



Office of the Secretary

32 CFR Part 300

Defense Logistics Agency

32 CFR Part 1285

[Docket ID: DOD-2012-OS-0019]

RIN 0790-AI87 Defense Logistics Agency Freedom of Information Act Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency (DLA) is revising and updating its existing rule concerning the DLA Freedom of Information Act (FOIA) Program. This rule implements changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996, and the OPEN Government Act of 2007. In addition, part 1285 will be redesignated as part 300.

DATES: Effective Date: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Teer, (703) 767-5247.

SUPPLEMENTARY INFORMATION: This rule supplements 32 CFR part 286 to accommodate specific requirements of DLA's FOIA Program.

Executive Summary

I. Purpose of this Regulatory Action

a. This rule assigns responsibilities and establishes policies and procedures for a uniform DLA Freedom of Information Act program pursuant to the provisions of the Freedom of Information Act.

b. Authority: 5 U.S.C. 552.

II. Summary of the Major Provisions of this Regulatory Action

This rule implements changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231, and the OPEN Government Act of 2007, Public Law 110-175.

III. Costs and Benefits of this Regulatory Action

This regulatory action imposes no monetary costs to the Agency or public. The benefit to the public is the accurate reflection of the Agency's FOIA Program to ensure that policies and procedures are known to the public.

REGULATORY PROCEDURES

Executive Order 12866, ``Regulatory Planning and Review`` and Executive Order 13563, ``Improving Regulation and Regulatory Review``

It has been certified that 32 CFR part 300 does not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96-354, ``Regulatory Flexibility Act`` (5 U.S.C. Chapter 6)

It has been determined that 32 CFR part 300 is not subject to the Regulatory Flexibility Act because it would not, if promulgated, have significant economic impact on a substantial number of small entities.

Public Law 96-511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 300 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Public Law 104-4, Unfunded Mandates Reform Act of 1995

It has been certified that 32 CFR part 300 does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

It has been certified that 32 CFR part 300 does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

32 CFR part 300 is not subject to Executive Order 13045.

Public Comments

The proposed rule was published on October 15, 2012 at 77 FR 62469. A discussion of the comments and the changes made to the proposed rule as a result of those comments are provided as follows:

1. General Comments

Comments: Office of Government Information Services (OGIS) and Electronic Privacy Information Center (EPIC) commends DLA for the emphasis on customer service and electronic databases in the proposed rule.

Response: Although no response is required, DLA appreciates all comments.

2. Out-of-Scope Comments

Comments: Several respondents stated that DLA does not offer any changes to existing regulatory exemptions governing the Agency under the Freedom of Information Act (FOIA). DLA assumes the continuing viability of these exemptions. However, in *Milner v. Department of the Navy*, 131 S.Ct. 1259 (2011), the Supreme Court reversed the lower court interpretation of certain of the FOIA statutory exemptions, upon which interpretation the exemptions regulations relied. The present Comment urges DLA and the Department of Defense (DoD) to revisit these regulatory exemptions and to recraft them both to comply with the Court's *Milner*

holding and to clarify the proper regulatory interpretation of the statutory exemptions.

EPIC makes a number of comments on the wording of 32 CFR part 286, DoD FOIA Program Regulation.

Response: The purpose of this rule is to implement 32 CFR part 286. Issues relating to the scope or coverage of 32 CFR part 286 are outside the scope of this final rule.

3. Specific Comments

§ 300.3 Definitions

Comment: EPIC suggests adding language to make clear that this section is intended to supplement 32 CFR part 286.

Response: The final rule opening paragraph has been revised to state that other definitions may be found in 32 CFR part 286, Subpart A.

Comment: OGIS suggests adding terms, including requester category and fee waiver, to the glossary. OGIS has found that even experienced requesters can still confuse those terms. Additionally, because DLA refers to both in § 300.3(1), this will ensure shared understanding.

Response: The final rule has been revised to include the requester category. The definition of fee waiver is unnecessary as DLA adopts Subpart F of 32 CFR part 286 which defines fee waiver.

(a) Administrative Appeal.

Comment: EPIC suggests adding language to state that failure to respond within the statutory time limit is appealable.

Response: The final rule definition has been revised.

(b) Adverse Determination.

Comment: EPIC suggests adding language to state that definition includes but is not limited to.

Response: The final rule definition has been revised.

(d) Consultation.

Comment: EPIC suggests amending the definition to clarify when consultation is necessary.

Response: The final rule has been revised.

(e) Defense Freedom of Information Program Office.

Comment: EPIC suggests changing the word Program to Policy.

Response: The final rule has been revised.

(g) DLA Component.

Comment: EPIC suggests modifying the current definition will result in limitless authority to any delegate within DLA to deny FOIA requests.

Response: DLA will not retain the current definition. Due to DLA reorganization of Components, including FOIA offices, not all components are authorized to receive and act independently on FOIA requests. To address EPIC's comment, DLA incorporates language from the DoD FOIA Program Regulation directing DLA Components to limit the number of IDAs appointed and to balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. Refer to definition (o) DLA FOIA Requester Service Center.

Comment: (l) *FOIA Public Liaison*. OGIS applauds DLA for including FOIA Public Liaison in its Definitions section and suggests additional language to reflect the position's statutorily enhanced role in the 2007 FOIA amendments that comes directly from 5 U.S.C. 552(1).

Response: The final rule has been revised to expand the definition of FOIA Public Liaison.

Comment: (m) FOIA Request. EPIC suggests retaining current DLA definition.

Response: The final rule definition is amended in part. The definition does not require advance payment but to state a willingness to pay fees should they be assessed. See current regulation at 1285.5(d). DLA does not deny a request if a willingness to pay fees is not indicated but before processing begins the requester is contacted to obtain a fee declaration.

§ 300.4 *Policy*

(a) *General.*

Comment: EPIC suggests that the proposed changes provide the agency with greater discretion to deny FOIA requests.

Response: DLA has amended this paragraph, since this regulation does not impact disclosures outside of FOIA (refer to DoD Directive 5230.09, Clearance of DoD Information for Public Release).

(c) *Creating a Record.*

Comment: EPIC suggests the regulations would significantly limit the circumstances under which DLA will process a FOIA request.

Response: DLA partially accommodates EPIC's comment regarding agency burden and significant inference with business as usual.

(d) *Consultations and Referrals.*

Comment: OGIS suggests that in addition to the adoption of 32 CFR part 286, Subpart A, 286.4(i) and 286.22(e), Policy, that DLA offices notify requesters in writing of a referral, and the part of the request that has been referred and the name of a contact at the other agency.

Response: The final rule implements this section of 32 CFR part 286, Subpart A, 286.4(i), which incorporates OGIS's suggestion.

Comment: EPIC suggests DLA not adopt 32 CFR part 286, Subpart A, 286.4 unless it is revised.

Response: DLA adheres to DoD policies, to create uniformity across DoD which provides greater understanding of the DoD FOIA Program to requesters. Paragraph 300.7(d) contains the language recommended by EPIC in its comment (B).

§ 300.6 *General*

(a)(2) *Requests from the public.*

Comment: EPIC states that the new language gives DLA unharnessed discretion whether to comply with time limits; unnecessarily delay the processing of FOIA requests; and contains a broken link.

Response: Per 32 CFR 310.17(i), DLA is required by law to abide by the statutory time limit. DLA has revised this paragraph to re-emphasize that requirement; and included a link to the homepage of DoD Issuances.

§ 300.7 FOIA request processing procedures

(a) Receipt and Control.

Comment: OGIS suggests including a new subsection that addresses acknowledgment of a request. Specifically OGIS suggests that DLA state that it will provide an acknowledgment letter confirming receipt of a request that includes the unique tracking number as well as a brief description of the subject of the request. This would help requesters as well as the agency keep track of multiple pending requests.

Response: Per 5 U.S.C. 552(a)(7)(A), the final rule has been revised at § 300.7 (a)(4) to include acknowledgement of a FOIA request.

(a)(2) Receipt and Control.

Comment: EPIC states that the proposed language increases the burden on the requester to produce errorless requests and suggests addressing tolling the time limit due to defects. EPIC suggests that sentences be struck from this section. EPIC also states the proposed language outright bans referrals outside the DoD.

Response: At the screening phase a request that is not perfected cannot be tolled. There is no ban of referrals outside of DoD, to the contrary, DLA refers records to the originating agency both inside and outside of DoD. The regulation is revised to address tolling and the language relating to misdirected requests is removed.

(b) Multi-track processing.

Comment: EPIC believes that DLA is supplanting the statute with this section as it reduces the "unusual circumstances" provision of the agency.

Response: Pursuant to the authority granted by 5 U.S.C. 552(a)(6)(D), DLA's establishment of multi-track processing complies with DoD regulation and assists both DLA and the requester in recognizing when the request is complex in nature due to "unusual circumstances," and may require an additional ten days for processing. DLA's focus on customer service ensures the requester is informed of its processes

and the use of multi-track assists DLA and requesters in achieving better response times.

(d) Misdirected requests.

Comment: EPIC recommends retaining the language in the current regulation.

Response: DLA has amended this paragraph based on guidance in both the DOJ FOIA Guide and DoD regulation. DLA is not required to forward misdirected requests to outside DoD agencies.

§ 300.8 Initial determinations

(a)

Comment: OGIS suggests including additional information addressing the content of the denial letter. Specifically, OGIS suggests providing a brief description of the information DLA is withholding if it is possible without revealing exempt information. OGIS also recommends that DLA specifically address the new requirements in 5 U.S.C. 552 (b) that agencies shall (1) indicate, if technically feasible, the precise amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion is made, and (2) indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption.

Response: The final rule has been revised at § 300.8(c) to include the elements of an initial determination response letter.

(b)

Comment: EPIC states that the proposed rule eliminates the mention of advising a requester when segregation was not reasonable when a release is denied in full.

Response: The final rule has been revised at § 300.9(c) to address EPIC's comment. DLA does not deny records in full on the grounds of reasonable segregability. Full denials are based on FOIA exemptions and should be appealed on this basis.

§ 300.9 Appeals.

Comment: EPIC suggests language adding the right to appeal if the requester receives no determination. This subsection changes the window of time in which requesters may file an appeal from sixty to thirty calendar days.

Response: DLA has revised the definition of an adverse determination (see § 300.3(b)) to include this language. The length of time to appeal is set by DoD, therefore, is outside the scope of DLA's authority.

§ 300.10 Mediation services

Comment: OGIS suggests renumbering the current § 300.10 as § 300.11 and inserting a new § 300.10 to inform requesters of the mediation services provided by OGIS to resolve disputes between FOIA requesters and DLA in accordance with FOIA and DoD policy.

Response: DLA recognized the value of mediation and appreciates its role in the FOIA process, however, DoD has not established guidelines for using mediation services provided by OGIS to resolve disputes between FOIA requesters and the Agency, therefore this comment is not adopted.

§ 300.11 General

Comment: OGIS suggests that in addition to the adoption of 32 CFR part 286, Subpart F, Fee Schedule that DLA address fee estimates and administrative waiver of fees.

Response: The purpose of this rule is to implement 32 CFR part 286 and DLA finds it unnecessary to duplicate information published by DoD.

List of Subjects in 32 CFR Parts 300 and 1285

Freedom of Information Act.

For the reasons stated in the preamble, DoD amends 32 CFR chapters I and XII as follows:

TITLE 32--NATIONAL DEFENSE

CHAPTER I--OFFICE OF THE SECRETARY OF DEFENSE

CHAPTER XII--DEFENSE LOGISTICS AGENCY

Part 1285 [REDESIGNATED AS PART 300 AND TRANSFERRED TO CHAPTER I]

1. Part 1285 is redesignated as part 300 and transferred from chapter XII, subchapter B, to chapter I, subchapter N.

2. Newly redesignated part 300 is revised to read as follows:

PART 300 -- DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Subpart A--General Provisions

Sec.

300.1 Purpose.

300.2 DLA FOIA regulatory precedence.

300.3 Definitions.

300.4 Policy.

Subpart B--Exemptions

Sec.

300.5 General.

Subpart C--FOIA Request Processing

Sec.

300.6 General.

300.7 FOIA request processing procedures.

300.8 Initial determinations.

300.9 Appeals.

300.10 Judicial actions.

Subpart D--Fees and Fee Waivers

Sec.

300.11 General.

Appendix A to Part 300--Access to DLA Records

Authority: 5 U.S.C. 552.

Subpart A--General Provisions

§ 300.1 Purpose.

This part provides policies and procedures for the Defense Logistics Agency (DLA) implementation of the Freedom of Information Act (FOIA) (5 U.S.C. 552). This part supplements and implements the Department of Defense (DoD) FOIA Program

Directive (32 CFR part 285) and DoD FOIA Program Regulation (32 CFR part 286). This part applies to DLA Components and takes precedence over all DLA regulations that supplement the FOIA program.

§ 300.2 DLA FOIA regulatory precedence.

This part is published in accordance with the authority contained in 5 U.S.C. 552 and 32 CFR parts 285 and 286. It supplements 32 CFR part 286 to accommodate specific requirements of DLA's FOIA Program. For all FOIA issues not covered by this part, the rules set forth in 32 CFR part 286 will govern.

§ 300.3 Definitions.

Definitions not included in this subpart may be found in 32 CFR part 286, subpart A. The following terms and meanings apply for the purposes of this part:

(a) *Administrative appeal.* A written request by a member of the public, made under the FOIA, to DLA's Appellate Authority requesting reversal of an adverse determination. An appeal may be mailed, emailed to hq-foia@dla.mil, or faxed to 703-767-6091. Appeals are to be addressed to the Appellate Authority, Defense Logistics Agency, Suite 1644, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060-6221.

(b) *Adverse determination.* Adverse determinations include, but are not limited to decisions that: withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for waiver or reduction of fees; deny requesters challenge of fee estimates; denies a request for expedited processing; state that no records were located; do not provide a response within the statutory time limit; or what the requester believes is adverse in nature.

(c) *Appellate authority.* The General Counsel, DLA, who upon receipt of an administrative appeal, reviews the initial determination and may uphold, reverse or amend any adverse determination.

(d) *Consultation.* The process whereby a DoD Component receives a FOIA request for a record in which another DoD Component or Federal agency has a clear and substantial interest in the subject matter, the responsive record is sent to

another DoD Component or Federal agency to obtain recommendations on the releasability of the document and is returned to the originator for further action.

(e) *Defense Freedom of Information Policy Office (DFOIPO)*. The office responsible for the formulation and implementation of DoD policy guidance for FOIA. For information about DFOIPO refer to <http://www.dod.mil/pubs/foi/dfoipo/>.

(f) *Direct costs*. Expenditures made in searching for, reviewing, and duplicating documents in response to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay plus 16 percent of that rate to cover benefits) and the costs of operating duplicating machinery. Not included in direct costs are overhead expenses such as the cost of space, heating, or lighting the facility in which the records are stored.

(1) *Search*. This term includes all time spent looking, both manually and electronically, for records that are responsive to a FOIA request, such as:

(i) Searching for responsive emails or electronic documents located on individually-assigned computers or servers;

(ii) Time taken by a programmer to create a program to run a requested report from a database; or

(iii) Searching through hardcopy files to include records stored at a Federal Records Center. The term "search" also includes a page-by-page and line-by-line identification of a record to determine if it, or portions, are responsive to the request.

(2) *Duplication*. The process of making a copy of a document in response to a FOIA request. Copies can take the form of paper, microfiche, audiovisual or machine-readable documentation (e.g., magnetic tape or compact disc), among others. Personnel time spent performing tasks to enable a computer system to output information in a particular digital form or format for a requester is considered search time. Search time is calculated according to 32 CFR part 286, subpart F.

(3) *Review*. The examination of documents located in response to a FOIA request to determine if any of the statutory exemptions permit withholding. Review also includes the time taken to redact documents, preparing them for release and

reviewing submitter responses under Executive Order 12600. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions.

(g) *DLA component*. DLA Components consist of Headquarters Organizations, Primary Level Field Activities, Defense Business Services, Regional Commands, and other Organizational entities. A description of DLA Components can be found at www.dla.mil.

(h) *DLA FOIA Requester Service Center*. DLA Office's authorized to receive and process FOIA requests and where a FOIA requester can gain information concerning DLA's FOIA Program, the status of the person's FOIA request, or information about the agency's FOIA response. Refer to Appendix A of this part for locations of FOIA Requester Service Centers or for additional information refer to DLA's public web site at www.dla.mil/FOIA-Privacy.

(i) *Electronic records*. Records (including email) created, stored, and retrieved by electronic means.

(j) *Federal agency*. This term is defined at 5 U.S.C. 551(1) and 5 U.S.C. 552(f)(1).

(k) *FOIA officer*. DLA employee who is responsible for processing FOIA requests and is a point of contact for the FOIA program. The FOIA Officer grants or denies requests for fee waivers or expedited processing and makes requester category determinations.

(l) *FOIA Public Liaison*. The member of DLA's Headquarters FOIA staff to whom a FOIA requester can raise concerns about the service the requester received from a DLA FOIA Requester Service Center. The FOIA Public Liaison is available to assist in reducing delays, increasing transparency; increasing understanding of the status of requests and assists with resolving disputes.

(m) *FOIA request*. A written request for DLA records that reasonably describes the record(s) sought, enabling a DLA employee familiar with the files to locate the record(s) with a reasonable amount of effort; indicates a willingness to pay processing fees or requests a fee waiver; and includes a postal mailing address and

contact information. A willingness to pay fees is not required when, based upon the request, fees will not be assessed (e.g. an "other" requester requests a document that is certain to be less than 100 pages and will take less than two hours of search time). Written requests may be received by U.S. Postal Service or other commercial delivery means, by facsimile, or electronically. A FOIA request meeting these conditions, arriving at DLA's FOIA Requester Service Center in possession of the requested records, is considered perfected or properly received at which time the statutory time limit for response begins. In no case shall the statutory time limit for processing a perfected request begin later than ten business days after receipt by any of DLA's FOIA Request Service Centers.

(n) *Initial denial authority (IDA)*. By this regulation, the Director, DLA, delegates to Heads of DLA Components the authority to withhold information requested under the FOIA pursuant to one or more of the nine FOIA exemptions and to confirm that no records were located in response to a request. The designation of IDA may be further delegated by the Heads of DLA Components to their Deputies. DLA Components shall limit the number of IDAs appointed. In designating its IDAs, a DLA Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. IDA's may also deny a fee category claim by a requester, deny a request for expedited processing, deny a request for a waiver or reduction of fees, or review a fee estimate, although these determinations are usually made by the FOIA Officer.

(o) *Referral*. The process of transferring records found in response to a FOIA request to another DLA or DoD Component, or any Federal agency for review and direct response to the requester. This process is used when documents located during a search are found to have originated or there is a substantial interest in the record with another DLA or DoD Component, or Federal agency.

(p) *Requester category*. One of three categories that agencies place requesters in for the purpose of determining fees for search, review and duplication. The three categories are:

- (1) Commercial;
- (2) Non-commercial scientific or educational institutions or news media; and
- (3) All others.

§ 300.4 Policy.

DLA adopts and supplements the DoD FOIA Program policy and procedures codified at 32 CFR part 286, subpart A, General Provisions and subpart B, FOIA Reading Rooms and 32 CFR part 285.

(a) *General.* As a matter of policy, DLA shall make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court. The public has a right to information concerning the activities of its Government. DLA policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DLA record requested by a member of the public who follows rules established herein shall be withheld only when it is exempt from mandatory public disclosure under the FOIA.

(b) *Customer Service.* Executive Order 13392, Improving Agency disclosure of Information, December 14, 2005, requires agencies to emphasize a new citizen-centered approach to the FOIA that is results-oriented. Because FOIA requesters are seeking a service from the Federal Government, all DLA Components shall respond courteously and professionally to FOIA requesters. Additionally, the Components shall provide the public with information about agency records that are already publicly available, as well as information about the status of a person's FOIA request and an estimated date on which DLA's Component will complete the request. Refer to Appendix A of this part for DLA FOIA Requester Service Center contact information.

(1) To meet the requirements of Executive Order 13392, each FOIA Requester Service Center shall have an internet Web site that serves to educate the public on the FOIA process. At a minimum, each Web site shall have the address, telephone

number, facsimile number, and electronic mail address to which FOIA requests can be sent; a link to DoD's FOIA handbook; the name and contact information of DLA's FOIA Officer and Public Liaison; and information on how a requester can obtain the status of a request. Additionally, each FOIA Requester Service Center Web site will have links to DLA's Headquarters FOIA/Privacy Web site reading room.

(2) [Reserved]

(c) *Creating a Record.* (1) There is no obligation to create nor compile a record to satisfy an FOIA request. A DLA activity, however, may compile a new record when doing so would result in a more useful response to the requester or be less burdensome to the activity provided the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with part 286, subpart F, of this title.

(2) A record must exist and be in the possession and control of DLA at the time the search begins to be considered subject to this part and the FOIA.

(3) When processing FOIA requests for electronic data, if DLA's Component has the capability to respond to the request, and the effort is reasonable and would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. For example: Processing a request that would cause a significant interference with the operation of DLA's Component's automated system or require a significant amount of programming effort.

(d) *Consultations and Referrals.* The rules published in part 32 CFR part 286, subpart A, §§286.4(i) and 286.22(e), Policy, apply to this rule.

(e) *Forms.* This part authorizes the use of forms developed by DoD and DLA for the express use of the FOIA Program. Refer to www.dla.mil for a list of all forms prescribed by this part.

Subpart B--Exemptions

§ 300.5 General.

Refer to the DoD FOIA Program regulations codified at 32 CFR part 286, subpart C, Exemptions.

Subpart C--FOIA Request Processing

§ 300.6 General.

DLA adopts and supplements the DoD FOIA Program regulations codified at 32 CFR part 286, subpart E, Release and Processing Procedures.

(a) *Requests from the public.* (1) Individuals seeking DLA information should address their FOIA requests to one of the FOIA Requester Service Center addresses listed in Appendix A of this part.

(2) When personally identifying information in a record is requested by the subject of the record or the subject's representative, and the information is contained within a Privacy Act system of records, the request will be processed under both the FOIA and the Privacy Act. Due to the dual nature of the processing, the FOIA time limits will be used. DLA Components must comply with the provisions of 32 CFR 310.17(c) to confirm the identity of the requester.

(b) [Reserved]

§ 300.7 FOIA request processing procedures.

(a) *Receipt and Control.* Requests received after 5:00 p.m. EST will be considered received the following business day. Upon receipt of a request for records, the FOIA Officer must:

(1) Open a file in DLA's specified control system designed to ensure accountability and compliance with the FOIA. The control system will include the data elements needed to compile the statistics required in the annual Department of Justice FOIA report or other reports required by another authority. Each request shall automatically be assigned a unique tracking number.

(2) Screen the request for defects in the description, the requester category, the fee declaration, and full postal address. The FOIA Officer will notify the requester of any such defects and provide assistance to help remedy the defects.

The FOIA Officer will place the request on-hold until the request is perfected. When a DLA FOIA Requester Service Center receives a request for records that clearly belong to an agency outside of DoD, the requester shall be told these are not agency records and, if possible, provide the name of the agency that may hold the records. No referral of the request is made outside of DoD.

(3) Once a request is perfected, DLA may make one request for additional information unrelated to fees and toll the 20 working-day period while awaiting the information. Tolling the 20 working-day period is not limited for fee related issues.

(4) DLA will provide the requester with the FOIA tracking number and the track in which the FOIA was placed (see § 300.7(b)). Each DLA FOIA Requester Service Center has a telephone line to inform the requester of the status of their request (see Appendix A of this part).

(5) DLA uses the date-of-search cut-off (this cut-off is the day before the search begins) to ensure that as many records as possible will be captured by the agency's search. A FOIA request may not be on-going or open-ended in nature. DLA Components are responsible for providing records in possession and control of DLA at the time the search for records begins. DLA Components are not required to expend DLA funds to establish data links that provide real-time or near-real-time data to a FOIA requester.

(b) *Multi-track Processing.* DLA components shall process requests with all due diligence according to their order of receipt. A DLA component uses three processing tracks by distinguishing between simple, complex, and expedited requests based on the need to search and collect from multiple directorates/locations; the need to search for, collect and appropriately examine a voluminous amount of records; and/or the need to consult with other DLA or DoD Components having a substantial interest in the releasability of the record. Requesters are notified in the acknowledgement letter of the track the request is placed in. Requests placed in the simple track will typically be completed within the statutory time limit for responding to requests. Requests placed in the complex track may be narrowed or

modified in order to qualify for faster processing within the specified limits of DLA's simple track. Expedited processing must be requested and a requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant expedited processing and shall notify the requester of the decision. If a request for expedited processing is granted, the request shall be given priority and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously. Refer to the DoD FOIA Handbook for information on multi-track processing (<http://www.dod.mil/pubs/foi/dfoipo/foiaHandbook.html#long>).

(c) *Payments in Arrears.* Where a requester has previously failed to pay a fee charged within 30 calendar days, DLA may require the requester to pay the full amount owed, plus any applicable interest, before beginning to process a new or pending request from the requester (see OMB Fee Guidelines (http://www.dod.gov/pubs/foi/dfoipo/docs/OMBGuidelines_FOIAFees.pdf)). Interest will be at the rate prescribed in 31 U.S.C. 3717, and confirmed with the servicing Financial Operations Office.

(d) *Misdirected Requests.* A misdirected request is a request received by DLA's FOIA Office for records maintained by another DLA or DoD Component. Misdirected requests shall be forwarded promptly, but in any event not later than ten days after the request is first received by any component of the agency that is designated in this regulation to receive requests (see Appendix A of this part). The receiving FOIA Office shall route the request to the proper DLA or DoD FOIA Office and the response time will commence on the date that the request is received by the proper FOIA Office, but not later than ten working days after the request is first received by any DLA or DoD FOIA Office. Misdirected FOIA requests are not forwarded outside of DoD.

§ 300.8 Initial determinations.

(a) The initial determination is whether to make a record available in response to a FOIA request. A full release may be made by an official knowledgeable of the record, with authority to determine that no harm would come from release. Adverse determinations (refer to § 300.3(b)) must be made by the designated Initial Denial Authority (IDA) except for determinations made regarding the requester category and requests for fee waivers or expedited processing. By this regulation, the Director, DLA, delegates to Heads of DLA Components (see § 300.3(h)) the designation of IDA. The designation of IDA may be further delegated by the Heads of DLA Components to their Deputies. The IDA shall review all recommendations for withholding information and whether the criteria for withholding under one or more FOIA exemptions are met. DLA has IDAs throughout the agency; and each IDA will make the determination for records within their area of functional responsibility. If a request involves records from more than one functional area, consultation will be done with all responsible IDAs but will be signed by the IDA assigned the primary responsibility for processing the request.

(b) The FOIA requires that any reasonably segregable portion of a record must be released after appropriate application of the Act's nine exemptions. Segregation is not reasonable when it would produce an essentially meaningless set of words and phrases, or even sentences which taken separately or together have minimal or no information content.

(c) If information is withheld in whole or part, DLA will provide in a response letter the exemption under which the withholding is made, a description of the type of information redacted, the name and title or position of the IDA and the administrative appeal rights. When information is withheld in full, DLA will provide an estimate of the volume withheld. This estimate should be in number of pages or in some other reasonable form of estimation. When information is withheld in part, DLA will show the redacted amount of information and the exemption under which the redaction is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption under which the redaction is made.

§ 300.9 Appeals.

When an IDA makes an adverse determination (see § 300.3(b)) the requester may appeal that decision in writing to the designated appellate authority (see § 300.3(a)). An appeal must be made in writing to DLA's Appellate Authority and must be postmarked within the appeal time limits of the DoD FOIA Program Regulation at 32 CFR 286.24. The appeal should be accompanied by copies of the initial request and the denial letter.

§ 300.10 Judicial actions.

DLA adopts the DoD FOIA Program regulations codified at 32 CFR part 286, subpart E, Release and Processing Procedures.

Subpart D--Fees and Fee Waivers

§ 300.11 General.

DLA adopts the rules and rates published in 32 CFR part 286, subpart F, Fee Schedule. In addition, DLA considers fees charged by a Federal Records Center to retrieve and re-file records a part of the direct costs charged to requesters.

APPENDIX A TO PART 300--GAINING ACCESS TO DLA RECORDS

(a) *General.* (1) The Defense Logistics Agency, established pursuant to authority vested in the Secretary of Defense, is an agency of DoD under the direction, authority, and control of the Assistant Secretary of Defense for Logistics and Materiel Readiness, and is subject to DoD policies, directives, and instructions.

(2) DLA is comprised of several Components and each DLA Component is responsible for maintaining its own records; therefore, FOIA requests should be addressed to the FOIA Requester Service Center that has custody of the record sought. (See paragraph (c) of this appendix.) DLA FOIA Officers will assist requesters in determining the correct DLA Requester Service Center to address requests. (See paragraph (c) of this appendix and DLA's public Web site at www.dla.mil.)

(3) On DLA's public Web site is an index to assist in locating DLA records by category, organization, keyword search, or by contract prefix. The index is titled

"Index of Information at DLA FOIA Service Centers" at www.dla.mil/FOIA-Privacy/servindex/pages/category.aspx.

(b) *Requester Requirements.* (1) Requesters are responsible for submitting a perfected request as defined in § 300.3(m), FOIA Request.

(2) *Addressing Requests.* Address requests to DLA's FOIA Requester Service Center most likely to hold the records (see paragraph (c) of this appendix for the contact information of DLA FOIA Requester Service Centers designated to receive FOIA requests). If DLA's FOIA Requester Service Center is undeterminable, address requests to DLA Headquarters FOIA Requester Service Center for proper routing.

(3) *Availability of DLA Publications.* Many unrestricted DLA regulations, manuals, and handbooks are available online. Visit DLA's FOIA/Privacy Web site for more information at <http://www.dla.mil/foia-privacy/>.

(c) *Locations of DLA FOIA Requester Service Centers.* Refer to the FOIA/Privacy Web page at <http://www.dla.mil/FOIA-Privacy/pages/foiapocs.aspx> for current points of contact at each of the DLA's FOIA Requester Service Centers.

(1) Defense Logistics Agency Headquarters, ATTN: DGA, 8725 John J. Kingman Rd., Ste 1644, Fort Belvoir, VA 22060-6221, Fax: 703-767-6091, E-mail: hq-foia@dla.mil--Responsible for broad functional areas, such as Office of the Director, General Counsel, Small Business Programs, DLA Office of Inspector General, Legislative Affairs, Equal Employment Opportunity Office, Installation Support, Human Resources, Logistics Operations, Information Operations, Acquisition, and Financial Operations. This FOIA Requester Service Center also processes FOIA requests for the following locations:

(i) DLA Transaction Service, Wright-Patterson AFB, Ohio--
Editing/routing of logistics transactions, network interoperability and eBusiness services.

(ii) DLA Strategic Materials, Fort Belvoir, Va.--Manages the strategic and critical raw material stockpile that supports national defense needs.

(iii) DLA Europe & Africa, Kaiserslautern, Germany--Focal point for U.S. European Command's and U.S. Africa Command's theater of operations.

(iv) DLA Pacific, Camp Smith, Hawaii--Focal point for U.S. Pacific Command's theater of operations.

(v) DLA Central, MacDill AFB, Fla.--Focal point for U.S. Central Command's theater of operations.

(2) DLA Energy, 8725 John J. Kingman Rd., Ste 3729, Fort Belvoir, VA 22060-6222, Fax: 703-767-5022, E-mail: dlaenergy.efoia@dla.mil--Fuel, energy support and services, and bulk petroleum.

(3) DLA Land and Maritime, ATTN: GC, 3990 E. Broad Street, Columbus, OH 43218-3990, Fax: 614-692-4385, E-mail: dscc.efoia@dla.mil--Maritime and land weapons system supply chains.

(4) DLA Aviation, 8000 Jefferson Davis Highway, Richmond, VA 23297-5000, Fax: 804-279-4137, E-mail: foia.dscr@dla.mil--Aviation supply chain.

(5) DLA Troop Support, 700 Robbins Avenue, Bldg 36, Philadelphia, PA 19111-5096, Fax: 215-737-2151, E-mail: DLATroopSupportFOIAerequest@dla.mil--Subsistence, clothing, and textiles, medical, and construction and equipment supply chains.

(6) DLA Distribution, ATTN: DDC-GC, Mission Drive, Bldg 81, New Cumberland, PA 17070-5000, Fax: 717-770-5685, E-mail: ddc-efoia@dla.mil--Worldwide network of 25 distribution depots and nine map support offices.

(7) DLA Disposition Services and DLA Logistics Information Service, 74 Washington Avenue North, Battle Creek, MI 49017-3084, Fax: 269-961-4534, E-mail: drmsefoia@dla.mil.

(i) Disposition Services: Reutilization, transfer, demilitarization, and environmental disposal and reuse.

(ii) Logistics Information Service: Manages a wide range of logistics information and identification systems.

(8) DLA Document Services, 5450 Carlisle Pike, Bldg 9, P.O. Box 2020,
Mechanicsburg, PA 17055-0788, Fax: 717-605-3999, E-mail:
foia.docsvcs@dla.mil--Automated document production, printing services,
digital conversion and document storage.

Dated: May 21, 2014.

Aaron Siegel,
Alternate OSD Federal Register Liaison Officer,
Department of Defense.

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