



## UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

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### SUBJECT: Freedom of Information Act (FOIA)

October 26, 2020

#### Instruction 5402

(VPE)

#### ABSTRACT

This Instruction implements DoD requirements for Freedom of Information requests by providing policies and responsibilities with respect to the Freedom of Information Act (FOIA), release of information, and initial denial authority.

**A. Reissuance and Purpose.** This Instruction reissues Uniformed Services University of the Health Sciences (USU) Instruction 5402 (*Reference (a)*) and implements DoD Directive 5400.7 (*Reference (b)*), Administrative Instruction 108 (*Reference (c)*), and DoD Manual 5400.07 (*Reference (d)*) in their entirety, and assigns responsibility for the effective administration of the FOIA Program.

**B. References.** *See Enclosure 1.*

**C. Applicability.** The provisions of this Instruction apply to all personnel assigned to USU and the Armed Forces Radiobiology Research Institute (AFRRI).

**D. Policies.**

1. It is USU policy that:

a. The public has a right to information concerning the activities of its Government. Activities will be conducted in an open manner and provide the public with a maximum amount of accurate and timely information, always consistent with the legitimate public and private interests of the American people.

b. USU personnel are expected to comply with the provisions of FOIA in both letter and in spirit.

c. USU will conduct its activities in an open manner consistent with the need for security and adherence to other requirements of laws and regulations.

d. Members of the public should submit FOIA requests for USU records to the Office of the Secretary of Defense and Joint Staff (OSD/JS) Requester Service Center <https://www.esd.whs.mil/FOID/Submit-Request>. When a request is received directly from a requester (out-of-channel request) that request will be forwarded to the Office of Freedom of Information (OFOI) for entry into the FOIA case tracking system and assignment of a FOIA tracking number. OFOI will forward the request to USU Vice President for External Affairs (VPE), for appropriate action and response back to OFOI. OFOI will provide the final written response to requesters.

e. When a member of the public complies with the procedures set forth in DoD AI 108 for obtaining USU records, the request will receive prompt attention; a reply to a FOIA tasking from the Chief, Office of Freedom of Information (OFOI), Washington Headquarters Services (WHS), will be dispatched within 20 working days of the tasking, unless a delay is authorized by the appropriate authority.

**E. Definitions.** *See Enclosure 2.*

**F. Responsibilities.**

1. The Vice President for External Affairs (VPE) shall:

a. Designate a USU FOIA Officer who will coordinate all FOIA requests directed to USU with the Chief, OFOI.

b. Assign responsible USU activities to review agency records within their possession to see if such records are responsive to the FOIA request.

c. Coordinate with USU Office of General Counsel (OGC) on the range of recommendations available to the VPE, regarding whether requested agency records may be released and obtain a legal opinion on whether the requested records are specifically exempt from disclosure.

d. As delegated by the President, USU, serve as the Initial Denial Authority (IDA) for all matters arising out of review of University FOIA requests. The VPE has the authority to withhold records requested under FOIA, if they belong to one or more of the nine categories of records exempt from mandatory disclosure under DoDD 5400.07 (*Reference (b)*) and DoD Manual 5400.07 (*Reference (d)*).

e. Provide in a timely manner the determination of the IDA and/or records, as appropriate. The Chief, OFOI, WHS, handles the actual release and appeals process.

2. Individuals in direct receipt of a request for records, whether or not it invokes FOIA, shall immediately email the request to the USU FOIA Officer at [FOIA@usuhs.edu](mailto:FOIA@usuhs.edu) for action. The time sensitive processing requirements mandate the earliest possible notification.

3. Individuals/activities assigned to review agency records, pursuant to a FOIA request shall:

a. Assign the highest priority to determine whether any documents responsive to the FOIA request are in USU systems of records.

b. Provide the records, or in the alternative, advise USU FOIA Officer that no records responsive to the FOIA request were found.

**G. Effective Date.** This Instruction is effective immediately.



Richard W. Thomas, MD, DDS, FACS  
President

20 OCT 2020

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Date

Enclosures:

1. References
2. Definitions

## REFERENCES

- (a) USU Instruction 5402, "Freedom of Information Act (FOIA)," dated July 2, 2015 (hereby canceled).
- (b) DoD Directive 5400.07, "DoD Freedom of Information Act (FOIA) Program," dated April 5, 2019.
- (c) Administrative Instruction 108, "Office of the Secretary of Defense (OSD) and Joint Staff (JS) Freedom of Information Act (FOIA) Program," dated June 23, 2016, Incorporating Change 1, dated April 14, 2017.
- (d) DoD Manual 5400.07, "DoD Freedom of Information Act (FOIA) Program," dated January 25, 2017, as amended.
- (e) Title 5, United States Code, Chapter 5, Section 552, "Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings."

## DEFINITIONS

1. FOIA Request. A written request for USU records, made by a person, including a member of the public (U.S. or foreign citizen), an organization, or a business. However, a Federal agency or a fugitive from the law, may not invoke FOIA. Requesters should indicate a willingness to pay fees associated with the processing of their request. Requesters may ask for a waiver of fees, but should also express a willingness to pay fees in the event of a waiver denial. Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically (such as e-mail).

2. Agency Record.

a. Includes all documents or records created or obtained by a U.S. Government agency that are in the agency's possession and control at the time a FOIA request is received. Four factors determine an agency's control:

- 1) The intent of the creator of the document to retain control over the record.
- 2) The ability of the agency to use and dispose of the record as it sees fit.
- 3) The extent to which agency personnel have read or relied upon the document.
- 4) The degree to which the document was integrated into the agency's record systems or files. Records maintained by a government contractor for records management purposes are considered in the DoD Component's possession. Records created by an agency employee during employment, including e-mails, may be either agency records or personal files.

b. Examples of agency records include:

- 1) Research data produced during the performance of a federal grant used by the U.S. Government in developing an agency action that has the force and effect of law, in accordance with Office of Management and Budget Circular No. A-110.
- 2) All recorded information, regardless of form or characteristics. "Form or characteristics" refers to physical media type or transmission mode desired by the FOIA requester (e.g., computer disk, computer tape, file transfer protocol, photographs, videotape, and microfiche).

c. Examples of agency records do **not** include:

- 1) Objects or articles such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence.
- 2) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

3) Personal files.

d. The definition of an agency record under the FOIA is more expansive than the definition of a federal record. For example, documents such as drafts and working files are not considered official records, but are still agency records responsive to FOIA requests.