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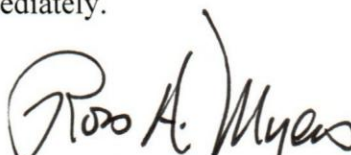
United States Cyber Command Instruction (USCCI)

OPR: J070
DISTRIBUTION: B

USCCI 5000-06
APR 08 2019

Freedom of Information Act Program

1. Purpose. This United States Cyber Command (USCYBERCOM) Instruction (USCCI) establishes policies, procedures, requirements and responsibilities for releasing requested records in accordance with (IAW) Section 552 of Title 5, United States Code (USC), *Freedom of Information Act* (FOIA) and within statutory time limits.
2. Supersedes/Cancellation. This revision supersedes USCCI 5000-06, *Freedom of Information Act (FOIA) Program*, 17 April 2018.
3. Applicability. This instruction applies to USCYBERCOM personnel and subordinate units including the Headquarters Cyber National Mission Force, Service Component Commands (SCC), Joint Force Headquarters-Cyber, Joint Force Headquarters – Department of Defense Information Network, and designated Joint Task Forces (JTF). SCCs will follow Service regulations for any FOIA request that is Service specific or separated from the joint mission area.
4. Responsibilities. Responsibilities are outlined in Enclosure 1.
5. Procedures. Procedures are outlined in Enclosure 2.
6. Summary of Changes. This revision reflects command elevation to a Combatant Command and its designation as a Department of Defense (DOD) FOIA Program Component. Changes of importance include the removal of all FOIA responsibilities previously conducted by United States Strategic Command as the command's DOD FOIA Program Component.
7. Releasability. Cleared for Public Release. This instruction is approved for public release; distribution is unlimited. DOD Components, other Federal agencies, and the public may obtain copies of this directive.
8. Effective Date. This instruction is effective immediately.


ROSS A. MYERS
Rear Admiral, USN
Chief of Staff

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Enclosures:

Enclosure 1 – Roles and Responsibilities

Enclosure 2 – Procedures

Attachment 1 – Glossary of References and Supporting Information

Attachment 2 – DD Form 2086, *Record of Freedom of Information (FOI) Processing Cost*

ENCLOSURE 1**1. Roles and Responsibilities.****1.1. Chief of Staff (CoS).**

1.1.1. Oversees the command FOIA Program.

1.1.2. Serves as the Initial Denial Authority (IDA).

1.1.3. Delegates IDA for select FOIA cases.

1.2. Chief Knowledge Officer (CKO). Assigned to USCYBERCOM J070, Information Management Defense.

1.2.1. Directs, manages, and administers the command FOIA program.

1.2.2. Designates the FOIA Program Manager in writing.

1.3. FOIA Program Manager (FPM). Reports matters to the CoS and CKO. Leads the command FOIA Program Office (FPO)/J070. Supervises all FOIA Case Managers (FCM) assigned full-time to the FPO to assist in the processing and redaction of each FOIA request. Maintains responsibility for FPO actions listed in paragraphs 1.3.1.-1.3.18.

1.3.1. Tracks and processes FOIA requests IAW the FOIA, DOD Directive (DODD) 5400.07, *DOD Freedom of Information Act (FOIA) Program* and DOD Manual (DODM) 5400.07, *DOD Freedom of Information Act Program*.

1.3.2. Manages the command FOIA Requestor Service Center (RSC).

1.3.3. In coordination with the command Public Affairs Office, maintains content on the public facing FOIA website on the non-classified internet protocol router network (NIPRNET) at www.cybercom.mil.

1.3.4. Tasks the appropriate organizations via the USCYBERCOM Workflow Management System (WMS), to identify, search for and/or review responsive records for each FOIA request. Provide ample processing instructions. Conduct an initial review of identified documents to confirm responsiveness to a specific FOIA request.

1.3.5. Determines the responsible directorate to task for search and/or document review. Via a USCYBERCOM FCM:

1.3.5.1. Identifies a Subject Matter Expert (SME) and tasks the responsible parties directly, when possible, as a direct FOIA tasking approach is paramount to shorten the coordination efforts and ease the burden to the mission.

1.3.5.2. On a case-by-case basis, determines the SMEs' level of effort on the request.

1.3.5.3. Determines when to task FOIA requests in WMS.

1.3.6. Unless categorized under "unique circumstances," within twenty (20) workdays of the original FOIA request, or a referral or consultation request from another DOD or US Government

(USG) agency, provides to the FOIA requester the responsive records with or without redactions, a response of zero responsive records, a Glomar response (IAW DODM 5400.07, para 5.1.f.(1)) or an estimated date as to when responsive records can be realistically processed. Includes the USCYBERCOM IDA-signed memorandum for completed FOIA cases.

1.3.7. Accomplishes the redaction of responsive records or reviews the proposed redactions of the appropriate organizations for FOIA compliance.

1.3.8. If a FOIA request implicates other USG agencies, to include other military organizations, forwards the portion of the proposed response that includes records related to that agency to the implicated agency.

1.3.9. Prepares staffing packages for CoS review and/or approval to submit to the FOIA requester IAW USCCI 5000-01, *Correspondence Management*. Ensures formal coordination includes the offices described in paragraph 2.3.6.

1.3.10. Provides FOIA processing initial and/or recurring training to appointed FOIA Monitors (FMon) and, as required, SMEs.

1.3.11. Co-chairs the combined FOIA and Privacy & Civil Liberties Working Group (FP&CL WG). Keeps all FMons and SMEs apprised of FOIA processing guidance updates. Maintains a FOIA wiki page or similar forum on an internal NIPRNET primary key infrastructure (PKI) enabled command portal.

1.3.12. Promptly notifies the CoS and the Office of the Staff Judge Advocate (OSJA) of FOIA requests for records of a controversial or sensitive nature.

1.3.13. Promptly notifies the Public Affairs Office if there is potential for media interest or involvement in the case.

1.3.14. Maintains appropriate electronic and hard copy records pursuant to Chairman of the Joint Chiefs of Staff Manual (CJCSM) 5760.01A, *Joint Staff and Combatant Command Records Management Manual: Volume I--Procedures*, and *Volume II--Disposition Schedule*; DODD 5400.07; DODM 5400.07; USCCI 5000-01 and the appropriate records management program laws/directives.

1.3.15. Submits annual and special FOIA report requirements to higher headquarters, as directed.

1.3.16. Develops and maintains a command FOIA Standard Operating Procedures.

1.3.17. Maintains Classification Advisory Officer (CAO) certifications IAW USCCI 5900-04, *Classification Advisory Officer Program*.

1.3.18. Serves as the alternate representative to the FP&CL WG for J0 (Special Staff), J1 (Manpower and Personnel) and J4 (Logistics) Directorates, and current or subsequently established JTFs.

1.4. **FOIA Monitors (FMon).** Appointed in writing by the J-Code Director or subordinate organization equivalent.

1.4.1. Be familiar with the nine FOIA exemptions and the Intelligence Oversight requirements of USCCI 5200-02, *Intelligence Oversight*.

1.4.2. Monitor the FOIA program within respective directorates or equivalent subordinate organizations to ensure a reasonable search of electronic and physical files occurs for each applicable FOIA request. Provide relevant status updates directly to the FPO or through WMS, as appropriate.

1.4.3. Task organizational leadership to identify SME(s) to respond to each FOIA request.

1.4.4. Complete the FOIA task or monitor SME progress in order to meet each FOIA tasking deadline.

1.4.5. Provide FOIA processing advice and assistance to the SME. Seek advice from the FPM, when necessary.

1.4.6. Notify the FPO regarding responsive records to a controversial or sensitive subject or cases where the existence or nonexistence of a record may in itself be classified (Glomar Response).

1.4.7. Track and provide the time spent processing each FOIA request on the DD Form 2086, *Record of Freedom of Information (FOI) Processing Cost* (see Attachment 2) to the FPO.

1.4.8. Serve as the organization's primary representative to the FP&CL WG.

1.5. Subject Matter Expert (SME).

1.5.1. Responds to FOIA requests according to processing instructions contained in the tasking guidance provided by the FPM and/or FMon.

1.5.2. Processes FOIA actions through the organization's FMon.

1.5.3. Serves as the organization's alternate representative to the FP&CL WG. This task is not applicable to J0, J1, J4 and JTF.

1.6. J-Code Directors (or equivalent at a subordinate organization).

1.6.1. Appoint an individual to serve as the directorate's FMon and provide the FMon a copy of the appointing memorandum.

1.6.2. Designate a SME to serve as alternate representative to the FP&CL WG. This task is not applicable to J0, J1, J4 and JTF.

1.6.3. Ensure respective FMon (s) understand FOIA procedures and enable training opportunities, as required, to execute assigned duties.

1.7. Office of the Staff Judge Advocate (OSJA).

1.7.1. Reviews and evaluates recommendations to withhold all or part of a record using one or more of the FOIA exemptions.

1.7.2. At their discretion, identifies additional items for withholding or disclosure.

1.8. Public Affairs Officer (PAO).

1.8.1. Remains cognizant of FOIA requests that possess command equities, with special consideration to those with known or potential media interests.

1.8.2. Provides insight on publicly available information.

1.8.3. Provides recommendations on withholding all or part of a responsive record.

1.9. Operations Security (OPSEC) Coordinator. Provides recommendations on withholding all or part of a record based on OPSEC considerations.

1.10. Classification Advisory Officer (CAO).

1.10.1. Confirms withheld information is properly and currently classified pursuant to an existing executive order, classification guide, or its aggregation under FOIA exemption (b) (1).

1.10.2. Confirms information recommended for disclosure is unclassified. Inform the FPM if information recommended for disclosure should be classified, but is not.

ENCLOSURE 2**2. Procedures.**

2.1. The Commander, USCYBERCOM ensures personnel comply with the FOIA by making releasable information available to the public, as requested, and by responding to perfected FOIA requests within the statutory time limits.

2.2. The command responds to FOIA requests as a FOIA RSC and processes all FOIA requests (electronic or hardcopy) received directly from a requestor. Refer to DODM 5400.07:

2.2.1. Para 3.4.b. for the FOIA Public Liaison function.

2.2.2. Para 6.5 for FOIA appeal processing guidance.

2.3. The FPO responds to perfected FOIA requests 1) received directly from a FOIA requestor or 2) referred from another DOD agency. The typical flow of actions is as follows.

2.3.1. Upon receipt, the FPO reviews the written FOIA request for clarity. Direct any questions or desired clarifications about the FOIA request to the requestor. In addition, any procedural questions on that particular FOIA request (e.g., application of exemptions or release determinations in similar previous FOIAs) are resolved to minimize processing time of any responsive records. Finally, the FPO determines whether the request properly belongs to the command or whether the command should refer the request to a different DOD agency based on the subject of the FOIA.

2.3.2. Based on the requested records, the FPO determines which organizations to task to search for responsive records. The FPO either can distribute the task via WMS or, in certain cases where the requested record is a specific record, may directly task an organization (e.g., J7 (Exercises and Training) for exercise related records) or an office (e.g., Command Historian for historical records). All correspondence will include the command assigned FOIA case number (e.g., 19-010, the 10th case for Fiscal Year 2019).

2.3.3. To meet the FOIA timeline to release records within twenty (20) business days of receipt of the FOIA, tasked organizations must complete an electronic and hard copy search for responsive records and provide access to these records to the FPO, preferably in an electronic form, within seven (7) business days. Whether the tasked organization finds none, one, or multiple records, each tasked organization's FMon ensures all personnel involved with a FOIA case provide a brief description of the extent of the search and the time spent completing the search. The FPO annotates this time on the DD Form 2086 to reflect the level of effort required to answer the FOIA request.

2.3.4. The FPO then validates whether the records identified by each organization are responsive to the actual request, and provides the requester an estimated date when the FPO can sufficiently process all of the records. Depending on the number, length and/or complexity of the records found, the estimated time to review/redact each record may take significantly longer than twenty (20) business days. The RSC communicates with the FOIA requestor when there are delays.

2.3.4.1. Option 1. Pending the FOIA requester's concurrence, the FOIA requestor receives two or more interim releases of reviewed records versus waiting for the review and

release of all responsive records. For example, instead of releasing ten (10) responsive records at the ninety (90) business-day mark, the command reviews and releases four (4) of ten (10) responsive records at the forty-five (45) business day mark. The command would release the remaining six (6) records at the ninety (90) business-day mark.

2.3.4.2. Option 2. In cases where the number of responsive records is significant, the FPM negotiates a refined FOIA request that better identifies the desired information, and hence limits the number of records to a more manageable level that the command can process within acceptable timelines. For example, USCYBERCOM reviews an exercise After Action Report and the corresponding presentation versus reviewing those two records plus a plethora of e-mail that barely address the exercise and its aftermath. The FOIA requester receives the desired information in a reasonable time without unnecessarily overburdening the FPO.

2.3.5. While tasked organization's FMon and SME are not required to redact each responsive record under their purview, insight into what portions of each of the records is recommended for withholding, especially from a classified (i.e., FOIA exemption (b)(1)) perspective, is beneficial as the FPO processes each record and applies the appropriate FOIA exemptions.

2.3.6. Upon completion of the proposed redactions, the FPO coordinates the proposed response with multiple organizations and offices. At each step, the FPO attempts to adjudicate any recommended additional disclosures or withholdings. At the end of this staffing, if differences remain, the FPO annotates those items on the USCYBERCOM Form 915 to codify the various staffing actions and decisions. The organization and offices involved in this staffing include, but are not limited to, the following.

2.3.6.1. The FMon and/or SME from the organizations that provided the responsive records to focus on the proposed redactions.

2.3.6.2. An OPSEC Coordinator or the command OPSEC Program Manager to look at each FOIA response and determine whether OPSEC concerns exist, especially from a mosaic and compilation perspective.

2.3.6.3. A CAO to verify information recommended for disclosure is unclassified.

2.3.6.4. The OSJA to provide legal advice on the application of FOIA exemptions to the USCYBERCOM CoS.

2.3.6.5. A PAO to maintain oversight of requested records and information recommended for disclosure to the FOIA requestor. The PAO provides insight to the FPM regarding existing applicable open source information. This guidance could affect the application of FOIA exemptions.

2.3.6.6. The CKO for concurrence to submit the completed staffing package to the J010 (Command Secretariat (CmdSec)) for staffing to the CoS. Pending CoS delegation, the staffing of select FOIA cases may vary from this norm.

2.3.7. The CmdSec logs each package and reviews it for formatting discrepancies. Upon completion of review, the CmdSec forwards the package to the USCYBERCOM CoS Executive Assistant. The Deputy CoS review is not mandated. The CoS may choose to approve the FOIA

package as is, approve with additional redactions or return the package to the FPM for additional staffing and a resubmission.

2.3.8. Upon CoS approval (signature of the IDA memorandum), the FPO electronically provides the command response to the FOIA requestor and maintains the completed DD Form 2086 for fee collection and/or reporting purposes. This concludes command actions unless the FOIA requestor invokes appeal rights.

2.4. There are two additional situations where the FPO reviews records prior to FOIA release. In both scenarios, based on IDA delegation guidance, the CKO or lower may sign out USCYBERCOM's response.

2.4.1. **Consultation.** Based on the material in responsive record(s) under review by another agency, USCYBERCOM is determined to have equities in at least one section of a record. The FPO only reviews those portion(s) to determine whether FOIA exemption(s) apply to the information, then initiates actions consistent with paragraph 2.3.6. depending on the extent of the consultation.

2.4.2. **FOIA-like Review.** When the command receives a request to complete a Mandatory Declassification Review (i.e., FOIA-like review) for a select record(s), the FPO initiates actions consistent with paragraph 2.3.6.

ATTACHMENT 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

5 USC § 552, *The Freedom of Information Act*, as amended
 DODD 5400.07, *DOD Freedom of Information Act (FOIA) Program*, 2 January 2008, certified current through 2 January 2015
 DODM 5400.07, *DOD Freedom of Information Act (FOIA) Program*, 25 January 2017
 Chairman of the Joint Chiefs of Staff Manual (CJCSM) 5760.01A, *Joint Staff and Combatant Command Records Management Manual: Volume I--Procedures*, 7 February 2008, incorporating Change 2, 13 July 2009
 CJCSM 5760.01A, *Joint Staff and Combatant Command Records Management Manual: Volume II -- Disposition Schedule*, 13 July 2012, directive current as of 15 September 2014
 USCCI 5000-01, *Correspondence Management*, 22 April 2016
 USCCI 5200-02, *Intelligence Oversight*, 29 May 2014
 USCCI 5900-04, *Classification Advisory Officer Program*, 2 December 2016

Informative Websites

USG: <https://FOIA.gov/>
 Department of Justice (DOJ): <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>
 DOD: <http://open.defense.gov/Transparency/FOIA/>
 USCYBERCOM: <https://www.cybercom.mil/FOIA/>

Acronyms

CAO	Classification Advisory Officer
CJCSM	Chairman of the Joint Chiefs of Staff Manual
CKO	Chief Knowledge Officer
CmdSec	Command Secretariat
CoS	Chief of Staff
DOD	Department of Defense
DODD	Department of Defense Directive
DODM	Department of Defense Manual
FCM	FOIA Case Manager
FMon	FOIA Monitor
FOIA	Freedom of Information Act
FP&CL WG	FOIA and Privacy and Civil Liberties Working Group
FPM	FOIA Program Manager
FPO	FOIA Program Office
IAW	in accordance with
IDA	Initial Denial Authority
JTF	Joint Task Force
NIPRNET	Non-classified Internet Protocol Router Network
OPSEC	Operations Security

PAO	Public Affairs Office
RSC	Requestor Service Center
SCC	Service Component Command
SME	Subject Matter Expert
USCCI	United States Cyber Command Instruction
USCYBERCOM	United States Cyber Command
USG	United States Government
WMS	Workflow Management System

Terms [Definitions are from DODM 5400.07 (Ref c). The word “document” equates to “record,” which is used throughout this USCCI.]

Agency Record [record]. Includes all documents or records created or obtained by a USG agency that are in the agency’s possession and control at the time a FOIA request is received. Four factors determine an agency’s control: C-S&R

1. The intent of the creator of the document to retain control over the record.
2. The ability of the agency to use and dispose of the record as it sees fit.
3. The extent to which agency personnel have read or relied upon the document.
4. The degree to which the document was integrated into the agency’s record systems or files.

Records maintained by a government contractor for records management purposes are considered in the DOD Component’s possession. Records created by an agency employee during employment, including e-mails, may be either agency records or personal files. [DODM 5400.07 further defines an agency record from a FOIA perspective]

Consultation. The process whereby, in certain situations, a federal agency transfers a FOIA responsive record to another federal agency to obtain recommendations on the releasability of the document. After review, the document is returned to the original agency for response to the FOIA requestor or further review.

FOIA Request. A written request for agency records that reasonably describes the records sought, enabling a DOD Component employee familiar with the files to locate the records with a reasonable amount of effort.

FOIA Requester. Any person, including a partnership, corporation, association, State or State agency, foreign government, foreign national, or a lawyer or other representative acting on behalf of any person who submits a FOIA request. This definition specifically excludes agencies within the Executive Branch of the USG.

IDA. An official who has been granted authority by a DOD Component head to withhold information requested pursuant to the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

Perfect FOIA Request. A FOIA request that arrives at the FOIA RSC of the DOD Component in possession of the records. The statutory time limit for responding to a FOIA request does not begin until it is perfected.

Responsive. Information or agency records requested by a FOIA requester.

ATTACHMENT 2

DD FORM 2086

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

DD FORM 2086, JAN 2003

PREVIOUS EDITION IS OBSOLETE.