

**WHAT YOU NEED TO KNOW TO MAKE FREEDOM
OF INFORMATION ACT (FOIA) REQUESTS**



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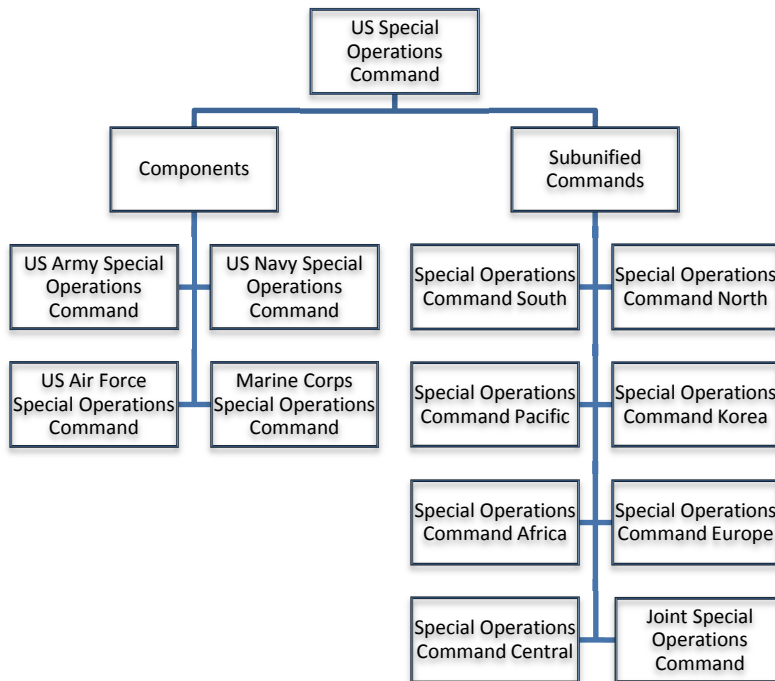
HISTORY

In October 1986, Congress mandated the creation of United States Special Operations Command (USSOCOM) in response to significant joint operational failures and the need to address the unconventional threats posed by a world of increasing complexity. Since activation on April 16, 1987, USSOCOM has responded to our Nation's call. Special operations have been conducted across the entire spectrum of conflict in support of conventional forces and as independent missions in support of national security interests. USSOCOM and SOF have played significant roles in all recent operations including SOF helicopter and special boat operations in the Persian Gulf during EARNEST WILL (1987-89); coalition warfare, special reconnaissance, direct action, and SCUD hunting during DESERT STORM (1991); urban warfare during UNOSOM II in Somalia (1993); peace enforcement operations in Haiti (1994-95); noncombatant evacuations operations around the world (1992-Present); peacekeeping operations in Bosnia-Herzegovina (1995-Present); operations in Kosovo (1999-Present); Operations IRAQI FREEDOM and NEW DAWN (2003-2011); full spectrum operations in support of OPERATION ENDURING FREEDOM (2001-present); humanitarian, disaster relief operations such as TOMODACHI after the tsunami in Japan, UNIFIED PROTECTION in Libya, the open-sea rescue of the Maersk Alabama with 54 hostages from Somali pirates (2011) as well as the rescue of American and Danish aid workers from Somali captures (2012). USSOCOM played a pivotal role in taking down Osama bin Laden during OPERATION NEPTUNE'S SPEAR (2011), and continues the pursuit of terrorist organizations in many more operations yet to be declassified for release.

The events of September 11, 2001 had a profound impact on USSOCOM and its role in the national security of the United States. From that day on, the role of USSOCOM has grown in breadth, complexity and global engagement. In the last decade, the enemy has become more elusive and agile; hiding in the shadows amongst the general population of failing nation-states and other remote regions of the globe. They use the internet and other overt communication to piece together violent extremist organizations and avoid detection while attempting to plan and execute attacks. The capabilities, budget and deployed footprint of SOF have grown as well since 2001, allowing USSOCOM to maintain a continuous comparative advantage over our enemies and defeat terrorist networks that threaten the security and interests of the United States and our allies. Also during this era, technology advances and greater global economic interdependence have made the world seem smaller. This new global terrain favors the unique capabilities of SOF in order to achieve national objectives of today and the foreseeable future. In the January 2012 National Defense Strategy, the President and the Secretary of Defense both called for a shift away from the use of large conventional forces towards a force that was "agile, flexible, and ready for the full range of contingencies and threats." This shift in defense strategy reflects the evolving threat environment and the reality of tightening fiscal

constraints that the Department of Defense will face in coming years. In many ways, this defense strategy paradigm shift advocates a military force with the same characteristics that make SOF so efficient and effective. As the Department faces new challenges during a period of fiscal constraints, USSOCOM will continue to effectively and efficiently allocate its resources to meet the global operational demands for SOF and prosecute the current fight while preserving its most important asset— its people.

USSOCOM HIERARCHY



INTRODUCTION

This handbook is intended to assist you in making Freedom of Information Act (FOIA) requests for United States Special Operations Command (USSOCOM) records. It will get you started and provide you with a brief description of your rights and the manner in which USSOCOM will respond to your requests. The information contained herein is not intended to be definitive or exhaustive.

REFERENCES

1. Title 5, United States Code (U.S.C.), Section 552, as Amended
2. Executive Order 13392, December 2005, Improving Agency Disclosure of Information
3. Department of Defense (DOD) Directive 5400.7, DOD Freedom of Information Act (FOIA) Program
4. DOD 5400.7-R, DOD Freedom of Information Act Program

FOIA HISTORY

The FOIA, Title 5, U.S.C., Section 552, as Amended, was signed into law on 4 July 1966 to provide the fullest possible disclosure of information to the public. Key concerns of the FOIA include:

1. All individuals have equal rights of access, while ensuring that information essential for adversaries to plan, prepare, or conduct terrorist or related hostile operations against the United States is denied.
2. The burden is on the Government to justify the withholding of a document, not on the person who requests it.
3. An individual denied access to documents has a right to seek relief in the courts.

The FOIA was amended in 1974 to encourage more disclosure than the original statute allowed, in 1986 to strengthen the language for investigations and establish various categories of requesters for the purpose of fee assessments, and in 1996 to align the original statute with technology.

DOD AND USSOCOM POLICY

For FOIA purposes, USSOCOM, a combatant command, is under responsibility of the DOD program which is directed and administered by the Office of the Deputy Chief Management Officer. USSOCOM is a designated DOD component, operates a FOIA Requester Service Center (RSC), and responds directly to requests for USSOCOM records. The USSOCOM RSC may be found on the World Wide Web (WWW) at <http://www.socom.mil> and click on “FOIA” at the bottom of the page under “USSOCOM Links”.

FOIA REQUESTS

Any “person” (a member of the public [U.S. or foreign citizen/entity], an organization, or a business, but not including a Federal agency or fugitive from the law), can file a FOIA request. The FOIA’s scope includes Federal Executive Branch departments, agencies, and offices; Federal regulatory includes agencies; and Federal corporations. Congress, the Federal Courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments, likewise, are not subject to the FOIA, but some states

have their own equivalent access laws for state records. At USSOCOM, you may expect to find policy and planning information for the Defense Transportation System. FOIA requests for USSOCOM records should be addressed to:

USSOCOM
ATTN: SOCS-SJS-VI/FOIA Requester Service Center
7701 Tampa Point Blvd
MacDill AFB, FL 33527-5323

Label your request “Freedom of Information Act Request,” preferably within the request letter. State your willingness to pay applicable fees. If you request a fee waiver, provide justification for such a waiver. Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject, date of creation, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit an organized, non-random search. Requests by electronic mail (e-mail) to FOIA@SOCOM.MIL and facsimile (fax) to 813-826-5482, are also acceptable. A sample request letter is at Attachment 1.

RECORDS

A record is the product(s) of data compilation, such as all books, papers, maps, and photographs; machine readable materials, inclusive of those in electronic form or format; or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in possession and control of the originating office at the time the FOIA request is made. The following are not included within the definition of the word “record.”

1. Objects or articles such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence.
2. Anything that is not a tangible or documentary record, such as an individual’s memory or oral communication.
3. Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

The FOIA does not require USSOCOM to answer questions, render opinions, or provide subjective evaluations. A FOIA request must ask for existing records, such as those mentioned above. For the purpose of the FOIA, the definition of an “Electronic Record” is: Records (including e-mail) that are created, stored, and retrieved by electronic means. The FOIA requires that records created on or after 1 November 1966 be made available electronically, as well as in hard copy, in the FOIA reading room for inspection and

copying, unless such records are published and copies are offered for sale.

REASONS FOR NOT RELEASING A RECORD

1. No Records. A reasonable search of files failed to identify responsive records.
2. Referrals. The request is transferred to another DOD component, or to another Federal agency.
3. Request Withdrawn. The requester withdraws the request.
4. Fee-Related. The requester is unwilling to pay fees associated with a request, the requester is past due in the payment of fees from a previous FOIA request, or the requester disagrees with the fee estimate.
5. Records not Reasonably Described. A record has not been described specifically enough to enable the DOD component to locate it by conducting a reasonable search.
6. Not a Proper FOIA Request for Other Reason. The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by agency policy.
7. Not an Agency Record. The information requested is not a record within the meaning of the FOIA and this handbook.
8. Duplicate Request. The request is a duplicate request (a requester asks for the same information more than once). This includes identical requests received via different means (e.g., e-mail, facsimile, mail, courier) at the same or different times.
9. Other (Specify). Any other reason a requester does not comply with published policy and procedures other than those outlined above.

EXEMPTIONS

Records (or portions of records) will be released unless that release harms an interest protected by an exemption cited in the Freedom of Information Act at 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 related solely to the internal personnel rules and practices of the DoD or any of the DoD Components;
- (b)(3)--records protected by another law that specifically exempts the information from public release;

- (b)(4)--trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source if disclosed;
- (b)(5)--internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations;
- (b)(6)--records which 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 for the use of any agency responsible for the regulation or supervision of financial institutions; and
- (b)(9)--records containing geological and geophysical information (including maps) concerning wells.

RELEASE AND PROCESSING PROCEDURES

Generally, USSOCOM will endeavor to provide a final response determination within the statutory 20 working days (excluding weekends and holidays). If a significant number of requests or the complexity of the requests prevents a final response determination within the statutory time period, USSOCOM will advise the requester of this fact in an interim response and explain how the request will be responded to within its multi-track processing system.

1. **Multi-track Processing:** When a response determination cannot be made within 20 working days, requests are processed in a multi-track processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing. DOD components must establish three processing tracks all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track for expedited processing. Each DOD component has the discretion of determining whether a request is simple or complex.

2. **Expedited Processing:** Shall be granted a requester upon request and demonstration of a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request that will determine whether to grant expedited processing. If expedited processing is granted, the request shall be processed as soon as practicable.

(1) **Compelling need** means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(2) Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

(3) Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily, this means a breaking news story of general public interest.

(4) Other reasons for expedited processing are an imminent loss of substantial due process rights and humanitarian need.

APPEAL RIGHTS

If your FOIA request is initially denied in whole or in part under one or more of the FOIA exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal. Appeals must be submitted within 60 days to the Director of Administration and Management, Office of the Secretary of Defense, by writing directly to the OSD/Joint Staff Freedom of Information Division, ATTN" Appeals Office, 1155 Defense Pentagon, Washington, DC 20301-1155.

FEES

FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Public interest is defined as "disclosure of the information is in the public interest because it is likely to contribute significantly to the public's understanding of the operations or activities of the Government." Assessable fees are as listed on Department of Defense (DD) Form 2086. All requesters should submit a willingness to pay fees regardless of the fee category; however, this does not mean you will be charged fees. FOIA requires that requesters be placed into one of the following categories:

(1) Commercial Requester: Refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. Fees shall be limited to reasonable standard charges for document search, review, and duplication.

(2) Educational Institution Requester: Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research.

(3) Non-Commercial Scientific Institution Requester: Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research.

(4) News Media Requester: Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media.

(5) Other Requester: Requesters who do not fit into any of the categories described above, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

KEITH F. KOMOSINSKI
Chief of FOIA/Privacy/Civil Liberties

Attachment
Sample FOIA Request Letter

Attachment

SAMPLE FOIA REQUEST LETTER

TO: United States Special Operations Command (date)
ATTN: SOCS-SJS-VI/FOIA Requester Service Center
7701 Tampa Point Blvd
MacDill AFB, FL 33527-5323
Dear FOIA Officer,

This is a request under the Freedom of Information Act (5 U.S.C. 552, as amended). I am requesting all records pertaining to [identify the subject and/or records as specifically as possible. Provide as much information as known to facilitate records search.

For fee purposes, my status is: (a) Commercial, (b) Educational Institution, (c) Non-commercial Scientific Institution, (d) News Media [Give name of newspaper, magazine, television station, etc. and this request is made as part of news gathering and not for commercial use (e) Other.

I am willing to pay fees for this request up to a maximum of [give dollar amount]. If fees exceed this amount, please notify me prior to proceeding with request. I request consideration for a fee waiver since disclosure of the information is in the public interest and will contribute significantly to public understanding of the operations or activities provide justification for consideration for fee waiver including details of how the requested information will be disseminated to the general public.

Provide your full name, address, telephone number, e-mail address, and company name, as applicable.

[Sign your request.]