

1280 or involving an incident which may give rise to a claim covered by this part 1280, together with other immediately available data concerning the commencement of legal proceedings, will be promptly referred to Counsel for the activity involved, or, if the activity has no Counsel, to the next higher echelon having such a position.

(2) Any Military Service member or civilian employee of DLA (or his personal representative) against whom a domestic civil action or proceeding is brought for damage to property, or for personal injury or death, on account of his operation of a motor vehicle (Government- or privately-owned) in the scope of his employment (28 U.S.C. 2679) will:

(i) Upon receipt of process and pleadings or any other information regarding the commencement of such action or proceeding, immediately inform the Head of his activity and Counsel as specified in paragraph (f)(1) of this section.

(ii) Promptly deliver all process and pleadings served upon him, or an attested true copy thereof, to Counsel.

(3) Upon receipt of information or process and pleadings pursuant to paragraph (f)(1) or (2) of this section, Counsel will promptly prepare and process reports in accordance with the appropriate portions of AR 27-40 except that:

(i) If the incident giving rise to the litigation was occasioned by an act or omission of a member of the Navy or Marine Corps, or a member of the Air Force, information and reports required to be furnished to The Judge Advocate General of the Army will be furnished instead to The Judge Advocate General of the Navy and Air Force respectively.

(ii) If the litigation is under the Federal Tort Claims Act and no administrative claim has been filed, Counsel will immediately advise the U.S. Attorney and furnish him a report of all information the activity has with respect to the claim and an affidavit by the Claims Investigating Officer to the effect that no administrative claim has been filed. Two copies of the foregoing will be provided to the appropriate Military Service Judge Advocate General. If an administrative claim has

been filed and has been referred to a Military Service, a copy of the process and pleadings and any information not previously furnished will be sent to the appropriate Military Service Judge Advocate General.

PART 1285—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Sec.

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APPENDIX A TO PART 1285—GAINING ACCESS TO DLA RECORDS

AUTHORITY: 5 U.S.C. 552.

SOURCE: 56 FR 65423, Dec. 17, 1991, unless otherwise noted.

§ 1285.1 Purpose and scope.

This rule provides policies and procedures for the DLA implementation of DoD 5400.7-R,¹ DoD Freedom of Information Act Program. It applies to HQ DLA and all DLA field activities and takes precedence over all DLA regulations that supplement the FOIA program. A list of mailing addresses for DLA activities is provided at appendix A to this part.

§ 1285.2 Policy.

(a) *General.* 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

¹Copies may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161-2171.

under the FOIA. In order that the public may have timely information concerning DLA activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this rule. Any request for DLA records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this rule, unless otherwise required by paragraph (m) of this section.

(c) *Compliance with the FOIA.* DLA personnel are expected to comply with the FOIA and this rule in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DLA FOIA program and to create conditions that will promote public trust. To promote a positive attitude among DLA personnel, each DLA Primary Level Field Activity (PLFA) will establish education and training programs described in part 286, subpart H, of this title. Training materials, including supplements, will be coordinated with DLA-XAM prior to publication or issuance.

(d) *Openness with the public.* DLA shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated herein, whether or not the Act is invoked.

(e) *Avoidance of procedural obstacles.* DLA activities shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DLA records promptly. DLA activities shall provide assistance to requesters to help them understand and comply with procedures established by this rule and any rules published by the DLA PLFA's.

(f) *Prompt action on requests.* When a member of the public complies with the procedures established in this rule for obtaining DLA records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days unless a delay is authorized. When a DLA activity has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude an activity from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. A DLA activity may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the activity processing the request.

(g) *Public domain.* Nonexempt records released under the authority of this rule are considered to be in the public domain. Such records may also be made available in reading rooms to facilitate public access. Exempt records released pursuant to this rule or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this rule apply if the same individual seeks the records in a private or personal capacity.

(h) *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 §1285.6 of this part and part 286, subpart F, of this title.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, DLA activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request and the effort 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.

(i) *Description of the requested record.*
 (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables DLA to locate the record with a reasonable amount of effort. When a DLA activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect. The requester may be asked to provide the type of information outlined in paragraph (i)(2) of this section. Activities are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DLA activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with “fishing expedition” requests and are based on the principle of reasonable effort. Descriptive infor-

mation about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the activity’s filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search. The decision of the DLA activity concerning reasonableness of description must be based on knowledge of its files. If the description enables DLA activity personnel to locate the record with reasonable effort, the description is adequate.

(4) The following guidelines deal with requests for personal records. Ordinarily, when only personal identifiers are provided in connection with a request for records concerning the requester, then only records retrievable by personal identifiers need be searched. The search for such records may be conducted under Privacy Act procedures contained in DLAR 5400.21.² No record may be denied that is releasable under the FOIA.

(j) *Possession and control.* A record must exist and be in the possession and control of DLA at the time of the search to be considered subject to this rule and the FOIA. Mere possession of a record does not presume Agency control. Information created or originated by another activity shall be referred to that activity for release determination and direct response to the requester.

(1) *Referring requests.* A DLA activity having no responsive records to an FOIA request may refer the request to another DLA activity, DoD component,

²Copies may be obtained, at cost, from DASC-PD, Cameron Station, Alexandria, VA 22304-6130.

or Federal agency if, after consultation with such activity, component, or agency, the intended recipient confirms that it has the requested record. In cases where the DLA activity receiving the request has reason to believe that the existence or nonexistence of the record may in itself be classified, that activity shall consult the DoD component having cognizance over the record in question before referring the request. If the DoD component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DLA activity originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD component, and the requester shall be notified of any such referral. Any DLA activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) *Referring records.* (i) Whenever a record or a portion of a record is, after prior consultation, referred to another DLA activity, DoD component, or to a Government agency outside of the DoD for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(ii) A DLA activity shall refer an FOIA request for a classified record that it holds to another DoD component or agency outside the Department of Defense if the record originated in the other DoD component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(iii) A DLA activity may refer a request for a record that it originated to another DoD component or agency when the record was created for the use of the other DoD component or agency. The DoD component or agency for which the record was created may have an equally valid interest in withholding the record as the DLA activity that created the record. In such situations, provide the record and a release recommendation on the record with the referral action.

(iv) Within DLA, an activity shall ordinarily refer an FOIA request for a record that it holds but that was originated by another activity or that contains substantial information obtained from another activity to that activity for direct response after coordination and obtaining concurrence from the activity. The requester shall then be notified of such referral. DLA activities shall not, in any case, release or deny such records without prior consultation with the other activity.

(3) *On-loan documents.* A DLA activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to DLA for a specific purpose if the records are restricted from further release and so marked. However if, for investigative or intelligence purposes, the outside agency desires anonymity, a DLA activity may only respond directly to the requester after coordination with the outside agency.

(4) *General Accounting Office (GAO) documents.* On occasion, the DoD receives FOIA requests for GAO documents containing DoD information. Even though the GAO is outside the executive branch and not subject to the FOIA, all FOIA requests from GAO documents containing DoD information received either from the public or on referral from GAO will be processed under the provisions of the FOIA.

(5) *Agencies not subject to the FOIA.* A DLA activity may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DLA activity must respond to the request.

(6) *Time to respond.* DLA activities that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this rule. Those time limits shall begin to run upon proper receipt of the referral by the PLFA FOIA manager to respond.

(7) *Accumulating fees.* Requesters receiving the first two hours of search and the first 100 pages of duplication

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without charge (see part 286, subpart F, of this title) are entitled to such only once per request. Consequently, if a DLA activity, after completing its portion of a request, finds it necessary to refer the request to another DLA activity or another DoD component to action their portion of the request, the referring activity shall inform the recipient of the expended amount of search time and duplication cost to date.

(k) *Requests for authentication of records.* FOIA requests for authentication of records shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function according to DLA Regulation 5105.5.³ This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DLA activities may charge for the service at a rate of \$5.20 for each authentication.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with DLA Manual 5015.1.⁴

(m) *Relationship between the FOIA and the Privacy Act.* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) Requesters who seek records about themselves contained in a Privacy Act system of records and who cite or imply the Privacy Act, will have their requests processed under the provisions of the Privacy Act, 5 U.S.C. 552a.

(2) Requesters who seek records about themselves which are not contained in a Privacy Act system of records and who cite or imply the Privacy Act, will have their requests processed under the provisions of the FOIA, since they have no access rights under the Privacy Act.

(3) Requesters who seek records about themselves which are contained in a Privacy Act system of records and

who cite or imply the FOIA or both Acts will have their requests processed under the time limits of the FOIA and the exemption and fee provisions of the Privacy Act.

(4) Requesters who seek access to Agency records and who cite or imply the Privacy Act, the FOIA, or both will have their requests processed under the FOIA.

(5) Requesters should be advised in final responses why their request was processed under a particular act.

(n) *Reading rooms.* (1) DLA activities may provide a facility or room where the public may inspect and copy or have copied the so-called “(a)(2)” material (see §1285.3(b) of this part). At those activities where it is impractical to set up a formal reading room, the FOIA manager will arrange for a review of “(a)(2)” material at a suitable time and location. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from “(a)(2)” materials prior to placement in reading rooms. However, in every case, justification for the deletion must be fully explained in writing. The public’s right to inspect first and then decide what is to be copied applies only to “(a)(2)” material. Activities may elect to place other documents in their reading room, including so-called “(a)(1)” material (see §1285.3(a) of this part), as a means to provide public access to such documents and allow the public to first inspect them before copying. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with §1285.6 of this part and part 286, subpart F, of this title.

(2) *“(a)(2)” materials index.* Each activity maintaining a reading room shall maintain an index of the “(a)(2)” materials that are issued, adopted, or promulgated after 4 July 1967. No “(a)(2)” materials issued, promulgated, or adopted after 4 July 1967 that are not indexed and either made available or published may be relied upon or used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Each index shall be arranged topically or by descriptive words rather than by case name or

³ See Footnote 2 to § 1285.2(i)(4).

⁴ See Footnote 2 to § 1285.2(i)(4).

numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for the convenience of the DLA activity. Such materials issued, promulgated, or adopted before 4 July 1967 need not be indexed but must be made available upon request if not exempted under part 286, subpart C, of this title.

(3) DLA publications and PLFA supplements may, at the discretion of the DLA activity, be regarded as “(a)(2)” material and placed in reading rooms subject to the restrictions in paragraph (o)(2) of this section. Otherwise, requests for publications will be handled according to paragraph (o)(1) of this section.

(o) *Publications of DLA regulations, manuals, handbooks, and uncontrolled forms.* (1) Since most DLA publications are available to the public through the publications distribution sales outlet, the requester may be referred to that outlet.

(2) Requests for DLA publications which are classified, marked “FOR OFFICIAL USE ONLY,” or have limited distribution statements will be referred to the issuing activity for release determination and, if appropriate, formal denial. Such publications will not be placed in reading rooms. However, where a public reading room also serves as an activity’s library, restricted publications may be maintained provided they are appropriately safeguarded and not commingled with other nonensitive regulations.

(3) For DoD regulations, manuals, directives, handbooks and similar issuances, the FOIA manager may refer the requester to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161-2171.

(p) *Exemptions.* The types of records described in part 286, subpart C, of this title may be withheld in whole or in part from disclosure under the FOIA unless otherwise prescribed by law.

(q) *Requests for the examination of DLA records.* Only those materials described as “(a)(2)” (and “(a)(1)” at the discretion of the PLFA head) are subject to the examination clause of the FOIA. Such requests will be submitted directly to the appropriate DLA activ-

ity listed in appendix A. FOIA managers will inform requesters of the location and time the requested record may be examined. Requesters may be charged for the cost to reproduce copies subject to the guidelines §1285.6 of this part and part 286, subpart F, of this title.

(r) *Requests for copies of records.* Individuals seeking copies of DLA records should address their FOIA requests to the FOIA manager of the appropriate activity. Addresses and brief descriptions of functions are included in appendix A to this part.

(s) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to Federal Governments seeking official information. Requests from private persons will be made in writing and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements and ensure better inter- and intra-agency coordination. DLA activities are under no obligation to establish procedures to receive hand delivered requests. Release for records to individuals under the FOIA is considered public release of information, except as provided for in paragraph (g) of this section and §286.13(a) of this title.

(t) *Requests from government officials.* Requests from Members of Congress for records on behalf for a Congressional Committee, Subcommittee, or either House sitting as a whole will be processed according to DLA Regulation 5400.12.⁵ Requests from officials of foreign governments which do not invoke the FOIA shall be referred to HQ DLA-I or the appropriate foreign disclosure channel for processing and the requester so notified. Requests invoking the FOIA from the following government officials will be considered the same as any other requested and processed according to this rule:

(1) Officials of State or local governments.

(2) Members of Congress seeking records on behalf of their constituents.

(3) Officials of foreign governments.

(u) *Privileged release to U.S. Government officials.* (1) Records determined to

⁵ See Footnote 2 to §1285.2(i)(4).

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be exempt from public disclosure under one or more of FOIA exemptions may be authenticated and released to U.S. Government officials requesting them on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To a Committee or Subcommittee of Congress or to either House sitting as a whole in accordance with DoD Directive 5400.4.⁶

(ii) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice. However, receipt of a subpoena *duces tecum* does not automatically compel disclosure of DLA records. To qualify for privileged release under this section, the subpoena must be signed by the judge of a court of competent jurisdiction. A subpoena which has been sent through FOIA channels and signed by a litigating attorney, a subpoena service agent, or an official of a state or local court will be treated as any other FOIA request and subject to the exemptions in part 286 subpart C, of this title. Consult with Counsel before acting on such subpoenas.

(iii) To other Federal Agencies, both executive and administrative, as determined by the DLA Director or designee.

(2) Disclosure under these privileged release circumstances does not set a precedent for disclosure to the general public under the FOIA.

(3) DLA activities shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under the FOIA and are privileged. DLA activities will also advise officials of any special handling instructions. See part 286, subpart D, of this title for marking requirements under privileged release circumstances.

§ 1285.3 Definitions.

The following terms and meanings shall be applicable:

(a) “(a)(1) material”. Material described in 5 U.S.C. 552(a)(1) consisting of descriptions of central and field organizations and, to the extent that they affect the public, rules of procedures, descriptions of forms available,

instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

(b) “(a)(2) material”. Material described in 5 U.S.C. 552(a)(2) encompassing:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the FEDERAL REGISTER.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DLA policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties or to instructions relating only to the internal management of the DLA activities. Examples of manuals and instructions not normally made available include but are not limited to the following:

(i) Those issued for audit, investigation, and inspection purposes or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(c) *Administrative appeal*. A request made under the FOIA by a member of the general public asking the appellate authority to reverse an initial denial authority’s decision to withhold all or part of a requested record, to review a “no record found” determination, to reverse a decision to deny a request for waiver or reduction of fees, or to review a category determination for fee assessment purposes.

(d) *Agency record*. (1) The products of data compilation, such as all books, papers, maps and photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United

⁶See Footnote 1 to § 1285.1.

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States Government under Federal law in connection with the transaction of public business and in DLA's possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word "record":

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DLA activity. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (d)(3) of this section.

(iii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iv) 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.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, poli-

cies, functions, decisions, or procedures of a DLA activity, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(iii) See part 286, subpart C, of this title for guidance on release determinations of computer software.

(4) A record must exist and be in the possession and control of DLA at the time of the request to be considered subject to this rule and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(5) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply, and requests for such need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the FEDERAL REGISTER also require no processing under the FOIA. In such cases, DLA activities should direct the requester to the appropriate source to obtain the record.

(e) *Appellate authority.* The Director, DLA, or his designee, except for fee waivers and category determinations. The appellate authority for such appeals is the Staff Director, Office of Administration, HQ DLA.

(f) *DLA activity.* An element of DLA authorized to receive and act independently on FOIA requests. A DLA activity has its own FOIA manager, initial denial authority, and office of counsel.

(g) *Electronic data.* Those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. See paragraphs (d)(2)(ii) and (d)(3) of this section for a discussion of computer software.

(h) *FOIA request.* A written request for records made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD 5400.7-R, DLAR 5400.14,

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this rule, or DLA activity supplementing regulations or instructions.

(i) *Initial denial authority (IDA)*. An official who has been granted authority by the Director, DLA, to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure or to issue a “no record” determination. These include the Directors (or equivalent) of HQ DLA Primary Staff Elements (PSE’s) and the Commanders (or equivalent) of PLFA’s. For fee waiver and requester category determinations, the initial denial authority is the FOIA manager or head of the FOIA unit.

(j) *Public interest disclosures*. Those disclosures which shed light on DLA performance of its statutory duties and thus inform citizens about what their government is doing. The “public interest”, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency’s or official’s own conduct. The public interest is one of several factors considered in determining if a fee waiver is appropriate (see part 286, subpart F, of this title).

(k) *Releasing official*. Any individual with sufficient knowledge of a requested record or program to allow him or her to determine if harm would come through release. Releasing officials are at all levels and may be selected to review a particular document because of their expertise in the subject area. The level must be high enough to make sure that releases are made according to the policies outlined here. The authority to release records of a routine nature, such as fact sheets or local directories, may be delegated to any individual at the discretion of the denial authority. In doubtful cases, releasing officials may consult with the FOIA staff or servicing counsel prior to release.

§ 1285.4 Responsibilities.

(a) *The Staff Director, Administration, HQ DLA-X*: (1) Has overall responsibility for establishment and implementation of the DLA FOIA program, pro-

viding guidance and instructions to PLFA’s and PSE’s.

(2) Designates a FOIA manager to administer the DLA FOIA program.

(3) Serves as the point of contact for referring members of the public to the proper DLA source for Agency records.

(4) Serves as appellate authority on fee waivers and category determinations.

(5) Serve as initial denial authority for record denials where more than one PSE is involved or where a PSE has made a determination that the requested record cannot be found.

(6) Submits required reports to the Office of the Assistant Secretary of Defense, Public Affairs.

(7) Collects and deposits fees for FOIA services performed at HQ DLA and DASC.

(b) *The General counsel, HQ DLA-G*: (1) Provides legal advice and assistance to HQ DLA PSE’s and, where appropriate, PLFA’s in determining decisions to withhold records.

(2) Processes appeals to the Director, DLA, of denials to provide records or “no record” determinations.

(3) Coordinates denial actions with Office of the General Counsel, DoD, and the Department of Justice, as appropriate.

(4) Ensures that case files of FOIA appeals are maintained for 6 years after final agency decision.

(c) *The Staff Director, Office of Public Affairs, HQ DLA-B*, serves as a coordinating office for the release of information to the news media where potential for controversy exists.

(d) *The Staff Director, Office of Congressional Affairs, HQ DLA-Y*, serves as a coordinating office on final responses to FOIA requests from members of the Congress.

(e) *The heads of the DLA principal staff elements (PSE’s)*: (1) Appoint an individual to serve as FOIA monitor. Letters of appointment will be forwarded to DLA-XAM.

(2) Forward to DLA-XAM any FOIA request received directly from the public so that the request may be administratively controlled.

(3) Ensures that provisions of this regulation are followed in processing requests for records from the public.

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(4) Coordinate requests with other HQ DLA staff elements to the extent considered necessary.

(5) Coordinate any proposed denial with the General Counsel.

(6) Serve as initial denial authority.

(7) Ensure that FOIA case files of denials are maintained for 6 years and that full releases are maintained for 2 years.

(8) Make initial determinations to release records or designate individuals to make such determinations.

(f) *The PSE FOIA monitors:* (1) Process and control all FOIA requests received from DLA-XAM.

(2) Make sure established suspenses are met.

(3) Request extensions of time from DLA-XAM when necessary and within the limits of §1285.5(j) of this part.

(4) Gather cost estimates when requested.

(5) Ensure costs for processing each Freedom of Information Act request are properly recorded.

(6) Coordinate proposed full and partial denials with DLA-XAM prior to signature by the PSE director. Forward a copy of the final response and cost information to DLA-XAM.

(g) *The heads of DLA primary level field activities (PLFA's):* (1) Designate a FOIA manager to administer the DLA FOIA program within the PLFA. Forward the name, address, and telephone number of the manager to DLA-XAM.

(2) Ensure that the provisions of this regulation are followed in processing requests for records from members of the public.

(3) Provide facilities where members of the public may examine and copy the following documents:

(i) DLAH 5805.1⁷, DLA Organization Directory.

(ii) DLAH 5025.1⁸, DLA Index of Publications.

(iii) DLAM 5015.1, Files Maintenance and Disposition.

(iv) Copies of local directories or indexes.

(v) Any other available "(a)(1)" or "(a)(2)" material.

(4) Sign letters of denial and "no record" determinations after coordination with Counsel.

(5) Refer cases of significance to DLA-XAM for review and evaluation when the issues raised are unusual, precedent setting, or otherwise require special guidance.

(6) Establish safeguards to ensure that FOUO material is protected.

(7) Establish procedures to ensure that a record is maintained of all FOIA requests for logistical data (data on magnetic tape extracted from any of the DLA automated data processing (ADP) systems). The record will contain the requester's name and address, the date of the request, what information was requested, and what information was furnished. This record will be kept for five years.

(8) Inform Public Affairs offices in advance when they intend to withhold or partially withhold a record if it appears that the withholding action may be challenged in the media.

(h) *Freedom of Information Act managers at all levels:* (1) Establish procedures to receive, control, process, and screen FOIA requests. To provide for rapid retrieval of information, FOIA managers will maintain a central log of all incoming FOIA requests.

(2) Review requests to determine if they meet the requirements of 5 U.S.C. 552. Determine category of the requester before assigning the request for search. Provide instructions to the searching office on fees and time limits for response.

(3) Consult with requesters, where necessary, to determine requester category and to resolve fee issues.

(4) Establish training and education program for those personnel who may be involved in responding to FOIA requests.

(5) Approve requests for formal extensions of time and notify requesters in writing of the extension.

(6) Grant or deny requests for fee waivers or requester category determinations and provide DLA-XAM with a copy of each such denial.

(7) Establish procedures to ensure that §1285.5(1) of this part regarding consultation with submitters of information is complied with.

⁷ See Footnote 2 to § 1285.2(i)(4).

⁸ See Footnote 2 to § 1285.2(i)(4).

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(8) Establish procedures for the collection and deposit of fees for FOIA services.

(9) Ensure that cost data is maintained for each case file.

(10) Establish procedures to ensure that record denials and “no record” determinations are signed by the PLFA initial denial authority and a copy forwarded to DLA-XAM.

(11) Notify DLA-XAM of requesters who have failed to pay fees in a timely manner.

(12) Prepare and submit reports as required.

(13) Consult with public affairs officers (PAO's) to become familiar with subject matter that is considered to be newsworthy and advise PAO's of all requests from news media representatives.

(14) Establish procedures to provide the Congressional Affairs focal point with an information copy of each FOIA request received from a member of the Congress.

(15) Coordinate any proposed supplements or training material with DLA-XAM prior to publication or dissemination.

(16) Establish procedures to ensure that case files of FOIA releases are maintained for two years after cutoff and that denials are maintained for 6 years after cutoff.

(17) Review all proposed full and partial denials prior to signature by the initial denial authority for compliance with these rules.

§ 1285.5 Procedures.

(a) *FOIA channels.* If DLA personnel receive a FOIA request directly from the public that has not been logged in and processed through the FOIA office, they will immediately forward it to the local FOIA manager.

(b) *Central log system.* Each FOIA manager will maintain a central log of FOIA requests received within the activity to ensure compliance with the time limits and accurate cost accounting, fee assessment, and reporting.

(c) *Time limit.* FOIA requests must be responded to within 10 business days after proper receipt, except in unusual circumstances outlined in paragraph (j) of this section. A request is considered properly received on the date the FOIA

manager receives it provided the request has been reasonably described and the requester has either agreed to pay assessable fees or has provided sufficient justification for a fee waiver.

(d) *Screening requests.* (1) Before assigning a request for search, the FOIA manager will screen the request for defects in the description, the requester category, and the issue of fees. FOIA managers will notify requesters of any such defects and, wherever possible, offer assistance to help remedy the defects. If the FOIA manager must consult with the requester on any of the following issues, then the request is not considered to be properly received and the 10-day time limit does not begin or resume until the requester has satisfactorily addressed the issue.

(i) *Payments in arrears.* If a requester has failed to pay fees for a previous request, then the FOIA manager need not process the current request until the requester pays the delinquent amount. In such situations, the FOIA manager will notify the requester of the defect and provide an opportunity to forward payment along with any assessable interest. At that time, the FOIA manager may, at his or her discretion, demand that the requester also pay an estimated fee for the current request.

(ii) *Faulty description.* If the request is not reasonably described, the FOIA manager will notify the requester of the defect and advise that a search cannot be initiated without more specific information. In making such determinations, FOIA managers may consult with offices of primary interest to determine the details that are needed to conduct a search. See also paragraph (f)(2) of this section and § 1285.2(i) of this part.

(iii) *Requester category and fees.* The FOIA manager will analyze the request to determine the category of the requester. If the category of the requester is different than that claimed by the requester, the FOIA manager will:

(A) Notify the requester that he or she should provide additional justification to warrant the category claimed and that a search for responsive records will not be initiated until agreement has been attained relative

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to the category of the requester. Absent further category justification from the requester and within a reasonable period of time (i.e., 30 calendar days), the FOIA manager shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the FOIA manager. Requesters must submit a fee declaration appropriate for the following categories:

(1) *Commercial*. Requesters must indicate a willingness to pay all search, review, and duplication costs.

(2) *Educational or noncommercial scientific institution or news media*. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(3) *All others*. Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iv) *Justification for fee waivers*. If the requester has asked for a fee waiver but failed to provide a justification, FOIA managers will ask requesters to address the fee waiver criteria in part 286, subpart F, of this title before further processing the request. FOIA managers are reminded that with some types of records, a final decision cannot be made on waiver until after the records have been surfaced, reviewed, and the public benefit and previous public availability assessed.

(2) In cases where there is disagreement on the category of the requester or there is lack of justification for fee waiver, the FOIA manager may process the request without further contacting the requester if he or she believes it can be processed within the automatic \$15 waiver limit.

(e) *Providing estimates*. In the situations described by paragraphs (d)(1)(iii) and (d)(1)(iv) of this section, DLA activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized

that search situations will vary among DLA activities and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should actual costs exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(f) *Internal processing*. (1) Upon making a determination that the request is reasonably described, that the fee issue has been settled, and that the requester does not owe for a prior request, the FOIA manager will assign the request to the appropriate office of primary interest (OPI) for handling and provide instructions on the category of the requester, the fees to be charged or waived, and what actions the OPI is to take.

(2) After reviewing a request, the OPI may determine, based on knowledge of the files and programs, that a request is, in fact, not reasonably described. OPI's will notify FOIA managers of such defects immediately so that further details may be sought from the requester. Any delays on the requester's part in receiving more detailed information will not count toward the 10-day time limit.

(g) *Initial determinations*—(1) *Reasons for not releasing a record*. There are seven reasons for not complying with a request for a record:

(i) The request is transferred to another DLA activity, DOD component, or to another Federal agency.

(ii) The DLA activity determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. Responding officials will advise requesters of the right to appeal such determinations. See paragraph (i)(5) of this section for details on processing "no record" responses.

(iii) A record has not been described with sufficient particularity to enable the DLA activity to locate it by conducting a reasonable search.

(iv) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this rule.

(v) The request is withdrawn by the requester.

(vi) The information requested is not a record within the meaning of the FOIA and this rule.

(vii) The record is denied in accordance with procedures set forth in the FOIA and this rule.

(2) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(h) *Preparing documents for public release—(1) Material containing For Official Use Only marks.* When a determination has been made that a FOUO document may be fully released to a requester under any public information program, the FOUO markings will be removed from the requester's copy prior to release. In cases where a person seeks access to his or her own record and the record is marked FOUO to protect that person's personal or proprietary interests, the FOUO marks will be deleted from the requester's copy prior to release, even though the FOUO status has not been terminated. In such cases, the official file copy will retain the FOUO warning. If only portions of a document marked as FOUO are to be released to the public under the FOIA, then the exempt portions will be taped out, blackened out, whited out, or cut out and a copy reproduced for the requester from the marked up copy. Initial denial authorities will ensure that the deleted portion cannot be read and that the FOUO marks have been lined through prior to release.

(2) *Material containing classification markings.* The procedures in paragraph (h)(1) of this section apply to classified documents with the exception that the classified portions will be cut out rather than blackened, taped, or whited out. The classification markings on the requester's copy will be deleted prior to release.

(i) *Response to requester—(1) Time limits.* Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the FOIA manager. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with procedural requirements.

(2) *Acknowledging date of receipt.* When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(3) *Billing.* When fees are being levied, the response to the requester will contain a billing paragraph. Responding officials will advise requesters to make checks or money orders payable to the United States Treasury and forward them to the FOIA manager of the PLFA that incurred the expense. FOIA managers will notify DLA-XAM of names and addresses of requesters who have failed to pay after a second billing has been mailed and 30 days have elapsed without payment.

(4) *Full and partial denials.* (i) When a request for a record is denied in whole or in part on the basis of one or more of the exemptions in part 286, subpart C, of this title the initial denial authority shall inform the requester in writing and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemption(s) on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to the Director, DLA.

(ii) FOIA managers shall forward a copy of each letter of denial to DLA-XAM, Cameron Station, Alexandria,

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Virginia 22304-6100. Do not include attachments, the incoming request, or any backup material.

(5) *Providing “no record” responses.* (i) If no documents can be located in response to a FOIA request, the initial denial authority will so advise the requester. Requesters will also be advised that, if they consider the response to be adverse, they may file an appeal within 60 calendar days from the date of the response. Requesters are to be advised to address appeals to the local FOIA manager and include the case number and reasons why they believe the DLA activity should have records on the subject matter.

(ii) Before a formal “no record” response is issued, OPI will verify that the requester has adequately described the record. If additional details will aid the search, then the requester will be asked to provide those details. See paragraph (d)(1)(ii) of this section and § 1285.2(i) of this part for procedures for resolving inadequate descriptions.

(iii) In cases where the requested record has been destroyed, the initial denial authority will confirm that the record was retained for the period authorized in DLAM 5015.1 before issuing a formal response. In responding to requesters in these cases, advise the requester that the records were properly destroyed according to Agency rules for record disposition and give the right to appeal as outlined in paragraph (i)(5)(i) of this section. However, do not ask the requester to provide reasons why the activity should have the records.

(iv) Upon receipt of an appeal, the FOIA manager will direct that a second search be conducted using any information supplied by the requester. If the second search produces no documents, the appeal will be forwarded to HQ DLA-G, Cameron Station, Alexandria, Virginia 22304-6100, along with a copy of the case file. The FOIA manager will include the cost information and an explanation of the method of search and the types of offices searched. In cases where the “no record” response was issued because the records have been destroyed, the FOIA manager will verify that the records were destroyed as provided for in DLAM 5015.1 and provide a statement to that effect.

(v) FOIA managers will ensure that a copy of each “no record” response letter is forwarded to DLA-XAM, Cameron Station, Alexandria, Virginia 22304-6100. Do not include attachments, the incoming request, or any backup material.

(6) *Coordination.* OPI’s will ensure that the proposed response is fully coordinated with offices having an interest in the request. Proposed responses to FOIA requests from members of the Congress will be coordinated with DLA-Y or the local Congressional Affairs focal point.

(j) *Extensions of time—(1) Formal extensions.* In unusual circumstances, when additional time is needed to respond, the FOIA manager will acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Such extensions will be approved on a case-by-case basis. In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Since the requester still retains the right to treat this delay as a defacto denial with full administrative remedies, such extensions should be issued only when essential. The unusual circumstances that may be cited to justify delay are:

(i) *Location.* The requested record is located in whole or in part at places other than the office processing the request.

(ii) *Volume.* The request requires the collection and evaluation of a substantial number of records.

(iii) *Consultation.* Consultation is required with other DoD components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part

under provisions of this rule or should be released as a matter of discretion.

(2) *Informal extensions.* Where practical and expedient, the FOIA manager or official designated to respond may negotiate with the requester and arrange for an informal extension. Such extensions may be appropriate in instances where the records have to be ordered from a record repository; where the record has been sent out for commercial printing and is not expected back before the 10-day time has elapsed; and similar circumstances.

(k) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the FOIA manager of the DLA activity, DoD component, or Federal agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the FOIA manager of the PLFA that controls the records requested.

(1) *Records of contractors and other non-U.S. government sources.* (1) Executive Order 12600 of 23 June 1987 (52 FR 23781) establishes predisclosure notification procedures for confidential commercial information. When a request is received for a record that was obtained from a contractor or other non-U.S. Government source or for a record containing information clearly identified as having been provided by a contractor or other non-U.S. Government source, the source of the record or information (also known as “the submitter” for matters pertaining to proprietary data under 5 U.S.C. 552(b)(4)) (see §286.13(a)(4) of this title) shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. The following procedures will be followed:

(i) The person designated to respond will provide the source with a copy of the incoming request, a copy of the documents responsive to the request, and a letter of instruction. The notification letter will be addressed to the president of the entity or the entity’s counsel and sent by return receipt mail.

(ii) When a substantial issue has been raised, the DLA activity may seek additional information from the source and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved.

(iii) Any objections to release will be evaluated and the source provided with a copy of the activity’s final decision. Where a decision is made to release information claimed to be exempt, the source will be notified that the information will be released on a specified date unless the source seeks a restraining order or takes court action to prevent disclosure. Evaluators are cautioned that any decision to disclose information claimed to be exempt under 5 U.S.C. 552(b)(4) must be made by an official equivalent in rank to the initial denial authority.

(iv) When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the FOIA manager will notify the requester and suspend action on the request until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the FOIA manager shall promptly notify the submitter of this action.

(2) These procedures are required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source.

(3) These coordination provisions also apply to any non-U.S. Government record in the possession and control of DLA from multi-national organizations, such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through the Department of State.

(m) *File of initial denials.* Copies of all initial denials shall be maintained by each DLA activity in a form suitable

for rapid retrieval, periodic statistical compilation, and management evaluation.

(n) *Appeals*—(1) *General*—(i) *Appeals to record denials*. Requesters denied access to records under the provisions of part 286, subpart C, of this title may appeal such determinations to the Director, DLA. The appeal should be accompanied by a copy of the letter denying the initial request and contain the basis for disagreement with the initial refusal.

(ii) *Appeals to a “no record” finding*. Requesters have the right to appeal any “no record” finding to the FOIA manager of the activity that issued the finding. The letter of appeal should include the case number and, where appropriate, reasons why the requester believes the activity should have records on the subject matter. Using the information supplied by the requester, the FOIA manager will direct that a second search be conducted. If the second search produces no documents, the appeal will be forwarded to HQ DLA-G, Cameron Station, Alexandria, Virginia 22304-6100, along with a copy of the case file. The FOIA manager will include information on the amount of time spent on the request and provide an explanation of the method of search and the types of offices searched.

(iii) *Appeals to fee waiver denials or requester category decisions*. Requesters may appeal an initial determination regarding placement in a certain fee assessment category or waiver or reduction of fees when disclosure serves the public interest. Requesters will include a basis for disagreement and submit the appeal to the Staff Director, Office of Administration (Attn: DLA-XAM), Cameron Station, Alexandria, Virginia 22304-6100.

(2) *Time limits*—(i) *Time limits to file appeals*. The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the

time for the appeal shall not begin until the requester receives the last such notification.

(ii) *Time of receipt*. An FOIA appeal is considered received by DLA when it reaches DLA-G or, in the case of fee or requester category appeals, when it reaches DLA-XAM. Misdirected appeals should be referred expeditiously to the appropriate office.

(iii) *Time limits to decide appeals*. Final determinations on appeals normally shall be made within 20 working days after receipt.

(iv) *Delay in responding to an appeal*. (A) If additional time is needed due to the unusual circumstances described in paragraph (j) of this section, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(B) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph (j) of this section, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DLA shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(C) When the appellate authority or the authority's representative must consult with the requester over an issue not previously settled, such as agreement to pay fees for documents previously denied, then any delays on the requester's part will not count toward the 20-day time limit.

(3) *Response to the requester*. (i) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of

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the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(ii) Final refusal to provide a requested record must be made in writing by the DLA Director or his designee. In the case of fee appeals, final refusal to waive or reduce fees must be made in writing by the Staff Director of Administration. Record denial responses, at a minimum, shall conform to the following:

(A) The basis for the refusal shall be explained to the requester with regard to the applicable statutory exemption or exemptions invoked.

(B) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(C) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(D) The response shall advise the requester of the right to judicial review.

(4) *Consultation.* (i) Final refusal involving issues not previously resolved or that are known to be inconsistent with rulings of other DoD components ordinarily should not be made without first consulting with the Office of the General Counsel of the Department of Defense.

(ii) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, Attn: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

(5) *Records management.* Case files of appeals shall be retained by DLA-G or, in the case of fee or requester category appeals, by DLA-XAM for a period of six years to meet the statute of limitations of claims requirement.

(o) *Special mail services.* DLA activities are authorized to use registered

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mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(p) *Receipt accounts.* The Treasurer of the United States has established Receipt Account 3210 for use in depositing search, review, and duplication fees collected under the FOIA. Upon receipt of payment, the FOIA manager will forward the check or money order to DFAS/CO/PDG, P.O. Box 182317, Columbus, Ohio 43218-2317. FOIA managers will advise DFAS that the check is to be deposited to accounting classification 21R3210.0004. This account will not, however, be used for depositing receipts for technical information released under the FOIA, industrially-funded activities, and non-appropriated funded activities. Instead, payments for these shall be deposited to the appropriate fund.

§ 1285.6 Fees and fee waivers.

The rules and rates published in part 286, subpart F of this title apply to this rule. For purposes of computer search, DLA has established rates of \$20 per minute of central processing unit time for mainframe computer use and \$20 per hour of wall clock time for personal computer use. These rates represent average operational costs and may be used when the actual computer cost cannot be determined.

§ 1285.7 Reports.

The reporting requirement outlined in this rule is assigned Report Control Symbol DD-PA(A)1365 and will be prepared according to part 286, subpart G, of this title.

APPENDIX A TO PART 1285—GAINING ACCESS TO DLA RECORDS

I. General

The Defense Logistics Agency was established pursuant to authority vested in the Secretary of Defense and is an agency of DoD under the direction, authority, and control of the Assistant Secretary of Defense (Production and Logistics) and is subject to DoD policies, directives, and instructions. DLA is made up of a headquarters and 22 Primary Level Field Activities (PLFA's). DLA does not have a central repository for its records.

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FOIA requests, therefore, should be addressed to the FOIA Office of the DLA activity that has custody of the record desired. In answering inquiries regarding FOIA requests, DLA personnel will assist requesters in determining the correct DLA activity to address their requests. If there is uncertainty as to the ownership of the DLA record desired, the requester may be referred to the FOIA manager of the DLA activity most likely to have the record or to HQ DLA-XAM.

II. Description of DLA's Central and Field Organization

A. HQ Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304-6100

The headquarters is organized by broad functional area and includes the following offices and directorates:

Office of the Director.
Executive Director, Contracting.
Executive Director, Supply Operations.
Executive Director, Technical and Logistics Services.
Executive Director, Contract Administration.
Executive Director, Quality Assurance.
Executive Director, Program and Technical Support.
Staff Director, Congressional Affairs.
Staff Director, Public Affairs.
Staff Director, Command Security.
Staff Director, Administration.
Staff Director, Civilian Personnel.
Staff Director, Contracting Integrity.
Staff Director, Military Personnel.
Staff Director, Small and Disadvantaged Business Utilization.
Staff Director, Installation Services and Environmental Protection.
Assistant Director, Information Systems and Technology.
Assistant Director, Policy and Plans.
General Counsel.
Comptroller.

B. The PLFA's.

The 22 PLFA's are organized into six supply centers, four depots, six service centers, and six contract districts.

1. *Supply centers.* The six supply centers are responsible for materiel management of assigned commodities and items of supply relating to food, clothing, textiles, medical, chemical, petroleum, industrial, construction, electronics, and general items of supply. The six supply centers are:

a. Defense Construction Supply Center (DCSC). Buys and manages construction materials, automotive, and construction equipment components, and many repair parts used by the Military Services and other Federal agencies. Manages items ranging from common commercial items such as lumber

and plumbing accessories to complex repair parts for mechanical, construction, and automotive equipment, and for military aircraft, surface ships, submarines, combat vehicles, and missile systems.

b. Defense Electronics Supply Center (DESC). Responsible for the acquisition, management, and supply of more than one-half million electronic components such as resistors, capacitors, tubes, transformers, microcircuits, and components for various communications and weapons systems.

c. Defense Fuel Supply Center (DFSC). Serves as material manager for bulk petroleum and coal and is responsible for its worldwide supply, storage, and distribution.

d. Defense Industrial Supply Center (DISC). Buys and manages industrial items such as bearings, ferrous and nonferrous metals, electrical wire, gasket material, and certain mineral ores and precious metals.

e. Defense Personnel Support Center (DPSC). Buys and manages food, clothing, and medical supplies for all the armed services, some Federal agencies and authorized foreign governments.

f. Defense General Supply Center (DGSC). Buys and manages such categories of materials as electrical hardware, materials handling equipment, kitchen and laundry equipment, woodworking and metalworking machines, photographic supplies, and precision measuring instruments.

2. *Depots.* DLA depots are responsible for the receipt, storage, and distribution of DLA-managed materiel. The principal depots are:

Defense Distribution Region West (DDRW)
Defense Distribution Region East (DDRE)
Defense Depot Memphis (DDMT)
Defense Depot Ogden (DDOU)

3. *Service centers.* DLA operates six service centers which provide technical and logistics services. The service centers are:

a. Defense Logistics Services Center (DLSC). Responsible for maintenance of the Federal Supply Catalog System, including the development and dissemination of cataloging and item intelligence data to the Military Departments and other authorized customers.

b. Defense Reutilization and Marketing Service (DRMS). The central clearinghouse for the reutilization, donation, sale, or disposal of DoD-owned excess property, including scrap and waste.

c. Defense Industrial Plant Equipment Center (DIPEC). Manages the reserve of DoD-owned industrial plant equipment. The center repairs, rebuilds, and updates equipment to avoid new procurement costs.

d. DLA Administrative Support Center (DASC). Provides general administrative support to designated DLA activities.

e. Defense National Stockpile Center (DNSC). Maintains the national reserve of

strategic materials stored for use in event of war or other national emergency.

f. DLA Systems Automation Center (DSAC). Develops and maintains DLA's automated and computerized systems.

4. *Contract districts.* Six districts, each responsible for contracts covering a multistate or specialized area, administer materiel contracts after they are awarded by the military services, defense agencies, some civil agencies, and certain foreign governments. The districts are:

Defense Contract Management District Northeast (DCMDN).
 Defense Contract Management District Mid Atlantic (DCMDM).
 Defense Contract Management District North Central (DCMDC).
 Defense Contract Management District South (DCMDS).
 Defense Contract Management District West (DCMDW).
 Defense Contract Management Command International (DCMCI).

III. Requester Requirements

A. Addressing Requests

Address requests to the DLA PLFA most likely to hold the records (see paragraph V of this appendix for mailing addresses of FOIA managers). If the PLFA is undeterminable, address requests to HQ DLA-XAM for proper routing. Requests must be in writing.

B. Description of Records.

Provide a reasonable description of the documents you are seeking. If you have detailed information which would help reduce the search time involved, please include it in your request. If you have a document which references the DLA record you seek, include a copy of that document.

C. Fees and fee waivers.

State your willingness to pay fees above the \$15 automatic waiver or provide a justification for waiver of all or part of the costs. Waiver requests must address with specificity each of the fee waiver elements in part 286, subpart F, of this title.

IV. Availability of DLA Publications

Unrestricted DLA regulations, manuals, and handbooks may be purchased from the DLA publications sales outlet. DLA Handbook 5025.1, Defense Logistics Agency Index of Publications, is published quarterly and may be used to help you identify publications of interest to you. Orders for this and other nonrestricted publications may be placed through DASC-PD, Cameron Station, Alexandria, VA 22304-6130. That office will advise you of cost before completing your order.

V. FOIA Mailing Addresses

HQ Defense Logistics Agency, Attn: HQ DLA-XAM, Cameron Station, Alexandria, VA 22304-6100.
 Defense Construction Supply Center, Attn: DCSC-WXA, 3990 E. Broad Street, Columbus, OH 43216-5000.
 Defense Electronics Supply Center, Attn: DESC-WXA, 1507 Wilmington Pike, Dayton, OH 45444-5252.
 Defense Fuel Supply Center, Attn: DFSC-DB, Cameron Station, Alexandria, VA 22304-6160.
 Defense General Supply Center, Attn: DGSC-DB, Richmond, VA 23297-5000.
 Defense Industrial Supply Center, Attn: DISC-PPR, 700 Robbins Avenue, Philadelphia, PA 19111-5096.
 Defense Personnel Support Center, Attn: DPSC-WXA, 2800 South 20th Street, Philadelphia, PA 19101-8419.
 Defense Distribution Region East, Attn: DDRE-WX, New Cumberland, PA 17070-5001.
 Defense Depot Memphis, Attn: DDMT-WX, 2163 Airways Blvd., Memphis, TN 38114-5000.
 Defense Depot Ogden, Attn: DDOU-G, 800 West 12th Street, Ogden, UT 84407-5000.
 Defense Distribution Region West, Attn: DDRW-WX, Tracy, California 95376-5000.
 Defense National Stockpile Center Attn: DNSC-L, 1745 Jefferson Davis Highway, Crystal Square No. 4, suite 100, Arlington, VA 22202-3402.
 Defense Industrial Plant Equipment Center, Attn: DIPEC-LP, 2163 Airways Blvd., Memphis, TN 38114-5051.
 Defense Logistics Services Center, Attn: DLSC-WXA, 74 N. Washington Avenue, Battle Creek, MI 49017-3084.
 Defense Reutilization and Marketing Service, c/o Defense Logistics Services Center, Attn: CLSC-WXA, 74 N. Washington Avenue, Battle Creek, MI 49017-3084.
 DLA Systems Automation Center, Attn: DSAC-E, P.O. Box 1605, Columbus, OH 43216-5002.
 DLA Administrative Support Center, Attn: DASC-RA, Cameron Station, Alexandria, VA 22304-6130.
 Defense Contract Management District South, Attn: DCMDN-W, 805 Walker Street, Marietta, Georgia 30060-2789.
 Defense Contract Management District Northeast, Attn: DCMDN-WX, 495 Summer Street, Boston, MA 02210-2184.
 Defense Contract Management District North Central, Attn: DCMDC-WX, O'Hare International Airport, P.O. Box 66926, Chicago, IL 60666-0926.
 Defense Contract Management District West, Attn: DCMDW-WXA, 222 N. Sepulveda Blvd., El Segundo, CA 90245-4320.

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Defense Contract Management District Mid Atlantic, Attn: DCMDM-RW, 2800 S. 20th Street, Philadelphia, PA 19101-7478.

Defense Contract Management Command International, Attn: DCMCI-MBW, Wright-Patterson AFB, OH 45433-5000.

PART 1288—REGISTRATION OF PRIVATELY OWNED MOTOR VEHICLES

Sec.

1288.1 Purpose and scope.

1288.2 Policy.

1288.3 Definitions.

1288.4 Responsibilities.

1288.5 Procedures.

1288.6 Forms and reports.

APPENDIX A TO PART 1288—DECAL SPECIFICATIONS

AUTHORITY: 5 U.S.C. 301; DOD Directive 5105.22, June 8, 1978.

SOURCE: 43 FR 40806, Sept. 13, 1978, unless otherwise noted.

§ 1288.1 Purpose and scope.

To prescribe policy and procedures for the registration, inspection, and marking of privately owned vehicles (POV) on Defense Logistics Agency (DLA) activities. This regulation is applicable to individuals serving in or employed by the Defense Logistics Agency, and to all other individuals subject to motor vehicle registration requirements set forth in this part 1288 and DLAR 5720.1/AR 190-5/OPNAVINST 11200.5B/AFR 125-14/MCO 5110.1B, Military Police Motor Vehicle Traffic Supervision.

§ 1288.2 Policy.

(a) The operation of a POV on a DLA activity constitutes a conditional privilege extended by the Head of the activity. The Heads of DLA primary level field activities (PLFA's) have the authority to supplement this regulation to implement additional controls and restraints warranted by existing conditions at a PLFA. For example, commanders of depots and supply centers may impose searches of vehicles as warranted to reduce pilferage, and protect Government interests.

(b) POV's permanently registered for operation on a DLA activity will be identified by use of one of the decals prescribed in this part 1288 (appendices A and B).

(c) The DLA vehicle decal will be valid for a period of 3 years from the year and month of issue.

(d) Activities will use DLA Form 1454, Vehicle Registration/Driver Record, as the basic vehicle registration and driver record.

(e) DLA tenant activities will comply with host installation policies and procedures for registering POV's.

§ 1288.3 Definitions.

Terms used in this part 1288 are contained in DLAR 5720.1.

§ 1288.4 Responsibilities.

(a) *HQ DLA*. (1) The command security officer, DLA (DLA-T) will provide staff supervision and assistance to DLA activities on matters concerning this part 1288.

(2) The inspector general, DLA (DLA-I) will procure, issue, and control inspector general (IG) vehicle decals in accordance with §1288.6 of this part, with the exception of the 3-year validation requirement. (Vehicles bearing such decals will be permitted entry to all DLA activities.)

(b) The heads of DLA primary level field activities will:

(1) Insure that personnel adhere to the provisions of this part 1288 when implemented.

(2) Procure, issue, and control vehicle decals in accordance with this DLAR.

(3) Periodically inform personnel of the requirements of this DLAR, DLAR 5720.1, and local requirements concerning the motor vehicle registration program.

(4) Activity/tenant employees are not considered visitors and will not be issued visitor passes. Employees operating loaner/rental vehicles may be temporarily registered in accordance with DLAR 5720.1, paragraph 3-2c.

§ 1288.5 Procedures.

(a) *Issuance of DLA POV decal and 3-year validation sticker*. (1) One decal will be affixed to the left front bumper (operator's side) of a four-wheel vehicle. An additional decal may be placed on the rear bumper of the vehicle. For vehicles not equipped with bumpers and two-wheeled vehicles, the placement of decals will be determined locally.