

**WHAT YOU NEED TO KNOW TO MAKE  
FREEDOM OF INFORMATION ACT (FOIA) REQUESTS**



**PREPARED BY:**

**UNITED STATES TRANSPORTATION COMMAND  
OFFICE OF THE STAFF JUDGE ADVOCATE  
CHIEF FOIA/PRIVIACY ACT (TCJA-FO)  
SCOTT AIR FORCE BASE, ILLINOIS 62225-5357**

## INTRODUCTION

This handbook is intended to assist you in making Freedom of Information Act (FOIA) requests for United States Transportation Command (USTRANSCOM) records. It will get you started and provide you with a brief description of your rights and the manner in which USTRANSCOM will respond to your requests. The information contained herein is not intended to be definitive or exhaustive.

## REFERENCES

1. Title 5, United States Code (U.S.C.), Section 552, as Amended
2. Executive Order 13392, December 2005, Improving Agency Disclosure of Information
3. Department of Defense (DOD) Directive 5400.7, DOD Freedom of Information Act (FOIA) Program
4. DOD 5400.7-R, DOD Freedom of Information Act Program
5. USTRANSCOMI 33-26

## HISTORY

The FOIA, Title 5, U.S.C., Section 552, as Amended, was signed into law on 4 July 1966 to provide the fullest possible disclosure of information to the public. Key concerns of the FOIA include:

1. All individuals have equal rights of access, while ensuring that information essential for adversaries to plan, prepare, or conduct terrorist or related hostile operations against the United States is denied.
2. The burden is on the Government to justify the withholding of a document, not on the person who requests it.
3. An individual denied access to documents has a right to seek relief in the courts.

The FOIA was amended in 1974 to encourage more disclosure than the original statute allowed, in 1986 to strengthen the language for investigations and establish various categories of requesters for the purpose of fee assessments, and in 1996 to align the original statute with technology.

## DOD AND USTRANSCOM POLICY

For FOIA purposes, USTRANSCOM, a combatant command, is under responsibility of the DOD program which is directed and administered by the Office of the Assistant Secretary of Defense for Public Affairs (reference DOD 5400.7-R). USTRANSCOM is a designated DOD component, operates a FOIA Service Center, and responds directly to requests for USTRANSCOM records (reference USTRANSCOM Instruction 33-26). USTRANSCOM policy may be found on the World Wide Web (WWW) at <http://www.transcom.mil> and click on "FOIA Service Center." At the DOD link, you may review the "DOD FOIA Handbook," the "DOD FOIA Regulation, DOD 5400.7-R,

the Annual FOIA Reports to Congress,” the “DOD FOIA Briefing,” and the “Office of the Secretary of Defense/Joint Staff Electronic Reading Room.”

## FOIA REQUESTS

Any “person” (a member of the public [U.S. or foreign citizen/entity], an organization, or a business, but not including a Federal agency or fugitive from the law), can file a FOIA request. The FOIA’s scope includes Federal Executive Branch departments, agencies, and offices; Federal regulatory includes agencies; and Federal corporations. Congress, the Federal Courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments, likewise, are not subject to the FOIA, but some states have their own equivalent access laws for state records. At USTRANSCOM, you may expect to find policy and planning information for the Defense Transportation System. FOIA requests for USTRANSCOM records should be addressed to:

USTRANSCOM/TCJA-FO (FOIA)  
508 Scott Drive  
Scott AFB IL 62225-5357

Label your request “Freedom of Information Act Request,” preferably within the request letter. State your willingness to pay applicable fees. If you request a fee waiver, provide justification for such a waiver. Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject, date of creation, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit an organized, non-random search. Requests by electronic mail (e-mail) to [transcom.scott.tcja.mbx.foia@mail.mil](mailto:transcom.scott.tcja.mbx.foia@mail.mil) and facsimile (fax) to 618-256-8356, is also acceptable. A sample request letter is attached.

## RECORDS

A record is the product(s) of data compilation, such as all books, papers, maps, and photographs; machine readable materials, inclusive of those in electronic form or format; or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in possession and control of the originating office at the time the FOIA request is made. The following are not included within the definition of the word “record.”

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 records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

The FOIA does not require USTRANSCOM to answer questions, render opinions, or provide subjective evaluations. A FOIA request must ask for existing records, such as those mentioned above. For the purpose of the FOIA, the definition of an “Electronic Record” is: Records (including e-mail) that are created, stored, and retrieved by electronic means. The FOIA requires that records created on or after 1 November 1966 be made available electronically, as well as in hard copy, in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. The USTRANSCOM reading room is located in Building 1961, Room 113, SCOTT AFB IL. Telephone 618-220-4100 for an appointment.

### **REASONS FOR NOT RELEASING A RECORD**

1. No Records. A reasonable search of files failed to identify responsive records.
2. Referrals. The request is transferred to another DOD component, or to another Federal agency.
3. Request Withdrawn. The requester withdraws the request.
4. Fee-Related. The requester is unwilling to pay fees associated with a request, the requester is past due in the payment of fees from a previous FOIA request, or the requester disagrees with the fee estimate.
5. Records not Reasonably Described. A record has not been described specifically enough to enable the DOD component to locate it by conducting a reasonable search.
6. Not a Proper FOIA Request for Other Reason. The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by agency policy.
7. Not an Agency Record. The information requested is not a record within the meaning of the FOIA and this handbook.
8. Duplicate Request. The request is a duplicate request (a requester asks for the same information more than once). This includes identical requests received via different means (e.g., e-mail, facsimile, mail, courier) at the same or different times.
9. Other (Specify). Any other reason a requester does not comply with published policy and procedures other than those outlined above.

## EXEMPTIONS

Records (or portions of records) will be released unless that release harms an interest protected by an exemption cited in the Freedom of Information Act at 5 U.S.C. 552(b)(1) through (b)(9):

**Exemption 1 (5 U.S.C. 552 (b)(1)).** Records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulation are exempt from release. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. There is no discretion regarding its release.

**Exemption 2 (5 U.S.C. 552 (b)(2)).** Only those matters “related solely to the internal personnel rules and practices of the agency” are eligible for protection under this exemption.

**Exemption 3 (5 U.S.C. 552 (b)(3)).** Records concerning matters that a statute specifically exempts from disclosure. The USTRANSCOM FOIA officer (TCJA-FO) maintains a list of 5 U.S.C. 552 (b)(3) statutes used within DOD. There is no discretion regarding release.

**Exemption 4 (5 U.S.C. 552 (b)(4)).** Records containing trade secrets, commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the respective agency and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary information submitted strictly on a *voluntary* basis, absent any exercised authority prescribing criteria for submission are exempt from release. There is no discretion regarding release.

**Exemption 5 (5 U.S.C. 552 (b)(5)).** Records containing information considered privileged in litigation, primarily under the deliberative process privilege, are exempt from release. In order to qualify for this exemption, records must be both deliberative in nature (internal advice, recommendations, and subjective evaluations,) as well as part of a decision-making process. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is entirely discretionary.

**Exemption 6 (5 U.S.C. 552 (b)(6)).** Records containing information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person whom the information is about, would result in a clearly unwarranted invasion of personal privacy, are exempt from release. Release of information about an individual contained in a Privacy Act System of Records that would constitute a clearly unwarranted invasion of privacy is prohibited and could subject the releaser to civil and criminal penalties. This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. Included in Exemption 6 are lists of names and other personally identifying information of personnel currently or recently assigned within a particular component, unit, organization or office with the DOD to include active duty personnel, civilian employees, contractors, members of the National Guard and Reserves, military dependents, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy. There is no discretion regarding release.

**Exemption 7 (5 U.S.C. 552 (b)(7)).** Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to laws, are exempt from release. Information that, if released, could constitute an unwarranted invasion of personal privacy of a living person, including surviving family members and/or could reasonably be expected to endanger the life or physical safety of an individual, is denied under this exemption. There is limited discretion regarding release of certain parts of Exemption 7. (See DoD 5400.7-R para. C 3.2.1.7 for further information).

*Exemption 8 (5 U.S.C. 552 (b)(8)).* Records containing information relating to the examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions are exempt from release. *(This exemption is not normally applicable to DoD.)*

*Exemption 9 (5 U.S.C. 552 (b)(9)).* Records containing geological and geophysical information and data (including maps) concerning wells are exempt from release. *(This exemption is not normally applicable to DoD.)*

## **RELEASE AND PROCESSING PROCEDURES**

Generally, USTRANSCOM will endeavor to provide a final response determination within the statutory 20 working days (excluding weekends and holidays). If a significant number of requests or the complexity of the requests prevents a final response determination within the statutory time period, USTRANSCOM will advise the requester of this fact in an interim response and explain how the request will be responded to within its multi-track processing system.

1. Multi-track Processing: When a response determination cannot be made within 20 working days, requests are processed in a multi-track processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing. DOD components must establish three processing tracks all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track for expedited processing. Each DOD component has the discretion of determining whether a request is simple or complex.

2. Expedited Processing: Shall be granted a requester upon request and demonstration of a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request that will determine whether to grant expedited processing. If expedited processing is granted, the request shall be processed as soon as practicable.

(1) Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(2) Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

(3) Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily, this means a breaking news story of general public interest.

(4) Other reasons for expedited processing are an imminent loss of substantial due process rights and humanitarian need.

## **APPEAL RIGHTS**

If your FOIA request is initially denied in whole or in part under one or more of the FOIA exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal. Appeals must be submitted within 60 days to the Director, Administration and Management and Washington Headquarters Services, Directorate for Freedom of Information and Security Revenue, Room 2C757, Executive Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

## **FEES**

FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Public interest is defined as “disclosure of the information is in the public interest because it is likely to contribute significantly to the public’s understanding of the operations or activities of the Government.” Assessable fees are as listed on Department of Defense (DD) Form 2086 (Attachment 2) and DD Form 2086-1, Technical Data, (Attachment 3). All requesters should submit a willingness to pay fees regardless of the fee category; however, this does not mean you will be charged fees. FOIA requires that requesters be placed into one of the following categories:

(1) Commercial Requester: Refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. Fees shall be limited to reasonable standard charges for document search, review, and duplication.

(2) Educational Institution Requester: Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research.

(3) Non-Commercial Scientific Institution Requester: Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research.

(4) News Media Requester: Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media.

(5) Other Requester: Requesters who do not fit into any of the categories described above should indicate a willingness to pay fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(6) Aggregating Requests: Except for requests that are for a commercial use,

there is no fee for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees.

If there is a reasonable belief that a requester or, on occasion, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, USTRANSCOM may aggregate any such requests and charge accordingly.

CANDICE VELAZQUEZ  
Chief of FOIA/Privacy

Attachments

1. Sample FOIA Request Letter
2. DD Form 2086
3. DD Form 2086-1

**Attachment 1**

**SAMPLE FOIA REQUEST LETTER**

**TO:** United States Transportation Command (date)  
FOIA Service Center (TCJA-FO)  
508 Scott Drive  
Scott AFB IL 62225-5357

Dear FOIA Officer

This is a request under the Freedom of Information Act (5 U.S.C. 552, as amended). I am requesting all records pertaining to [identify the subject and/or records as specifically as possible. Provide as much information as known to facilitate records search.

For fee purposes, my status is: (a) Commercial, (b) Educational Institution, (c) Non-commercial Scientific Institution, (d) News Media [Give name of newspaper, magazine, television station, etc. and this request is made as part of news gathering and not for commercial use (e) Other.

I am willing to pay fees for this request up to a maximum of [give dollar amount]. If fees exceed this amount, please notify me prior to proceeding with request. I request consideration for a fee waiver since disclosure of the information is in the public interest and will contribute significantly to public understanding of the operations or activities provide justification for consideration for fee waiver including details of how the requested information will be disseminated to the general public.

Provide your full name, address, telephone number, e-mail address, and company name, as applicable.

[Sign your request.]

### Attachment 2 DD FORM 2086

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST				REPORT CONTROL SYMBOL DD-DA&M(A)1365																
Please read instructions on back before completing form.																				
1. REQUEST NUMBER	2. TYPE OF REQUEST (X one) a. INITIAL <input type="checkbox"/> b. APPEAL <input type="checkbox"/>	3. DATE COMPLETED (YYYYMMDD)	4. ACTION OFFICE																	
<b>5. CLERICAL HOURS (E-9/GS-8 and below)</b>		FEE CODE	(1) TOTAL HOURS	(2) HOURLY RATE	(3) COST															
a. SEARCH		1		X \$20.00	-															
b. REVIEW/EXCISING		2																		
c. OTHER ADMINISTRATIVE COSTS		3																		
<b>6. PROFESSIONAL HOURS (O-1 - O-6/GS-9-GS-15)/CONTRACTOR</b>		(1) TOTAL HOURS	(2) HOURLY RATE	(3) COST																
a. SEARCH		1		X \$44.00	-															
b. REVIEW/EXCISING		2																		
c. OTHER/COORDINATION/DENIAL		3																		
<b>7. EXECUTIVE HOURS (O-7 - ES 1 and above)</b>		(1) TOTAL HOURS	(2) HOURLY RATE	(3) COST																
a. SEARCH		1		X \$75.00	-															
b. REVIEW/EXCISING		2																		
c. OTHER/COORDINATION/DENIAL		3																		
<b>8. COMPUTER SEARCH</b>		(1) TOTAL TIME	(2) RATE	(3) COST																
a. MACHINE TIME (Not PC, desktop, laptop)		4																		
b. PROGRAMMER/OPERATOR TIME (Human)				X	-															
(1) Clerical Hours		1	\$20.00/hr																	
(2) Professional Hours		1	\$44.00/hr																	
<b>9. OFFICE MACHINE COPY REPRODUCTION</b>		(1) NUMBER	(2) RATE	(3) COST																
a. PAGES REPRODUCED FOR FILE COPY		3	.15	X	-															
b. PAGES RELEASED		5	.15																	
<b>10. PRE-PRINTED PUBLICATIONS</b>		(1) TOTAL PAGES	(2) RATE	(3) COST																
a. PAGES PRINTED		5	.02	X	-															
<b>11. COMPUTER PRODUCT OUTPUT/ACTUAL COST CHARGES</b>		(1) NUMBER	(2) ACTUAL COST	(3) COST																
a. TAPE/DISC/CD		6		X	-															
b. PAPER PRINTOUT		3																		
<b>12. OTHER ADMINISTRATIVE FEES</b>		(1) NUMBER	(2) ACTUAL COST	(3) COST																
a. ALL POSTAGE/ADMINISTRATIVE (See instructions)		3		X	-															
<b>13. AUDIOVISUAL MATERIALS</b>		(1) NUMBER	(2) ACTUAL COST	(3) COST																
a. MATERIALS REPRODUCED		4		X	-															
<b>14. SPECIAL SERVICES</b>		(1) NUMBER	(2) ACTUAL COST	(3) COST																
a. ALL SPECIAL SERVICES (See instructions)		6		X	-															
<b>15. MICROFICHE REPRODUCED</b>			.25	X	-															
<b>FEE CODES</b>			<b>16. FOR FOI OFFICE USE ONLY</b>																	
1 Chargeable to "commercial" requesters. Chargeable to "other" requesters after deducting 2 hours.			a. TOTAL COLLECTABLE FEES																	
2 Chargeable to "commercial" requesters only.			b. TOTAL PROCESSING FEES																	
3 Not chargeable to any fee category.			c. TOTAL CHARGED																	
4 Chargeable to "commercial". Chargeable to "other" after deduction of the equivalent of 2 hours. (Example: deduct \$88.00 professional rate.)			d. FEES WAIVED/REDUCED (X one)																	
5 Chargeable to all fee categories after deduction of 100 pages (DOES NOT include "commercial").			e. FEES NOT APPLICABLE (X one)																	
6 Chargeable to all fee categories. No deductions.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"></td> <td style="width: 10%; text-align: center;">Yes</td> <td style="width: 10%; text-align: center;">No</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td></td> <td></td> </tr> </table>				Yes	No				<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>		
	Yes	No																		
	<input type="checkbox"/>	<input type="checkbox"/>																		
	<input type="checkbox"/>	<input type="checkbox"/>																		
See Chapter 6, Fee Schedule, DoD 5400.7-R, to determine appropriate assessment of fees.																				

### Attachment 3 DD FORM 2086-1

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST FOR TECHNICAL DATA				REPORT CONTROL SYMBOL DD-DA&M(A)1365	
Please read instructions on back before completing form.					
1. REQUEST NUMBER	2. TYPE OF REQUEST (X one)		3. DATE COMPLETED (YYYYMMDD)		
	a. INITIAL	b. APPEAL			
<b>4. CLERICAL HOURS (E-9/GS-8 and below)</b>		TOTAL HOURS (1)	HOURLY RATE (2)	COST (2)	
a. SEARCH			X \$13.25	-	*
b. REVIEW/EXCISING					*
c. CORRESPONDENCE AND FORMS PREPARATION					*
d. OTHER ACTIVITY					*
e. MINIMUM CHARGE			\$ 8.30		*
<b>5. PROFESSIONAL HOURS (O-1 - O-6/GS-9 - GS/GM-15)</b>		TOTAL HOURS (1)	HOURLY RATE (2)	COST (2)	
a. SEARCH			X ACTUAL HOURLY RATE	-	*
b. REVIEW/EXCISING					*
c. COORDINATION/APPROVAL/DENIAL					*
d. OTHER ACTIVITY					*
e. MINIMUM CHARGE			1/2 HOURLY RATE		*
<b>6. EXECUTIVE HOURS (O-7/GM-16/ES 1 and above)</b>		TOTAL HOURS (1)	HOURLY RATE (2)	COST (2)	
a. SEARCH			X ACTUAL HOURLY RATE	-	*
b. REVIEW/EXCISING					*
c. COORDINATION/APPROVAL/DENIAL					*
d. MINIMUM CHARGE			1/2 HOURLY RATE		*
<b>7. COMPUTER SEARCH</b>		TOTAL HOURS (1)	HOURLY RATE (2)	COST (2)	
a. MACHINE HOURS			X	-	*
b. PROGRAMMER/OPERATOR TIME					*
- Clerical			\$13.25 OR MINIMUM		*
- Professional			ACTUAL OR MINIMUM		*
<b>8. REPRODUCTION</b>		NUMBER (1)	RATE (2)	COST (2)	
a. AERIAL PHOTOGRAPHS, SPECIFICATIONS, PERMITS, CHARTS, BLUEPRINTS, AND OTHER TECHNICAL DOCUMENTS			X \$ 2.50	-	*
b. ENGINEERING DATA (Microfilm)					*
- Aperture cards					*
- Silver duplicate negative, per card			.75		*
- When keypunched and verified, per card			.85	-	*
- Diao duplicate negative, per card			.65		*
- When keypunched and verified, per card			.75		*
- 35 mm roll film, per frame			.50		*
- 16 mm roll film, per frame			.45		*
- Paper prints (engineering drawings), each			1.50		*
- Paper reprints of microfilm indices, each			.10		*
c. AUDIOVISUAL MATERIALS (Insert actual cost in block (2))					*
d. OTHER TECHNICAL DATA RECORDS					
Charges for any additional services not specifically provided above shall be made by components at the following rates:					
- Minimum charge for office copy (up to six images)			X \$ 3.50	-	*
- Each additional image			.10		*
- Each typewritten page			3.50	-	*
- Certification and validation with seal, each			5.20		*
- Hand-drawn plots and sketches, each hour or fraction thereof			12.00		*
* Chargeable to all requesters.					
<b>9. FOR FOI OFFICE USE ONLY</b>					
a. SEARCH FEES PAID			f. TOTAL COLLECTABLE		
b. REVIEW FEES PAID			g. TOTAL PROCESSING		
c. COPY FEES PAID			h. TOTAL CHARGED		
d. TOTAL PAID			i. FEES WAIVED/REDUCED (X one)		
e. DATE PAID (YYYYMMDD)			YES	NO	