



OVERSIGHT AND
COMPLIANCE

OFFICE OF THE DEPUTY CHIEF MANAGEMENT OFFICER
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WASHINGTON, DC 20301-9010

July 5, 2016

**MEMORANDUM FOR DOD FREEDOM OF INFORMATION ACT (FOIA) OFFICERS,
ATTORNEYS, PUBLIC LIAISONS, AND APPELLATE
AUTHORITIES**

SUBJECT: The FOIA Improvement Act of 2016

The President signed the subject legislation on June 30, 2016. All provisions of this Act, which is available at <https://www.congress.gov/114/bills/s337/BILLS-114s337enr.pdf>, take effect immediately. A White House fact sheet on the bill is at <https://www.whitehouse.gov/the-press-office/2016/06/30/fact-sheet-new-steps-toward-ensuring-openness-and-transparency>.

The purpose of the memorandum is to issue interim FOIA processing guidance that the Department must implement. Please follow the guidance contained within the attachment and immediately implement necessary changes to your processes.

Any questions should be directed to this office at OSD.FOIAPolicy@mail.mil.

James P. Hogan
Chief, DoD FOIA Policy

Attachment:
As Stated

Interim FOIA Processing Guidance

- **Fee Restriction** – DoD Components must not charge commercial or “other” requesters search fees, or representatives of the news media or educational requesters duplication fees, if you do not respond within in 20 working days
 - When it is determined that unusual circumstances (documents not located with the office processing the FOIA request, the responsive records are voluminous, and consultation with another agency) apply, the DoD Component is granted another, 10 days before this fee restriction applies. The DoD Component must, however, provide timely written notice to the requester of the unusual circumstances.
 - This fee restriction does not apply if the responsive records total more than 5,000 pages and the DoD Component has provided a timely written notice to the requester and made three or more good faith attempts to discuss, with the requester, how to effectively limit the scope of the request.
- **Foreseeable Harm** - Information responsive to a FOIA request will be withheld only if the DoD Component reasonably foresees that disclosure would harm an interest protected by one or more of the FOIA exemptions, or disclosure is prohibited by law.
 - It appears that this standard applies only to Exemptions 2, 5, and 9. The remaining exemptions incorporate a reasonable foreseeability of harm standard within their text or as a result of case law or, by their own existing terms, cover information prohibited by or exempt from disclosure by another law.
- **Exemption 5, Deliberative Process Privilege** – This privilege no longer applies to records created 25 or more years prior to the date of the FOIA request asking for them.
- **Responding to FOIA Requests with Adverse Determinations** – Requesters must now be advised that:
 - They have 90 days to appeal any adverse determinations.
 - They have the right to seek dispute resolution services from the DoD Component FOIA Public Liaison. This statement should include the name and contact information of the DoD Component FOIA Public Liaison.
- **Communicating with Requesters** – In all communications with requesters where the DoD Component is asking the requester to clarify or limit the scope of the request, requesters must now be advised that:

- They have the right to seek dispute resolution services from from the DoD Component FOIA Public Liaison or the Office of Government Information Services (<https://ogis.archives.gov/>).