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## Message from the Chief FOIA Officer

As the DoD Chief FOIA Officer, I am happy to take the time to extend my appreciation for your hard work in implementing your FOIA Programs over the past year. We recently submitted, to the Department of Justice, our [DoD FOIA Annual Report for Fiscal Year \(FY\) 2011](#) and our [DoD Chief FOIA Officer Report for 2012](#). Although we missed our backlog reduction goal by 5%, the sum of our efforts is

still quite impressive.

I want to congratulate the 18 DoD Components who did meet the 10% backlog reduction goal, or that have managed to maintain no backlog at all. They were as follows: AF, ASBCA, ARMY, CENTCOM, DCAA, DECA, DFAS, DIA, DLA, DoDEA, DTIC, DTRA, EUCOM, JFCOM, NGA, OSD/JS, STRATCOM and TRICARE (TMA). The DoD Components



with the most impressive backlog reductions were DLA, which decreased by 69% (from 62 requests to 19), the NGA backlog reduced by 38% (from

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## Two New Exemption 3 Statutes: 10 USC § 130e & 10 USC § 2254a

On December 31, 2011, the President signed the National Defense Authorization Act (NDAA) for FY 2012 into law. The NDAA established two new Exemption 3 statutes; **10**

**U.S.C. § 130e**, to protect DoD critical infrastructure security information, and **10 U.S.C. § 2254a**, to protect Military Flight Operations Quality Assurance information. In the NDAA, Congress

granted authority to withhold this information only to the Secretary of Defense and this authority was delegated to the Director of Administration and Management (Mr. Michael

# Message from the Chief FOIA Officer

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217 requests to 135; and the DIA backlog reduced by 29% (from 2259 requests to 1605).

It is obvious that you are taking to heart the initiatives of OPEN Government by extending your efforts toward proactive disclosures, maintaining focus on your oldest FOIA requests and improving the response time on your requests. TRICARE Management Agency (TMA) and DLA's efforts to reduce the necessity of FOIA requests for contracts at their agencies are groundbreaking to say the least, and many of you are following the lead of OSD/JS in

posting every FOIA release that doesn't have privacy implications. Going the extra mile to do more than what is required is exactly the effort that demonstrates our commitment to the President's Open Government goals. Couple these efforts with the fact that DoD closed all of its ten oldest FOIA requests; increased by 1400, the number of responses released in full; and processed 84% of "complex" FOIA requests within 100 days of receipt, and I would say we certainly have a great deal of which to be proud.

Of course, there is still work to be done and I trust that those who have achieved

these astounding accomplishments will keep up the good work and those who fell short in any area will strive for greater success in time for next year's reporting. As always, we are here to assist you if you need us and trust that you will not hesitate to reach out to us whenever necessary.

Again, I appreciate your hard work and applaud your accomplishments.

*Michael L. Rhodes*



## Two New Exemption 3 Statutes:

### 10 USC § 130e & 10 USC § 2254a

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Rhodes, the DoD Chief FOIA Officer). Meanwhile, if you have a need to deny information protected by either of these two

statutes, please contact the Defense Freedom of Information Policy Office (DFOIPO) at [dfoipo@whs.mil](mailto:dfoipo@whs.mil),

*James P. Hogan*



## Mid Year Resolutions

- Continue to look for opportunities to make proactive releases. This reduces the need for requesters to make FOIA requests.
- Continue to make discretionary releases of information that could be exempt from disclosure pursuant to a FOIA exemption, but no real harm exists with disclosure. Let the requester know in the response letter that you are making the discretionary release and document the release to report it as part of your Chief FOIA Officer Report input.
- Continue to reduce backlogs of initial requests and appeals.
- Continue to work your Ten Oldest initial requests and consultations. Do not let the ten you reported in FY11 be the same ten you report in FY12.
- Continue to let requesters know to whom you are sending referrals, consultations and coordinations unless that information is sensitive. See new guidance at <http://www.justice.gov/oip/foiapost/2011foiapost42.html>
- Continue to remember your customers.
- Continue to be professional and responsive.

# DoD FOIA & Privacy Act Training

The Defense Freedom of Information Policy Office (DFOIPO) has stepped up its efforts in offering FOIA & Privacy Act training to the DoD FOIA and Privacy Act Community. To learn the dates of the training, please consult [DFOIPO's training webpage](#). Since the beginning of FY12, DFOIPO has offered two three-day FOIA & Privacy Training Workshops, one hosted by the U.S. Northern Command (NORTHCOM) in Colorado Springs, Colorado, and another hosted by the Southwest Regional Maintenance Center (SWRMC) in San Diego, California. (See page 4 of this newsletter

for an article on the training workshop in San Diego.) When determining the location of the training workshops, DFOIPO considers travel and per diem costs, availability of training facilities; convenience for attendees, and training needs articulated throughout the community. Both workshops were successes, with close to 200 attendees. DFOIPO is planning to offer similar workshops in Padova, Italy in June and Knoxville, Tennessee in late October.

In addition to the three-day workshops, DFOIPO has started to offer online training via Defense Connect Online (DCO). In

early 2012 DFOIPO hosted a day long FOIA 101 training that was offered both in person, in Alexandria, Virginia, and online via DCO. Dozens of FOIA professionals attended the training in person and over one hundred attended online. DFOIPO plans to offer further online training via DCO. So, look out for Technology Workshops on document referrals and online redactions. Such online training options will help meet training needs of individuals who may not be able attend in person.

Also, DFOIPO partnered with the Director, DoD Alternative Dispute

Resolution and Director, Army Alternative Dispute Resolution offices to pilot its Conflict Resolution and Customer Relations course in January and March 2012. A hearty thank you goes out to the 45+ individuals from the DoD community who took part in the pilot and provided valuable feedback to assist in developing a course that will be taught to the DoD FOIA community at-large. The Conflict Resolution/Customer Relations course is geared towards helping FOIA & Privacy Act

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Rita LaPrince (DFOIPO—Host), Grace Young (SWRMC—Host) and Paul Jacobsmeyer (OSD/JS—Speaker) welcome San Diego training attendees.



# DoD FOIA & Privacy Act Training

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professionals to improve their communication with requesters, subject matter experts, submitters, and document owners. It also provides needed skills to better handle conflicts and disputes.

FOIA & Privacy Act training is key to ensuring a knowledgeable FOIA/PA community, equipped with the

information and tools necessary to handle every FOIA & Privacy Act request received. The establishment by the U.S. Office of Personnel Management (OPM) of a [new Government Information Series for FOIA & Privacy Act](#) professionals makes it more important than ever for these individuals to be trained. To this end DFOIPO is sponsoring the DoD FOIA Certification

Working Group which is moving forward to create a DoD-wide FOIA certification program.



## San Diego DoD FOIA/PA Training

Southwest Regional Maintenance Center Office of Counsel hosted the DoD Freedom of Information Act/Privacy Act (FOIA/PA) Training Workshop in San Diego. The workshop was held on April 10-12 at the Holiday Inn Bayside San Diego.

The workshop provided an opportunity to learn and refresh participants' understanding of FOIA/PA concepts and practices. It also recognized the importance of continued training and networking with other FOIA/PA officers and attorneys in the DoD community. The workshop featured distinguished speakers and was attended by nearly 200

participants from various DoD components and agencies across the U.S. and abroad. Workshop presentations include Overview of the FOIA; Exemption 1; Exemption 2, post-Milner; Exemption 4 and Contract-Related Information; Exemptions 5, 6, and 7; FOIA Litigation; and FOIA Administrative Process, including the use of technology. There was also Privacy Act training from the Defense Privacy and Civil Liberties Office.

According to Mr. Will Kammer, Chief of DoD FOIA Division, this workshop is the second of the many DoD FOIA/PA Training Workshops to come. In these budget conscious times, conducting more "in house" DoD level

training workshops is a way to facilitate more budget friendly training for our access professionals. With the new FOIA/PA Officer job classification series and the move toward establishing a DoD FOIA Certification Program, workshops such as this are fast becoming a necessity.

This article is provided courtesy of the Southwest Regional Maintenance Center Office of Counsel



### Upcoming DoD FOIA Training courses:

**DoD FOIA/PA Training Workshop** in *Padova, Italy*: June 5th-7th 2012. Please see the [Agenda](#) for the material to be discussed.

**DoD FOIA/PA Training Workshop** in *Knoxville, Tennessee*: October 30th-November 1st 2012. Please see the [Knoxville Tennessee training venue website](#) for more information on the training location.

### Recent DoD FOIA Training courses:

**DoD-wide FOIA/PA Training Workshop** in *San Diego, CA*: April 10th-12th 2012. Please see the [Agenda](#) for the material discussed.

**FOIA/PA Training hosted by NORTHCOM** in *Colorado Springs, CO*: October 4th-6th 2011. Please see the [Agenda](#) for the material discussed.

**Conflict Resolution/Customer Relations Training** at the *Pentagon and the Mark Center in Alexandria VA*: January 17, January 19th and March 1st 2012. This training honed in on those skills which help FOIA professionals as they relate and interact daily with FOIA customers (Requesters, Document Owners, Subject Matter Experts, etc.).

**FOIA 101 Training**: at the *Mark Center in Alexandria VA* on February 15th 2012. This was a day-long training presented in person and via a secure online connection using Defense Connect Online (DCO) to reach DoD FOIA professionals throughout the country and abroad

# Special Report: FOIA & Privacy Acts: Worlds that Intertwine



At the Department of Defense and throughout the federal government, the Freedom of Information Act (FOIA) and Privacy Act worlds are deeply intertwined. In fact, it is not uncommon for employees to be designated by a single moniker, “FOIA & Privacy Analyst.” But even if your position is designated as strictly “FOIA,” there is no way you are performing your duties without having to give consideration to Privacy. And if your position is designated as strictly “Privacy,” there is no way you are performing your duties without having to give consideration to FOIA.

Cindy Allard, Chief of the Office of the Secretary Defense/Joint Staff (OSD/JS) Privacy Office raises awareness about the Privacy Act of 1974 and the OSD/JS Privacy Programs by teaching both the various aspects of the Privacy Program and the FOIA-Privacy Interface at workshops, conferences, and at training sessions hosted by specific DoD Components. Ms. Allard has been at her current position as the Chief since 2007; she has worked in the DoD on FOIA & Pri-

vacancy for 18 years.

According to Ms. Allard, analysts dealing primarily with FOIA, as well as analysts dealing primarily with Privacy Act requests, should be cross-trained to be aware of both Acts. If they are cross-trained, then they will learn how to deal with Personally Identifiable Information (PII); be aware of how to handle both FOIA and Privacy Act requests; as well as understand how to apply the FOIA-Privacy Interface.

Whether you are a FOIA & Privacy Analyst, FOIA Analyst or Privacy Analyst, below is a list of things to consider while performing your duties daily:

**Personally Identifiable Information (PII)** - FOIA requests typically contain the requester’s PII, such as their mailing address, personal email address, home and/or cell phone number, etc. FOIA Offices should follow the PII storage and handling rules in place within their Components. Also, if while processing a request, you find PII within a document, that informa-

tion needs to be protected under FOIA exemption (b)(6) and/or FOIA exemption (b)(7)(c) if the document in question is a law enforcement record.

**Privacy Act Access Requests** - Some requests designated as FOIA requests are actually Privacy Act access requests.

When analysts who deal primarily with FOIA matters receive Privacy Access requests, they need to process them according to their Component guidelines and practices. In

some instances, if there is a Component Privacy office that responds to access requests as well, the request should be transferred to that office.

**FOIA/Privacy Interface.** Interface exists when you have a request for first party access (a requester seeking access to his/her own records) and the requested record is contained in an exempt System of Records. This means that there is some aspect of the record which

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**Privacy Act Data Cover Sheet**

To be used on all documents containing personal information

**DOCUMENTS ENCLOSED ARE SUBJECT TO THE PRIVACY ACT OF 1974**

Contents shall not be disclosed, discussed, or shared with individuals unless they have a direct need-to-know in the performance of their official duties. Deliver this/these document(s) directly to the intended recipient. **DO NOT** drop off with a third-party.

The enclosed document(s) may contain personal or privileged information and should be treated as "For Official Use Only." Unauthorized disclosure of this information may result in **CIVIL** and **CRIMINAL** penalties. If you are not the intended recipient or believe that you have received this document(s) in error, do not copy, disseminate or otherwise use the information and contact the owner/creator or your Privacy Act officer regarding the document(s).

**Privacy Act Data Cover Sheet**

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# Special Report: FOIA & Privacy Acts: Worlds that Intertwine

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may be exempt from release to the first party requester. The only way you are able to determine this is by reviewing the published System of Records Notices (SORNs), as the SORN is where you find the exemption(s) for withholding the particular information. Once you determine you have information that can be defined as exempt information, you have to put on your FOIA hat, process the information under FOIA, and determine whether or not a FOIA exemption applies for withholding the information. If no FOIA exemption applies, then the information should be released under the FOIA.

If a FOIA exemption does apply, you must protect the information under both Acts.

## FOIA Request with Privacy Considerations.

When a requester is seeking information about another individual, there is no FOIA/Privacy Act interface. Instead, you have a pure FOIA request, with privacy considerations. In this instance, if it is necessary to protect the information from disclosure, you would apply FOIA exemption (b)(6) and exemption (b)(7)(c) if you are dealing with law enforcement records. In both instances you would be protecting the individual from an unwarranted

invasion of personal privacy.

The Privacy Act was established in 1974, during the Watergate Era, as a way to increase the transparency of the federal government. It was created to give U.S. citizens, residents and lawfully admitted aliens access to records that the government holds about them. It also serves as an opportunity for individuals to petition for corrections to their records. In its spirit of openness, it complements the Freedom of Information Act of 1966 which also aimed to give the public greater access to the records the federal government

holds. Now, as the Office of Personnel Management has established a Government Information Series for FOIA and Privacy professionals, it is more important than ever for analysts to understand the FOIA and the Privacy Act and their interrelation.



## Organization

### DOD/WHS/ESD/DFOIPO

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DoD FOIA Newsletter is envisioned as a quarterly newspaper.

Defense Freedom of Information Policy Office (DFOIPO) was founded in 2006. It was created as a result of the issuance of the FOIA Executive Order 13392, which created the position of the Chief FOIA Officer, which added importance to the FOIA program. DFOIPO carries out the guidance on behalf the Director of Administration Management and facilitates the efficiency of the FOIA program.

For more information regarding DFOIPO and its role in DoD feel free to contact us at