

NAVFAC INSTRUCTION 5720.14C

From: Commander, Naval Facilities Engineering Command

Subj: FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Ref: (a) SECNAVINST 5720.42E, Department of the Navy Freedom of Information Act Program
(b) DoD 54007R, DoD Freedom of Information Act Program
(c) U.S. Department of Justice, Office of Information and Privacy, FOIA Case List
(d) SECNAVINST 5211.5D, Personal Privacy and Rights of Individuals Regarding Records Pertaining to Themselves

1. Purpose. To establish policies, procedures and responsibilities for responding to public requests for Naval Facilities Engineering Command (NAVFACENGCOM) Headquarters or field activity records under the Freedom of Information Act (FOIA), 5 USC § 552. This instruction supplements reference (a) and incorporates the following changes:

(i) Deletes descriptions of detailed procedures already contained in reference (a).

(ii) Revises the list of officials having the authority to release, deny and extend time limits for responding to FOIA requests.

2. Cancellation. None.

3. Scope. This instruction applies to FOIA requests relating to records in the custody of NAVFACENGCOM Headquarters and/or its field activities.

4. Definitions.

a. NAVFACENGCOM. As used in this instruction, NAVFACENGCOM shall include the Headquarters as well as any of the Command's subordinate activities.

b. All other definitions shall be as defined in reference (a).

5. Requests for Records. To be subject to FOIA and processing by NAVFACENGCOM, a record must already exist and be in the possession and control of NAVFACENGCOM at the time

of the request. FOIA does not impose an obligation to create records that do not otherwise exist. See reference (a), Secs. 7.a & 7.b for request content requirements.

6. FOIA Coordinators.

a. The FOIA Coordinator for NAVFACENGCOM HQ shall be the Office of Counsel (Code 92).

b. Each NAVFACENGCOM subordinate activity shall designate a FOIA coordinator and furnish the name, title, telephone and fax numbers, and electronic mail and/or internet address of the individual to NAVFACENGCOM Headquarters, FOIA Coordinator, Code 92.

c. Personnel whose duties involve FOIA responsibilities shall receive training in accordance with reference (a).

d. The same person shall not serve as both FOIA Coordinator and Initial Denial Authority.

e. The FOIA Coordinator shall maintain FOIA request logs and files in accordance with procedures outlined in reference (a), and will submit to NAVFACENGCOMHQ's FOIA Coordinator, Code 92, an annual FOIA report for activities in their geographic area no later than five working days after the close of the reporting period on OPNAV Form 5720/7. See references (a) and (b). Report Control Symbol DD-PA (a) 1365 (5720) applies for the FOIA Annual Report. NAVFACENGCOMHQ's FOIA Coordinator is responsible for filing the Command's Annual Report.

f. The FOIA Coordinator shall maintain FOIA related documents as outlined in references (a) and (b).

7. General Procedures for Processing FOIA Requests.

a. FOIA Coordinators shall be the single point of contact for all FOIA requests filed with their activity. All requests shall be immediately forwarded to the Coordinator for processing and response. Responses to FOIA requests shall be made in accordance with the timelines established in references (a) and (b).

b. If after receipt of the request, the Coordinator determines that the records requested are not within the custody and control of his/her activity, the Coordinator will forward the request as appropriate in accordance with reference (a). Should the Coordinator determine that the documents are within the custody and control of his/her activity, the FOIA Coordinator will forward the request to the appropriate action code for processing in accordance with Paragraph 8 below. Upon receipt and review of the response from the action code, the FOIA Coordinator will forward to Counsel any records which are recommended for withholding in whole or in part. Questions concerning the releasability of a particular document will be referred to Counsel.

c. After any required Counsel review, the FOIA Coordinator will prepare the appropriate response, determine the applicable fees, and complete the required reports. Requests for fee waivers which are not adequately supported may be returned to the requester stating the deficiency and seeking additional clarification. This is not a fee waiver/reduction denial and does not need the signature of the IDA. Fees under \$25.00 will be considered for waiver on a case by case basis. For guidance on fee assessment see reference (a), enclosure (3).

d. If any portion of the request is denied, the FOIA Coordinator shall submit a copy of the denial letter to the NAVFACENCOMHQ FOIA Coordinator, Code 92, for record keeping purposes. All denial letters shall cite the specific exemption(s) that apply and inform the requester that an appeal of the denial must be filed within sixty (60) calendar days from the date of denial to:

General Counsel
Office of the General Counsel
901 M Street SE Bldg 36
Washington DC 20374-5012

e. Field activities subordinate to Engineering Field Divisions (EFDs), Engineering Field Activities (EFAs), Public Works Centers (PWCs), and Construction Battalion Centers (CBCs) that do not have Initial Denial Authority formally delegated by COMNAVFACENCOM in paragraph 15 below shall forward all proposed denials/partial denials of requests to the next higher level within the chain of command. At a minimum, the following should be included:

- (i) Brief Sheet. Detailed discussion of the issues.
- (ii) Proposed Denial Letter. An original and two copies.
- (iii) Original Request. One copy of the original request.
- (iv) Other Correspondence. Any correspondence relevant to the request.
- (v) Copies of Records Requested. Two copies of the records requested. On one copy highlight those portions which are to be withheld and indicate the applicable exemption.
- (vi) Forms. Attach completed DD Form 2086 or 2086-1, as applicable.

8. Action Codes. As appropriate, Department/Division Heads will function as action codes for the FOIA program, and will act on matters under their cognizance. After receipt of a FOIA request from the FOIA Coordinator, action codes will immediately inform the FOIA Coordinator of the identity of the person under their cognizance responsible for processing the FOIA request and will investigate, research, collect and examine documents, prepare a memorandum delineating the research conducted, a description of the documents responsive to the request and a

recommendation as to the releasability of each document requested. This information, along with a Record of Freedom of Information Processing Cost (DD Form 2086), shall be forwarded to the FOIA Coordinator.

9. Exemptions Justifying Denials Under FOIA. Each record under the custody and control of NAVFACENGCOM is available for release unless it is determined to be exempt from disclosure under one or more exemptions set out in reference (a). This also applies to release of portions of a document. For guidance on situations in which records may be released/withheld, see also references (b) & (c).

10. “Other Reasons” for Not Fulfilling a FOIA Request. Records not falling within a specific FOIA exemption shall be released. However, under certain circumstances a request may not be answered even though a specific exemption does not apply. FOIA requests not fulfilled for “other reasons” do not constitute a denial and therefore do not require the signature of an Initial Denial Authority. See reference (a), paragraph 8.h.

11. Handling of Records Marked For Official Use Only. Requests for records Marked “For Official Use Only (FOUO)” will be handled in accordance with reference (a).

12. Releasability of Personnel Listings. Requests for lists of names and duty addresses of NAVFACENGCOM personnel (e.g., NAVFAC Key to Routing) will be released per reference (a), paragraph 9p(3). Legal Counsel should be consulted before the release of other personnel listings.

13. Special Procedures for Civilian Personnel Records. The Director, Human Resources Office (HRO) Crystal City, is authorized to respond to requests for records in its control and custody upon receiving appropriate written concurrence from the NAVFACENGCOM component’s FOIA coordinator having primary interest in the requested records. In the absence of concurrence, the Director shall forward the request to the Headquarters’ FOIA Coordinator for resolution. See reference (d).

14. Records Requiring Special Handling. Requests for records in the following categories shall be handled in accordance with reference (a), paragraph 9: Classified Records, Naval Investigative Service (NIS) Reports, Naval Inspector General Reports, Judge Advocate General Manual (JAGMAN) Investigation Reports and Courts Martial Reports, Mishap Investigation Reports (MIRs), Naval Audit Service Reports, Technical Documents Controlled by Distribution Statements, Records Originated by Other Government Agencies, National Security Council (NSC)/White House Documents, Naval Telecommunications Procedures (NTP) Publications, Naval Nuclear Weapons Information (NNWI), Naval Nuclear Propulsion Information (NNPI), Medical Quality Assurance Documents, Records of a Non-U.S. Government Source, and Government Accounting Office Documents.

15. Initial Denial Authority (IDA). When information sought relates to matters within their respective areas of responsibility or chain of command and they have Counsel within their

respective organizations, the following officials, as IDAs, are authorized to deny requests for records, either in whole or in part; grant formal extensions of time limits; and grant/deny requests to waive/reduce FOIA fees:

a. Commander, Naval Facilities Engineering Command, Headquarters or any subordinate designated as acting.

b. Vice Commander, Naval Facilities Engineering Command, Headquarters or any subordinate designated as acting.

c. Counsel, Naval Facilities Engineering Command, Headquarters, Code 92, or any subordinate designated as acting.

d. Commanders and Commanding Officers, Engineering Field Divisions, Executive Officers, or any subordinate designated as Acting Commander/Commanding Officer or Executive Officer. (All Divisions).

e. Commanding Officers, Engineering Field Activities, Executive Officers, or any subordinate designated as Acting Commander or Executive Officer. (All Activities).

f. Commanding Officers, Naval Public Works Centers, Executive Officers, or any subordinate designated as Acting Commanding Officer or Executive Officer. (All Centers).

g. Commanding Officers, Naval Construction Battalion Centers, Executive Officers, or any subordinate designated as Acting Commanding Officer or Executive Officer.

h. Director, Consolidated Civilian Personnel Office, Crystal City, or any subordinate designated as Acting Director. (See Paragraph 13)

Initial denial authority shall not be redelegated.

R. L. MOELLER
Vice Commander

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