



# UNITED STATES FORCES KOREA INSTRUCTION

FKSJ

DISTRIBUTION: A, B, C

USFKI 5713.01

30 September 2022

## UNITED STATES FORCES KOREA (USFK) FREEDOM OF INFORMATION ACT PROGRAM

References: See Enclosure A.

1. Purpose. To establish procedures for handling requests for records under the provisions of the Freedom of Information Act (FOIA). This Instruction establishes the United States Forces Korea (USFK) FOIA Program.
2. Superseded/Cancellation. Not Applicable.
3. Applicability. This instruction applies to all personnel assigned to USFK.
4. Policy. Records requested under the FOIA must be reviewed and processed in accordance with references a through h and the procedures established herein. All records responsive to FOIA requests must be released in accordance with the timeline unless exempted under the exemptions outlined in reference e, section 5.2.
5. Applying the FOIA Exemptions. FOIA exemptions most frequently used in USFK records include the following:
  - a. Exemption 1. Specifically authorized under the criteria established by Executive Order 13526 (Reference c) and implemented by DoD Regulation 5400.11-R (Reference d) to protect certain sensitive records in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.
  - b. Exemption 3. Specifically exempted from disclosure by another statute (other than section 552b of Title 5), if: (1) The statute requires that the information be withheld from the public in such a manner as to leave no discretion on the issue; or (2) The statute establishes particular criteria for withholding or refers to particular types of matters to be withheld (e.g., 10 U.S.C. § 130b which authorizes the withholding of names, ranks, duty addresses, official titles, and pay information of DoD personnel in overseas, sensitive, or routinely deployable units; 10 U.S.C. § 130c which authorizes the withholding of unclassified sensitive information of a foreign government or international organizations; 10 U.S.C. § 2254a which authorizes the withholding of military flight operations quality assurance (MFOQA) system data files).

c. Exemption 5. Inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested (e.g., Staff papers and internal reports that contain staff advice, opinions, or recommendations; Attorney-Client Privilege; Attorney Work Product Privilege; Safety Investigation Privilege IAW DoDI 6055.07).

d. Exemption 6. Personnel files and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

e. Remaining exemption types (infrequently used) at USFK:

(1) Exemption 2. Information related solely to the internal personnel rules and practices of an agency.

(2) Exemption 4. Trade secrets or commercial or financial information that is confidential or privileged.

(3) Exemption 7. Information compiled for law enforcement purposes.

(4) Exemption 8. Information that concerns the supervision of financial institutions.

(5) Exemption 9. Geological and geophysical information and data on wells.

## 6. Responsibilities.

a. Deputy Chief of Staff (FKDS) and Secretary Joint Staff (FKSJ). The FKDS serves as primary Initial Denial Authority (IDA) and the FKSJ as the alternate IDA for partially or fully withheld documents responsive to FOIA requests.

b. Judge Advocate (FKJA).

(1) Reviews final USFK FOIA responsive memorandum(s) to the FOIA requester(s).

(2) Reviews releasable and non-releasable responsive documents and provides a legal review memorandum to the FOIA Officer prior to release or non-release of FOIA responsive documents.

(3) On partial or full denial of responsive documents, provides legal review memorandum to the IDA (FKDS) for approval.

c. Command FOIA Officer.

- (1) Processes FOIA requests of USFK-originated documents or records.
- (2) Obtains FOIA training and other FOIA-related courses to maintain proficiency (based on availability of funding).
- (3) Manages and provides oversight and direction for the USFK FOIA Program.
- (4) Serves as the USFK point of contact for all FOIA matters.
- (5) Coordinates with USFK Public Affairs webmaster to establish the USFK FOIA public website.
- (6) Develops a USFK FOIA request form upload to the USFK FOIA Public Website.
- (7) Tasks USFK directorates/special staffs primarily via the Enterprise Task Management System Solution (ETMS2) or encrypted email to search directorates/special staff records for documents responsive to FOIA requests.
- (8) Identifies directorates/special staffs potentially holding documents responsive to FOIA requests.
- (9) Conducts an initial review of all responsive documents and recommends or determines a final disposition in accordance with references b through f.
- (10) Prepares memorandum, reflecting a final disposition and coordinates the package with appropriate directorates/special staffs and other offices.
- (11) Authenticates and releases final USFK disposition memorandums.
- (12) Provides fee estimates.
- (13) Provides appeal rights guidance to requestors concerning adequacy of search or fee estimates.
- (14) Files finalized FOIA requests in the official USFK records repository.

d. Principal Heads of Directorates/Special Staffs

- (1) Search records to identify documents responsive to FOIA requests when tasked by the USFK FOIA Office.
- (2) Forward copies of all FOIA responsive documents to the USFK FOIA Office for review.

30 September 2022

(3) Review and provide recommended approval of all proposed final disposition packages.

(4) Electronically transmit FOIA requests directly received from sources (other than the USFK FOIA Office) and send via encrypted email to the USFK FOIA Office for official processing.

7. Procedures. The USFK FOIA Office will process FOIA requests as follows.

a. Requests that include documents for review.

(1) Conduct a line-by-line review of the documents or information provided to determine if release is appropriate.

(2) Identify by brackets, [ ] any portions exempt from release.

(3) Input request into the USINDOPACOM tracking spreadsheet, and submit reports as required to the USINDOPACOM FOIA Office.

(4) Obtain formal review and approval of the package from responsible USFK directorates, special staffs, and other offices as appropriate via ETMS2 or encrypted email. FOIA requests for information considered to be routine, redundant, and/or non-sensitive will not be coordinated with directorates/special staffs; however, the USFK FOIA Office will inform responsible directorates/special staffs of disposition recommendations on such packages.

(5) Coordinate FOIA packages with the FKJA on all requests of USFK-originated information requested under the FOIA.

b. Requests that require a document search. The USFK FOIA Office will:

(1) Conduct a search of the USFK records in their custody to identify responsive documents or information.

(2) Task, when appropriate, the cognizant USFK directorates or special staffs to search for, identify, and forward responsive documents or information to USFK FOIA Office for review.

(3) Process responsive documents in accordance with the procedures in subparagraph 7.a., above.

c. When necessary, process and collect fees. Fee calculation is accomplished by using DD Form 2086, Record of Freedom of Information (FOI) Processing Cost.


d. Requests made under the Privacy Act. The USFK FOIA Office will process in accordance with references h.

8. Summary of Changes. Not applicable.

9. Records Management. Records must be dispositioned in accordance with the CJCSM 5760.01A Volume II, Joint Staff and Combatant Commands Records Management Manual-Disposition Schedule.

10. Releasability. This manual is approved for public release, distribution is unlimited. DOD components other federal agencies, and the public may obtain copies of this manual through the internet from the USFK home page <https://www.usfk.mil/Resources/Publications/> or on NIPRNet at [https://pacom.deps.mil/cmds/usfk/USFK\\_Publications/Pages/Home.aspx](https://pacom.deps.mil/cmds/usfk/USFK_Publications/Pages/Home.aspx).

11. Effective Date. This instruction is effective upon receipt.

  
BRAD SULLIVAN  
Major General, USAF  
Chief of Staff

Enclosure:  
A – References

(INTENTIONALLY BLANK)

ENCLOSURE A  
REFERENCES

- a. 5 U.S.C. § 552, The Freedom of Information Act.
- b. 32 C.F.R. § 286, DoD Freedom of Information Act (FOIA) Program.
- c. Executive Order 13526, Classified National Security Information.
- d. DoD Regulation 5400.11-R, Department of Defense Privacy Program.
- e. DoD Manual 5200.01, Volume 1, DoD Information Security Program: Overview, Classification, and Declassification.
- f. DoD Manual 5200.01, Volume 2, DoD Information Security Program: Marking of Information.
- g. DoD Manual 5200.01, Volume 3, DoD Information Security Program: Protection of Classified Information.
- h. DoD Manual 5400.07, DoD Freedom of Information Act (FOIA) Program

(INTENTIONALLY BLANK)