



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

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

SUBJECT: DoD Guidance on Attorney General (AG) FOIA Guidelines

On March 15, 2022, the AG issued a memorandum titled “Freedom of Information Act Guidelines” for all heads of federal departments and agencies (“AG FOIA Guidelines”) to update and strengthen the federal government’s commitment to the fair and effective administration of the FOIA. On March 17, 2022, the U.S. Department of Justice (DOJ) Office of Information Policy (OIP) distributed the AG FOIA Guidelines and provided a brief summary. A copy of the AG FOIA Guidelines is attached and a link to OIP’s summary is provided:
<https://www.justice.gov/oip/blog/attorney-general-issues-new-foia-guidelines-federal-agencies>.

The AG FOIA Guidelines focused on five specific areas: (1) the presumption of openness; (2) proactive disclosures; (3) removing barriers to access; (4) reducing FOIA request backlogs; and (5) ensuring fair and effective FOIA administration. As the DoD Chief FOIA Officer, I direct all DoD Component FOIA Offices to take the following actions in support of the AG FOIA Guidelines:

1. Continue to apply the foreseeable harm standard to identify information that may be released even though it is technically within the scope of a FOIA exemption other than exemption (b)(3). A Component may not withhold information subject to an exemption unless it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or there is a legal bar to the disclosure. *See* 5 U.S.C. 552(a)(8)(A)(i) and DoD Manual (DoDM), DoD FOIA Program, 5400.07, sec. 5.1.b. In case of doubt, openness and transparency should prevail*.
2. In addition, within 30 days of this memo, Component FOIA Offices shall:
 - a. Ensure response letters to FOIA requesters address the application of the foreseeable harm standard as suggested in the AG FOIA Guidelines; and
 - b. Ensure foreseeable harm determinations are adequately documented in the FOIA administrative case file to demonstrate compliance with the requirement and to support further review of the case in the event of an appeal.
3. By October 1, 2022, conduct a review of their public-facing FOIA websites and FOIA libraries to identify improvements that could enhance the public’s ability to

* Although the fair and effective administration of FOIA requires that openness prevail in the face of doubt, Congress established nine exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests. *Id.* § 552(b).

navigate and identify records of interest. *See* DoDM 5400.07, sec. 4. If the improvements cannot be made immediately, the Component FOIA Office will establish a written plan to implement the improvements and/or request funding for them. These plans and funding requests should be completed by the end of calendar year 2022.

4. By October 1, 2022, review their Component's compliance with 5 U.S.C. 552(a)(2)(D)(ii) and identify any potential processes for increasing their Component's release of proactive disclosures, which make more non-exempt information available to the public on a timely basis. *See* DoDM 5400.07, sec. 4.1. Intra-component engagement is usually necessary to identify and establish effective processes for proactive disclosures. For example, because contracts are a frequently requested type of record under FOIA, FOIA Offices should engage with their acquisition offices to discuss the requirements of FOIA's proactive disclosure provisions and determine if there are contracts that could be affirmatively released. In addition, the FOIA Office should set a process, by which that release will routinely occur.
5. By October 1, 2022, identify any categories of records that (1) their Component makes readily accessible for private use without the requirement to file a FOIA or Privacy Act request, and (2) their Component determines may be appropriate to make so accessible in the future. This could include records about Service members, family members, and civilian or contractor personnel made directly accessible to those individuals through an account-based DoD online portal. This task is likely to involve internal engagement with various Component offices to determine if additional records can be affirmatively released to the public, or to the individuals to whom they pertain, without the requirement to file a FOIA or Privacy Act request.

We recognize that you may have reported your efforts in these areas through annual submissions to the DoD Chief FOIA Officer Report. We request Components provide updates on these areas, specifically addressing the requirements of the AG FOIA Guidelines by reporting progress in these areas during the information gathering process in October 2022 in preparation of the next DoD Chief FOIA Officer Report.

Any questions should be directed to this office at osd.mc-alex.ocmo.mbx.dod-foia-policy-office@mail.mil.

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Attachment:
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