



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
200 STOVALL STREET  
ALEXANDRIA, VIRGINIA 22332-0300

November 10, 1999

*Career prog*

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Freedom of Information Act (FOIA) Release Procedures for Referral/Selection Records

This is intended to serve as general guidance for processing FOIA requests concerning referral/selection records and other records that are maintained by personnel offices.

This guidance is provided to help ensure that requests for this type of information are processed consistently throughout the Department of the Army. The examples provided, however, are intended as general guidelines only. Documents should be reviewed both as to responsiveness and releasability on a case-by-case basis.

The Department of the Army officials listed in AR 25-55, Section 2, 5-200(19), as Initial Denial Authorities (IDAs), their delegates, or the Secretary of the Army are the only ones authorized to deny a FOIA request for records. The appropriate denial authority for civilian personnel records (see partial listing at Enclosure 1) and other documents involving civilian personnel matters is this office.

We ask that you verify with the requester whether he/she is willing to accept the responsive records with protected information redacted, prior to forwarding the request to us for determination. If the requester agrees to accept the records in redacted format, you may release the records in that format; no further action will be required by this office as the IDA. If requester does not agree to accept the document(s) in a redacted format, the document(s) in question must be forwarded to this office for release determination and a direct response to the requester.

Requests forwarded to this office should contain the following:

- a. The original request.
- b. A cover memorandum requesting release determination from the installation that identifies which records are being referred

for release determination and which records have already been released.

- c. Where the documents were filed and how they were filed. If the document(s) were retrieved by the name, social security number or other personal identifier of an individual and indicate the file(s) from which they were retrieved.
- d. The servicing legal office's opinion and recommendation, in accordance with AR 25-55, para 5-104.
- e. Two copies of the requested information, one original and one copy clearly indicating which portions are recommended for withholding, which FOIA exemption supports such withholding, and which portions, if any, have already been released.
- f. A copy of the letter from the installation to the requester which states that the request has been referred to the IDA.
- g. In the case of a "no record" response, ensure that you provide a "no record" certification (see example at Enclosure 2).
- h. Name and phone number of point of contact at the personnel office.
- i. Copies of any other correspondence to and/or from the requester regarding the request.
- j. Copy of a completed DD Form 2086, Freedom of Information (FOI) Processing Cost, and an indication as to whether any applicable fees have been paid.
- k. Verification that the requester refused to accept the documents in a redacted format. (This may be reflected in the FOIA request itself, in separate correspondence from the requester, or by memorandum for record from someone who has discussed the matter with the requester.)

- l. Verification that the requester has been advised of the estimated fee assessment and has expressed a willingness to pay all applicable fees. (To comply with the procedural requirements of AR 25-55, willingness to pay fees should be expressed in the FOIA request itself, however, it may be reflected in subsequent correspondence from the requester, or by memorandum for record from someone who has discussed the matter with the requester. That the requester has been advised of estimated fees should be reflected in correspondence to the requester, or by memorandum for record from someone who has discussed the matter with the requester.)
- m. The command's recommendation to deny the request in whole or in part.

Since the field receives a large volume of requests from individuals who have applied for a particular job and were not selected we are providing the following guidance on handling these requests.

These requests are often for "all records" relating to the vacancy announcement; however, sometimes specific records—such as the selected candidate's application—are requested. Such documents are ordinarily filed in a general file on the vacancy itself, and since they are not retrieved by an individual's name, social security number or other personal identifier, they are not subject to the Privacy Act.

Exemption 6 of the FOIA, 5 USC 552(b)(6), and Exemption 6 of Department of Defense Regulation 5400.7-R, protects information in personnel, medical and similar files from release when disclosure of the information would constitute a clearly unwarranted invasion of personal privacy. Such information is eligible for protection if no public interest would be served in the release of the information, or if the public interest in disclosure fails to outweigh the potential harm to an individual's privacy. The public interest must fall within FOIA's core purpose of shedding light on an agency's performance of its duties. A balancing of the public interest against the privacy interest must be done in either case.

The general rule is that most information, other than purely personal data pertaining to the selected candidate is releasable. This includes the SF-171 (or equivalent form). The SF-171 must be redacted to delete the following personal information. As mentioned above, if the requester does not agree to accept redacted documents, the documents in question must be forwarded to this office for release determination and a direct response to the requester:

- home address
- home telephone number or personal beeper/cellular phone number
- social security number
- age
- place and date of birth
- other names used
- marital status and date of marriage
- race and/or ethnic background
- lowest pay willing to accept
- salary, if not federal service (salary for persons in the federal service is releasable.)
- name and phone number of supervisors (if not federal service, or if not a general office number)
- whether an employer may be contacted regarding the applicant's work record
- information as to the type of discharge an individual received from military service
- information regarding any veteran's preference claim
- information regarding any medical condition or disability
- an individual's party or union affiliation
- membership in organizations other than those related to the employee/applicant's profession or those related to the position held or applied for
- reasons for leaving or wanting to leave past or current employment
- reasons for job termination
- criminal history (unless it shows fitness for the job)
- information concerning references
- information concerning relatives who work for the government (but release if the relative works for or supervises the applicant)
- other background information which is not work-related.

Evaluation reports and support forms submitted by the selectee as part of his/her application packet are protected in large part under Exemption 6; however, pursuant to 5 USC 552(b), any reasonably segregable portion of the record should be provided to the requester after deletion of the portions which are exempt. Duty description narratives, performance elements and performance standards should be withheld under Exemption 6 when they are so intertwined with the performance appraisal that their disclosure would reveal how the individual was rated. They should also be withheld under Exemption 2 when their release would interfere with law enforcement programs or inhibit agency effectiveness. The award and step increase boxes on the evaluation form should be redacted, even if favorable or blank, and withheld under Exemption 6.

Release the redacted application, including the redacted SF-171 of selectee. If the selectee refused the offer, or if the vacancy announcement was cancelled, do not release the selectee's application. This is to protect the individual's privacy interest in, for example, the fact that he/she was looking for other employment. Withhold in their entirety the applications, including the SF-171's, of non-selectees. The applications of non-selectees need not be reviewed for redaction and partial release because disclosure of the qualifications of people who were not appointed is unnecessary for the public to evaluate the competence of the selectee.

Release redacted Rating & Ranking Worksheets (redact names and personal identifiers of non-selectees; release the names and the final scores for the selectees/requester). The final scores for the non-selectees may be released provided their identities will not otherwise be revealed under the circumstances. Scores should not be released if they indirectly reveal other protected information, such as an individual's veteran's preference or disability status, or the details of the crediting plan. ✓

Although performance appraisals themselves are ordinarily protected from release under Exemption 6 as discussed above, the Supervisory Appraisal form used by applicants seeking a promotion is releasable since it relates directly to the Knowledge, Skills and Abilities of, and qualifications for, the position being advertised. Likewise, when the

selectee uses a "Supplemental Qualifications Statement" form as part of his/her application, the information on the line on that form which indicates the candidate's overall performance rating is releasable.

The panel ratings and final score of the selectee may be released if they do not reveal the details of the crediting plan, but the names and identities of the raters or panel members should be protected under Exemption 6. Similarly, if the FOIA request is focused on the identity of the panel members as opposed to the specific ratings given, the identities of the panel members may be released if doing so will not reveal the particular ratings they gave. This is to shield the raters, under Exemption 6, from the possible secondary effects that release of such information might have on them. The ratings given to the non-selectees (including, if applicable, the requester) may be released if doing so will not reveal the identities of the panel members or, as discussed above, the details of the crediting plan. Ratings, since they are pre-deliberative, are protected under Exemption 5 of the FOIA, 5 USC 552(b)(5), but discretionary release of these ratings may be made if the deliberative process will not be harmed. Discretionary release may not be made of information protected under Exemption 6.

Vacancy Announcements and the associated Position Descriptions and Grading Evaluation Statements are ordinarily released in response to a FOIA request.

Crediting plans, which are used to determine the qualifications of an applicant for employment, are withheld under Exemption 2 of the FOIA, 5 USC 552(b)(2). Exemption 2 protects information related solely to the internal personnel rules and practices of an agency, if release might allow individuals to circumvent the rule or practice, substantially hindering the effectiveness of a significant agency function. Releasing the crediting plan would allow an applicant to circumvent the plan by specifically tailoring his or her application, and might thereby give an unfair advantage to a potential job applicant. There should be no discretionary release of crediting plans; however, any reasonably segregable portion of the record should be provided to the requester after deletion of the portions which are exempt. For example, while those portions of the crediting plan that reveal the weights for the selection criteria will be withheld, those portions

that merely repeat the Knowledge, Skills and Abilities listed in the Vacancy Announcement should be released.

Exemption 2 also protects the criteria established for interviewing prospective employees, as well as proposed examination/interview questions and answers.

Some of the requests are for statistics only. Information pertaining to age, race, and sex may be released if the requester would not be able to identify particular individuals based on these statistics.

Please ensure that appropriate attention is given to the fee schedules prescribed in Chapter 6 and the procedural guidance in Chapter 1 of Department of Defense Regulation 5400.7-R and AR 25-55.

If you have any questions regarding releasing documents/ information under the FOIA or Privacy Act, please contact Debra Chiles of this office at (703) 325-9985 or DSN 22-9985 or Beth Helmer of this office at (703) 325-9974 or DSN 221-9974.

Sincerely,

  
for Elizabeth B. Throckmorton  
Chief, Policy and Program  
Development Division

Enclosures

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KOREA REGION

USAREUR REGION

## Categories of Records Covered:

Academic discipline; career program; citizenship; date of birth; educational level; employee tenure; Federal Employees Group Life Insurance (FEGLI); Federal Employees Health Benefits (FEHB); Thrift Savings Plan (TSP); functional classification; name of employee; nature of action; occupational series; pay basis, pay plan; rate determinant; physical handicap; position occupied and tenure; military status; salary; service computation date; sex; social security number, special program identifier; step or rate; submitting office number, training data, including costs, non-duty hours, on-duty hours, principal purpose, special interest program, date of completion; type of appointment; unit identification code; veterans preference; work schedule; organizational and position data; retention data; adverse action data; Fair Labor Standards Act (FLSA) coverage; cost of living allowances; transportation entitlements; cost codes; leave category, salary history; wage clearance and access data; performance/suggestion/cash awards; reemployment rights; training agreement; reserve status; vessel operations qualifications; Government driver's license; food handler's permit; intern recruitment and training data; career management data including performance/potential ratings; employee evaluation; qualifications; achievements; dependent data; overseas sponsor information; state address; home address; leave data; foreign language code.

Records maintained for military personnel participating in department-wide incentive awards and training programs sponsored by operating civilian personnel offices.

Grievance records that are maintained by servicing civilian personnel office are also included. This covers current or former employees of the Department of the Army who have submitted grievances in accordance with 5 CFR 771 or through a negotiated grievance procedure.

**FREEDOM OF INFORMATION ACT (FOIA) REQUEST  
NO RECORD CERTIFICATION**

Requester's Name: \_\_\_\_\_

Date of Request: \_\_\_\_\_

Request Number: \_\_\_\_\_

I hereby certify that on \_\_\_\_\_,  
(date) (name)

Records Custodian(s) for \_\_\_\_\_  
(organization)

performed a physical search of the following area(s) for records identified in the subject request:

(Check all areas searched)

Individual Desk(s)

Computer diskette(s)

File Cabinet(s)

Log Book(s)

Records Holding Area

Other (identify)

If such records existed, it is likely they would be found within the area(s) searched. All files which reasonable could be expected to contain the requested records were searched; however, no records responsive to the request were found.

NOTES: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed name of individual/grade

\_\_\_\_\_  
Job Title