

CHAPTER XCIX—MILITARY COMPENSATION
AND RETIREMENT MODERNIZATION
COMMISSION

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PART 9901—DISCLOSURE OF RECORDS AND INFORMATION

FREEDOM OF INFORMATION ACT

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AUTHORITY: National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, Subtitle H, 126 Stat. 1632, 1787 (2013) (amended by National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, Sec. 1095, 127 Stat. 672, 878 (2013)); 5 U.S.C. 552.

SOURCE: 79 FR 54567, Sept. 12, 2014, unless otherwise noted.

FREEDOM OF INFORMATION ACT

§ 9901.1 Authority, purpose, and scope.

(a) *Authority.* This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552. This subpart should be read in conjunction with FOIA.

(b) *Purpose.* (1) The National Defense Authorization Act for Fiscal Year 2013, Public Law 112-239, Subtitle H, 126 Stat. 1632, 1787 (2013) (amended by National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, Sec. 1095, 127 Stat. 672, 878 (2013)), established the Military Compensation and Retirement Modernization Commission (MCRMC). MCRMC's purpose, pursuant to its enabling statute, is to conduct a review of the military compensation and retirement systems and to make recommendations to modernize those systems to:

(i) Ensure the long-term viability of the All-Volunteer Force by sustaining the required human resources of that force during all levels of conflict and economic conditions;

(ii) Enable the quality of life for members of the Armed Forces and the other uniformed services and their families in a manner that fosters successful recruitment, retention, and careers for members of the Armed Forces and the other uniformed services; and

(iii) Modernize and achieve fiscal sustainability for the compensation and retirement systems for the Armed Forces and the other uniformed services for the 21st century.

(2) The Commission will make its recommendations only after it examines all laws, policies and practices of the Federal Government that result in any direct payment of authorized or appropriated funds to current and former members (veteran and retired) of the uniformed services, including the reserve components of those services, and the spouses, family members, children, survivors, and other persons authorized to receive such payments as a result of their connection to Service members.

(c) *Agency.* MCRMC is an independent establishment of the Federal government as defined by Sections 104 and 105 of Title 5 of the U.S. Code, and a temporary organization under section 3161 of such title. The Commission is composed of nine members, appointed by the President and Congressional leadership. Members of this Commission are deemed to be Federal employees. MCRMC maintains its headquarters in Arlington, Virginia.

(d) *Records on individuals.* MCRMC does not maintain any of its own systems of records on individuals. Pursuant to a Memorandum of Understanding between the Department of Defense, Director of Administration & Management and MCRMC, the Department of Defense, Washington Headquarters Services is responsible for MCRMC personnel records management including compliance with the Privacy Act.

[79 FR 54567, Sept. 12, 2014, as amended at 79 FR 63497, Oct. 24, 2014]

§ 9901.2 Proactive disclosure of records.

(a) *Proactive disclosure.* Subject to the application of FOIA exemptions, 5 U.S.C. 552(b), records that are required by FOIA to be made available for public inspection and copying and records identified by the agency as records of interest to the public, including Commission hearing schedules, testimony, minutes, press releases, and documents

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provided to the Commission, are available on the MCRMC Web site at <http://www.mcrmc.gov>.

(b) *Final report.* The Commission's final report will be available on its Web site.

(c) *Released records.* The Commission will post records released in response to FOIA requests on its Web site.

§ 9901.3 Requests for records.

(a) *Generally.* Many documents are available on the MCRMC Web site and MCRMC encourages requesters to visit the Web site before making a request for records pursuant to this subpart. MCRMC will provide records to individual requesters in response to FOIA requests for records not available on its Web site.

(b) *Electronic or written requests required.* For records not available on the Web site, requesters wishing to obtain information from MCRMC should submit a request on the MCRMC Web site. If a computer is not available to the requester, a written request may be made to the MCRMC FOIA Officer. Such requests should be addressed to: FOIA Officer, Military Compensation and Retirement Modernization Commission, Post Office Box 13170, Arlington, VA 22209. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 697-8330 or email to foia@mcrmc.gov. MCRMC will communicate with the requester by email unless he or she specifies otherwise.

(c) *Contents of request.* Requests must include the following:

(1) A statement that the request is being made under FOIA, the requester's full name and address, a telephone number at which the requester can be reached during normal business hours, and an email address for the requester, if the requester has one;

(2) A description of the records sought in enough detail to allow the records to be located with a reasonable amount of effort. The request must identify/describe the records sought and include information such as date, title or name, author, recipient, and subject matter of the records sought, where possible;

(3) If submitting the request as an *educational institution*, a *non-commercial*

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scientific institution, or a *representative of the news media*, the request must specifically identify the organization on which the status is based, and if a freelance representative of the news media, the requester should submit a history of past publications and/or demonstrate a solid basis for expecting publication through a news-media entity;

(4) A fee waiver, if applicable; and

(5) If the request is made by mail, the words "FOIA REQUEST" or "REQUEST FOR RECORDS" must be clearly marked on the cover letter, letter, and envelope.

(d) *Perfected requests.* MCRMC will process only perfected requests. A perfected request must meet all of the requirements of this subpart.

[79 FR 63498, Oct. 24, 2014]

§ 9901.4 Timing.

(a) *Acknowledgment of request.* MCRMC will provide an acknowledgment notice with an individualized tracking number and a summary of the records requested to each requester within 10 working days after receiving a request.

(b) *Response time.* Every effort will be made to respond to the request within 20 days (excluding Saturdays, Sundays, and legal public holidays) of receiving the request.

(c) *Appeal.* MCRMC will make a decision with respect to an appeal of a denial of a request for records within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of the appeal.

(d) *Clarification/Additional information.* If a request for records does not reasonably describe the records sought, MCRMC will contact the requester to seek additional information. Requesters may discuss their request with the MCRMC FOIA Public Liaison and modify the request. The MCRMC FOIA Public Liaison may be reached via telephone at (703) 692-2080 or by U.S. Mail at FOIA Public Liaison, Military Compensation and Retirement Modernization Commission, Post Office Box 13170, Arlington, VA 22209. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 697-8330 or email to foia@mcrmc.gov. MCRMC may make one

request for clarification/additional information to the requester for information and suspend the 20-day period while awaiting such information. When a requester fails to clarify by providing additional information, MCRMC will notify the requester that the request has not been properly made and that no further action will be taken on the request. The requester may appeal such a decision under the procedures set forth in subpart 9901.7.

(e) *Expedited processing.* A request for expedited processing must accompany the initial request for records. It must be a written statement of compelling need for expedited processing, stating that the facts are true and correct to the best of the requester's knowledge and belief. In determining whether processing should be expedited, the FOIA Officer may consider whether:

(1) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to a person's life or physical safety; or

(2) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about actual or alleged Federal government activity.

(f) *Extension for unusual circumstances.* If MCRMC determines that unusual circumstances exist, the time limits described in paragraphs (b) and (c) of this subpart may be extended by no more than 10 days (excluding Saturdays, Sunday, and legal public holidays) by providing written notice of the extension to the requester. The time limit may be extended if the request cannot be processed within the time limits of this subpart due to the need to search, collect, and examine a voluminous amount of records, coordinate, or consult with another agency. The requester will be given an opportunity to limit the scope of the request or to arrange with MCRMC an alternative time frame for processing the request. The FOIA Officer shall include with the notice of extension a brief statement of the reason for the extension and the date the FOIA Officer expects to make a determination.

§ 9901.5 Response to requests.

(a) *Authority to grant or deny requests.* The MCRMC FOIA Officer is authorized to grant or deny any request for MCRMC records.

(b) *Grant of request.* If the MCRMC FOIA Officer grants a request, in full or in part, the FOIA Officer shall promptly provide the requester written notice of the decision. The requester will be notified whether the request has been assigned to the Standard or Complex track, pursuant to paragraph (d) of subpart 9901.6.

(c) *Request denial.* If the FOIA Officer denies a fee waiver request or finds there are no responsive records subject to FOIA, the FOIA Officer will notify the requester of that fact. If the FOIA Officer denies the request, in full or part, the FOIA Officer will provide the requester written notice of the denial, which will include a description of the material withheld, the FOIA exemption under which the information was withheld, and the approximate number of pages of information withheld. When a portion of a record is withheld, the amount of information redacted and the claimed exemption will be noted at the place in the record where the redaction was made. The notice will also describe the procedure for filing an appeal.

(d) *Referral of records.* When a responsive record that originated in another agency is located, the responsive record will be referred to its originating agency for response.

(e) *Referral of request.* The requester will be notified when all or part of a request is referred to another agency and will be given contact information for the FOIA office of the agency to which the request and responsive record were referred.

§ 9901.6 Production of records.

(a) *Generally.* MCRMC will apply a presumption of openness when processing FOIA requests and will only withhold exempt information if it reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions or if disclosure is prohibited by law. Before withholding information, MCRMC will conduct a foreseeable harm analysis,

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which clearly identifies the harm that would occur with disclosure.

(b) *Large requests.* If a request involves a voluminous amount of material or searches in multiple locations, MCRMC will provide the requester with interim responses, releasing the information on a rolling basis.

(c) *Copies.* MCRMC will maintain copies of records that have been the subject of any pending or closed request, appeal, or lawsuit under the FOIA, to include all correspondence pertaining to the subject request, until disposition is authorized under the National Archives and Records Administration's General Records Schedule 14.

(d) *Multi-Track processing.* (1) MCRMC uses a multi-track system to process FOIA requests. This means that a FOIA request is processed based on its complexity. When MCRMC receives a request it will be assigned to the *Standard* or *Complex* track.

(i) *Standard Track.* Requests that are routine and require little search time, review, or analysis are assigned to the Standard Track. MCRMC will respond to these requests in the order in which they are received and make every effort to respond no later than 20 working days after receipt of the request.

(ii) *Complex Track.* Requests that are non-routine are assigned to the Complex Track if the response may:

(A) Be voluminous;

(B) Require an unusually high level of effort for search, review, or duplication; or

(C) Cause an undue disruption to the day-to-day activities of MCRMC in carrying out its statutory responsibilities.

(2) The requester will be notified if the request is assigned to the Complex Track and will be given an estimate of the time for response. MCRMC will respond to Complex Track requests as soon as practicable. MCRMC may discuss with the requester the possibility of reformulating the request to reduce processing time.

§ 9901.7 Appeals.

(a) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's decision may request review of the decision by the MCRMC FOIA Appellate Authority. The appeal must be received within 60 days of the date of the FOIA

Officer's decision. Appeals may be made through the MCRMC Web site at the FOIA tab or in writing, addressed to: FOIA Appellate Authority, Military Compensation and Retirement Modernization Commission, Post Office Box 13170, Arlington, VA 22209. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 697-8330 or email to foia@mcrmc.gov. The requester may wish to explain why the Appellate Authority should grant the appeal, to the extent that an explanation could assist the Appellate Authority in making a decision on the appeal.

(b) *Appeal decisions.* MCRMC's Chief FOIA Officer will decide the appeal within 20 days (except Saturdays, Sundays, and legal public holidays) from the date it receives the appeal. If the appeal is denied, MCRMC will notify the requester in writing of the decision and the provisions for judicial review. If the appeal is granted, the Chief FOIA Officer will notify the requester in writing.

(c) *Mediation.* A response to an appeal will advise the requester of the 2007 FOIA amendments, which created the Office of Government Information Services (OGIS), which offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS at: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740; email: ogis@nara.gov; telephone: (202) 741-5770; facsimile: (202) 741-5769; toll free telephone: (877) 684-6448.

§ 9901.8 Fees.

(a) *Generally.* MCRMC may charge reasonable fees that recoup the allowable direct costs incurred in responding to FOIA requests. MCRMC may assess charges for time spent searching for records even if MCRMC is unable to locate the records or if the records are located and determined to be exempt from disclosure.

(1) *Timing.* MCRMC may toll the response time limit while awaiting information from the requester regarding fee assessment. Time limits resume