

**U.S. Naval Academy Freedom of Information Act (FOIA)**  
**Subject Matter Expert SME Guidance Sheet:**

You, your office, or your program have been tasked with locating, aggregating, and reviewing records under your control, for a Freedom of Information Act (FOIA) request. In an effort to provide guidance on performing this task and complying with the Freedom of Information Act, the below information is provided. Broader context of the FOIA can be obtained via the FOIA office, USNA FOIA webpage, or the Department of Justice (DOJ) Office of Information Policy (OIP) webpage. **FOIA is everyone's responsibility.**

**What is FOIA?**

FOIA is the Freedom of Information Act, a law (5 U.S.C. §552) stating that anyone can request government documents, and, with few exceptions, the government is obligated to provide them.

**Q: I can't be bothered with this – shouldn't I be focusing on my real job?** Responding to FOIA requests **IS** your real job – part of it. The obligations of FOIA apply to **ALL** federal personnel, including military officers and government civilians.

**Under FOIA you are required to:**

- a) Conduct an extensive search within the first 72 hours of all record repositories most likely to hold responsive records and provide the FOIA Office with an update on the findings of the search. If you are unable to complete the search and review of the records/documents within 10 days, the FOIA requires a notification be sent to the requester. The FOIA Office will coordinate with the requester for an additional 10 days upon receipt of the following information from you:
  - i) An estimate of the volume of records/size of electronic files.
  - ii) An estimated completion date.

Fees can only be assessed if the agency responds within 20 days.
- b) If no records are located, provide a written explanation describing the search method you used, include systems and filing cabinets searched along with the key words used during the search.
- c) If records/documents are found, review the records/documents for releasability. During the review of the records, document/highlight any word, phrase, image, etc. that is classified or recommended for withholding under the 9 FOIA exemptions attached, as well as a short list of statutes requiring withholding under FOIA exemption (b)(3).
  - 1) For each highlighted recommendation of withholding, provide an explanation of why the information fits under the exemption and provide a written statement of harm to be included in the administrative record for analysis as well as support for appeals and litigation.
  - 2) If your office determines that the documents contain equities belonging to another Navy component, please let the FOIA Office know. Your office is responsible for coordination, review of proposed redactions, and providing the FOIA Office with a clean copy as well as a copy with the proposed redactions of all responsive records/documents.
  - 3) The term "GLOMAR" and the phrase "neither confirm nor deny" refer to information so sensitive that there would be harm in disclosing even whether such information exists. Please let the FOIA office know if this may be needed.

In an effort to meet the FOI Act reporting requirements, all FOIA requests/cases are tracked via the DON's current system, so please include the tracking number in all correspondence. For additional guidance and assistance you can contact the FOIA Office at 3-1550 or email us at [foia@usna.edu](mailto:foia@usna.edu). Please include the FOIA tracking number in the subject of all correspondence.

# FOIA Exemptions and Exclusions

The Freedom of Information Act provides that the agency will provide access to identifiable documents within its possession unless one of nine exemptions or three exclusions applies. The exact language of the law and its exemptions can be found in the FOIA, 5 USC 552, <http://www.justice.gov/oip/amended-foia-redlined.pdf>.

## Nine Exemptions

**Exemption One:** Classified national defense and foreign relations information.

**Exemption Two:** Internal agency personnel rules and practices.

**Exemption Three:** Information that is prohibited from disclosure by another federal law.

**Exemption Four:** Trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

**Exemption Five:** Inter-agency or intra-agency memoranda or letters that are protected by legal privileges. This privilege also protects draft documents, pre-decisional information, opinions, attorney work product, and the deliberative process.

**Exemption Six:** Personnel, medical, financial, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

**Exemption Seven:** Certain types of information compiled for law enforcement purposes.

**Exemption Eight:** Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

**Exemption Nine:** Geological and geophysical information and data, including maps, concerning wells.

## Three Exclusions

**(c)(1) Exclusion:** Subject of a criminal investigation or proceeding is unaware of the existence of records concerning the pending investigation or proceeding and disclosure of such records would interfere with the investigation or proceeding.

**(c)(2) Exclusion:** Informant records maintained by a criminal law enforcement agency and the individual's status as an informant is not known.

**(c)(3) Exclusion:** Existence of FBI foreign intelligence, counterintelligence or international terrorism records are classified fact.

<b>(b)(3) Statutes</b>		<b>Type of Information Covered</b>
[UNITED STATES CODE COMMONLY APPLICABLE TO DoD UNDER THE FOIA AT 5 USC §552 (b)(3).]		[INFORMATION SPECIFICALLY EXEMPTED BY A STATUTE ESTABLISHING PARTICULAR CRITERIA FOR WITHHOLDING. THE LANGUAGE OF THE STATUTE MUST CLEARLY STATE THAT THE INFORMATION WILL NOT BE DISCLOSED.]
NOTE: [*] ASTERISK -- DENOTES VALID BY LITIGATION.		
1.	5 USC § 574(j)	<b>Administrative Dispute Resolution Act - Dispute resolution communication between a neutral and a party to the dispute</b>
2. *	5 USC § 107(a)(2)	<b>Financial disclosure information pertaining to certain government employees</b>
3. *	5 USC §§ 7114(b)(4), 7132	<b>Civil Service Reform Act – Representation rights and duties, labor unions</b>
4.	10 USC § 128	<b>Unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material</b>
5. *	10 USC § 130	<b>Unclassified technical data with military or space application</b>
6. *	10 USC § 130b	<b>Personally identifying information regarding personnel assigned to an overseas, sensitive or routinely deployable unit</b>
7. *	10 USC § 130c	<b>Sensitive information of foreign governments and international organizations</b>
8.	10 USC § 130d	<b>Confidential business and unclassified homeland security information shared with State and local personnel pursuant to section 892 of the Homeland Security Act of 2002</b>
9.	10 USC § 130e	<b>DoD critical infrastructure security information</b>
10. *	10 USC § 424	<b>Organizational and personnel information for DIA, NRO, and NGA</b>
11.	10 USC § 455	<b>Maps, charts, and geodetic data</b>

12.	10 USC § 457	Operational files previously maintained by or concerning activities of the national photographic interpretation center
13.	10 USC § 613a(a)	Proceedings from selection and special selection boards for active duty officers and warrant officers
14. *	10 USC § 1102	Medical quality assurance records
15.	10 USC § 1506(d) and (f)	Debriefing of a missing person returned to U.S. control from July 8, 1959, forward.
16.	10 USC § 2254a	Military flight operations quality assurance information
17. *	10 USC § 2305(g)	DoD contractor proposals
18.	10 USC § 2371(i)	Research Projects: Transactions other than contracts and grants
19.	10 USC § 2485(h)	Commissary commercially valuable information
20.	10 USC § 2640(h)	Safety-related information voluntarily provided by an air carrier
21.	10 USC § 14104(a)	Proceedings from selection and special selection boards for reserve officers
22.	15 USC § 638 (k)(4)	Protects information contained within a Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) program evaluation databases
23. *	15 USC § 3710a(c)(7)	Confidential commercial or financial information obtained in Cooperative Research and Development Agreements (CRADA)
24. *	16 USC § 470hh	Information pertaining to the nature and location of certain archaeological resources
25.	16 USC § 470w-3	National Historic Preservation

<b>26. *</b>	<b>18 USC § 798(a)</b>	<b>Communications intelligence</b>
<b>27.</b>	<b>18 USC § 1917</b>	<b>Civil service examinations</b>
<b>28. *</b>	<b>18 USC § 2510-2520</b>	<b>Wiretap requests and the contents of any wire, oral, or electronic communication obtained through wiretaps</b>
<b>29. *</b>	<b>18 USC § 3509(d)</b>	<b>Information pertaining to children involved in criminal proceedings</b>
<b>30. *</b>	<b>22 USC § 2778(e)</b>	<b>Information pertaining to export license applications under the Arms Export Control Act</b>
<b>31. *</b>	<b>26 USC § 6103</b>	<b>Tax return information</b>
<b>32.</b>	<b>31 USC § 3729(c)</b>	<b>False Claims Act</b>
<b>33. *</b>	<b>31 USC § 5319</b>	<b>Monetary instruments transactions filed under subchapter II of chapter 53 of title 31 and records of those reports</b>
<b>34.</b>	<b>33 USC § 2313(b)</b>	<b>Information developed as a result of research and development activities conducted by the Army Corps of Engineers that is likely to be subject to a cooperative research and development agreement within 2 years of its development and that such information would be a trade secret or commercial or financial information that would be privileged or confidential if the information had been obtained from a non-Federal party participating in a cooperative research and development agreement under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980</b>
<b>35. *</b>	<b>35 USC § 122</b>	<b>Patent applications</b>
<b>36.</b>	<b>35 USC § 205</b>	<b>Government inventions information</b>
<b>37.</b>	<b>41 USC § 2102(a)(1)</b>	<b>Contract source selection information</b>
<b>38.</b>	<b>42 USC § 262a(h)</b>	<b>Enhanced control of dangerous biological agents and toxins</b>

39.	42 USC § 290dd-2	Confidentiality of patient records maintained in connection with substance abuse education, prevention, training, treatment, rehabilitation, or research
40. *	42 USC § 2162 (Atomic Energy Act of 1954)	Information regarding atomic weapons and special nuclear material: Restricted Data
41.	42 USC § 2168(a)(1)(C) (Atomic Energy Act of 1954)	Information regarding atomic weapons: Formerly Restricted Data
42.	50 USC § 421	Protection of identities of US undercover intelligence officers, agents, informants and sources
43.	50 USC § 432	NGA operational files
44. *	50 USC § 432a	NRO operational files
45.	50 USC § 432b	NSA operational files
46.	50 USC § 435 Note Sec 1082, P.L. 102-190	Information concerning US personnel classified as POW/MIA during the Vietnam and Korean Conflicts (“McCain Bill”)
47.	50 USC Appx § 2170(c)	Authority to review certain mergers, acquisitions, and takeovers
48. *	50 USC Appx § 2411(c)	Information pertaining to export license applications under the Export Administration Act
49. *	50 USC § 3024(i) Formerly 50 USCA § 403-1(i)	Intelligence Sources and Methods
50. *	50 USC § 3507 Formerly 50 USC § 403g Section 6 of the CIA Act of 1949	CIA functions and information
51. *	50 USC § 3605	NSA Functions and Information (NSA Use)

	<b>Formerly 50 USC § 402 Note Sec 6, P.L. 86-36</b>	
<b>52. *</b>	<b>Fed. R. Crim. P. 6(e), enacted by Act of July 30, 1977, Pub. L. No. 95-78, 91 Stat. 319</b>	<b>Certain records pertaining to grand jury information.</b>
<b>53. *</b>	<b>Fed. R. Crim. P. 32, enacted by Act of July 30, 1977, Pub. L. No. 94-64, § 2, 89 Stat. 370</b>	<b>Presentence reports of recommendations</b>
<b>54.</b>	<b>IG Act of 1978, Sec 7(b), P.L. 95-452</b>	<b>Confidentiality of employee complaints to the Inspector General</b>
<b>55.</b>	<b>P.L. 100-180, Sec 276(a)</b>	<b>Protection of Sematech information</b>
<b>56.</b>	<b>P.L. 103-236, Sec 533</b>	<b>Protection of certain Open Skies Treaty information</b>
<b>57.</b>	<b>P. L. No. 111-83, 123 Stat. 2142, the “Protected National Security Documents Act of 2009”</b>	<b>Protection of photographs related to the treatment of individuals engaged, captured, or detained after September 11, 2001.</b>

# Privacy Act Exemptions

The Privacy Act provides that the agency will provide access to records on individuals within its possession unless one of ten exemptions applies. The exact language of the exemptions can be found in the Privacy Act, 5 USC 552a, <http://www.justice.gov/opcl/privstat.htm>.

## Ten Exemptions

**Exemption (d)(5):** Information compiled in reasonable anticipation of civil action or proceeding; self-executing exemption.

**Exemption (j)(1):** CIA records (information concerning polygraph records, sources and methods to gather intelligence -- including the facilities, organization, functions, names, officials titles, salaries, or numbers of personnel employed by the Agency -- and documents or information provided by foreign governments).

**Exemption (j)(2):** Principal function criminal law enforcement agency; records compiled during course of criminal law enforcement proceeding.

**Exemption (k)(1):** Classified information under an Executive Order in the interest of national defense or foreign policy.

**Exemption (k)(2):** Non-criminal law enforcement records; criminal law enforcement records compiled by non-principal function criminal law enforcement agency; coverage is less broad where individual has been denied a right, privilege, or benefit as result of information sought.

**Exemption (k)(3):** Pertain to the protection of the President of the United States or other individual pursuant to section 3056 of Title 18.

**Exemption (k)(4):** Required by statute to be maintained and used solely as statistical records.

**Exemption (k)(5):** Investigatory material used only to determine suitability, eligibility, or qualifications for federal civilian employment or access to classified information when the material comes from confidential sources.

**Exemption (k)(6):** Testing or examination material used to determine appointment or promotion of federal employees when disclosure would compromise the objectivity or fairness of the process.

**Exemption (k)(7):** Military evaluative records (similar to (k)(5)).