a DoD Component to reverse, modify, or reconsider any adverse determination. (Reference (m))
Appellate Authority (AA)	An Agency person granted authority to review the decision made by the IDA when that that decision has been appealed by a FOIA/PA/MDR requester and to make the appeal determination for the Agency on whether the records in question are releasable. (References (h), (l), and (m))
Expedited Processing	An Agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records that warrants the prioritization of the request over previously received requests. (Definition created by NGA for NGA's purposes only.)
Freedom of Information Act (FOIA) Request	A written request for agency records that reasonably describes the records sought, enabling a DoD component employee familiar with the files to locate the records with a reasonable amount of effort. (Reference (m))
Case Management Tool	A tracking tool used in a searchable database for FOIA and PA requests. (Definition created by NGA for NGA's purposes only.)
Initial Denial Authority (IDA)	An official who has been granted authority by a DoD Component head to withhold information requested pursuant to the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. (Reference (h))
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 an urgent need for records may request expedited processing. (Definition created by NGA for NGA's purposes only.)

Privacy Act of 1974	A document establishing a Code of Fair Information Practice that governs the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in systems of record by federal agencies. The Privacy Act prohibits the disclosure of information from a system of record absent the written consent of the subject individual, unless the disclosure is pursuant to one of 12 statutory exceptions. The Act also provides individuals with a means by which to seek access to and amendment of their records and sets forth various agency record-keeping requirements. (Definition created by NGA for NGA purposes only)
Record	Records include all recorded information, regardless of physical form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the US Government or because of the informational value of the data in them. (Reference (o))
Time Limits	The time period in the FOIA for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request). (Reference (h))