U.S. Department of Homeland Security
United States Coast Guard

Commandant
United States Coast Guard

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COMDTNOTE 5260
Jun 13, 2003

COMMANDANT NOTICE 5260 CANCELLED: Jun 13, 2004

Subj: CH-4 TO THE COAST GUARD FREEDOM OF INFORMATION AND PRIVACY ACTS MANUAL, COMDTINST M5260.3

1. PURPOSE. This Notice promulgates changes to the subject Manual.

2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of Headquarters units, assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure the listed changes are incorporated into the subject Manual. Internet release authorized.

3. DIRECTIVES AFFECTED. None

4. DISCUSSION. CH-4 incorporates a federal regulation to augment existing authority for withholding, when requested via the FOIA, personally-identifying information regarding personnel assigned overseas, onboard ship, or to sensitive or routinely-deployable units. It also extends the scope of FOIA Exemption 6 to withhold personally-identifying information regarding all Coast Guard personnel.

   a. Chapter 5 discusses personally-identifying information that should be withheld when responding to a FOIA request for personnel lists.

   b. Chapter 8 introduces new statutory authority to withhold personally-identifying information of personnel assigned to units which are sensitive, routinely-deployable, or stationed in foreign territories. It also discusses the increased consideration that must be applied when releasing personally-identifying information of all other Coast Guard members.

DISTRIBUTION – SDL No. 140

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NON-STANDARD DISTRIBUTION: B:C MLCs (16 extra)

5. PROCEDURE.

a. Remove and insert the following pages.

REMOVE PAGES	INSERT PAGES
5-25 thru 5-27	5-25 thru 5-28
8-7 thru 8-19	8-7 thru 8-19

C. I. PEARSON /s/
Director, Information and Technology

Encl: (1) CH-4 to The Coast Guard Freedom of Information and Privacy Acts Manual

U.S. Department of Transportation
United States Coast Guard

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COMDTNOTE 5260
APRIL 25, 2002

COMMANDANT NOTICE 5260

CANCELLED:
APRIL 24, 2003

Subj: CH-3 TO THE COAST GUARD FREEDOM OF INFORMATION AND PRIVACY ACTS MANUAL, COMDTINST M5260.3

1. PURPOSE. This Notice promulgates changes to The Coast Guard Freedom of Information and Privacy Acts Manual, COMDTINST M5260.3.

2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure the listed changes are incorporated into the subject Manual. Internet release authorized.

3. DIRECTIVES AFFECTED. None.

4. DISCUSSION. CH-3 incorporates amendments to the Freedom of Information Act (FOIA) pursuant to the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231 (E-FOIA); policy announced in Attorney General Ashcroft's FOIA memorandum of October 12, 2001 (Ashcroft Memorandum); and changes in personal privacy policy. EFOIA increases agency response time from 10 to 20 working days; defines requests for expedited treatment; discusses agency backlog; defines how we process information denied to a requester; changes reporting requirements to Congress; requires agency public reference guides; and provides instructions on processing paper records. Further, the amendments address those issues that have resulted from an increase in electronic communication and records, specifically sets standards on how we maintain and disseminate electronic records, and makes changes regarding how we report data to Congress. In addition to incorporating the E-FOIA amendments, CH-3 provides policy on privacy statements, use of "cookies" on Coast Guard web sites, and scrubbing of Coast Guard web sites of all personal and other sensitive information. Major changes have been made to the following chapters:

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NON-STANDARD DISTRIBUTION: B:C MLCs (16 extra)

a. Chapter 2 -- Announces that an Electronic FOIA Reading Room has been added to the Coast Guard web site for frequently requested records.

b. Chapter 4 -- Advises that list of denial officials is now accessible on the Coast Guard intranet web site.

c. Chapter 5 -- Explains expedited and multi-track processing and how we should notify requesters of information withheld in electronic records.

d. Chapter 8 -- Describes Coast Guard intranet web site containing the list of (b)(3) statutes that permit withholding of records such as contract proposals, procurement integrity information, security plans, and procedures or programs for passenger vessels or passenger terminals. Certain units have been added or deleted from the list of sensitive and routinely deployable units. It also discusses using exemption 2 in accordance with the Ashcroft Memorandum.

e. Chapter 9 -- Describes how to show the requester the volume of non-disclosed records, and explains the application of a sound legal basis in accordance with Ashcroft Memorandum when applying exemptions to withhold records.

f. Chapter 10 -- Chapter was completely rewritten. Describes circumstances that would justify an appeal. Describes responsibilities of G-CIM and the recordholder in the appeal process. Identifies the Director of Information and Technology as the appeal authority. Describes multi-track and expedited processing.

g. Chapter 11 -- Adds schedule for calculating search and review costs and advises of "Do It Yourself" web site that allows for electronic FOIA payments.

h. Chapter 20 -- Identifies current reporting requirements for the Annual Report to Congress that is required each fiscal year and is due the Department of Justice not later than February 1 of each year.

i. Chapter 22 -- This is a new chapter. Identifies procedures for posting clear privacy policies, scrubbing personal and other sensitive information, and monitoring the use of "cookies" on CG web sites.

j. Enclosure (1) -- Incorporates new FOIA Annual Report format.

k. Enclosure (5) -- Incorporates consultation letter that would notify persons who were required or volunteered to submit business information to the Coast Guard that a request for their information has been received by the Coast Guard.

5. PROCEDURE.

a. Remove and insert the following pages:

REMOVE PAGES	INSERT PAGES
i thru iv	i thru v CH-3
1-1 thru 1-2	1-1 thru 1-2 CH-3
2-1 thru 2-6	2-1 thru 2-6 CH-3
4-1 thru 4-5	4-1 thru 4-6 CH-3
5-1 thru 5-19	5-1 thru 5-27 CH-3
8-1 thru 8-18	8-1 thru 8-19 CH-3
9-1 thru 9-4	9-1 thru 9-4 CH-3
10-1 thru 10-3	10-1 thru 10-4 CH-3
11-1 thru 11-9	11-1 thru 11-11 CH-3
20-1	20-1 CH-3
---	22-1 thru 22-5 CH-3
Enclosure (1)	Enclosure (1) CH-3
Enclosure (5)	Enclosure (5) CH-3
Enclosure (6)	Enclosure (6) CH-3

b. Make the following pen and ink changes:

Strike “G-SI” and insert “G-CIT” wherever it appears in the Manual.

Strike “G-SII” and insert “G-CIM” wherever it appears in the Manual.

Strike “G-SII-2” and insert “G-CIM-2” wherever it appears in the Manual.

Encl: (1) CH-3 to The Coast Guard Freedom of Information and Privacy Acts Manual

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COMDTNOTE 5260
NOVEMBER 29, 1999

COMMANDANT NOTICE 5260

CANCELLED:
NOVEMBER 28, 2000

Subj: CH-2, FREEDOM OF INFORMATION (FOIA) AND PRIVACY ACTS MANUAL, COMDTINST M5260.3

1. PURPOSE. This Notice promulgates changes to the subject Manual.

2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of Headquarters units, assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure the listed changes are incorporated into the subject Manual.

3. DISCUSSION. CH-2 provides for the Headquarters FOIA Coordinator (HFC) to divide a request for which responsive records are located in more than one Headquarters directorate into its constituent parts and then transfer these parts to the respective directorate FOIA Coordinators for independent processing and direct response to the requester. Commandant (G-SII-2) will continue to provide resolutions in response to requests for fee waivers, fee reductions, and expedited processing involving multiple directorates. CH-2 also replaces two pages inadvertently removed by CH-1. Lastly, a minor pen-and-ink change is made.

4. PROCEDURE.

a. Remove and insert the following pages.

DISTRIBUTION – SDL No. 136

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b. Make the following pen-and-ink change.

Chapter 2-D-2: Strike out "G-CCS" and replace with "G-SI"

Chapter 4-B-1-f-(2): Insert before "Chief" the word "Deputy"

Chapter 4-B-1-f-(2): Strike out "General" and replace with "Regulation and Administrative"

G. N. NACCARA
Director, Information and Technology

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COMDTNOTE 5260
FEBRUARY 11, 1998

COMMANDANT NOTICE 5260

CANCELLED:
FEBRUARY 10, 1999

Subj: CH-1, COMDTINST M5260.3, FREEDOM OF INFORMATION (FOIA) AND PRIVACY ACTS MANUAL,

0. PURPOSE. This Notice promulgates changes to the subject Manual.

2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of Headquarters units, assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure the listed changes are incorporated into the subject Manual.

2. DISCUSSION. The new chapter sets forth standard processes and procedures for responding to FOIA requests within Headquarters, Headquarters Support Command, Intelligence Coordination Center, Telecommunications and Information Systems Command, Coast Guard Personnel Command; and National Maritime Center; establishes responsibilities for action within the FOIA process; and establishes an accountability system to ensure compliance with these responsibilities.

3. PROCEDURE.

a. Remove and insert the following pages.

REMOVE PAGES	INSERT PAGES
iii thru iv	iii thru v
2-1 thru 2-6	2-1 thru 2-4
	21-1 thru 21-5

DISTRIBUTION – SDL No. 136

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REMOVE PAGES	INSERT PAGES
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b. Make the following pen-and-ink change.

Chapter 2-D-2: Strike out "G-CCS" and replace with "G-SI"

Chapter 4-B-1-f-(2): Insert before "Chief" the word "Deputy"

Chapter 4-B-1-f-(2): Strike out "General" and replace with "Regulation and Administrative"

G. N. NACCARA
Director, Information and Technology

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COMDTINST M5260.3
JUNE 14, 1996

COMMANDANT INSTRUCTION M5260.3

Subj: THE COAST GUARD FREEDOM OF INFORMATION (FOIA) AND PRIVACY ACTS MANUAL

1. PURPOSE. This Instruction sets forth the policy and procedures for all commands to follow in administering the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act of 1974 (5 U.S.C. § 552a), as implemented by Department of Transportation regulations contained in 49 C.F.R. Parts 7 and 10.

2. ACTION. Area and district commanders, commanders logistics and maintenance commands, commanding officers of Headquarters units, Commandant (G-A, G-H, G-L, G-M, G-O, G-S and G-W) and special staff offices at Headquarters shall ensure compliance with the provisions of this directive.

3. DIRECTIVES AFFECTED. The Coast Guard Privacy and Freedom of Information Acts Manual, COMDTINST M5260.2 is cancelled.

4. DISCUSSION. This Manual is the basic Coast Guard regulation governing the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act of 1974 (5 U.S.C. § 552a).

5. MAJOR CHANGES. Major changes in this Manual include:

a. Procedures for providing "no records" determinations;

b. Harm analysis;

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NON-STANDARD DISTRIBUTION:

c. Denial procedures;

d. Appeal procedures;

e. Notification of fees assessed; and

f. The format and due date of the Annual Freedom of Information Act Report (RCN-5260-1).

D. A. Potter
Director of Command Control
Communications and Computers

TABLE OF CONTENTS

Chapter 1. Introduction.....**1-1**

A. Purpose of the FOIA.....**1-1**
B. History.....**1-1**
C. Who May Request Records Under the Act.....**1-2**
D. Provisions of the FOIA.....**1-2**
E. Coast Guard Policy on Records Access.....**1-2**

Chapter 2. Definitions.....**2-1**

Chapter 3. Duties and Responsibilities.....3-1

A. Commandant (G-CIM-2).....3-1
B. Freedom of Information and Privacy Act officer.....3-1
C. Area, District, and MLC Commanders, and Commanding Officers at Headquarters Units.....3-2
D. FOIA/PA Coordinators at Headquarters.....3-3
E. System Managers.....3-3
F. Officials Responsible for Administration of a System of Records.....3-4

Chapter 4. Delegation of Authority Under FOIA.....**4-1**

A. FOIA Release Authority.....**4-1**
B. FOIA Denial Authority.....**4-3**
C. Disciplinary Action Under FOIA.....**4-4**
D. Systems of Records Exemption Authority.....**4-4**
E. Privacy Act Systems of Records Denial Authority.....**4-4**
F. Penalties.....**4-5**

Chapter 5. Procedures for Handling FOIA Requests.....**5-1**

A. Requirements for FOIA Requests.....**5-1**
B. Time Provisions.....**5-2**
C. Search Procedures.....**5-7**
D. Review of Records to Determine Releasability.....**5-10**
E. Response to the Requester.....**5-11**
F. "No Records" Determinations.....**5-12**
G. Special Situations.....**5-14**
H. Consultation with Submitters of Business or Financial Information.....**5-17**
I. Guidance for Specific Types of Records.....**5-18**

Chapter 6. Material Exempt from the Provisions of the FOIA.6-1

A. Material Available to the Public.....6-1
B. Material Available from Other Sources.....6-2

Chapter 7. "For Official Use only" (FOUO) Material.....7-1

A. Marking Requirements.....7-1
B. Controlling "For Official Use Only" Material.....7-1
C. Awareness of What Constitutes "FOUO" Material.....7-1
D. Authority to Assign "For Official Use Only".....7-1
E. Marking and Handling.....7-1
F. Security of "FOUO" Material.....7-3
G. Transmission.....7-3
H. Release.....7-4
I. Disposal.....7-4
J. Unauthorized Disclosure.....7-5

Chapter 8. Withholding of Records Under the FOIA.....**8-1**

A. Information Exempt from Public Disclosure.....**8-1**
B. Other Sources.....**8-19**

Chapter 9. Denial Procedures.....**9-1**

A. Requirements for an Initial Denial of Access.....**9-1**
B. Requirement for a Letter of Denial.....**9-2**
C. Signature for Denial Letters.....**9-3**
D. Requirements for an Initial Denial of "Fee Waiver"..**9-3**
E. Signature for Denial of "Fee Waiver".....**9-4**
F. Forwarding Correspondence to the Commandant
When Initial Access or Fee Waiver is Denied.....**9-4**
G. Retention of Records.....**9-4**

Chapter 10. Appeal Procedures.....**10-1**

A. Appeals.....**10-1**
B. Responsibilities.....**10-1**
C. Multi-track Processing..... .....**10-2**
D. Remands **10-2**
E. Documentation Required from the Recordholder.....**10-2**
F. Provision of Resolution to the Appellant.....**10-4**

Chapter 11. Fees.....**11-1**

A. Categories of Requesters.....**11-1**
B. Waiver or Reduction of Fees.....**11-4**

C. Fee Assessment.....**11-5**
D. Collection of Fees.....**11-8**

Chapter 12. The Privacy Act..... 12-1

A. Purpose of the Privacy Act.....12-1
B. Who May Request Records Under the Act.....12-1
C. Provisions of the Privacy Act.....12-1
D. Coast Guard Policy Concerning Maintenance of Records on Individuals.....12-2
E. Processing Privacy Act Requests Under the Freedom of Information Act.....12-3
F. Office of Personnel Management (OPM) Systems of Records.....12-4

Chapter 13. Disclosure of Privacy Act Material.....13-1

A. Notifying Individuals if Described Systems of Records Contain Information About Them.....13-1
B. Disclosure to the Individual Who is the Subject of the Record [First Party Request].....13-1
C. Disclosures to Persons other Than the Subject of the Record [Third Party Request].....13-1
D. Time Limits.....13-6
E. Accounting for Disclosures.....13-6
F. Procedures for Accounting.....13-7

Chapter 14. Privacy Act Exemptions.....14-1

A. General Information.....14-1
B. Denial Action.....14-2
C. General Exemptions: Subsection (j)(2) of the Act.....14-2
D. Specific Exemptions: Subsection (k) of the Act.....14-3
E. Requirements for Use of Subsection (k) of the Act.....14-3

Chapter 15. Collection and Safeguarding of Personal Data.... 15-1

A. Collection of Information.....15-1
B. Privacy Act Statements.....15-2
C. Collecting Information for Investigations.....15-2
D. Safeguarding Personal Information.....15-3
E. Transmission of Privacy Act Material.....15-4
F. Destruction of Privacy Act Material.....15-4

Chapter 16. Corrections and Amendments to Records.....16-1

A. Requests for Corrections.....16-1
B. Procedures for Acting on Requests for Corrections.....16-1
C. Routine Administrative Corrections.....16-2
D. Corrections Under the Board for Correction of Military Records.....16-2

Chapter 17. Denials and Appeal Procedures.....17-1

A. Responsibilities of the System Manager.....17-1
B. Privacy Act Appeals.....17-1
C. Statement of Dispute.....17-2
D. Civil Remedies.....17-2

Chapter 18. Public Notice Requirements.....18-1

A. System of Records.....18-1
B. When to Report Altered Systems of Records.....18-1
C. Submission and Publication of Systems Notices.....18-2
D. Publication of Systems of Records.....18-3
E. Public Notice Requirements for Matching Agreements.....18-3
F. Publishing Matching Notices.....18-4

Chapter 19. Computer Matching.....19-1

A. Background.....19-1
B. Matching Agreements.....19-1
C. When a Matching Agreement is Required.....19-2
D. Special Caution.....19-2

Chapter 20. Reporting Requirements.....20-1

A. Responsibility.....20-1
B. Reports.....20-1
C. Negative Replies.....20-1

Chapter 21. Special Instructions for Processing FOIA Requests at Headquarters and selected units.....21-1

A. Definitions.....21-1
B. Discussion.....21-1
C. Responsibilities.. 21-2
D. Headquarters FOIA Process.....21-2
E. Training Requirements.....21-4
F. Accountability.....21-4
G. Enclosures.....21-5

Chapter 22. Privacy Issues.....22-1

A. Discussion.....22-1
B. Privacy Policies on Federal Web Sites.....22-1
C. Scrubbing Web Sites for Privacy and Sensitive Information.....22-3
D. Use of "Cookies" on Coast Guard Web Sites.....22-3

ENCLOSURE (1) Format for FOIA Annual Report (RCN-5260-1)

ENCLOSURE (2) Format for Biennial PA Report (RCN-5260-2)

ENCLOSURE (3) Biennial Computer Matching Report (RCN-5260-3)

ENCLOSURE (4) Sample Letter for using FOIA to respond to PA Request for information from an exempt system

ENCLOSURE (5) Sample Letter to Submitter of Information

ENCLOSURE (6) VACANT

ENCLOSURE (7) Sample Directorate FOIA Coordinator (DFC) Position Description (PD)

ENCLOSURE (8) Sample Directorate FOIA Coordinator (DFC) Critical Job Element (CJE)

ENCLOSURE (9) Sample Directorate FOIA Coordinator (DFC) Officer Evaluation Report (OER) Description of Duties

CHAPTER 1. INTRODUCTION

> ***A popular Government, without popular Information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.***
>
> ***--James Madison***

A. Purpose of the Freedom Of Information Act. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, establishes a presumption that records in the possession of agencies and departments of the Executive Branch of the United States Government are accessible to the people. The basic premise is that the public has a right to know what the Government is doing, how it is being done, and what information is being collected. However, to prevent harm to individuals, businesses or the Government from release of certain information, the FOIA includes limited authority to withhold records from the public.

B. History. Before enactment of the FOIA in 1966, the burden was on the individual to establish a right to examine Government records. There were no statutory guidelines or procedures to help a person seeking information. There were no judicial remedies for those denied access. With the passage of the FOIA, the burden of proof shifted to the Government. Those seeking information are no longer required to show a need for information. Instead, the "need to know" standard has been replaced by a "right to know" doctrine. Major amendments to the FOIA passed in 1974 and 1986. The 1986 amendments made a provision for certain law enforcement records to be treated as not subject to the requirements of the Act and also established new guidelines for fees charged by agencies for providing records. **In 1996, the FOIA was further amended by the "Electronic Freedom of Information Act Amendments of 1996" (E-FOIA). This important legislation established new time limits for the Government to respond to FOIA requests, as well as set standards for handling agency backlogs, denial letters, the FOIA Annual Report to Congress, and public reference guides. It provides additional guidance on processing paper records. Because the Government is moving toward a more electronic environment for communications and record keeping, E-FOIA addresses those issues and sets standards on how we maintain and disseminate electronic records. This is the first time the Government has been required to maintain certain records in electronic format and to provide some records in electronic format upon request.**

C. Who May Request Records Under the Act. The FOIA specifies that records must be made available to any "person," which encompasses individuals (including foreign citizens), partnerships, corporations, associations and foreign, state or local governments. The definition of "person" does not, however, include other **Federal** government agencies; therefore, requests for Coast Guard records from other Federal agencies are not considered FOIA requests and are not processed under the requirements of the Act. **We share investigatory materials with state and local law enforcement agencies.** The only exception to this broad "any person" standard is for those who flout the law, such as a fugitive from justice. Requesters do not have to explain or justify reasons for their requests.

D. Provisions of the FOIA. The FOIA sets standards for determining which records must be made available for public inspection and which records can be withheld from disclosure. The statute specifies time limits for agencies to respond to a request. There is a provision for fees to be charged to requesters to cover the government's costs of processing requests. The law also provides administrative and judicial remedies for those denied access to records.

E. Coast Guard Policy On Record Access. It is the Commandant's policy to make records maintained by the Coast Guard available to the public to the greatest extent possible in keeping with the spirit of the FOIA **while balancing the need to protect privacy and security interests.**

CHAPTER 2. DEFINITIONS

A. "Agency" includes any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

B. "Computer Matching" is the process of using a computer to compare two data bases in order to find common data elements.

C. "Data Integrity Board" is a group of senior officials designated by the head of an agency responsible for reviewing, approving and maintaining all written agreements for receipt or disclosure of agency records for computer matching programs.

D. Denial: The decision made by a Denial Authority to withhold all or portions of requested information. There are two types of denials:

   1. Initial. When an official holding denial authority (See Chapter 4) refuses records access to a requester upon original request, citing one or more exemptions in 5 U.S.C. 552 or 5 U.S.C. 552a.

   2. Final. When Commandant **(G-CIT)** upholds an initial denial upon appeal from the requester. The final denial is subject to the concurrence of the General Counsel for the Department of Transportation (C-10).

E. Denial Authority: Those individuals identified in Chapter 4 as having authority to deny records.

F. Determination: The decision to release or withhold requested information.

G. "Disclosure means communicating information from a record to a person or entity.

H. Discretionary Release Under FOIA: Information/ documents which fall under one of the nine exemptions but do not pose a harm to agency operations or to an individual if they are released to the public. Agencies may make discretionary releases of material under the FOIA as a matter of good public policy and

government accountability where there is no "foreseeable harm" in the release of the material. Under limited circumstances, a discretionary release by the agency does not necessarily waive their ability to invoke FOIA exemptions for similar or related material in the future.

I. "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or state on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals.

J. "Federal personnel" means officers and employees of the Government of the United States, members of the Uniformed Services (including members of the Reserve components), and individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

K. "First Party Requester" is an individual (U.S. citizen or alien lawfully admitted for permanent residence) who is requesting records/information about him/her from a Privacy Act system of records. These requests are processed under both the Privacy and Freedom of Information Acts.

L. Freedom of Information Act/Privacy Act (FOIA/PA) Coordinators

1. At Headquarters, those officials designated, in writing, to be the central point of contact for all FOIA and Privacy Act cases referred by Commandant **(G-CIM-2)** to their office or division. They are designated as such by the Chief of their Office or special staff division. A copy of the letter of designation should be forwarded to Commandant **(G-CIM-2).** Include the Coordinator's office routing symbol, phone number, FAX number, and electronic mail (e-mail) address. Coordinators should be familiar with both Acts, program changes and administrative processes, training opportunities and recent court decisions in order to provide guidance to personnel handling FOIA/PA requests.

2. In the field, those officials designated, in writing, to be the central point of contact for all Privacy and Freedom of Information Act matters within their area, district, maintenance and logistics command, or Headquarters unit. They are designated as such by the area commander, district commander, MLC commander or commanding officer of a Headquarters unit. A copy of the letter of designation should be forwarded to Commandant **(G-CIM-2)**. Include the field official's unit address, routing symbol, phone number, FAX number, and e-mail address. Field officials should be familiar with both Acts, program changes and administrative processes, training opportunities and recent court decisions in order to provide guidance to personnel handling FOIA/PA requests.

M. "For official Use only" (FOUO) is assigned to official unclassified information which requires protection against uncontrolled release to the public. The "FOUO" designation is meant to be used as an awareness tool to flag material which may be exempt from release under the FOIA (only information which is exempt from disclosure to the public under exemptions 2 through 9 of the FOIA). FOUO is not authorized as a form of classification to protect national security interests.

N. Freedom of Information and Privacy Acts Officer: The official who, under the supervision of Commandant **(G-CIM-2)**, is responsible for implementing, overseeing and providing guidance concerning the Privacy and Freedom of Information Acts, Coast Guard-wide.

O. "Functional Request:" A request for records that does not specifically cite or imply the FOIA. The functional program manager answers each functional request. However, if the functional manager determines that information will be denied based on a FOIA exemption, forward the request to the appropriate FOIA office for assignment of a control number prior to processing under the FOIA.

P. "Individual" as defined in the Privacy Act (PA), means a citizen of the United States or an alien lawfully admitted for permanent residence.

Q. "Matching program" means any computerized comparison of: (1) two or more automated system of records or a system of records with non-Federal records for the purpose of establishing or verifying eligibility of or

continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs or recouping payments or delinquent debts under such Federal benefit programs, or (2) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records.

R. "Maintain" includes maintain, collect, use or disseminate.

S. "Non-Federal agency" means any state or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program.

T. Person: As specified in the FOIA, is interpreted to mean an individual (including foreign citizens), partnership, corporation, association or foreign, state or local government. "Person" does not include another Federal government agency.

U. "Recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program.

V. Record Under FOIA:

1. The Supreme Court has articulated a basic, two-part test for determining what constitutes an "agency record" under the FOIA: "Agency records" are documents which must be (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request.

2. For the purpose of requests made under FOIA, a record includes: "any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved. The term also includes any such documentary material stored by computer." However, the term does not include uncirculated personal notes, papers and other documents created and maintained solely for the personal convenience of Coast Guard personnel and over which the agency exercises no control. NOTE: If a request is made

for personal records of a Coast Guard official or employee, that request is denied since the FOIA does not apply to them. However, the information must be retained until the requester's appeal and litigation rights expire. This is required for the benefit of any reviewing court.

3. Title 44 U.S.C. 3301 defines records to include "all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency under Federal law or in connection with the transaction of public business."

4. FOIA applies only to "records" maintained by "agencies" within the Executive Branch of the Federal Government. "Records" do not include records maintained by state governments, municipalities, the courts, Congress or private citizens.

5. The format in which a record is maintained by an agency does not affect its availability. A request may seek a printed or typed document, sound or video recording, chart, map, architectural drawing, computer printout, computer tape, film, photograph or any other medium by which information is preserved.

6. **"Frequently requested records" are records created on or after November 1, 1996, regardless of form or format, that have been released to any person under FOIA and which the Coast Guard determines have been or, because of the nature of their subject matter, are likely to be requested more than three times. The Coast Guard electronic reading room web site (http://www.uscg.mil/hq/g-s/g-si/g-sii/sii-2/Electronic_Reading_Room.htm) features an index of "frequently requested records."**

W. "Record," as defined in the PA, means any item, collection, or grouping of information about an individual that is maintained by a Federal agency including, but not limited to, education, financial transactions, medical history, and criminal or

employment history and that contains the name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

X. Required release under FOIA - information/documents that do not fall within any of the nine exemptions in the FOIA are required to be released.

Y. "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

Z. "Search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

AA. "Source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any state or local government, or agency thereof, which discloses records to be used in a matching program.

AB. "System Manager" is the official responsible for the overall policies and procedures of a system of records.

AC. "System of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(1) A "new system of records" is one for which a notice has not been published in the Federal Register.

(2) An "altered system of record" is one which has been reported in the Federal Register but has "significantly" changed since publication. (See Chapter 18 for guidance.)

AD. "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

AE. Third Party Requester: A "person" as specified in the FOIA who requests information about an individual that is contained in a PA system of records. These requests are processed under the FOIA.

CHAPTER 3. DUTIES AND RESPONSIBILITIES

A. Commandant (G-CIM-2) Shall:

1. Ensure that all systems of records are described by a notice published in the Federal Register, that record systems are not modified or otherwise expanded prior to public notice and that procedures for disclosures of personal information and accounting for disclosures of records are in accord with this Manual.

2. Act on all requests for establishment of or modification to any record systems subject to the PA.

3. Generally, provide for the management and administration of the Acts within the Coast Guard.

4. Designate an individual as "Freedom of Information and Privacy Act Officer".

5. Coordinate Coast Guard FOIA/PA matters with the Department of Transportation as required.

B. The Freedom of Information and Privacy Acts Officer Shall:

1. Provide routine administrative functions and guidance required in connection with the Acts.

2. Provide for training of personnel on FOIA/PA matters.

3. Meet annual statutory reporting requirements.

4. Process appeals of denials of requests for access to or amendment of records. Serve as chair of appeal board.

5. Conduct the following reviews, required by OMB Circular A-130:

   a. Every two years review a random sample of contracts that provide for the maintenance of a system of records on behalf of the Coast Guard to accomplish a Coast Guard function, in order to ensure that the wording of each contract makes the provisions of 5 U.S.C. 552a(m)(1) apply.

   b. Review annually Coast Guard recordkeeping and disposal policies and practices in order to ensure compliance with the Act.

   c. Review annually each ongoing matching program in which the Coast Guard has participated during the year, either as a source or as a matching agency.

d. Review annually Coast Guard training practices in order to ensure that all personnel are familiar with the requirements of the PA, with the Coast Guard's implementing regulations, and with any special requirements that their specific jobs entail.

e. Review annually any actions of agency personnel that have resulted either in the agency being found civilly liable under Section (g) of the PA, or an employee being found criminally liable under the provisions of Section (i) of the PA, in order to determine the extent of the problem and to find the most effective way to prevent recurrences of the problem.

6. Conduct the following reviews, required by the Computer Matching and Privacy Protection Act.

a. Review and approve all computer matching agreements prior to submission to Data Integrity Boards.

b. Submit notices of the establishment or alteration of matching programs to the Department of Transportation for publication in the Federal Register at least 30 days prior to conducting such programs.

c. Ensure prior notice is given to record subject when there is some form of contact between the Government and the subject,

d. Ensure disclosures are justified under section (b) of the PA.

e. Ensure all offices responsible for systems of records involved in the matching program have published the necessary notices in the Federal Register.

C. Area, District and MLC Commanders and Commanding Officers of Headquarters Units shall:

1. Assign, in writing, a FOIA/PA coordinator. Forward a copy of the letter of designation to Commandant (G-CIM-2).

2. Make assigned personnel aware of the existence of the coordinator(s).

3. Educate assigned personnel as to their rights under the PA.

4. Ensure that the provisions of the PA are complied with by personnel under their command.

D. FOIA/PA Coordinators at Headquarters Shall:

1. Oversee administration of the Acts within their designated areas, assure proper response and maintain accurate records, per COMDTINST M5212.12 (Series), on all Act inquiries.

2. Establish guidelines for monitoring PA systems of records within.

3. Provide data for required reports.

E. System Managers Shall:

1. Establish internal procedures needed to comply with the provisions of this Manual and the PA.

2. Ensure that all records under their cognizance subject to the provisions of the Act are properly described and published in the Federal Register as a system of records.

3. Prepare materials for Rules and Notices to be published in the Federal Register.

4. Make decisions regarding contested requests for disclosure or amendment of records.

5. Issue written statements initially denying access to or amendment of records.

6. Route all Federal Register notices establishing, modifying, or cancelling systems of records through the PA officer.

7. Ensure that the following reviews, required by OMB Circular A-130, are conducted:

   a. Review every four years the routine use disclosures associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the Coast Guard originally collected the information.

   b. Review every four years each system of records for which an exemption under Section (j) or (k) of the PA has been authorized in order to determine whether the exemption is still needed.

   c. Review annually each system of records notice to ensure that it accurately describes the system.

F. Officials Responsible for Administration of a System of Records Shall:

1. Discuss and review records with individuals concerned.

2. Correct or amend records in cases where amended information is not controversial and does not involve policy decision making.

3. Consult with the PA Officer, appropriate PA Coordinator or system manager when a decision to disclose or amend a record is in question.

4. Determine reproduction fees to be charged per Chapter 11.

5. Establish and maintain appropriate recordkeeping files and registers.

CHAPTER 4. DELEGATION OF AUTHORITY UNDER FOIA

A. FOIA Release Authority.

1. Delegation of Release Authority. Authority to make records available under the FOIA is delegated to:

   a. Area Commanders.

   b. District Commanders.

   c. Commanders of Maintenance and Logistics Commands.

   d. Superintendent, Coast Guard Academy.

   e. Directors of Headquarters Directorates.

   f. Chiefs of special staff elements at Headquarters.

   g. Director, National Pollution Funds Center.

   h. Commanding Officers of Headquarters units.

   i. The Coast Guard Freedom of Information Act Officer at Headquarters.

   Authority to deny records under the FOIA is restricted. Refer to Chapter 4-B for information on denial authority.

2. Scope of Delegation. Unless specified below, the authority to make records available applies to all records (originals or copies) in the custody of units listed above and units subordinate to them in the chain of command:

   a. A request for classified records shall be processed per **the Classified Information Security Program, COMDTINST M5510.23 (series), Section 10-G.** Those portions of documents which remain classified after the procedures required by **the Classified Information Security Program, COMDTINST M5510.23 (series), Section 10-G** have been completed shall be withheld by an official listed in Section B below, citing exemption 1 of 5 U.S.C. 552.

Unclassified portions of the record may be released by any FOIA release authority.

b. Requests for classified documents in the custody of the Coast Guard but classified by another agency will be referred to the classifying agency for processing and direct response to the requester. The requester will be notified of the referral by the program office.

c. Requests for Coast Guard documents containing information that originated with other Federal agencies will be processed after consultation with the originating agencies regarding the release or withholding of the information. After consultation, the Coast Guard will make the consolidated response to the requester.

d. For records which originated with or were obtained by a state or local government, a territory or possession of the United States, or a foreign government, the determination as to release will be made by the Coast Guard only after consultation with the state or local government or foreign government.

e. Those portions of records marked "For Official Use Only" per Chapter 7 of this Manual, shall be released only by the originator or an official senior in the chain of command to the originator.

f. Computer records may be released by the official who requires that the computer record be created and/or maintained, or by a senior to that official in the chain of command, or by the unit that maintains the database. This limitation does not apply to paper records that form the basis for computer data.

g. Investigations conducted by Special Agents (criminal, National Agency Checks, Background Investigations) shall only be released by the Commandant. This limitation applies only to FOIA or PA requests.

h. Records of Class A or Class B Mishap Analysis Boards shall only be released by the Commandant **(G-WKS)**.

i. Unless approval is secured from the copyright holder, the Coast Guard will not reproduce or otherwise disseminate a copy of a copyrighted work to a requester under the FOIA. However, the Coast Guard will make arrangements to enable a requester to review the copyrighted work at a Coast Guard facility.

j. Long-range acquisition estimates, such as the Advanced Acquisition Plan, may only be released by the Commandant (G-CPM).

k. Records concerning planned or proposed unit closings, functional shifts or reorganizations shall only be released by the Commandant. This limitation does not apply after the Commandant has made the decision public.

3. Redelegation Authorized. The authority to release records should be redelegated as widely as possible to assure that records may be made readily available to the public at the lowest practicable administrative level.

B. FOIA Denial Authority.

1. Delegation of Denial Authority. Authority to deny disclosure of records **and** requests for fee waivers**/reductions and expediting processing** in response to FOIA requests **is restricted. You can view the list of denial officials on the Coast Guard FOIA Home Page, http://cgweb.uscg.mil/g-s/g-si/g-sii/sii-2/foia.htm, under FOIA Initial Denial Authority.**

2. Redelegation Prohibited. The authority to deny disclosure of records or requests for fee waivers/**reductions and expedited processing** shall not be redelegated, except by the **Director of Information and Technology (G-CIT).**

C. Disciplinary Action Under the FOIA. The officer or employee primarily responsible for withholding of records may be subject to investigation by the Special Counsel of the Merit Systems Protection Board if the following three jurisdictional prerequisites are met:

1. A court orders production of agency records found to be improperly withheld;

2. The court awards attorney fees and litigation costs to the plaintiff; and

3. The court issues a specific written finding of suspected arbitrary and capricious conduct on the part of the officer or employee.

D. Systems of Records Exemption Authority.

1. The Chief of Staff of the Coast Guard is delegated authority under 49 C.F.R. Part 10 to:

a. Exempt specified systems of records from specified provisions of the PA.

b. Make final administrative determinations not to disclose or amend a record.

The above authority may not be further redelegated.

E. Privacy Act Systems of Records Denial Authority.

1. Coast Guard Systems of Records.

a. The System Manager is the only person who is authorized to issue an initial denial of access to or amendment of a record.

b. Waive or reduce fees for copies of documents when waiver or reduction is considered in the public interest because furnishing the information can be considered as primarily benefiting the general public.

c. Denial authority may not be redelegated.

2. Office of Personnel Management (OPM) Systems of Records.

a. The following officials are authorized to initially deny access to or amendment of records, in the custody of the Coast Guard, for the OPM record systems indicated. Denial authority may not be redelegated.

(1) Chief, Human Resources Directorate for:

(a) OPM/GOVT-1 General Personnel Records.

(b) OPM/GOVT-2 Employee Performance File System Records.

(c) OPM/GOVT-3 Records of Adverse Actions and Actions Based on Unacceptable Performance.

(d) OPM/GOVT-5 Recruiting, Examining, and Placement Record.

(e) OPM/GOVT-6 Personnel Research and Test Validation Records.

(f) OPM/GOVT-7 Applicant Race, Sex, National Origin, and Disability Status Records.

(g) OPM/GOVT-9 File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

(2) Director of Health Safety for OPM/GOVT-10 Employee Medical File System Records.

F. Penalties.

1. Penalties for Violation of the Privacy Act.

a. Any officer, member or employee of the Coast Guard who, by virtue of his or her official position, willfully and knowingly discloses individually identifiable information in violation of 5 U.S.C. 552a to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

b. Any officer, member or employee of the Coast Guard who willfully maintains a system of records without meeting the notice requirements shall be guilty of a misdemeanor and fined not more than $5,000.

c. Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

CHAPTER 5. PROCEDURES FOR HANDLING FOIA REQUESTS

A. Requirements for FOIA Requests. Each Federal agency is required to publish its procedural regulations governing access to its records under the FOIA. These regulations must inform the public of: where and how to address requests; the types of records maintained by the agency; its schedule of fees for search and duplication; its fee waiver criteria; and its administrative appeal procedures. Although an agency may occasionally waive some aspect of its published procedures for reasons of public interest, speed or simplicity, no special requirement may be imposed on a requester beyond those prescribed in the agency's regulations. Regulations for the Department of Transportation and Coast Guard can be found in 49 C.F.R. Part 7.

1. Freedom of Information Act Request: **The request to the Coast Guard should state that it is being made under the FOIA and must meet the following requirements before the 20-day time limit for responding to a request starts to run:**

a. **The request must** be in writing **using electronic or regular mail, or electronic facsimile.**

(1) The envelope **in** which the request is sent should be prominently marked "FOIA."

(2) Use of Coast Guard **e-mail**, stationery **and/or postage to submit a FOIA request** is not authorized.

(3) The request should be addressed to the office at which the records are located. If the office is unknown, the request may be mailed to Commandant **(G-CIM-2).**

b. **The request must** reasonably describe the requested information. In determining whether a request "reasonably describes" the records, it may be necessary to contact the requester for clarification. The Coast

Guard has a duty to help requesters obtain records they desire. Reading a poorly-worded request narrowly, thereby denying access to records that exist and are desired, will simply result in further correspondence and additional work at a later date. Conversely, the fact that a FOIA request is overly broad or "burdensome" does not, in and of itself, allow the Coast Guard to deny that request on the grounds that it does not "reasonably describe" records. It is important to work with the requester to pin down an accurate description of the records desired in order to satisfy the request while keeping down costs for both the requester and the agency.

2. Other Written Request: A written request for records in the custody of the Coast Guard which neither cites, implies nor indicates a knowledge of the FOIA will not be treated as a request under the Act unless the functional program manager determines all or part of the information requested will be denied. This also applies to written requests that:

   a. Request documents identified in Chapter 6 of this Manual.

   b. Cite a specific statute, regulation or procedure, other than the PA or FOIA.

   c. Request information which is not obtained from records. See the Public Affairs Manual, COMDTINST M5728.2 (series) for guidance.

3. When Records Will Be Denied. When release of records in the custody of the Coast Guard will be denied, the procedures outlined **in** Chapter 9 in this Manual must be followed whether or not the request cites the FOIA.

4. Requests from Members of Congress. Individual members of Congress possess merely the rights of access guaranteed to "any person" under the FOIA. A request from a U.S. Senator or Representative made on behalf of a constituent shall be treated

as a third party FOIA request unless the request attaches a specific written release from the individual to whom the records pertain. The Senator or Representative shall be informed of the disposition of the case. However, Congress as a body (or through its committees and subcommittees) cannot be denied access to information on the grounds of privacy exemptions.

5. Requests from Other Executive Branch Agencies. Requests from other Federal agencies for copies of Coast Guard records are not considered FOIA requests and are not subject to the requirements of the Act.

6. **Requests from Foreign, State, and Local Government Agencies. Requests for records from these entities shall generally be treated in the same manner as other FOIA requests.**

B. Time Provisions. An initial determination as to whether to release or withhold a record requested under the FOIA shall be made within 20 days (excluding Saturday, Sunday and legal holidays) after the request is received. The actual records are not required to be released within the 20 days, but access to the records should be granted **as soon as practicable** thereafter. Time limits for processing FOIA requests begin when the request is identified as being a FOIA request and is received by the FOIA coordinator for the unit where the records are located.

1. Extensions of the Time Limit.

a. **Time limits may be extended 10 working days in unusual circumstances by written notice to the requester** of the date on which a determination is expected to be dispatched. When the extension is for more than ten working days, the Coast Guard will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the Coast Guard for processing the request or a

modified request. Unusual circumstances, allowed by law, are limited to the following reasons:

(1) To search for and collect the requested records from units other than the unit processing the request;

(2) To search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) To consult with another agency or between two or more components of the Coast Guard having substantial subject matter interest in-the records.

b. The statutory extensions of time authorized by 5 U.S.C. 552(a)(6)(B) shall not be used without the prior approval of **your servicing legal office. Attempts should be made to negotiate a longer time directly with the requester to eliminate the need to formally invoke the 10-day extension.** Requests from the field for extensions must be in writing and may be made by message, or letter. If extension is made by letter, FAX a copy to Commandant **(G-CIM-2).** Requests for extensions must include:

(1) A description of the records requested.

(2) Identification of the person making the request.

(3) A summary of the reasons for requested extension citing the pertinent "unusual circumstances."

(4) The number of days extension requested.

c. Requests for extensions from offices or special staff divisions at Headquarters will be by memo to **Commandant (G-CIM).**

2. Exercising "Due Diligence" in Processing Requests. An agency's failure to comply with the time limits for either the initial request or administrative appeal may be treated as a constructive exhaustion of administrative remedies and a requester may immediately seek judicial review. An agency must be able to show to the court that it is applying "due diligence" in processing requests. To this end, the following procedures are required:

a. **Requests are processed on a "First-In/First-Served" basis, unless a requester asks for and has been granted expedited processing.** Contact your legal servicing office if contemplating taking a request out of turn.

(1) "First-In/First-Served" Policy. Requests shall be processed in order of receipt. This policy does not mean that action on one request must be completed before the next one can be started, but rather that initial steps to respond to requests should begin and continue in the order that requests are received. **(See Multi-track Processing at V.B.4. below.)**

(2) The only exception to **the "First-In/First-Served" policy is when the requester has asked for and been granted expedited processing.**

b. Keeping the Requester Informed of Progress Made. In cases involving extensive search and/or review time, retrieval of records from the Federal Records Center, or consultation with third parties, it is important to keep the requester informed of the progress being made on the request by means of interim correspondence. Many requesters will not require the Coast Guard to formally seek the 10 day extension time if they have been notified when they can expect their request to be completed and if they see evidence that their request is being processed.

3. Expedited Processing of Requests. A request for expedited processing must include a qualified compelling need.

a. Upon written request by the requester, requests and appeals will be processed ahead of other requests in the queue if the requester includes a reason which meets one or both of the following criteria:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) Requests made by a person primarily engaged in disseminating information, with an urgency to inform the public of actual or alleged Federal Government activity.

b. A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. The proper component is that component that maintains the records requested.

c. A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester must establish a particular urgency to inform the public about the Federal government activity involved in the request, beyond the public’s right to know about Federal government activity generally.

The formality of certification may be waived as a matter of discretion.

d. Within ten calendar days of receipt of a request for expedited processing, the recordholder will notify the requester of the decision to grant or deny the request. If a request for expedited treatment is granted, the request will be given priority and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

4. Multi-track Processing of Requests.

a. Multi-track processing is an option which allows you to segregate requests into queues by request type (for example, simple and complex). You choose a category based upon your local experience and needs.

b. For example, the Commandant (G-CIM) FOIA staff divides FOIA appeals into an administrative (simple) track (requests for expedited processing, fee reductions/waivers, etc.) and a substantive (complex) track (decisions to deny records).

c. Organize your work so that both tracks are processed concurrently; complex requests cannot languish to facilitate the processing of simple requests. If processing time does not vary significantly by type, then bifurcation into simple and complex tracks is unnecessary.

C. Search Procedures. The Coast Guard must make a thorough effort to locate any reasonably described records for which a request is made. The Coast Guard shall make reasonable **efforts to search for records in electronic format, except when such efforts would significantly interfere with the operation of a Coast Guard automated system.** The term "search" includes

all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searching for material must be done in the most efficient and least expensive manner so as to minimize costs for both the Coast Guard and the requester. For example, a line-by-line search should not be done when merely duplicating an entire, wholly releasable document would prove the least expensive and quicker method of complying with a request.

1. Reasonable Description of Records. **(See 5.A.1.b.)**

2. Existing Records. The FOIA applies only to records that exist at the time a request is received. The Coast Guard is not required to compile, create or procure a record solely for the purpose of making it available under the FOIA. Requesters cannot require the Coast Guard to make automatic releases of records as they are created.

3. Electronic Records. The Coast Guard is not required to write new computer programs to search for data not already compiled for agency purposes or to edit computerized data files so as to effectively create new records. Data readily available in databases with easily-operated query programs should be released. **Records will be provided in the format sought by the requester if the record is readily reproducible in the requested format.** The **Systems Manager** chooses the form of disclosure (**e.g.**, floppy disk, magnetic tape, printout) **only when the FOIA requester has either not specified the format or when the requested format is not feasible.**

4. Records Located at Federal Records Centers **of** the National Archives. For the purposes of the FOIA:

   a. Coast Guard records (except civilian and military personnel files) sent to a Federal Records Center (FRC) via a Records Transmittal and Receipt, SF-135, are the

property of the Coast Guard. Requests for these records shall be processed by the Coast Guard unit which transferred them to the FRC.

b. Coast Guard records sent to AND accepted by FRC's **of** the National Archives via a Request to Transfer, Approval, and Receipt of Records to National Archives of the United States, SF-258, are the property of the National Archives. Requests for these records shall be forwarded to the appropriate FRC of the National Archives for a direct reply to the requester. Addresses for the various FRC's are located **on the National Archives website at www.nara.gov**. (Note that pending acceptance by the National Archives, the records remain the property of the Coast Guard.)

c. Records of Coast Guard military personnel located at the National Personnel Records Center are the property of the Coast Guard **for a specified time frame.** Requests for those records shall be forwarded to Commandant **Commandant (G-CIM-2)** for control prior to processing.

d. See **the Coast Guard Paperwork Management Manual**, COMDTINST M5212.12 (series) for detailed information concerning records retention, transfer and disposal.

e. For records located at Headquarters, submit requests to Commandant **Commandant (G-CIM-2).**

5. Preliminary Search for Responsive Records. Upon receipt of the request in the action office, a preliminary survey shall be conducted to determine whether any records are subject to the request.

a. If a preliminary search indicates that a large number of records fall within the scope of the request, or that a lengthy search will be required to locate the requested documents, the action office

should so inform the requester and an effort made to clarify or refine the request both to reduce the administrative burden on the Coast Guard and to reduce the costs which a requester will otherwise incur.

b. When it is estimated that search, review, and reproduction fees will be in excess of $25.00, the requester must be advised in writing of the estimated fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated.

6. Responsive Records Located At More Than One Unit. When records responsive to the request may be located at one or more other units, one of the following procedures must be followed:

a. If the records requested are located at one or more other units, the action office refers a copy of the request to the other unit(s) for a direct reply to the requester. The action office notifies the requester of the referral and the address(es) he/she should write if any questions arise concerning the referral.

b. If the records are located at units subordinate to the unit receiving the request, the procedure in a. above may be followed or the request may be coordinated by requiring all subordinate units to search for and provide responsive records to the coordinating unit.

c. For records located at Headquarters, requests should be forwarded to Commandant **(G-CIM-2)**.

D. Review of Records to Determine Releasability. Once the search has been completed, the records must be reviewed and a determination must be made concerning their releasability. The term "review" refers to the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld.

Review includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

1. Denials are to be based ONLY on one or more of the nine exemptions contained in the FOIA. These exemptions are to be narrowly construed and applied sparingly. Merely because a record may fall within an exemption does not mandate that it be withheld in every instance. In some circumstances, the recordholder may choose to make a discretionary disclosure. Classified records and records mandated protection by another law or statute cannot be discretionarily disclosed, and consideration shall be given to adequately protect security and privacy interests.

2. The law states that any "reasonably segregable" portions of an otherwise exempt record will be provided to a requester after redaction of parts which are not to be disclosed. The review process may include redacting (blacking out) material which is exempt. However, where non-exempt material is so "inextricably intertwined" that disclosure of it would leave only meaningless words and phrases, or where the editing required for partial disclosure would be so extensive as to effectively result in the creation of new records, the entire record may be withheld. Consult your legal servicing office if contemplating a response which asserts materials are nonsegregable.

3. In cases where an official without denial authority believes that records or portions of records which are responsive to a FOIA request should be withheld from the requester, the responsive records and request shall be forwarded to an official in the chain of command with denial authority. The proposed response must accompany a harm analysis approved by the servicing legal office prior to forwarding for signature.

E. Response to the Requester. The cover letter prepared to accompany records mailed to the requester should contain the following information, as applicable:

1. Identification of the requester's original letter, such as the date or nature of the request.

2. The Coast Guard control number assigned to the request.

3. A description or listing of the records provided.

4. A statement of fees incurred, and instructions to send payment in the form of a check or money order made payable to "Treasury of the United States." The check must include the Coast Guard control number used to identify the FOIA request. The check should be sent to the program office responding to the request in order to clear their records.

F. "No Records" Determinations. In instances where no records are located, the Coast Guard is responsible for establishing that: an adequate search has been conducted in response to the request, when applicable, records have been destroyed, the legal standard for conducting a search is being met, and the requester is informed of the right to appeal the "no records" determination.

1. Search Description. Without information detailing the search, the requesters can question the adequacy of the search and the Coast Guard is open to appeals that could otherwise be avoided. To provide better customer service and to reduce the number of appeals associated with no records determinations, searches must be documented adequately. **The Commandant (G-CIM-2) will remand appeals of no records determinations to the recordholder if the recordholder hasn't adequately documented the search in its response to the requester.** The documentation of the search must include:

a. The types of files reviewed (paper, **electronic format**, microfiche, etc.).

b. The identifiers used to conduct the search (SSICs, key words, phrases, subjects, parameters, etc.).

c. The date of the search, the organization who conducted the search and the people involved, along with a point of contact should the requester have questions.

d. Any relevant or similar information that may be of use or interest to the requester.

e. If you determine responsive records may reasonably be located at other Coast Guard unit(s), you must either forward a copy of the request to that unit(s) (and so inform the requester) or inform the requester that additional responsive records may exist at the unit(s).

2. Destroyed Records. If it is determined that the records have been destroyed or, if there is a question as to whether they once existed, inform the requester. Include such information as:

a. The guidance or regulation that authorized the destruction of the records (i.e., The Coast Guard Paperwork Management Manual, COMDTINST M5212.12 (series), General Records Schedule).

b. Proof of destruction (such as a receipt, memo to file, etc.).

c. An explanation concerning the practices followed for maintaining records in question.

3. Legal Standard. In addition to adequately documenting the search, you must advise the requester of the legal standard to which the Coast Guard is held in making a reasonable search. The following statement must be placed after the search documentation:

"We have determined that a reasonable search for responsive records has been made and no other places within the Coast Guard exist where the records are likely to be found."

4. Appeal Rights. The requester must also be advised of the right to appeal the adequacy of the search. The following paragraph must be included **in its entirety:**

"This is not a denial. We have searched our records and have found no records responsive to your request. We are, however, required by law to inform you that you may appeal the adequacy of our search. Your appeal must be made in writing and you must submit it within 30 days from the date of receipt of this letter. Your letter should indicate that you are making an appeal based on a "no records" determination of a request made under the FOIA, and the envelope should be prominently marked "FOIA Appeal." Include in your appeal the reason(s) you believe the search was inadequate and a copy of the "no records" response. Send your appeal to:

Commandant **(G-CIM-2)**
U.S. Coast Guard
Attn: FOIA/PA Officer
2100 Second Street SW
Washington DC 20593-0001

By providing **as many** details **about your search as you can in your initial response to the requester, he/she** may be satisfied and an appeal avoided. If an appeal is filed, the information provided will ultimately reduce/eliminate appeal processing time.

G. Special Situations.

1. Requests Involving Classified Documents. A request for records which contain classified material shall be processed per **the Classified**

Information Security Program, COMDTINST M5510.23 (series), Section 10-G prior to a release determination.

2. Records Obtained from Other Government Organizations. Records which originated with or were obtained by a part of the Federal government other than the Coast Guard, or by a state or local government or by a foreign government shall be processed as provided below:

   a. If the release of a record would be of concern to another Federal agency, the record will be made available only after consultation with the other interested agency. Such records will be processed as follows:

      (1) If an entire document or page contains information provided by another federal agency, the document or page will be referred to that agency for a direct release by them. In most cases, the requester should be advised of the referral. However, if the identification of the originating agency would be contrary to the national security, the requester will not be informed. Contact Commandant (**G-OCI**) via secure means for guidance. The agency must be provided with:

         (a) A copy of the initial request,

         (b) A copy of the requested document or page, **and**

         (c) A copy of the letter notifying the requester of the referral **(if appropriate)**.

      (2) Exception to (1) above: In the case of a third party request (an individual making a request involving information about another individual), if the records or documents originated with the Federal Bureau of Investigation,

the requester should not be informed of the referral, unless there is already evidence that the requester is aware of an FBI investigation. The purpose of this procedure is to avoid acknowledgment of the existence of an FBI investigation, thus protecting the privacy of the subject of the investigation.

(3) If a page contains information which originated with another federal agency and information which originated with the Coast Guard, the other agency shall be consulted concerning the release of their information. The consultation shall occur as follows:

(a) Provide the other agency a copy of the documents with the information originated by that agency clearly identified.

(b) Ask that agency to advise the Coast Guard, in writing, if there is any objection to release of the information and if there is an objection, to specify the exemption under the FOIA and the reason for use of that exemption.

b. If a document originated with or contains information obtained from a state or local government, or a foreign government, the state, local or foreign government shall be consulted concerning the release of their information. The consultation shall occur as follows:

(1) Provide the other agency with a copy of the documents, with the information which originated with that government clearly identified.

(2) Provide a copy of exemptions that might apply to the records requested.

(3) Ask that government to advise the Coast Guard, in writing, if there is any objection to release of the information and, if there is an objection, to provide an opinion as to the FOIA exemption that may apply and the associated reasons.

G. Consultation with Submitters of Business or Financial Information. The provisions of this paragraph shall be followed to notify submitters of **requests for its records** which may be exempt from **disclosure** under exemption 4 of the FOIA, and the Coast Guard may be required to disclose the records. **When an agency determines that it will release information at the objection of the submitter, the submitter has a right to sue the agency.** This **lawsuit** is commonly referred to as a Reverse FOIA. Confidential **commercial or** financial information may be protected from release when disclosure would amount to violation of the Trade Secrets Act, cause substantial competitive harm to the submitter, or negatively impact the agency's ability to collect vital data in the future.

1. The submitter will be notified of a FOIA request for the records whenever:

   a. The information has been designated by the submitter as confidential commercial information; or

   b. The Coast Guard has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm **to the submitter, or impact the government's ability to obtain information in the future.**

2. The notification required by a. or b. above shall be in writing and should be similar to the example in enclosure (5). It should provide a reasonable time (normally 10 days) to review the records and provide a reply. Notify the requester, in writing, of the requirement to contact the submitter of the information.

4. Careful consideration to all specified grounds for nondisclosure must be given prior to making an administrative determination of the issue. Whenever the Coast Guard makes a decision to disclose confidential commercial information over the objection of a submitter, the unit responsible for the decision must first forward to the submitter a written notice which shall include:

   a. A statement of the reasons for which the submitter's disclosure objection was not sustained.

   b. A description of the business information to be disclosed or a copy of the records.

   c. A specific date on which the records will be released.

5. Whenever a submitter is notified that the Coast Guard may be required to disclose information specified in 4.a. and b. above, the requester shall be advised of that notice and that the submitter is being given an opportunity to comment.

6. Notice to the submitter is not required if:

   a. The Coast Guard determines that the information should not be released;

   b. The information has been lawfully published or otherwise officially made available to the public.

   c. Disclosure of the information is required by law (other than 5 U.S.C. 552).

   d. The information was submitted "voluntarily" and the Coast Guard has received specific information from the submitter that the information would customarily be released to the public by the submitter. (See enclosure (6).)

H. Guidance for Specific Types of Records. This section provides the Commandant's policy on release of certain types of records, under normal circumstances. This guidance is not a limitation on the exercise of release or denial authority granted in Chapter 4. Nor does it apply when other statutes, regulations or other proceedings provide for access to records (e.g., Uniform Code of Military Justice, Personnel Manual, Marine Safety Manual, suspension and revocation proceedings). Consultation with the unit FOIA Coordinator, the Coast Guard FOI/PA Officer, or **servicing legal officer**, before making a release determination contrary to this guidance is **required**. Consultation is recommended so that the Coast Guard will be as consistent as possible in releasing or withholding the same type of information.

1. SAR Files. Requests for SAR Case Files are normally granted, with the exception of privacy information, e.g. home addresses and telephone numbers. Those are normally withheld under exemption 6 as a clearly unwarranted invasion of the individual's personal privacy.

2. Investigations Conducted by Coast Guard Special Agents.

   a. Information from a personal security investigation is normally withheld, except as specified below:

      (1) The subject is normally provided a copy of the complete investigation, except for the names or information which could reveal the identity of individuals who provided information under an expressed or implied promise of confidentiality (exemption 7(D)).

      (2) Individuals who gave information during a personal security investigation are normally provided a copy of the information they provided.

(3) Individuals not identified in (1) or (2) above are normally partially denied access on the grounds that release of the record could constitute a clearly unwarranted invasion of personal privacy under exemption 7(C). If confidential informants are employed, redactions under exemption 7(D) are also appropriate.

b. Information from a criminal investigation is normally released as specified below:

(1) Once release will not interfere with the investigation or disciplinary proceedings, the subject of the investigation is normally provided a copy of the investigation with the following material withheld:

(a) The name, home address, SSN or other personal information concerning any individual other than the subject of the investigation when that individual's personal privacy interests outweigh any general public interest in disclosure.

(b) The identity of or information which could lead to the identification of documented confidential sources or undercover personnel.

(2) Once release will not interfere with the investigation or disciplinary proceedings, and the fact that the individual or subject has been under investigation is made public, **anyone** may be provided copies of the **investigation, except for the following information, which is withheld:**

(a) The name, home address, SSN or other personal information concerning any individual to protect that individual's personal privacy. Efforts to protect personal privacy should continue even if that information has been made public.

(b) The identity or information which could identify documented confidential sources or undercover personnel.

(3) Individuals who gave information during the investigation are normally provided a copy of the information they provided, **with names and identifying information on third parties redacted**.

When criminal investigations reveal no substantial misconduct, or minor instances of misconduct by low-level agency employees, a Glomar response may be appropriate to 3rd party FOIA requests because the privacy interests outweigh any general public interest in disclosure. (See 8-A-1-b-(1) and 8-A-7-c-(3).)

3. Administrative Investigations. Portions of investigative reports, in particular the opinions, recommendations and actions by intermediate reviewing authorities **(such as endorsements)** normally fall within the category of pre-decisional and intra-agency memoranda and **should** be withheld under exemption 5. Opinions and recommendations of boards of investigation (as well as other matters) may reveal the deliberative process and thus may be withheld. Findings of fact that have NOT been approved by the final reviewing authority may be withheld under exemption 5 as pre-decisional opinions. Additionally, comments regarding claims are subject to the protection of the attorney-client or attorney work-product privileges under exemption 5 **when prepared by an attorney**. Safety

Investigations warrant special consideration. **Statements** collected in confidence by a safety board may be withheld under exemption 5. Consult Commandant (G-WKS) or (**G-LRA**) for guidance in processing requests for safety investigations.

a. In order to encourage free and frank expression of opinion in investigative reports and to solicit innovative recommendations, it is Coast Guard policy to withhold these pre-decisional opinions, advice and recommendations since release would reveal disclose the deliberative process. It is necessary to clearly distinguish factual matters and actions taken, which are normally released, from opinions and recommendations and other items which are pre- decisional and which pertain to or reveal the deliberative process.

b. Normally, release of investigative reports is limited to enclosures until the final reviewing authority has taken action on the investigation. After final action, the findings of fact which have been approved by the final reviewing authority and any opinions or recommendations which have been specifically addressed by the final reviewing authority are normally released. (See 1-J-2.c, Administrative Investigations Manual, COMDTINST M5830.1 (series).) Predecisional opinions and recommendations fall within exemption 5 because their release would reveal the deliberative process and might tend to discourage the free and frank expression of opinion in investigative reports. Therefore, these items shall not be released or disclosed except when the policy against release is outweighed by considerations favoring release. **(As is the case when the final reviewing authority "adopts" an earlier endorsement or opinion but does not reprint that opinion in the final decision letter.)**

c. The action of intermediate reviewing authorities is normally withheld, except for that portion of the action which constitutes final action on some aspect of the case, or is especially adopted or incorporated by the final reviewing authority.

d. The final action is normally completely released as are those portions of the action of intermediate reviewing authorities which are incorporated into the final action.

e. Administrative investigations are frequently conducted because of potential claims or litigation. The prospect of a claim or litigation might be cause to withhold records which would normally be released. Additionally, the attorneys representing the United States in any claim or litigation must know what government records have been provided to the opposing side. Therefore, FOIA release authorities should ensure that their FOIA processing procedures provide that:

(1) The Coast Guard attorney responsible for a claim or lawsuit informs every holder of a record of the existence of a claim or lawsuit so that the files can be identified and marked with a notation to contact the appropriate attorney or legal office if a FOIA request is received.

(2) If there is notice of an existing claim or lawsuit regarding a requested record, the office responding to the request should consult with the FOIA Officer and attorney responsible or the claim or consult with the FOIA Officer and attorney responsible for the claim or lawsuit concerning the necessity to apply any FOIA exemption to withhold the records.

(3) If there is no notice of an existing claim or lawsuit regarding a requested record, the office responding to the request should still consider the incident which was investigated to determine if a future claim or lawsuit is a possibility.

(4) If an official responding to the request believes that a future claim or lawsuit is possible, that person should consult with the FOIA Officer and the legal office serving the unit to determine the necessity to apply a FOIA exemption in withholding records.

4. Marine Casualty Investigations.

a. Reports of Marine Casualty Investigations are normally released after final **agency** action. Release is limited to **factual** transcripts, **photographs** and exhibits **that do not indicate the course of the investigation or witnesses that need to be interviewed.** Any **personally identifiable** information **(name of third party or witness, social security number, date of birth, home address, etc.)** should be withheld under exemption 6 **and/**or 7(C). **Any proprietary commercial information about certain business procedures (unique techniques, costing data, proposals, manuals) that are defined as confidential or privileged commercial or financial information should be withheld under exemption 4.**

b. Requests for information on marine casualties may be responded to by using one of the following methods:

(1) **If prior to the final action,** deny access to the record, pending final **agency** action citing the deliberative process privilege under exemption 5 and **the open investigation exemption 7(A).**

This should be the normal response since errors in the findings of fact are frequently addressed and corrected by district or Commandant action, or advise the requester that the record will be released when final agency action has been taken. (This is permissible if the entire record will be "made promptly available" as required by statute. The delay should not exceed two months.)

(2) If the final action has occurred, provide the complete record, or withhold portions of the record citing the appropriate exemptions.

5. Merchant Seamen Records. Records concerning merchant seamen are in several categories.

a. Information from the file maintained on each merchant mariner's document is withheld under exemption 3 as required by 36 U.S.C. 7319.

b. Information from the files maintained on licenses and certificates of registry is normally released, except for the following personal information which is normally withheld under exemption 6 as a clearly unwarranted invasion of personal privacy:

(1) Birth date, SSN, method of obtaining citizenship, home address and telephone number.

(2) Civilian or military arrest and conviction record.

(3) Medical information.

c. Release information concerning suspension and revocation proceedings after a decision and order is issued by an administrative law judge or the case is closed, except for personally identifiable information (name of third party or witness, social security

number, date of birth, home address, merchant mariner number, etc.), which should be withheld under exemption 6 and/or 7(C). Deny access to record, pending final agency action citing the deliberative process privilege under exemption 5 until a decision is issued by an administrative law judge or the case is closed.

6. Enforcement of Laws and Treaties Program Records.

   a. Records compiled for enforcement of laws and treaties should normally be withheld if:

      (1) release is precluded by exemptions 1 or 3.

      (2) any of the exemptions of 7 are applicable.

   b. Individuals who provide information will normally be provided a copy of the information given, upon request.

   c. To the extent that information from law enforcement records has intentionally been made public by the Government (e.g., through press releases), the records are not withheld under a FOIA exemption.

7. Personnel Lists. Requests for lists of military or civilian personnel must be considered in **the following** areas:

   a. For personnel records stored in a computer database system, the issue of availability may depend on whether the system has an easily operable query capability. The Systems Manager chooses the option ONLY when the FOIA requester has either not specified the format or when the requested format is not feasible. The Coast Guard is not required to reprogram computers in order to produce records to fulfill a request. The format in which the list is provided (paper printout, magnetic tape) is the option of the database system manager.

b. As a spearhead agency for homeland security, the Coast Guard, like the other components of the Armed Forces, must maintain an appropriate security posture. Consequently, scrutiny must be applied in regard to the release of personally-identifying information in lists.

(1) You shall ordinarily withhold, under exemption 6, lists of names and lists of other personally-identifying information (including lists of e-mail addresses), of personnel currently assigned within the Coast Guard when subject to a request under the FOIA. These personnel include:

(a) active-duty military

(b) reservists

(c) civilian employees

(d) auxiliarists

(e) contractors

(f) military dependents

(g) naval personnel detached to the Coast Guard.

Apply the same standard to like personnel of the other components of the U.S. Armed Forces and DoD. If a particular request does not raise security or privacy concerns, names may be released as, for example, a list of attendees at a meeting held more than 25 years ago. Take particular care in reaching a decision to release a list of names in any electronic format.

(2) Release of duty addresses may especially be considered an invasion of privacy for personnel involved in law enforcement or intelligence activities due to threats of personal harm. (For

policies concerning the withholding of personally-identifying information of personnel stationed overseas, onboard ship, or to sensitive or routinely-deployable units, see section 8.A.6.c.(6) below.)

(3) Home addresses are routinely withheld under exemption 6 because privacy interests outweigh any general public interest in disclosure.

CHAPTER 6. MATERIAL EXEMPT FROM THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT

A. Material Available to the Public.

1. Publication in the Federal Register. Information required to be published in the Federal Register includes:

   a. A description of Coast Guard structure, including both the central organization and field units.

   b. The names and locations of individuals from whom information may be obtained.

   c. Procedural rules.

   d. Substantive rules and regulations adopted by the Coast Guard.

   e. Statements of general policy.

2. Document Inspection Facilities.

   a. Agency Requirements. Materials required to be available for public inspection and copying under 5 U.S.C. 552 include:

      (1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.

      (2) Those statements of policy and interpretations which were adopted by the agency and not published in the Federal Register.

      (3) Administrative staff manuals and instructions to staff that affect a member of the public.

   b. Locations. Document inspection facilities are located at Headquarters and each district office. A document inspection facility need not be any more elaborate than is necessary to provide required service to the public. The requirement that records be made available at document inspection facilities does not mean that the records must be physically stored in the space designated as the document inspection facility. It is adequate if the materials are readily available so that they may be brought to the document inspection facility for inspection, without charge, by any person visiting during normal working hours.

c. Records Available. The following records will be made available at all document inspection facilities:

(1) Final opinions and orders made in the adjudication of cases by the Commandant.

(2) Coast Guard directives that are neither classified nor marked "For Official Use Only" and that affect any member of the public, including the prescribing of any standard, procedure or policy that requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(3) Opinions and orders of administrative law judges located within that district.

d. Additional Records Available at the Headquarters Document Inspection Facility. In addition to the records described above, the following records will be made available at the Headquarters Document Inspection Facility:

(1) Opinions and orders of administrative law judges.

(2) Policies and interpretations issued within the Coast Guard (including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation).

e. Personal Privacy Considerations. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details in documents available to the public shall be deleted. However, in each case, justification for the deletion shall be explained fully in writing.

f. Charges. The records and the index may be inspected, at the facility, without charge. Copies of records may be obtained upon payment of the fees prescribed in Chapter 11 of this Manual.

B. Material Available From Other Sources. The following types of material are not considered record material subject to the FOIA:

1. Public Affairs Material. Informational material, such as press releases, pamphlets and other material that is ordinarily made available upon oral or written request. There is no charge for individual copies of this type of material as long as it is in supply. In addition, the Coast Guard will continue to respond, without charge, to routine oral or written inquires that do not involve the furnishing of records. (See COMDTINST M5728.2 (series) for guidance on release of information under the public affairs program.)

2. Library and Museum Material. Library and museum material made, acquired and preserved solely for reference or exhibition.

3. Publications and Documents Available Through a Distribution System. Publications and documents such as regulations, manuals, maps, charts, and released materials that are available to the public, with or without charge, from:

   a. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

   b. National Technical Information Service (NTIS), Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

   c. Consumer Information Center, General Services Administration, 18th and F Streets, N.W., Washington, D.C. 20405.

   d. National Ocean Survey, Department of Commerce, National Oceanic and Atmospheric Administration, 6501 Lafayette Avenue, Riverdale, Maryland 20737.

4. Transcripts. All transcripts of hearings and oral arguments are available for inspection. Requesters of transcripts prepared by a non-government contractor under contracts that reserve the sales privilege to the reporting service shall be advised that the transcript may be purchased directly from the reporting service. If the contract does not reserve the sales privilege to the contractor, copies of the transcript will be provided under the FOIA. This limitation does not apply to regulations governing the hearing or oral arguments which may entitle individuals to copies of the transcript (with or without charge).

CHAPTER 7. "FOR OFFICIAL USE ONLY" (FOUO) MATERIAL

A. Marking Requirements. This chapter provides for the marking and identification of documents which at the time of origination appear to require protection from uncontrolled release. It permits, but does not require, the marking of documents already in existence.

B. Controlling "For Official Use Only" Material. Material marked "For Official Use Only", may be reproduced in quantities necessary for the orderly transaction of business. Authorization for reproduction is not required unless a document itself contains a specific prohibition against reproduction. Reproduced copies shall bear the same markings as the original. Receipts and other accountability records are not required for the control of FOUO material nor is such material required to flow through classified material control points for recording.

C. Awareness of What Constitutes "FOUO Material". Coast Guard Officials responsible for producing records in the transaction of business need to be familiar with the exemptions explained in Chapter 8 of this Manual in order to assess the possibility of designating material as "For Official Use Only." While release of such material is discretionary in many cases, it is important for employees to be aware of the types of material which may qualify for withholding under the exemptions.

D. Authority to Assign "For Official Use Only" (FOUO). The following officials are authorized to assign FOUO to information:

1. Within Headquarters, office chiefs and above.

2. Within area, district and MLC offices, branch chiefs and above.

3. Group commanders, section commanders, Commander Coast Guard Activities Europe, all commanding officers and officers-in-charge.

E. Marking and Handling.

1. FOUO markings are not to be used indiscriminately to mark every document created in the line of official business. In determining whether markings should be applied, the originator of the material should consider whether the material is sensitive enough to require a review before release to any given requester, and whether members in the field would easily recognize the need for that review if the material were not marked.

2. Coast Guard originated material containing information which requires protection against uncontrolled releases shall be marked "For Official Use Only" when necessary to ensure that all persons having access to the information are aware that it requires such protection. The marking "For Official Use Only" shall include the notation: "Public Availability to be determined under 5 U.S.C. 552" Such markings shall be placed at the bottom on the front cover, if any, the first page, and each succeeding page which contains FOUO information. The marking "For Official Use Only" shall be placed at the bottom of the back cover on the outer surface.

3. File folders and documents need not be marked "For Official Use Only," when the material: is clearly identified as falling within a protected category, such as personnel and medical files, bids and proposals, and is covered by regulations specifying what information may and may not be released publicly.

4. When a document containing FOUO information is disseminated or transmitted by a forwarding memorandum or letter, the first page of the forwarding correspondence shall have an appropriate notation, such as "For Official Use Only Attached," to call attention to the presence of FOUO information in the accompanying documents. If the forwarding correspondence by itself contains FOUO information, it shall be marked as prescribed in paragraph 2., above.

5. On material, such as, photographs, films, tapes, or slides, the "For Official Use Only" or "FOUO" shall be marked in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

6. When necessary to assure protection, preliminary drafts, working papers, etc., shall be marked with the FOUO designation.

7. If a document contains classified and FOUO information, see COMDTINST M5510.21 (series).

8. When information is designated FOUO because of a time factor, the designating authority shall indicate on the document a date or event on or after which the information is no longer restricted. When a predetermined removal of the designation is not possible, the FOUO limitation shall continue indefinitely until action is taken to change the designation.

F. Security of FOUO Material.

1. The safeguards prescribed herein are minimum. All FOUO information is not equally significant. Some are more sensitive than others (e.g., Personnel and Medical records). Further, the importance of a specific FOUO item may vary in relation to time or as other developments may affect it. Accordingly, Officials having primary cognizance of FOUO information should consider affording a higher degree of protection to individual FOUO items when the sensitivity of the item would warrant more positive safeguards. Such measures should be selective and could include extremely limited dissemination, supplemental physical controls, and/or technical security services.

2. Persons who have custody of material designated FOUO should exercise care to ensure that it does not become accessible to unauthorized persons.

3. During office hours, FOUO material is to be placed in an out-of-sight location if control of authorized personnel is not maintained.

4. During non-working hours where normal U.S. Government, government contract, or internal building security is provided, FOUO material is to be filed out-of-sight with other unclassified material.

5. Where such internal security is not provided, the material should be stored in a locked container such as a desk, file cabinet, shelf or safe depending on its sensitivity.

G. Transmission.

1. FOUO material is handled generally in the same manner as unclassified material. Special handling or receipting is not normally required.

2. FOUO designated material may be transmitted outside an activity, in a single opaque envelope, by any class U.S. Postal Service mail.

3. The electronic transmission of FOUO information shall be governed by the criteria contained in COMDTINST M2000.3 (series).

4. E-mail transmission of FOUO information is permitted. However, it is the user's responsibility to exercise discretion when transmitting such information.

H. Release.

1. Persons acting in their official government capacities should be readily provided access to FOUO material.

2. Requests from the public or an individual for access to FOUO information shall be handled in accordance with Chapter 5 of this Manual.

3. Records designated "For Official Use Only" shall be reviewed for release by the originator or an official senior in the chain of command to the originator. Only the officials listed in Chapter 9 have the authority to make a decision to deny release of the material.

4. Records received from another Federal agency and marked "For Official Use Only" (or similar wording) shall not be released by the Coast Guard without authorization from that agency. It is also advisable to consult with state and local agencies before release of Coast Guard files containing documents which originated with those agencies and which were marked by the originating agency in a manner similar to "For Official Use Only". See Chapter 5 for procedures to follow when a request is received which involves records obtained from other agencies.

5. Advice on releasability of material can be obtained from unit FOIA coordinators Coast Guard legal offices and Commandant (G-CIM-2).

I. Disposal.

1. Non-record copies of FOUO materials shall be destroyed by tearing each copy into pieces to preclude reconstruction of the information and placed in regular trash containers. However, when local circumstances or experience indicate that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

2. Record copies of FOUO information shall be disposed of in accordance with COMDTINST M5212.12 (series)

J. Unauthorized Disclosure. The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of national defense information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information protected by the Privacy Act may also result in criminal sanctions against responsible persons. The originator of the FOUO information shall be informed of its unauthorized disclosure.

CHAPTER 8. WITHHOLDING OF RECORDS UNDER THE FOIA

A. Information Exempt from Public Disclosure. The FOIA, in section (b) of 5 U.S.C. 552, exempts certain records from release to the public. **Units may consider releasing exempt material on a discretionary basis, but may only do so after consulting with their servicing legal office.**

1. Classified Material. Exemption 1 applies to information which is currently and properly classified in the interest of National Defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations.

a. Prior to processing a FOIA request for classified records, refer to **the Classified Information Security Program, COMDTINST M5510.23 (series), Section 10-G.**

b. The current Executive Order on National Security Information (EO 12958) recognizes two situations which must be considered during a classification review, as required by **the Classified Information Security Program, COMDTINST M5510.23 (series), Section 10-G.**

(1) The Coast Guard shall refuse to confirm or deny the existence or nonexistence of the requested information when the fact of its existence or nonexistence is itself classified. This type of denial is referred to as a "Glomar" denial, or "glomarization."

(2) The "mosaic" concept must be considered. This is the concept that several apparently harmless individual pieces of information, when assembled together, could reveal a damaging picture. classified information, it is imperative that Prior to responding to a FOIA request for the document was in fact properly classified by someone with authority to do so and that it remains classified. There is no requirement to consider declassification unless appeal

follows. However, classification authorities are encouraged to declassify documents, consistent with national security.

2. Internal Personnel Rules and Practices. Exemption 2 concerns **internal practices and personnel rules of the agency.** Case law has led to two distinct interpretations of this exemption, known as "low 2" and "high 2."

   a. "Low 2" information **concerns internal matters of a relatively trivial matter, when the very task of processing and releasing the records would place an administrative burden on the agency that would not be justified by any genuine and significant public interest. In actual practice, the administrative burden must be legitimate and the public interest negligible to qualify for application of this exemption. A determination regarding the extent of public interest depends on the nature of the information sought and its relationship to the "core purpose of the FOIA" (i.e., to open agency actions to the scrutiny of the public). A particular FOIA requester's intended use of the requested information has no bearing on the merits of his/her request.**

   b. "High 2" information **concerns internal matters of a substantial nature, the disclosure of which would risk the circumvention of a law, statute, or regulation** or impede the effectiveness of law enforcement activities. **You may cite this exemption to protect critical infrastructure information, as well as to withhold vulnerability assessments and emergency response plans, including those obtained from state and local governments and the private sector, even if we share those documents with non-federal entities, as long as we are sharing them to promote safety or security.** Examples include law enforcement manuals, **the characteristics/quantity/location of Coast**

Guard weaponry, guidelines for conducting investigations, guidelines for identifying law violators, security procedures, information which would reveal the identities of informants or undercover agents, guidelines for determining which information should be classified, vulnerability assessments, etc.

3. Records Required to be Withheld by Another Statute. Exemption 3 relates to matters specifically exempted from disclosure by statute. **Exemption 3 statutes authorize withholding of Coast Guard records under the FOIA. A list of these statutes can be found at the Coast Guard FOIA Home Page, http://cgweb.uscg.mil/g-s/g-si/g-sii/sii-2/foia.htm, under DOT Exemption 3 Statutes.** Use of any other statute under this exemption must be approved in advance by Commandant **(G-CIM-2)** and published in the Code of Federal Regulations. See 49 C.F.R 7.67. The purpose of this exemption is to preserve the effectiveness of such statutes, in accordance with their terms.

4. Confidential Commercial or Financial Information. Exemption 4 relates to trade secrets and commercial or financial information obtained from a person or company and considered privileged or confidential. This exemption is intended to protect the interests of commercial entities that submit information to the Coast Guard and the interests of the government in receiving continued access to such data.

   a. In order for this exemption to be used, the Coast Guard must be able to demonstrate one of the following:

      (1) Release of the information would impair the Government's ability to obtain necessary information in the future;

      (2) Release of the information would cause substantial harm to the competitive position of the person from whom the information was obtained; or

      (3) Release of the information would cause some other harm to the Government or submitter.

b. "Voluntary" "Confidential" Information. The courts have established "categorical" protection of information submitted on a "voluntary" basis, if the information would "customarily not" be released to the public by the submitter.

c. "Required" versus "Voluntary" Information. The fact that a submitter elects to submit information to the Coast Guard does not necessarily make that submission voluntary.

d. Consider submitted information "required" when it is submitted in accordance with an exercised authority which prescribes criteria for submission (i.e., statute, executive order, or regulation); one example would be the Federal Acquisition Regulation (FAR). Therefore, notification to the submitter would be required prior to processing a request for the information. Also, when bids or proposals are incorporated by reference into contracts, they do not lose their required submission nature; as the FAR contains criteria for submission of unsolicited bids and proposals, information provided in accordance with that criteria is "required", but would probably be withheld under exemption 4.

e. Consider submitted information "voluntary" when it has been submitted in the absence of any exercised authority. When it is absolutely clear that the information would not customarily be released to the public by the submitter, it should be withheld, and normal submitter notification procedures are not necessary. When it is not clear whether the information would customarily be released to the public by the submitter, notify the submitter and ask that they describe their treatment of the information then render an objective decision on the submitter’s position. Segregate the information as appropriate. If a decision is made to release the information over the objections of the submitter, notify the submitter of these intentions. Allow sufficient time for notification to submitters (30 days) prior to release of the information.

(1) Examples of items generally regarded as commercial or financial information include: business sales statistics, research data and materials, technical designs, architectural drawings, formulae, customer and supplier lists, profit and loss data, overhead and operating costs, and information on financial condition. However, if the information sought is publicly available through other sources, disclosure under the FOIA is unlikely to cause competitive harm and exemption 4 is not applicable.

(2) Exemption 4 does not apply to unit prices of successful offerors unless the successful offeror convincingly demonstrates substantial competitive harm from such release. Being underbid in the future is insufficient, however enabling reverse-engineering is sufficient. Unsuccessful offerors' unit price is also normally releasable unless the above analysis permits withholding.

5. Inter-agency or Intra-agency Documents. Exemption 5 concerns inter-agency or intra-agency memoranda or letters which "would not be available by law to a party other than an agency in litigation with the agency". **The courts have construed this rather opaque language to exempt only those documents that are normally privileged in the civil discovery process.** Any record prepared by a government officer or employee (including records prepared by a consultant or advisory body) for internal government use is within this statutory exemption to the extent that is predecisional **(i.e., antecedent to the adoption of policy)** and it contains:

a. Deliberative process material.

(1) The purpose of withholding this type of document is to prevent injury to the quality of agency decisions; to encourage open, frank discussions on matters of policy between subordinates

superiors; to protect against premature disclosure of proposed policies before they are finally adopted; and to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. To qualify for the exemption, the material must be predecisional and be an integral part of the decision-making process.

(2) Examples of such material are: staff memoranda containing advice, opinions, recommendations, suggestions, or exchanges of views, preliminary to a final Coast Guard decision or action, with the exception of factual information (unless such information is inextricably intertwined with deliberative material); draft documents such as draft letters, memoranda or endorsements; and material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly decisionmaking by the Coast Guard.

b. Attorney work-product.

(1) This privilege covers memoranda and other documents prepared by a government attorney or at the direction of an attorney acting on behalf of the government setting forth strategy with regard to pending or probable future litigation and not otherwise made a matter of public record in a particular legal proceeding.

(2) Material prepared by an attorney in anticipation of litigation is protected by exemption 5. Litigation need not have actually commenced, so long as specific claims have been identified which make litigation probable.

c. Attorney-client communications.

(1) Confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice are protected by exemption 5. This privilege covers legal opinions and/or advice rendered by a government attorney or an attorney acting on behalf of the government and based on information communicated in confidence by the client. In this case the “client” is the Coast Guard, dealing with its attorneys, as would any private party seeking advice to protect personal interests.

(2) Unlike the attorney work-product privilege, the attorney-client privilege is not limited to the context of litigation.

d. Confidential commercial information.

(1) This privilege covers information which would be harmful to the government's bargaining position in commercial transactions or contract awards if released.

(2) The difference between the "commercial information" protected by this exemption and the material protected by exemption 4 is that in this case, the information (cost estimates, technical information, research results, realty appraisals, etc.) is generated by the government itself rather than an outside party. This protection expires upon the awarding of the contract or upon the withdrawal of the offer.

e. Safety Investigations

(1) Limited distribution safety investigations, conducted solely to reduce recurrence of mishaps and used only in that context, are afforded additional protection under exemption 5.

(1) When a safety investigator/board deems it necessary to afford confidentiality to uncover facts and circumstances pertaining to a mishap involving a military vessel (aircraft/boat/ship), the statement itself and evaluative facts gleaned from it are exempt from disclosure.

(3) Commandant (G-WKS) or (G-LRA) should be contacted regarding application of this privilege.

5. Personal Privacy. Exemption 6 relates to personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption cannot be invoked to withhold from a requester information pertaining only to him/herself.

a. **As a spearhead agency for homeland security, the Coast Guard, like the other components of the Armed Forces, must maintain an appropriate security posture. Consequently, scrutiny must be applied in regard to the release of names and other personally-identifying information.**

b. Any of the following personnel, medical, or similar records are within the statutory exemption if disclosure would result in a clearly unwarranted invasion of personal privacy:

(1) Personnel and background records personal to any member or employee of the Coast Guard or other person, including that person's home address.

(2) Medical histories and medical records concerning individuals, including applicants for licenses.

(3) Any other detailed record containing personal information identified with a particular person.

b. The use of exemption 6 requires a balancing of the public's right to disclosure against the individual's right to privacy. If a privacy interest is found to exist in the material requested, the public interest in disclosure must be weighed against the privacy interest in nondisclosure. The following guidelines should be used in making the determination:

(1) It is possible for substantial privacy interests to exist in personal information even though the information has been made available to the general public at some place and point in time.

(2) The identity of a FOIA requester cannot be taken into consideration in determining what should be released.

(3) The requester's particular purpose, circumstances or proposed use of the material should not be considered in determining what should be released. Such determinations depend on the nature of the material and its relationship to the public interest in general.

(4) The "public interest" to be **considered** in the balancing process is limited to the public interest for which Congress enacted the FOIA, i.e., to shed light on the agency's performance of its statutory duties.

(5) Certain types of information may be protected categorically without regard to individual circumstances. (See c. below.)

(6) Verification of status of named individuals: You may determine that release of personally-identifying information about an individual is appropriate only if the release would not raise security or privacy concerns and has been routinely released to the public.

(7) Ordinarily, names of Coast Guard personnel, other than lists of names, mentioned in records that are releasable under the FOIA should not be withheld; but in special circumstances where the release of a particular name would raise substantial security or privacy concerns, such a name may be withheld.

(8) This policy does not preclude discretionary release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag officers, public affairs officers, and other personnel designated as official command spokespersons.

c. Information normally protected by this exemption includes, but is not limited to:

(1) Home addresses and home telephone numbers of individuals. [Note that home addresses may be provided by the Parent Locator Service of the Department of Health and Human Services under 42 U.S.C. 653. Requesters who are obviously attempting to obtain an address in order to obtain child support should be advised to seek assistance from their state child support enforcement service.]

(2) Social Security numbers; Merchant Mariner's license numbers.

(3) Evaluations of military or civilian employees.

(4) The existence or nonexistence of records concerning alcohol or drug treatment or counseling.

(5) Personal information about family or dependents.

(6) **Personally-identifying information** of military and civilian personnel assigned to units which are sensitive, routinely-deployable, or located outside of the United States and its territories. **In addition to citing FOIA Exemption 6 to withhold this information, also cite FOIA Exemption 3 to invoke 10 U.S.C. 130b. Refer to section 8-3 of this Manual for guidance on the application of Exemption 3 statutes.** The following applies:

(a) **Among the "personally-identifying information" that would be withheld are the person's name, rank, duty address, and official title and information regarding the person's pay.**

(b) Routinely-deployable units normally deploy from permanent home station on a periodic or rotating basis to meet peacetime operational requirements, or to participate in scheduled training exercises, which require deployment on a routine basis (vessels, strike teams, mobile aerostat programs, law enforcement detachments and training teams).

(c) Units normally qualifying under this definition that change status for an extended period of time, such as those vessels undergoing extensive maintenance activities over 90 days, would not qualify for the duration of the period.

(d) Units designated for deployment on contingency plans not yet executed, and units that participate in deployment on an infrequent basis (e.g., annual or semiannual) would not fall within this definition. However, units which are alerted for deployment during actual

execution of a contingency plan, or in support of a crisis operation would qualify.

(e) The following OPFACs are exempt based on the above criteria:

OPFAC (1st 3 Digits)	UNIT CLASS/TYPE	OPFAC (1st 3 Digits)	UNIT CLASS/TYPE
114	WHEC	164/166	WLI
115	WMEC	191	WLR
141	WAGB	183	WIX
145	WAGB	202	A/S Washington
121	WMEC	343	Strike Teams
175	WTGB		and Tac Law Enf
122/123/125	WMEC		Teams
131/132/133/134	WPB		
152	WLB	641	Trng Teams
153/154/155	WLM	651	ATC Mobile
163/169/170	WLI/WLIC		(POPDIV)

(7) Sensitive Units:

(a) Units primarily involved in training for or the conduct of law enforcement, clandestine, or classified missions, including units involved in collecting, handling, disposing, or storing of classified information and materials (patrol boat squadron staffs, MDZ/LLTCINC liaison officers, intelligence coordination center, C3I centers, and communications stations).

(b) Also included are units engaged in training or advising foreign personnel and units attached to DOD forces treated as "Sensitive Units" under DOD policies.

(c) The following OPFACs are exempt based on the above criteria:

OPFAC (1st 3 Digits)	UNIT CLASS/TYPE
134/135	SES - WPB
201	A/S Clearwater
201	A/S Miami
322	LESUP
344	ICC and DET
523	OCC
322/324	Comm Sta
478	Squadron/Div of Patrol Boats
66*	MDZ/FLTCINC
711	CCGD 7 (oi) (MARINCEN)
751	LANTAREA (AI)
751	PACAREA (PI)

(8) Personal financial information as protected by the Right to Financial Privacy Act, 12 U.S.C. 3401, et seq.

d. Information normally not protected by this exemption includes, but is not limited to:

(1) For government civilian employees and military:

(a) Past duty stations.

(b) The qualifications of the successful applicant for a civilian position.

(2) Personal information concerning deceased persons, except for particularly sensitive information which may be withheld to protect the privacy interests of surviving family members.

(3) The home address of the owner of a documented vessel. [46 U.S.C. 12119]

(4) Information concerning civil penalty action, including a letter of warning issued by the district commander or other official. This information may generally be protected, if necessary,

until a letter of warning is issued or the matter is referred to a hearing officer.

(5) Information submitted by applicants for licenses which establish that they have the experience, education, or training required by Coast Guard regulations to obtain the license.

(6) Information on a Report of Marine Accident, Injury or Death, CG-2692, other than personally identifiable information (name of a third party or witness, social security number, date of birth, home address, merchant mariner number, etc.).

(7) The address of Coast Guard quarters, without the names of the occupants.

7. Records or Information Compiled for Law Enforcement Purposes. Exemption 7 relates to files compiled for law enforcement purposes by the Coast Guard or any other federal, state, or local agency, including those files compiled for the enforcement of civil or administrative regulations. This exemption applies only to the extent that the production of such law enforcement records or information:

a. Could reasonably be expected to interfere with enforcement proceedings, exemption 7(A). Determining the applicability of this exemption requires a two-step analysis focusing on:

(1) whether a law enforcement proceeding is pending or prospective; and

(2) whether release of information about it could reasonably be expected to cause some distinct harm. [See section on Law Enforcement "Exclusion" below.]

b. Would deprive a person of a right to a fair trial or an impartial adjudication, exemption 7(B).

c. Could reasonably be expected to constitute an unwarranted invasion of personal privacy, exemption 7(C).

(1) This exemption, like exemption 6, requires a balancing of the relevant personal privacy and general public interests concerning personal information in law enforcement records.

(2) This exemption is routinely invoked to withhold the identities of federal, state and local law enforcement personnel referenced in investigatory files, as public identification of these individuals could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives. It may also be used to protect the identities of individuals who provide information to law enforcement officials.

(3) Law enforcement records are unique in that the mere fact that an individual has been investigated by a law enforcement agency carries a stigmatizing connotation. Revealing the fact that investigatory files exist can in itself invade an individual's privacy. For this reason, the Coast Guard should use the "Glomar" response (See this chapter, section A-1-b-(1)) for such requests, refusing to confirm or deny the existence of the records requested, citing exemption 7(C), except in the following situations:

(a) confirmation of death of the subject;

(b) written waiver of privacy rights furnished by the subject of the investigation;

(c) if there is evidence that the existence of such files is general public knowledge. (NOTE: The fact

that the government has made such files public through indicting and prosecuting the individual at some time in the past does not necessarily extinguish all privacy concerns of the individual.)

(d) if there is a determination that the disclosure of such information is in the general public interest. (Note: Disclosure of corruption and significant intentional misconduct by high public interest.)

(4) It is important to be consistent in the practice of refusing to confirm or deny the existence of law enforcement records in order to make its use effective. If the agency provides a "no records" response to the first nine requests for investigatory files when a search reveals no records, it could not respond to the tenth request, where records in fact do exist, by "refusing to confirm or deny" without in effect disclosing the very fact sought to be protected.

d. Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, exemption 7(D).

(1) This exemption may be used to protect the identity of crime victims, citizens providing unsolicited allegations of misconduct, citizens who respond to inquiries from law enforcement officials, and commercial or financial institutions, as well as criminal informants.

(2) There must be evidence that the information was provided in confidence or in trust, with the assurance that it would not be disclosed to others.

e. Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, exemption 7(E).

(1) This exemption may be used to withhold such records as law enforcement manuals which contain techniques and procedures used by the Coast Guard in law enforcement activities.

(2) The material must meet the general requirement that the technique or procedure not be already well known to the general public.

f. Could reasonably be expected to endanger the life or physical safety of any individual, exemption 7(F).

8. Law Enforcement Exclusion. The Freedom of Information Reform Act of 1986 created an entirely new mechanism for protecting certain especially sensitive law enforcement records under subsection (c) of the FOIA. This subsection authorizes Federal law enforcement agencies to treat such records as not subject to the requirements of the FOIA, i.e., to lawfully respond to a requester that no records responsive to the request exist.

a. Processing of Requests. Use of an exclusion described in this section requires approval of the General Counsel for the Department of Transportation.

b. The command processing the request shall:

(1) Prepare a document identifying the records for which the exclusion is being invoked and the basis for the exclusion. This document is to be signed by the official recommending use of the exclusion.

(2) Mail a copy of the records and signed supporting document to Commandant (G-LRA) with a copy to Comdt(G-CIM-2).

c. Commandant (G-LRA) will coordinate the decision on use of the exclusion with the General Counsel for the Department of Transportation.

d. Two provisions of 5 U.S.C. 552(c) apply to the Coast Guard:

(1) Whenever a request is made which involves access to records or information compiled for law enforcement purposes; and,

(a) The investigation or proceeding involves a possible violation of criminal law; and,

(b) There is reason to believe that:

1 The subject of the investigation or proceeding is not aware of its pendency; and

2 Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings; then,

(2) The Coast Guard may, during only such time as the above circumstances continue, treat the records as not subject to the requirements of the FOIA.

e. Whenever informant records maintained by the Coast Guard under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the Coast Guard may treat the records as not subject to the requirements of the FOIA unless the informant's status as an informant has been officially confirmed.

9. Records Relating to Supervision of Financial Institutions. Exemption 8 relates to any material contained in or related to any examination, operating or condition report prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of a financial institution. This exemption is not used by the Coast Guard.

10. Geological or Geophysical Information. Exemption 9 relates to any geological or geophysical information and data concerning wells. This exemption is not used by the Coast Guard.

B. Other Sources. For additional information pertaining to exemptions see the following documents: The Freedom of Information Act, 5 U.S.C. 552; The Privacy Act of 1974, 5 U.S.C. 552a; The Government in the Sunshine Act, 5 U.S.C. 552b; Office of Management and Budget Circular Number A-130, dated July 25, 1994 [49 C.F.R. Part 7 and 49 C.F.R. Part 10].

CHAPTER 9. DENIAL PROCEDURES.

A. Requirements for an Initial Denial of Access. For either a partial or total denial, a **"justification memo"** will be drafted. The FOIA provides a requester who has been denied records certain rights to protect the requester against an arbitrary decision to withhold Federal records. The Department of Transportation will not support, nor will the Department of Justice defend, a Coast Guard decision to withhold records, unless the Coast Guard has justified its position. The "justification memo" must **explain the sound legal basis for applying each exemption cited to withheld records.** The Department of Transportation requires that an agency attorney concur with this justification. In the event an entire file is exempt from release under FOIA, a document-by-document **justification memo** is not normally required. **However, the justification memo must explain how the entire file meets the elements of one or more FOIA exemptions. This memo does not need** to be lengthy, but **it** must adequately identify and **explain**, in plain language, **how withheld material meets the elements of one or more FOIA exemptions.** The following procedure shall be followed for drafting the **"justification memo."**

1. The record holder proposing denial should **draft the justification memo.** Use a "memo to file" format. Deliver the entire case file to the **servicing legal office for approval. This includes the original request, any additional correspondence between the Coast Guard and the requester, all responsive records (whether being released or withheld), and drafts of the denial letter and justification memo. The justification shall not consist of a recitation of the text of the exemption; it must explain how the responsive documents meet the requirements of one or more FOIA exemptions. The justification memo** must **specifically** identify the information to be withheld under each exemption to be applied. **Segregation shall be utilized, so that only that material which falls under a FOIA exemption is redacted or withheld. Denial authorities shall ensure, prior to signing a denial letter, that a justification memo has been drafted and approved by a Coast Guard attorney from the servicing legal office.**

2. Place the approved **justification memo** in the case file. Do not include the **justification memo** in the correspondence sent to the requester. As an agency record, **however, the justification memo itself is subject to a subsequent FOIA request. However, because this memo is a deliberative, pre-decisional matter, and many times includes attorney work product or is an attorney client communication, Coast Guard policy is to deny requests for justification memos under FOIA exemption 5.**

B. Requirements for a Letter of Denial. Upon a decision to deny release of records in whole or in part, a written statement must be provided to the requester. This letter must contain the following items:

1. The number of pages of records provided and the number of pages completely withheld.

2. A specific reference to the one or more FOIA exemptions relied upon for the denial. When withholding law enforcement records, cite the specific portion(s) of exemption 7 that are applicable [i.e., 7(C)].

3. An explanation of how the exemption(s) apply to the records requested (i.e., "...being withheld under the authority of exemption 3 because 46 U.S.C. 3315(b) requires that the identity of a person who reported a vessel defect be withheld", or "...being withheld under the authority of exemption 7(C) because the release of the information could reasonably be expected to constitute an unwarranted invasion of personal privacy of the individual").

4. **If entire pages are being withheld, advise the requester of the volume of records being withheld, either by page count or some other description. If records are being disclosed in part, the amount of information which is being withheld shall be indicated on the released portion of the record, unless including that information would harm an interest protected by an applicable exemption.**

5. The name and title or position of each person participating in the decision to deny disclosure.

6. Information regarding the appeal rights/procedures available to the requester. The following statement shall be used **in its entirety**:

> "This letter constitutes a denial [or partial denial] of your request. You may appeal this decision. Your appeal must be in writing and must be submitted within 30 days from the date of this letter. Your letter **must (1)** indicate that you are making an appeal based on a denial [or partial denial] of a request made under the Freedom of Information Act; **(2) include the specific** reason(s) for a reconsideration of the denial; **and (3) refer to the tracking number assigned to your request by the Coast Guard. Write "FOIA Appeal" on the face of the envelope** and **include a** copy of **this** letter **in your package**. Send your appeal to:
>
> Commandant **(G-CIM-2)**
> U.S. Coast Guard
> Attn: FOIA/PA Officer
> 2100 Second Street SW
> Washington DC 20593-0001"

C. Signature for Denial Letters. The denial letter must be signed by one of the individuals **described** in Chapter 4, or an individual **officially designated as** acting in that capacity. **Denial** authority cannot be delegated except by Commandant **(G-CIT)**.

D. Requirements for an Initial Denial of Fee **Reduction/**Waiver. Denial of a request **for a** fee **reduction/**waiver must be in writing. Include the reasons for the denial and **a** notice that a written appeal for reconsideration of the decision may be addressed to Commandant **(G-CIM-2)**. When responding to the requester the following statement **shall** be used:

> "We have reviewed your request for a **reduction/**waiver of some or all of the fees chargeable under the Freedom of Information Act. We have determined that you do not fall within the specific categories identified for **a**

reduction/waiver of fees **because [state reason(s)].** You may appeal this fee **reduction/**waiver denial. Your appeal must be submitted in writing within 30 days from the date of this letter. Your letter should indicate that you are making an appeal based on a denial of a fee **reduction/**waiver for a request made under the Freedom of Information Act, and for reconsideration of the fee **reduction/** waiver. **Provide** any additional information which will support the fee reduction/waiver; **reference the tracking number assigned to your request by the Coast Guard**; and **include** a copy of **this** letter. Send your appeal to:

Commandant **(G-CIM-2)**
U.S. Coast Guard
Attn: FOIA/PA Officer
2100 Second Street SW
Washington DC 20593-0001"

E. Signature for "Denial of Fee **Reductions/**Waivers". The denial letter must be signed by one of the individuals listed in Chapter 4, or an individual acting in that capacity. Signature authority cannot be redelegated except **by the** Commandant **(G-CIT).**

F. Forwarding Correspondence to the Commandant When Access or Fee **Reduction/**Waiver is Denied. Officials denying access or a fee waiver shall forward a copy of each request for records or fee waiver that is denied (in whole or in part) together with a copy of the response to the requester to Commandant **(G-CIM-2).**

G. Retention of Records. The official file concerning the denial must be retained for the period specified in Enclosure (2), General Records Schedule 14, Item No. 16 of **the Coast Guard Paperwork Management Manual,** COMDTINST M5212.12 (series). The file must include:

1. The request, response and any other intervening correspondence.

2. A legible copy of all records responsive to the request.

3. Identification of the records withheld, the exemption relied upon for each item or document withheld and the harm analysis **justification memo.**

CHAPTER 10. APPEAL PROCEDURES

A. Appeals. Under certain circumstances, a FOIA requester may submit an appeal in regard to his/her request. These circumstances include:

1. Failure of the recordholder to process the request within the applicable timeframe specified by the FOIA.

2. Denial of a request for expedited processing.

3. A "No records" determination.

4. Denial of a request for reduction/waiver of fees.

5. Full/partial denial of responsive records.

B. Responsibilities.

1. The FOIA Staff in Commandant (G-CIM) processes all appeals. Processing includes recovering copies of responsive records and other relevant correspondence from the recordholder, evaluating the actions/decisions of the record-holder/denial authority, and preparing a final administrative determination for approval/signature by the appeal authority. In accordance with 49 CFR Part 7, this determination shall be made within twenty working days from receipt of the appeal, unless the time limit is extended another ten working days in accordance with procedures established in 49 CFR 7.32. Determinations of appeals of decisions to deny expedited processing will be determined within ten working days.

2. The recordholder provides information, explanation, and copies of records responsive to appeals upon notification by the FOIA Staff (see paragraph 10-E).

3. The staff attorney(s) in Commandant (G-LRA) reviews proposed appeal determinations to ensure they are legally sufficient.

4. For decisions rendered on situations described in paragraphs 10-A-4 and 10-A-5, an attorney for the

Office of the Secretary of Transportation reviews proposed appeal determinations to ensure they are legally sufficient.

5. The Director of Information and Technology is the appeal authority and signs all appeal decisions.

C. Multi-track Processing. Appeals are segregated into two queues for processing. Appeals within each track shall be processed in accordance with their position within the respective queues (i.e., first in/first served). Appeals within both tracks shall be processed concurrently in accordance with a formula that ensures balanced treatment of the tracks. The two categories of appeals are:

1. Administrative—those described in paragraphs 10-A-1 thru 10-A-4.

2. Substantive—those described in paragraph 10-A-5.

D. Remands. The FOIA Officer may remand an appeal to the initial responder or other recordholder for remedial processing if he/she determines that:

1. The initial responder substantially failed to follow the policies and procedures promulgated by this manual, 49 CFR Part 7, or the FOIA; or

2. It is otherwise appropriate for the request to be processed at the initial responder level.

E. Documentation Required from the Recordholder. The recordholder shall provide the FOIA Staff certain information, explanations, and records to enable the staff to process appeals. The appeal officer will notify the recordholder of the specific documentation needed on a case-by-case basis.

1. Timeframe. Recordholders shall forward requested documentation to the FOIA Staff within four working days of notification. Recordholders shall immediately forward requested documentation responsive to denials of requests for expedited processing. Rapid compliance is necessitated as a consequence of the constraints described in paragraph 10-B-1.

2. The nature of the required documentation depends upon the nature of the appeal:

   a. Expiration of statutory time limit for processing an initial request.

      (1) Reason(s) for delay of the final determination;

      (2) Estimate of additional time needed to issue the final determination;

      (3) Copy of correspondence already sent to the requester.

   b. Denial of a request for expedited processing.

      (1) Justification for the decision to deny the request;

      (2) Copy of correspondence already sent to the requester.

   c. "No records" determination.

      (1) Detailed description of the search that led to the initial "no records" determination (see chapter 5-F-1);

      (2) Detailed description of any subsequent search as a consequence of the appeal;

      (3) Copy of correspondence already sent to the requester.

   d. Denial of a request for a fee reduction/waiver.

      (1) Justification for the denial of the fee reduction/waiver;

      (2) Justification for any estimated/ assessed fees (see chapter 11) provided to the requester;

(3) Copy of correspondence already sent to the requester.

e. Decision to withhold responsive records in whole or in part.

(1) One legible, complete copy of all responsive records (to include those withheld as well as those released);

(2) Approved justification memo (see chapter 9-A);

(3) One legible copy of the responsive records, if applicable, in the identical format provided to the requester;

(4) Copy of other correspondence already sent to the requester.

F. Provision of Resolution to the Appellant. The FOIA Staff shall provide the appellant with the resolution of the appeal upon signature of the appeal authority. This determination constitutes the final agency action on the appeal. If the appeal is denied in whole or in part, the resolution shall include:

1. The reason(s) for the denial;

2. The names and titles of each person responsible for the determination;

3. The procedures available to the appellant for seeking judicial review (when applicable). Determinations on expeditious processing appeals are not subject to judicial review.

CHAPTER 11. FEES CHARGEABLE UNDER THE FOIA.

A. Categories of Requesters. Fees for FOIA requests will be assessed depending on which of the following categories the requester falls into:

1. Commercial use. The term "commercial use request" refers to a request from or on behalf of one who seeks information **primarily** for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

   a. In determining whether a requester properly belongs in this category, agencies must determine **the purpose for which** the requested documents will be used.

   b. Where there is reasonable cause to doubt the use of the requested records, or where that use is not clear from the request itself, the requester should be asked for clarification, in writing, before assigning the request to a specific category.

   c. In determining if the records are requested for commercial use, the following points will be considered:

      (1) An attorney who requests records, on behalf of a client shall not be considered as requesting the records for commercial use, unless the **attorney** will use the records for a commercial purpose.

      (2) Simply because the request is on the letterhead of a business does not mean the records will be put to a commercial use.

   d. When records are requested for commercial use, fees shall be assessed for search, review and duplication costs.

2. Educational or noncommercial scientific institution.

   a. The term "educational institution" refers to any public or private school, institution of higher education, institution of

professional education, or institution of vocational education, which operates a program or programs of scholarly research.

b. The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

c. When records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, fees shall be assessed for document duplication only. No charge will be made for the first 100 pages of duplicated material.

3. Representative of the News Media.

a. The term "news" means information that is about current events or that would be of current interest to the public.

b. The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Examples of news media entities include, **but are not limited to**, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public.

c. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included

in this category. **Alternative media, however, must otherwise meet the requirements of this section to qualify.**

d. "Free-lance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but **you** may also look to the past publication record of a requester in making this determination.

e. When records are not sought for commercial use and the request is made by a representative of the news media, fees shall be assessed for document duplication only. No charge will be made for the first 100 pages of duplicated material.

4. <u>All Other Requesters</u>.

a. Requesters not falling in category 1, 2 or 3 above are considered to be in the "all others" category.

b. Requesters in this category shall be assessed search and duplication costs only. No charge will be made for the first two hours of search time or for the first 100 pages of duplicated material. See below for a summary of fee assessments.

ASSESSMENT OF FEES

Type of requester	Search	Review	Duplication
Commercial	yes	yes	yes
Educational/ scientific institution	no	no	yes*
Representative Of news media	no	no	yes*
All others	yes**	no	yes*

* No charge for the first 100 pages
** No charge for the first two hours

B. Waiver or Reduction of Fees. Records will be furnished without charge or at a reduced charge if an official with denial authority (per Chapter 4) determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Factors to be considered by officials authorized to determine whether a waiver or reduction of fees will be granted include:

1. Whether the subject matter of the requested records concerns the operations or activities of the Federal government;

2. Whether the disclosure is likely to contribute to an understanding of Federal government operations or activities;

3. Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons;

4. Whether the contribution to public understanding of Federal government operations or activities will be significant;

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

6. Whether the magnitude of any identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, then that disclosure is primarily in the commercial interest of the requester.

C. Fee Assessment.

1. Minimum charge. When the total amount of fees that could be charged for a particular request (or aggregation of requests), after taking into account all services which must be provided at no charge or at a reduced charge, is less than $10.00 the Coast Guard will not make any charge for fees.

2. Search fees.

a. Search fees are charged for the actual time required to locate records responsive to the request. Search fees are not charged for the time required to review records to determine whether a statutory exemption will be invoked. **(See Chapter 11-C-3 for Review Fees.)**

b. Search fees are charged for the entire amount of time spent searching for records for commercial requesters. Requesters in the "all others" category receive the first two hours of search at no cost. For the purposes of this subparagraph, when a computer search is required, two hours of search time is considered spent when the hourly cost of operating the central processing unit used to perform the search added to the computer operator's salary costs equals two hours of the computer operator's salary costs.

c. No fee is to be charged for any time spent searching for a record if the requester is a representative of the news media, an educational institution whose purpose is scholarly research, or a noncommercial scientific institution whose purpose is scientific research.

d. Charges may be assessed for time spent searching for requested records even if the search fails to locate the records or the records located are determined to be exempt from disclosure.

e. Search fees are computed as follows:

(1) The hourly pay rate for Federal white-collar employees means the actual hourly base pay, plus 16 percent. All Coast Guard units shall use the Baltimore-Washington Federal white collar pay table. Select the appropriate rate from the following fee schedule.

(a) GS-1 through GS-8: use hourly base pay of a GS-5 step 7, plus 16%.

(b) GS-9 through GS-14: use hourly base pay of a GS-12 step 7, plus 16%.

(c) GS-15 and above: use hourly base pay of a GS-15 step 7, plus 16%.

(2) Hourly pay rate for military members of the Coast Guard means the equivalent hourly pay rate computed using a 40-hour week and the member's normal basic pay and allowances, plus 16 percent.

f. Computer search fees are based on the direct cost of providing that service. This includes the cost of operating the central processing unit (CPU) for the time that is directly attributable to searching for records responsive to a FOIA request and the operator/programmer salary (hourly rate plus 16 percent) apportionable to the search.

3. Review fees.

a. Review fees are charged for time spent reviewing any responsive records located to determine whether they are exempt from disclosure. Review fees are chargeable only

to commercial requesters. Review fees are computed at the same rate as search fees in paragraph 2e.

b. Charges may be assessed only for the initial review, i.e., the review undertaken the first time the Coast Guard analyzes the applicability of a specific exemption to a particular record or portion of a record.

c. Fees may not be charged for administrative appeal review except, when records or portions of records withheld in full under an exemption which is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered. This is considered an initial review for purposes of assessing review charges.

4. Duplication fees.

a. No fees shall be charged for duplication of the first 100 pages of records provided to any requester unless the records are requested for commercial use.

b. The standard fees for duplication:

(1) Per copy of each page (not larger than 8 1/2" x 14") reproduced by photocopy or similar methods (includes costs of equipment, supplies and the person operating the equipment): $0.10.

(2) Per copy prepared by computer, such as tapes or printout: Actual costs, including operator time.

(3) Per copy prepared by another method of duplication, such as microfiche, videotapes, photographs, etc.: Actual direct cost of production.

5. Special handling fees. If special handling is provided at the request of the requester (i.e. express mail, special delivery, messenger, etc.) the cost of that special service shall be assessed. Special handling shall not be provided if the cost of that service would be waived per paragraph B 1 through 6 of this Chapter.

6. Special services. The following special services not required by the FOIA may be made available upon request at the stated fees:

   a. Certified copies of documents, with Department of Transportation or Coast Guard seal: $4.00.

   b. True copy, without seal: $2.00.

7. Other situations.

   a. Fees specified in 33 C.F.R. 1.25-40(b) for records listed below shall be assessed in lieu of the fees in this section.

      (1) Certificate of Seaman's Service completed on form CG-723. [46 C.F.R. 12.02-18]

      (2) Duplicate merchant mariner's document. [46 C.F.R. 12.02-18]

      (3) Duplicate continuous discharge book. [46 C.F.R. 12.02-18]

      (4) Duplicate certificate of registry as staff officer. [46 C.F.R. 10.219]

      (5) Certificate of service issued in accordance with section 701 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat 1190, as amended; 50 U.S.C. App. 581). [46 C.F.R. 12.07-18]

   c. Fees specified in 46 U.S.C. § 927 shall be assessed in lieu of the fees in this section for records relating to vessel ownership, sale, conveyance, or mortgage.

D. Collection of Fees.

1. When it is estimated that the search charges, review charges, duplication fees or any combination of fees that could be charged to the requester will likely **exceed $25**, the requester shall be notified of the estimated amount of the fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. The notice must also inform the requester how to consult with appropriate Coast Guard officials with the object of reformulating the request to meet the requester's

needs at a lower cost. **If you do not notify the requester of estimated fees in excess of $25 or the fee he/she agreed to in advance and obtain his/her written consent to proceed, he/she will not be liable for the additional fees.**

2. Payment of fees may be required by the Coast Guard prior to actual duplication or delivery of any records to a requester.

3. Payment of fees before work is commenced, continued or delivered to the requester is normally not required except as authorized below.

   a. Allowable charges that a requester may be required to pay are likely to exceed $250. In this case, the requester shall be notified of the likely cost and where the requester has a history of prompt payment of FOIA fees, requested to furnish satisfactory assurance of full payment. Where no history of payment exists, the requester may be required to make advance payment of any amount up to the full estimated charges.

   b. The requester has failed to pay within 30 days of the billing date fees charged for a previous FOIA request. In this case, the requester shall be required to demonstrate that the fee has, in fact, been paid or to pay the full amount owed, including any applicable interest, late handling charges and penalty charges. The requester shall also be required to make an advance payment of the full amount of the estimated fee before processing of a new request or continuation of a pending request is begun.

4. Aggregated Requests. In any instance where the Coast Guard reasonably believes that the requester or a group of requesters acting in concert is attempting to break down a single FOIA request into a series of requests for the sole purpose of evading the payment of otherwise applicable fees, the Coast Guard will aggregate the requests and determine the applicable fees on the basis of the aggregation.

5. Notification of Fees Assessed. The notification of fees assessed shall include an itemized statement of charges incurred. Inform the requester that:

a. Fees may be paid by check, draft or money order, payable to the "Treasury of the United States". The FOIA control number must be written clearly on the face of the payment and the payment should be mailed to the unit assessing the fees.

b. Failure to remit payment within 30 days will result in additional costs, e.g. finance charges and administrative costs.

c. Failure to pay fees could result in refusal to process future requests.

The requester should be notified a total of three times concerning an outstanding balance. Each written demand for payment should be progressively stronger at not more than 30-day intervals, unless a response to the first or second demand indicates that further demand would be futile or the requester responds with payment. If payment still has not been received after three warnings, consult with the Coast Guard Finance Center for collection of these fees in accordance with 49 C.F.R. Subtitle A (10-1-92 Edition), Part 89 - Implementation of the Federal Claims Collection Act.

6. Payment. Payment must be remitted to the unit assessing the fees for field units and to the responding office at Headquarters **and can be made my mail or electronically using Do It Yourself (DIY) payment via Internet (http://diy.dot.gov).**

a. The unit or FOIA/PA Coordinator for Offices or Special Staffs at Headquarters will, in turn, forward the payment to the Department of Treasury's Lockbox at the following address:

US Coast Guard
PO Box **640626**
Pittsburgh PA **15264-0626**

Payments for more than one FOIA request, provided each payment is properly documented, may be sent at the same time. Include with the payment(s):

(1) Letter of Transmittal. A Rapidraft Letter (CG-3883) is acceptable. The letter of transmittal must include the unit OPFAC, amount of money

transmitted, and a statement that the payment(s) is/are for information access provided under the Freedom of Information Act; and

(2) Record of Cash Receipt (Form DOT F2770.2). List the payments individually and use the FOIA control number as the "purpose".

The processing unit shall maintain an adequate audit trail. This is imperative for general recordkeeping, proof of payment, and compilation of the Annual Freedom of Information Act Report to Congress.

b. Electronic Payment. The Coast Guard now provides requesters with the option of making payments through the Coast Guard DIY website (http://diy.dot.gov).

(1) Notification. Modify final response letter to the requesters when a payment is due by providing an option to pay electronically through the DIY website.

(2) Types of electronic payments. Acceptable modes of payment are MasterCard, American Express, Discover or VISA. The FOIA case number will serve as the invoice number for the payments. When partial payments are received, establish a procedure to number such payments. For example, FOIA case number, 2001-890, 2001-890#1, and so forth.

(3) Charge-back feature. A refund to the credit card is rendered when a final decision is made to credit someone's payment. Charge-backs are payments disputed by the FOIA requester, i.e. double payment.

(4) A form on the Coast Guard DIY website must be completed by the requester with the FOIA case number, name of requester, and payment amount to begin transmission.

CHAPTER 12. THE PRIVACY ACT (PA)

A. Purpose of the Privacy Act. The Privacy Act of 1974, (the Act) 5 U.S.C. § 552a, is a companion to the FOIA. The PA regulates Federal government agency recordkeeping and disclosure practices. In general, the Act allows citizens to learn how records are collected, maintained, used and disseminated by the Federal government. The Act also permits individuals to gain access to most personal information pertaining to them that is maintained by federal agencies and to seek amendment of any incorrect or incomplete information. The two laws restrict disclosure of personal information to others when disclosure would violate privacy interests.

B. Who May Request Records Under the Act.

1. The PA only grants rights to United States citizens and to aliens lawfully permitted for permanent residence.

2. The parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may make a request on behalf of the individual.

C. Provisions of the Privacy Act. There are five basic requirements of the PA.

1. Agencies must establish procedures allowing individuals to see and copy records about themselves. An individual may also seek to amend any information that is not accurate, relevant, timely or complete.

2. Agencies must publish notices describing all systems of records. This requirement prevents agencies from maintaining secret record systems.

3. Agencies must make reasonable efforts to maintain accurate, relevant, timely and complete records about individuals.

4. The Act establishes rules governing the use and disclosure of personal information. The Act specifies that information collected for one purpose may not be used for another purpose without notice to or the consent of the subject of the record. The Act also requires that agencies keep a record of some disclosures of personal information. (See Chapter 13 of this Manual.)

5. The Act provides legal remedies that permit individuals to seek enforcement of the rights granted under the Act.

In addition, there are criminal penalties that apply to Federal employees who fail to comply with the Act's provisions.

D. Coast Guard Policy Concerning Maintenance of Records on Individuals.

1. The Coast Guard considers the protection of personal information of paramount importance and as such will ensure that all levels of command comply with the letter and spirit of the Act. Personal information collected and maintained shall be the minimum necessary to accomplish a purpose of the Coast Guard required to be accomplished by statute or executive order of the President. A maximum effort will be made to collect personal information directly from the individual.

2. The Coast Guard will permit individuals to know what records about them are collected, maintained, used or disseminated; to have access to and copies of all non-exempt portions of such records, and to request amendments of such records. The Coast Guard will ensure that requests by individuals for notification, access, or amendment concerning their records are acted on within appropriate time regulations.

3. The Coast Guard will maintain personal information in a manner which ensures that the information is current and accurate for the intended uses. Records used by the Coast Guard in making determinations about an individual will be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to ensure fairness to the individual in any determination concerning the individual.

4. The Coast Guard will collect, maintain, use or disseminate records of identifiable personal information only for necessary and lawful purposes. In assessing need, consideration will be given to such alternatives as the use of information not identifiable to an individual.

5. The Coast Guard will not create any system of records that has not been published in the Federal Register. Coast Guard employees who believe that files might compromise a Privacy Act "System of Records" (because privacy information is maintained and could be retrieved by indexing via a personal identifier) should advise Commandant (G-SII-2) via their chain of command. The Coast Guard will not participate in any computer matching program without a written agreement between the agencies involved.

6. The Coast Guard will, prior to disseminating any records about an individual to any person or agency, make

reasonable efforts to assure that such records are accurate, complete, timely and relevant. Reasonable efforts will also be made to serve notice on an individual when any record is made available to any person under compulsory legal process when such process becomes a matter of public record.

7. The Coast Guard will not maintain any records describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the records is maintained or unless pertinent to and within the scope of an authorized law enforcement activity. This should not be construed as restricting or excluding solicitation of information which the individual is willing to have in the individual's records concerning religious preference, particularly that may be required in emergency situations.

E. Processing Privacy Act Requests Under the Freedom of Information Act.

1. An individual's request for his/her own record maintained in a PA system of records shall be processed for release under both the PA and the Freedom of Information Act. This guidance applies to first party requests (requests from the subject of the record). An individual need not specifically state in a written request that he or she wishes the request to be processed under both Acts.

2. The request shall be first processed under the PA. Where there is no published PA exemption for the system of records, the material/record shall be released to the individual.

3. Where there is a published exemption for the system of records, AND records/materials are found to fall within the scope of that exemption, those records shall then be reviewed for release to the individual under the FOIA.

4. The most common example of this situation is a request for information out of investigatory files held in DOT/CG 611, Intelligence and Security Investigative Case Systems. A request processed under the PA would be denied citing exemption (k)(2). However, under the FOIA the files could be released with certain material "redacted" (blacked out), such as information identifying a confidential source or disclosing law enforcement techniques. The appropriate FOIA exemption would then be cited.

5. Both PA and FOIA exemptions must be properly invoked to withhold information from a first party requester.

6. In summary:

   a. If no PA exemption applies to records in a system of records--release.

   b. If a PA exemption applies to all or portions of the record, review PA exempted material for possible release under FOIA.

      (1) If no FOIA exemption applies--release.

      (2) If PA and FOIA exemption both apply--withhold, citing both exemptions.

F. Office of Personnel Management (OPM) Systems of Records.

1. The appropriate officials listed in Chapter 9 are authorized to initially deny access to or amendment of records, in the custody of the Coast Guard, for OPM record systems. When access to or amendment of a record is questioned, the command which initially received the request shall forward the request through the chain of command to Commandant (G-SII-2). Denial authority may not be redelegated, except by Commandant (G-SI).

2. The originating command shall inform the requester in writing within 10 working days that the request has been forwarded to the Commandant (G-SII-2).

3. If a reviewing command determines that access to or amendment of the record is permissible, that command shall return the request to the originating command in lieu of forwarding it to Commandant (G-SII-2). The originating command shall ensure that all users of the record are promptly informed of an amendment and so advise the requester.

4. If access to or amendment of an OPM system of records is unwarranted, either in whole or in part, the official making the denial shall inform the requester promptly in writing of the reason(s) for the determination not to disclose or amend the record, together with a statement of the names and titles or positions of all persons responsible for the denial. The response shall also advise the requester of their right to file a statement of disagreement under provisions of 49 C.F.R. 10.45 and of the individual’s right to appeal the adverse decision to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW, Washington, D.C., 20415 within 180 days of the initial denial.

CHAPTER 13. DISCLOSURE OF PRIVACY ACT MATERIAL

A. Notifying Individuals if Described Systems of Records Contain Information About Them.

1. Any individual may ask the Coast Guard if a system contains information about him/herself. The addresses to which an individual may send a request are listed for each system of records biennially in the Federal Register. These system notices are available in hard copy and on CD-Rom in the Coast Guard Headquarters Law Library and also in Commandant (G-SII-2). Generally, an individual should write to Commandant (G-SII-2) for information concerning any system that is centrally controlled at Headquarters, or to the appropriate district commander or commanding officer of a Headquarters unit for information about a locally maintained portion of a records system.

2. If records concerning the individual are contained in the described system, the command responding will advise the individual of the procedures for review of the record and the procedures for having copies provided by mail. This notification should include procedures as described below for releasing records to the individual to whom the records pertain.

B. Disclosure to the Individual Who is the Subject of the Record.

1. Access by the individual. [First Party Request]

   a. Individuals shall be permitted access to any Coast Guard records which contain information about them, except insofar as these records might be exempt from disclosure under any provisions of the PA. (See Chapter 14.) If the command receiving the request believes that the records fall in the exempt category or that the request for other reasons should not be granted, the request should be forwarded immediately to the System Manager. An interim response to the requester by the command forwarding the request shall be made within 10 working days.

   b. Individuals need not state a reason for their request.

   c. The system of records in which the record is located or thought to be located should be specified in the request. Individuals may obtain assistance in

identifying the appropriate system of records from the local PA Coordinator or from Commandant(G-SII-2).

d. An individual may request access to a record in person or by mail.

e. An individual is entitled to have a copy made in a form comprehensible to the individual.

f. Requests for access to records should be submitted in writing using the Privacy Act Information Request Form OF-203 or personal stationary. Requests on personal stationary should contain the same information required by form OF-203.

g. Requests for access to or amendment of records when the physical location of the records is not known shall be forwarded via the chain of command to Commandant (G-SII-2). If the record or portion of the record requested is located at a "via" addressed command, that command should respond to the request and inform the originating command of the action taken.

2. Verifying the identity of individuals requesting records.

a. Individuals must prove their identity before being granted access to personal information about themselves which is not available to the public under the Freedom of Information Act. Individuals who appear in person to review their records must provide a valid military or government identification card, a state driver's license, or other similar document.

b. For mail requests, a letter properly signed by the requesting individual will normally suffice as identification. However, if the releasing official feels that the content of the record being sought is of a sensitive nature, and if released to someone other than the affected individual could prove detrimental to that individual, the official may require the following notarized proof of identity before releasing the information:

"I (name of requester), do hereby certify that I am the individual to whom the records in question pertain."

or

"I am the parent or guardian of the minor to whom the records in question pertain."

or

"I am the legal guardian of the individual determined by a court to be incompetent to whom the records in question pertain."

(NOTARIZATION)

(SIGNATURE)

(DATE)

c. Individuals may not be required to provide their social security number to assist in identification unless the provision of this number was required by statute or regulation prior to 1 January 1975.

3. Individuals accompanied by another person.

a. Individuals may be accompanied by a person of their own choice while reviewing their records.

b. The individual may be required to provide a signed statement authorizing that the records be reviewed or discussed in the presence of an accompanying person.

4. An individual's record may also be released to a representative designated by the individual provided that a signed statement authorizing such release is received by the Coast Guard prior to release of the record.

5. Release of records to legal guardians.

a. For the purposes of the PA, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental disability by a court having jurisdiction in the matter, may act on behalf of the individual. The laws of the jurisdiction where the records are located shall be used to determine whether or not an individual is a minor.

b. A disclosure under this provision shall be treated as a disclosure to the individual who is the subject of the record.

To verify identification, the Coast Guard may require a legal guardian to produce certified copies of court documents appointing the guardian to his or her position.

6. Medical records.

   a. When requests are for access to medical records, including psychological records, the decision to release directly to the individual, or to withhold direct release, shall be made by a medical practitioner.

   b. If the medical practitioner rules that direct release will do harm to the individual who is requesting access, normal release through the individual's chosen medical practitioner will be recommended.

7. Records compiled for a civil action or proceeding. Where a record has been compiled in reasonable anticipation of a civil action or proceeding, a denial authority may deny an individual's request for access to that record pursuant to 5 U.S.C. § 552a(d)(5), provided that there is a significant and legitimate governmental purpose to be served by denying the request.

C. Disclosures to Persons Other Than the Subject of the Record. Only in the following instances may a record be released to a person or agency other than the individual who is the subject of the record, or his or her representative or guardian without written permission of the subject of the record:

1. To officers or employees of the Coast Guard or the Department of Transportation who need the record for official purposes.

2. The disclosure is required under the Freedom of Information Act. [Third Party Requests] If an agency is in receipt of a FOIA request for information about an individual that is contained in a system of records that is not properly withholdable under any FOIA exemption, then the agency is required to disclose it under the FOIA. However, the PA prohibits an agency from making a discretionary FOIA release to a third party because that release is not "required" by the FOIA. Only those "required" FOIA releases will be made to a third party requester. (See "Discretionary releases" and "first and third party" definitions in Chapter 2.)

3. For a routine use, as defined in 49 C.F.R. Part 10 and described in the Federal Register publication of the system notice pertaining to that system of records.

4. To the Bureau of the Census for census purposes.

5. For statistical research and reporting purposes. It is required that advance adequate written assurance be received that the record will be used solely as a statistical research or reporting record, and the record will be transferred in a form that is not individually identifiable.

6. To the National Archives and Records Administration as a record of historical value or for a determination of historical value.

7. To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request specifying the particular portion of the record desired and the law enforcement activity for which the record is sought.

8. To a person demonstrating compelling circumstances affecting the health or safety of an individual. Upon such disclosure, notification must be sent to the last known address of the individual who is the subject of the record.

9. To either House of Congress, or, to the extent of matter within its jurisdiction, any committee, subcommittee or joint committee thereof.

10. To the Comptroller General, or any of their authorized representatives in the course of the performance of the duties of the General Accounting Office.

11. When directed by an order or subpoena signed by a judge of a court of competent jurisdiction. [A state court is not considered a " court of competent jurisdiction'' for release of Federal records. Release of Federal records under a state court subpoena waives "sovereign immunity" of the Federal government. Consult your servicing legal office prior to any release of Federal records as a result of a court subpoena.] When a record is disclosed under this paragraph the Coast Guard official responsible

for the record's disclosure shall make a reasonable effort to notify the individual who is the subject of the record of its disclosure when it becomes a matter of public record.

12. To consumer reporting agencies for debts owed the Federal government, as authorized by 31 U.S.C. § 3711(f).

13. To the Parent Locator Service of the Department of Health and Human Services per 42 U.S.C. § 653.

D. Time Limits.

1. Written requests concerning existence of a record shall be acknowledged within 10 working days. If the request is made in person, immediate response will be given, either granting access to the record or informing the individual when notification or access may be expected.

2. Within 30 days of receipt of a request, the Coast Guard will:

a. Make the record available;

b. Notify the requester of the need for additional information; or

c. Notify the requester of any denial, either in whole or in part, of access to a record.

3. If the response granting access or copies of the record is made within 10 working days, a separate acknowledgment of receipt of the request is not required.

E. Accounting for Disclosures.

1. The purposes of accounting for disclosures of information from records maintained on individuals are:

a. To provide an individual information about disclosures made;

b. To facilitate the corrections; and

c. To promote internal agency auditing and compliance monitoring.

6. An accounting for disclosures must be kept when a record maintained in a system of records is disclosed to any person or agency under the disclosure provisions of paragraph C above, even though such disclosure is at the request of the individual or with the written consent of the individual, with the following exceptions:

a. An accounting is not required when the disclosure is to Coast Guard or DOT personnel who have a need to access the information in the performance of their official duties. (See exemption 1.)

b. An accounting is not required when the disclosure is required under the Freedom of Information Act. (See exemption 2.)

3. The information which is required to be maintained shall be retained for 5 years after the date of disclosure or for the life of the record, whichever is longer. The required information is:

a. The date, nature and purpose of each disclosure; and

b. The name and address of the person or agency to whom disclosure is made.

4. The individual who is the subject of the record is entitled to have the accounting made available to her/himself upon request, with the exception of information concerning disclosures made under paragraph C-7 above (5 U.S.C. § 552a(b)(7) disclosures made to law enforcement agencies).

F. Procedures for accounting. Since the characteristics of the records maintained within the Coast Guard vary widely, no uniform method for keeping disclosure accounting is prescribed. For most paper records, it may be suitable to maintain the accounting on a log sheet physically affixed to the record. The primary criteria are that the selected method be one which will:

1. Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

2. Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

3. Provide a means to prove, if necessary, that the activity has complied with the requirements of the PA and this Manual.

A. General Information. Subsections (j) and (k) of the PA authorize agencies to adopt rules designating eligible systems of records as exempt from certain requirements of the Act. Publication of a general notice of a proposed rulemaking concerning exemptions for systems of records is required to appear in the Federal Register at least 30 days prior to the effective date, in order to afford interested persons an opportunity to comment. 49 C.F.R. § lO.61-.63 contains criteria for exemptions and Appendix A to Part 10 includes the list of systems which have been identified by the Coast Guard as exempt from certain requirements of the Act. The following requirements apply:

1. Conditions of Disclosure. (Subsection (b)). No agency shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be to those identified in 3.C.

2. Accounting of Certain Disclosures. (Subsection (c)(l) and (2)). Each agency, with respect to each system of records under its control, shall except for disclosures made in Chapter 13, paragraphs C-1 and C-2, keep an accurate accounting of: the date, nature, and purpose of each disclosure of a record to any person or to another agency made under Chapter 13-C. They will also maintain the name and address of the person or agency to whom the disclosure is made. The information will be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

3. Agency Requirements. (Subsections (e)(4)(A) through (f)). The following information is required to be published in the Federal Register: The name and locations of the system; the categories of individuals on whom records are maintained in the system; the categories of records maintained in the system; each routine use of the records contained in the system, including the categories of users and the purpose of such use; the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of records; and the title and business address of the agency official who is responsible for the system of records.

4. Agency Requirements. (Subsections (e)(6), (7), (9), (10), and (11)). Requirement to assure that records are accurate, complete, timely and relevant for agency purposes, prior to disseminating; maintain no records

describing how any individual exercises First Amendment rights unless expressly authorized by statute, the individual, or unless pertinent to and within the scope of an authorized law enforcement activity; establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records; establish appropriate administrative, technical, and physical safeguards; and publication in the Federal Register 30 days prior use or intended us of information.

5. Criminal Penalties. Subsection (i)(l). Any officer or employee of an agency, who by virtue of his/her employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. Subsection (i)(2). Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of the Act shall be guilty of a misdemeanor and fined not more than $5,000. Subsection (i)(3). Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

B. Denial Action. The System Manager is the only person who is authorized to issue an initial denial of access to or amendment of a record. (See Chapter 4-E.) When access to or amendment of a record is questioned, the command which initially received the request shall forward the request through the chain of command to Commandant (G-SII-2) or to Chief, Great Lakes Pilotage Staff, Ninth Coast Guard District (for System DOT/CG 592, Registered/Applicant Pilot Eligibility Folder), as appropriate. Denial authority may not be redelegated, except by Commandant (G-SI). The originating command shall inform the requester in writing within 10 working days that the individual’s request has been forwarded to the Commandant for determination. If a reviewing command determines that access to or amendment of the record is permissible, that command shall return the request to the originating command in lieu of forwarding it to the Commandant. Third party requests should be processed in accordance with the FOIA provisions of this Manual.

C. General Exemptions: Subsection (j)(2) of the Act. Subsection (j)(2) allows the agency to exempt any system of records maintained by a component which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent,

control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon or parole authorities.

D. Specific Exemptions: Subsection (k) of the Act. Subsection (k) exemptions are more limited in scope than subsection (j)(2) exemptions. Subsection (k) exemptions apply only to eligible portions of records and may exempt the information only from one or more of the following subsections of the Act:

1. (c)(3), making the accounting of disclosures available to the individual named in the record;

2. (d), access to and correction of records by the individual;

3. (e)(1), maintaining only relevant and necessary information;

4. (e)(4)(G), (H) and (I), publication of certain notification requirements; and

5. (f) agency rules concerning notification to individuals, making records available to individuals, procedures for amendments, fees to be charged, etc.

E. Requirements for Use of Subsection (k) of the Act. To be eligible for a subsection (k) exemption, the pertinent records within a designated system must contain one or more of the following (identified by subsection number):

1. (k)(1) subject to the provisions of section 552(b)(l).

2. (k)(2) Investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2). Provided, however, that if any individual is denied any right, privilege, or benefit that he/she would otherwise be entitled by federal law, or for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of

the source would be held in confidence, or, prior to 1975, under an implied promise that the identity of the source would be held in confidence.

3. (k)(3) Records maintained in connection with providing protective services to the President of the United States or other individuals.

4. (k)(4) Records required by statute to be maintained and used solely as statistical records.

5. (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to 1975, under an implied promise that the identity of the source would be held in confidence.

6. (k)(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

7. (k)(7) Confidential source information in evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to 1975, under an implied promise that the identity of the source would be held in confidence.

F. Special Exemption: Compiled in Anticipation of a Legal Proceeding. Nothing in the Privacy Act permits an individual to access any information which was compiled (not merely gathered for but actually prepared) in reasonable anticipation of a civil action or proceeding. The exemption applies regardless of whether the records were prepared by an attorney or some other person.

CHAPTER 15. COLLECTION AND SAFEGUARDING OF PERSONAL INFORMATION

A. Collection of Information.

1. Personal information shall be collected, to the greatest extent possible, directly from the individual concerned when the information may result in adverse determinations about an individual's rights, benefits, or privileges under Federal programs. Information required for verification of a security clearance or similar investigation shall be obtained from other sources when collection from the individual would be unreasonable or impractical.

2. Coast Guard personnel may not deny individuals any right, benefit, or privilege provided by law because the individuals refuse to disclose their Social Security number (SSN), unless such disclosure is required by Federal statute, or was required under statute or regulation adopted prior to 1 January 1975 to verify the identity of an individual. When individuals are requested to disclose their SSN, they shall be informed whether disclosure is mandatory or voluntary, by what statutory or other authority the information is solicited, what uses will be made of it, and what detriments, including delay in the location of records, will be incurred if the number is not provided.

B. Privacy Act Statements.

1. Each individual who is asked by the Coast Guard to supply information about themselves that will be placed in a system of records, unless the information will go into a Coast Guard exempted system, shall be provided a "Privacy Act Statement" which contains the following information:

   a. AUTHORITY: The statute or executive order which authorizes the solicitation of the information.

   b. PURPOSE: The principal purpose(s) for which the information will be used.

   c. ROUTINE USES: The routine use(s) as published in the Federal Register for the system of records of which this record is a part.

   d. MANDATORY OR VOLUNTARY: Whether or not providing the information is required by law (mandatory) or not (voluntary). The effect(s), if any, on the individual of not providing all or any part of the requested information.

2. The "Privacy Act Statement" may be provided to the individual on the form which is used to collect the information, on a separate sheet of paper that may be retained by the individual, or the statement may be prominently displayed in the office where the PA information is obtained from the individual. However, a copy of the statement must be provided to the individual upon request. The Coast Guard Privacy Act Officer will approve required Privacy Act Statements for forms originated by Headquarters. The official authorizing the use of a local form per COMDTINST M5212.12 (series) shall approve required Privacy Act Statements for local forms. Legal review is encouraged to significant sensitivity of Privacy records and potential for individual liability..

3. Individuals shall not be required to acknowledge receipt of a Privacy Act Statement, either by signing the statement or by any other means.

C. Collecting Information for Investigations.

1. Parties requested to supply information about other individuals during an interview conducted as part of an investigation which falls under subsections (k)(2), (k)(5) or (k)(7) of the PA (see Chapter 14) shall be informed of the following, prior to solicitation of information:

   a. The purpose for which the information is sought and its intended use.

   b. That the information provided, including the source's identity, may be disclosed to the individual being investigated if that individual so requests.

   c. That the source has the right to ask that material which would reveal his or her identity not be disclosed.

2. The "Privacy Act Statement" may be provided to the individual on the form which is used to collect the information, on a separate sheet of paper that may be retained by the individual, or the statement may be prominently displayed in the office where the PA information is obtained from the individual. However, a copy of the statement must be provided to the individual upon request. The Coast Guard Privacy Act Officer will approve required Privacy Act Statements for forms originated by Headquarters. The official authorizing the use of a local form per COMDTINST M5212.12 (series) shall approve required Privacy Act Statements for local forms.

3. Written Investigative inquiries shall include:

   a. The purpose for which the information is sought and its intended use.

   b. A notification that the information provided, including the respondent's identity, may be disclosed to the individual at the individual's request.

4. Exemption 7(D) of the FOIA covers the protection of informants. Identities are protected wherever they have provided information either under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. In all cases it is not the substance of the information given that determines the confidential nature of the source, but rather it is the circumstances under which the information was provided.

D. Safeguarding Personal Information.

1. Each area where systems of records containing personal information are maintained shall have adequate administrative and physical security.

2. Whenever personal information is not under the control of an authorized individual, it should be stored as outlined below. The degree of protection afforded records containing personal information is dependent upon the sensitivity of the material involved.

   a. Paper files or individual records containing information that should be protected from viewing or inadvertent exposure will normally be held in cabinets or other containers which are attended during working hours and when unattended are locked. If files are large and subject to heavy usage, an attended room with controlled access which is locked when unattended may be substituted.

   b. For automated records systems, the machine as well as the stored magnetic tapes or disk files, shall have a controlled access procedure in effect at all times. If PA material is stored on hard disks, it should be password protected against access by unauthorized personnel. Such information should be transferred to other storage media (tapes or disks) when not needed for immediate use and these media kept in locked areas as above.

E. Transmission of Privacy Act Material. Personal information subject to the PA regulations may be transmitted outside of the activity by U.S. mails. Within the activity, the material may be transmitted through the internal mail system in a sealed envelope or other container which does not reveal the nature of the contents. In addition, while it is not prohibited by the Act, PA protected information may be transmitted by e-mail. However, it is the user's responsibility to exercise discretion when transmitting this kind of information.

F. Destruction of Privacy Act Material. Destruction of PA materials shall be in accordance with COMDTINST 5212.12 (series) and shall be so complete as to prevent the reconstruction or recovery of the information from the residue. Destruction may be accomplished by one of the following methods in keeping with the sensitivity and quantity of the material involved:

1. For paper material, by burning, shredding, or pulverizing, as appropriate.

2. For magnetically machine written materials on tapes, disks and cassettes, by degaussing or overwriting techniques. Physical damage to the storage media sufficient to prevent reuse is acceptable.

CHAPTER 16. CORRECTIONS AND AMENDMENTS TO RECORDS

A. Requests for Corrections.

1. The PA permits any individual to request amendment of a record pertaining to him/herself and contained in a system of records. The procedures for requesting corrections are published in the "Contesting record procedures" paragraph of each system notice. Most Coast Guard systems notices advise the individual to write or visit Commandant (G-SII-2) to obtain the procedures.

2. A request for correction must be in writing and must contain a complete description of the item sought to be changed and documentation to substantiate the grounds for the requested change.

B. Procedures for Acting on Requests for Corrections. The official responsible for administering a system of records shall:

1. Acknowledge receipt of the request within 10 working days.

2. As promptly as possible after receipt of the request, make a determination as to whether the record should be changed.

3. If the determination is that the change should be made, the official shall promptly:

   a. Make such change.

   b. Ensure that any other holders or users of the record, or any party to whom previous disclosure of the information was made, are advised of the change.

   c. Transmit a copy of the amended record to the requester.

4. If the preliminary determination is that the change should not be made, forward the response to the System Manager for that system of records.

5. When a record is corrected at the request of the individual or a statement of dispute is filed, any person or agency to whom a previous disclosure of information was made shall be informed of the correction or notation of dispute.

C. Routine Administrative Corrections. Requests for routine administrative corrections of records need not be treated as a formal request. Such requests would be typographical errors, etc., where proof of the correct information is ascertainable on the spot and there are no other holders of the record or there is an established administrative procedure currently in use to handle the correction.

D. Corrections Under the Board for Correction of Military Records (BCMR). The PA correction and amendment provisions permit an individual to request factual amendments to his or her records. It does not ordinarily permit correction of judgmental decisions such as evaluations or selection and promotion board reports. These judgmental decisions should be challenged at the BCMR which by statute, 10 U.S.C. § 1552, is authorized to make these determinations. While factual amendments may be sought under both the BCMR or the PA, if the latter is used and a factual matter is corrected, any subsequent judgmental decisions that may have been affected by the factual correction should be considered by the BCMR. Guidance regarding the interface of the PA and BCMR process may be found in 33 C.F.R., Part 52. Additional guidance is available from the servicing legal office and Commandant (G-LMJ) and (G-LGL).

CHAPTER 17. DENIAL AND APPEAL PROCEDURES

A. Responsibilities of the System Manager.

1. Upon receipt of a recommendation for denial of a request for amendment, the System Manager shall make a final determination as to whether to grant the request.

2. If the System Manager determines that the amendment is appropriate, the record shall be immediately amended and the requester notified. Other holders and parties to whom disclosure has previously been made shall also be informed of the amendment.

3. If the System Manager determines that access or the request for amendment should be denied, he or she shall inform the requester in writing of the denial. The response letter should contain the following information:

   a. Reasons for the denial;

   b. Name and position or title of each person responsible for the denial;

   c. The requester's right to file a written appeal to Commandant (G-SII-2) of the adverse decision within 180 days of receipt of the denial; and

   d. The requester's right to file a concise "statement of disagreement" setting forth the reasons for disagreeing with the refusal of the Coast Guard to amend the record.

B. Privacy Act Appeals.

1. Any person who has been given a determination that access to a record will not be granted or who has been informed that an amendment to a record will not be made may appeal for review of that decision to Commandant (G-SII-2).

2. The appeal must be in writing and must include all information and arguments relied upon by the person making the request. The appeal should be made within 180 day of the initial denial.

3. Upon receipt of a written appeal, Commandant (G-CCS) will within 30 days conduct an independent review of the record and reach a determination. The General Counsel of the Department of Transportation must concur in a decision to deny access to or amendment of a record.

4. If the appeal is denied, the response to the requester must include the reasons for denial of the request, that the denial is the final administrative action on the request, the names and titles of each person participating in the determination upon review, and the procedures available for seeking judicial review. The requester must also be informed that he or she is entitled to file a concise statement of dispute.

C. Statement of Dispute.

1. When an individual has filed a statement of dispute, the official responsible for the administration of the system of records shall clearly annotate the record so that the dispute is apparent to anyone who uses the record. The notation itself must be an integral part of the record for manual records. For automated systems of records, the notation may consist of a special indicator on the entire record or on the specific part of the record in dispute.

   a. All previous recipients of the record for whom an accounting for disclosure has been made shall be advised that the record has been disputed and be provided a copy of the individual's statement of dispute, if the dispute concerns the information previously disclosed.

   b. All disclosures of the disputed information, after a statement of dispute has been received, shall include a copy of the statement of dispute.

2. The System Manager may include a brief summary of the reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited

D. Civil Remedies. The Act provides that civil remedies may be sought in Federal District Court against any agency by any individual who was:

1. Allegedly unsuccessful in an attempt to have the agency amend their records.

2. Allegedly improperly denied access, in whole or in part, to their records.

3. Allegedly affected adversely by an agency action based upon an improperly constituted record.

4. Otherwise allegedly injured by an agency in violation of the Act.

A. System of Records. A system of records is created whenever information pertaining to an individual is collected, maintained, and is retrievable by a personal identifier, i.e. name, social security number, etc. The Coast Guard shall only maintain systems of records which have been published in the Federal Register as authorized Coast Guard Systems.

1. The PA requires agencies to publish notices in the Federal Register describing new or altered systems of records, and to submit reports to OMB, the Chair of the Committee on Government Operations of the House of Representatives; and the Chair of the Committee on Governmental Affairs of the Senate. The reports must be transmitted at least 40 days prior to the operation of the new system of records or the date on which the alteration to an existing system takes place. The following requirements must be accomplished prior to implementing a system:

   (a) A System Notice must appear in the Federal Register before the agency begins to operate the system, e.g., collect and use the information.

   (b) The Routine Use(s) must be published in the Federal Register 30 days before an agency discloses records pursuant to its terms.

   (c) All Exemption Rules must be established through informal rulemaking pursuant to the Administrative procedure Act. This generally requires publication of a proposed rule, a period during which the public may comment; publication of a final rule, and the adoption of the final rule. Agencies may not withhold records under an exemption until these requirements have been met.

2. In order to meet the above time limits, proposed new or altered system notices must reach Commandant (G-SII-2) at least 90 days prior to implementation.

B. When to Report Altered Systems of Records. Prior authorization from the Commandant (G-L) must be obtained to establish any new system of records or to modify an existing system. The prior authorization is necessary so that the Congress and the Office of Management and Budget are notified. A public notice with a 30-day comment period must also be published in the Federal Register prior to any use (including any data collection) of any new or modified system. Minor changes to current system notices may be made without republishing in the Federal Register with the exception of the following:

1. A significant increase in the number of individuals about whom records are maintained. For example, a decision to expand a system that originally covered only residents of public housing in major cities to cover such residents nationwide would require a report. Increases attributable to normal growth should not be reported.

2. A change that expands the types or categories of information maintenance. For example, a file covering physicians that has been expanded to include other types of health care providers, e.g., nurses, technicians, etc., would require a report.

3. A change that alters the purpose for which the information is used.

4. A change to equipment configuration (either hardware or software) that creates substantially greater access to interactive terminals at regional offices for accessing a system formerly accessible only at Headquarters would require a report.

5. The addition or revision of an exemption pursuant to Section (j) or (k) of the Act. Note that, in examining a rulemaking for a PA exemption as part of report of a new or altered system or records, 0MB will also review the rule under applicable regulatory review procedures. Agencies need not make a separate submission for that purpose.

6. The addition or revision of a routine use pursuant to 5 U.S.C. § 552a (b)(3).

C. Submission and Publication of Systems Notices. All documents (except notification letters) are to be double spaced. Responsibilities regarding drafting and maintenance of the system notices may be obtained from Commandant (G-SII-2). The final package should be submitted to G-SII with a copy of the Headquarter's clearance documents for publication in the Federal Register by Office of the Secretary of Transportation. This package must include:

1. The proposed new or amended system notice,

2. The Narrative Summary, and

3. The letters of notification to:

   (a) The Chair of the House of Representatives Committee on Government operations;

   (b) The Chair of the Senate Committee on Governmental Affairs; and

   (c) The Office of Information and Regulatory Affairs of the Office of Management and Budget; and

4. The Letter of Transmittal from the Department of Transportation.

5. Offices may either provide a disk with the documents in WordPerfect format or provide an electronic copy of the documents to Commandant (G-SII-2) for submission to the Office of the Secretary of Transportation.

6. Detailed instructions on the format and content of the documents listed above may be obtained from the Coast Guard FOIA/PA office, Commandant (G-SII-2).

D. Publication of Systems of Records.

1. The PA requires each Federal agency to publish biennially in the Federal Register a listing of all of its systems of records containing personal information about individuals. The Coast Guard publishes its systems of records biennially in the Federal Registers "Privacy Act Issuances Compilation." A copy of the most recently published system notice should be forwarded to Commandant (G-SII). Current editions are published in CD-Rom format. System notices will also be available "on line" via the Internet. System Managers shall ensure that Commandant (G-SII-2) has a current copy of respective system notices on file.

2. By publishing this list, the Coast Guard notifies the public of the existence of its systems of records, their location, basic content, uses for which they are maintained and how to gain access. The notices also explain the procedures for requesting corrections or amendments to records.

E. Public Notice Requirements for Matching Agreements. The Federal Register publication and 30-day comment period requirements also apply to establishment or revision of a computer matching agreement between the Coast Guard and any non-Federal agency. See Chapter 19 for guidance on preparing matching agreements.

F. Publishing Matching Notices. Like system notices, certain requirements must be met prior to implementation of a matching program:

1. The recipient Federal agency (or the Federal source agency in a match conducted by a non-federal agency) is responsible for publishing in the Federal Register a notice describing the new or altered matching program.

2. Publication must occur at least 30 days prior to the initiation of any matching activity carried out under a new or '' substantially altered'' matching program.

3. The matching notice shall be in the following format:

   (a) The name of the Recipient Agency;

   (b) The name(s) of the Source Agencies;

   (c) The beginning and ending dates of the match;

   (d) A brief description of the matching program, including its purpose; the legal authorities authorizing its operation; categories of individuals involved; and identification of records used, including name(s) of PA Systems of Records, and

   (e) The identification, address, and telephone number of a Recipient Agency official who will answer public inquiries about the program.

CHAPTER 19. COMPUTER MATCHING

A. Background. The Computer Matching and Privacy Protection Act of 1988 amended the PA to add certain protection for the subjects of PA records used in automated matching programs. Detailed guidance is found at 54 FR 25818 (June 19, 1989) and 56 FR 18599 (April 23, 1991). In general, these protections are:

1. Procedural uniformity. In carrying out matching programs, agencies are required to comply with the specific procedures set out in the Act.

2. Due process for subject. The Act gives individuals certain due process rights including advance notice that their records may be matched, notice of any adverse data found, and a chance to rebut this evidence.

3. Oversight of matching. The Act established oversight mechanisms to ensure agency compliance. These include reports to OMB and Congress, publication of notices in the Federal Register, and the establishment of Data Integrity Boards at each agency engaging in matching to monitor the agency's matching activity.

B. Matching Agreements. The Act requires that no record contained in a system of records may be disclosed to another Federal Agency or non-federal agency for use in a computer matching program unless there is a written agreement between the source agency and the recipient agency. A matching agreement can last no longer than 30 months. The initial agreement may be for a period of 18 months. At the end of that period, a one year extension may be granted, if necessary. These agreements must contain the following:

1. Purpose and legal authority;

2. Justification and expected results;

3. Records description;

4. Notice procedures;

5. Verification procedures;

6. Disposition of matched items;

7. Security procedures;

8. Records usage; and

9. Records accuracy assessments.

10. Comptroller general access.

The matching agreement must be approved by the Department of Transportation Data Integrity Board prior to submission for publication in the Federal Register.

C. When a Matching Agreement is Required. A matching agreement is required whenever a computer matching is intended to:

1. Verify initial or continuing eligibility for a Federal benefit program.

2. Recoup payments or delinquent debts under such benefit programs.

3. Perform non-routine comparisons for Federal personnel or payroll records.

E. Special Caution. In addition to the extensive notice and safeguarding requirements, the recipient agency must independently verify information developed from computer matches (unless previously waived by the Data Integrity Board due to inherent and established reliability). Moreover, the recipient agency must provide actual notice to an individual regarding any proposed action, describing its potential actions, identifying the data relied on, and waiting 30 days from this notification before initiating such adverse action.

A. Responsibility. Area and district commanders, commanders logistics and maintenance commands, commanding officers of Headquarters units, Commandant G-CCS and special staff divisions at Headquarters, Commandant (G-A), (G-L), (G-M), (G-O), (G-S) and (G-W) shall submit reports as described below to Commandant **(G-CIM-2)**.

B. Reports.

1. Annual Freedom of Information Act Report (RCN-5260-1).

   a. Due not later than **1 February** of each year.

   b. Period of report is the **fiscal** year.

   c. Use the format in Enclosure (1) of this Manual.

2. Biennial Privacy Act Report (RCN-5260-2).

   a. Due not later than 2 January of each even year.

   b. Period of report is the two previous calendar years.

   c. Use the format in Enclosure (2) of this Manual.

   d. Officials with cognizance over a system(s) of records shall submit a complete report.

   e. All other officials shall limit their response to Section E, Items 1 through 3.

3. Biennial Computer Matching Report (RCN-5260-3).

   a. Incorporate into the Biennial Privacy Act Report.

   b. Use the format in Enclosure (3) of this Manual.

C. Negative Replies. Negative replies are required.

CHAPTER 21. SPECIAL INSTRUCTIONS FOR PROCESSING FOIA REQUESTS AT HEADQUARTERS AND SELECTED UNITS

A. Definitions. As used in this chapter only, "Directorate" means C-A, G-H, G-L, C-IA, G-O, G-S, G-W, G—CCS, G-C and special staff elements, the Headquarters Support Command, the Intelligence Coordination Center, the Telecommunications and Information Systems Command, the Coast Guard Personnel Command, and the National Maritime Center.

B. Discussion. A review of the FOIA process at Headquarters indicated that the organization, responsibilities, and other requirements related to processing FOIA requests within Headquarters were not clear. This chapter supplements the requirements in the remainder of this Manual, 5 U.S.C. § 552 (Freedom of Information Act), and 49 CFR § 7 (Public Availability of Information) for processing FOIA requests at USCG Headquarters. Directorates shall assign additional personnel as necessary to meet their FOIA workloads. FOIA work shall be carried out by the minimum number of persons practicable in order to reduce training requirements and take advantage of efficiencies of scale. All FOIA responsibilities shall be documented in descriptions of individuals' duties and addressed in performance evaluations. Enclosures (7)—(9) contain samples of descriptions of duties and an example of a critical job element to assist in meeting these requirements. The enclosures are recommendations only and should be modified appropriately to meet individual situations.

C. Responsibilities.

1. Freedom of Information Act Officer. The FOIA Officer shall:

a. Carry out the responsibilities described in 5 U.S.C. § 552 and 49 CFR § 7.

b. **develop and manage Headquarters** FOIA policy.

c. **be the point of contact for Headquarters FOIA policy issues.**

d. provide oversight of the Headquarters FOIA process.

e. manage the Headquarters FOIA Intranet site.

f. provide annual FOIA training at Headquarters.

g. update this manual as soon as practicable following changes to FOIA/Privacy Act policy.

h. **when responsive records are held by multiple recordholders, resolve requests for fee waivers, fee reductions, and expedited processing before such requests are forwarded to the Directorate FOIA Coordinators (DFCs) for continued processing.**

2. Headquarters FOIA Coordinator. This chapter establishes the Headquarters FOIA Coordinator (HFC) in G-SII. The HFC shall:

a. receive and track the status of Headquarters FOIA requests.

b. immediately distribute copies of requests to Directorates for response.

c. disseminate information, including policy changes, sample responses, and training information.

d. **be the point of contact for Headquarters FOIA process issues.**

e. issue required reports, including quarterly reports of overdue responses and the Headquarters submission to the Coast Guard's annual FOIA report.

3. Directorate FOIA Coordinator. Each Directorate shall establish a Directorate FOIA Coordinator (DFC). The responsibilities of the DFC, with the exception of maintaining a tracking system, may be delegated to anyone within the Directorate, provided that the person has appropriate training to perform the functions and is held accountable for performance. The DEC shall:

a. comply with this Manual, 49 CFR § 7, and 5 U.S.C. §552 in processing FOIA requests.

b. ensure that all FOIA requests received directly from requesters are logged through the HFC.

c. maintain a Directorate tracking system.

d. review all **Directorate** FOIA responses before forwarding them to requesters to assure that the responses comply with this Manual, 49 CFR § 7, and 5 U.S.C. **§ 552.**

e. ensure that requesters are kept informed of the status of their requests.

f. provide copies of all responses, **less responsive records**, to the HFC.

g. assess and collect fees in accordance with this Manual, 49 CFR § 7, and 5 U.S.C. § 552.

D. Headquarters FOIA Process.

1. All initial FOIA requests received at Headquarters must be logged through the HFC. If a FOIA request is received directly from a requester, the original request must be sent to the HFC to be logged and a copy may be retained in the Directorate for processing.

2. After the HFC logs the initial request, the request will be assigned to the appropriate Directorate(s) for response.

a. If a request seeks records located in more than one Directorate, the HFC shall divide the request accordingly and transfer the portions to the cognizant Directorates for independent processing. Rather than responding directly to the requester, however, the DFC shall forward to the HFC the completed response package--including a letter to the requester initialed by the appropriate release! denial authority and, if applicable, responsive records and/or a harm analysis approved by a Coast Guard legal officer. G-SII will coordinate the individual responses, prepare a unified response, and send the combined response package to the requester.

b. If a request seeking records located in more than one Directorate includes a request for a fee waiver, fee reduction, or expedited processing, the determination regarding the fee waiver/reduction/ expedited processing will be coordinated by the FOIA staff. The fee waiver/reduction/expedited processing decision will be made before other processing of a request is initiated.

c. If a FOIA request is misdirected, the DFC should promptly return the request to the HFC for rerouting to the appropriate Directorate.

The DFC shall ensure that:

a. all FOIA requests assigned to the Directorate are responded to in the time frame specified by 5 U.S.C. § 552 and 49 CFR § 7.

b. all **reasonable** locations for responsive records have been searched in accordance with Chap. 5—C of this Manual.

c. the search has been documented-—particularly when, in accordance with Chap. 5-F of this Manual, a no records response is issued.

d. responsive records have been reviewed for release in accordance with the remainder of this Manual, 49 CFR § 7, and 5 U.S.C. § 552.

e. fees have been assessed correctly.

f. a person with authority to do so has signed the response to the requester.

g. a copy of the response **(less the responsive records)** has been provided to the HFC.

h. if responsive records will be withheld in whole or part, G-LRA has completed all required legal reviews for the Directorates, unless the Directorate has assigned legal staff.

4. If the initial request does not reasonably describe the records requested, the DFC shall promptly contact the requester to clarify the request. The Directorate shall inform the requester within twenty days of its decision to release or withhold the responsive records. Directorates are not required to release the records within the twenty days, but releasable records should be provided promptly thereafter. The response time may be extended in limited circumstances: (1) the need to search for and collect records from separate locations; (2) the need to review a voluminous amount of records requested; or (3) the need to consult with another agency or DOT component. Any request for extension should be made to the HFC, who shall promptly act on the extension request. If a response to the FOIA request cannot be made within twenty days, the Directorate shall acknowledge receipt of the request and keep the requester informed of the status of

his/her request. DFCs shall make every effort to contact requesters about changing the scope of requests to narrow the need to search and review voluminous records, to exclude information which is not releasable, and to extend the time for response. Any such agreement shall be documented by the DFC; a copy of the documentation shall be provided to the requester.

5. Reserved—-multitrack processing. Until regulations are published establishing a multitrack processing system, all requests, **with** the **exception of those for which** a **request for expedited processing has been granted**, shall be answered in the order in which received.

6. Reserved—-expedited processing.

7. Fees shall be assessed and collected in accordance with this Manual, 49 CFR § 7, and 5 U.S.C. § 552.

E. Training Requirements.

1. All DFCs, and all personnel to whom any of the functions of the DEC have been delegated, shall receive FOIA training annually. This training requirement may be met by attendance at an annual Coast Guard—sponsored FOIA training session or attendance at a G-SII—approved course provided by a third party.

2. Annual FOIA training shall be presented by G-SII, in coordination with G-LRA. All dates for training shall be posted by G-SII to a ECIA Intranet site on a quarterly basis. DECs and all personnel to whom any of the functions of the DEC have been delegated shall receive initial training as soon as practicable upon assuming their duties, but in no case later than six months from the date of assumption of these duties.

3. On an annual basis, no later than 15 January, each Directorate shall report to G-SII the names of personnel assigned FOIA responsibilities and the names Of personnel trained during the preceding calendar year.

F. Accountability. The HFC shall produce a quarterly report of FOIA requests overdue for each Directorate. Within one week after receiving this report, the DEC shall verify all entries on the report, notify the HFC of any discrepancies, and provide supporting documentation. The HFC shall correct all verified errors before the next

report is issued. The HFC will produce a quarterly summary report for the Chief of Staff which identifies, by Directorate, the number of overdue FOIA requests.

G. Enclosures. Enclosures (7)—(9) are provided as a guideline for evaluating the performance of Directorate FOIA Coordinators.

CHAPTER 22. PRIVACY ISSUES

A. Discussion. Protecting personal privacy is an increasingly important concern as Coast Guard grows technologically in its efforts to transact business electronically. Because our responsibilities are enhanced with this rapid growth, it is imperative that Coast Guard continues to develop an effective and beneficial transition into an electronic Coast Guard (e-Coast Guard). To ensure that individuals have a clear understanding of their privacy expectations, the Coast Guard must take all necessary measures to establish policy that addresses various privacy issues.

B. Privacy Policies On Federal Web Sites

1. When visiting government web sites, the Coast Guard must post clear privacy policies on their world wide web (www) sites.

2. All Coast Guard public web sites must implement the privacy requirements as listed below:

   a. Effective 1 August 1999, any web page serving as a main entry point to the Coast Guard web site shall link its home page to the general privacy policy on the Coast Guard internet web site (www.uscg.mil/disclaim.html).

   b. Effective 1 October 1999, all Coast Guard web sites that collect substantial personal information from the public must post a privacy policy.

   c. Effective 1 January 2000, prior to establishing a new hotlink to a non-DOT web site from a Coast Guard www site, the owner of the Coast Guard web site must send to the non-DOT organization a notification advocating that it post on its web site a statement of its web site's privacy policies and practices.

      (1) The notification should use the following or similar language:

"The Coast Guard advocates providing useful information to the general public. For this reason, we have decided to provide a hotlink to your web site from ours. However, we believe it is important to address the growing public concern about protecting people's privacy on the internet, and therefore strongly encourage you to post a statement on your web site clearly describing your privacy policies and practices. Examples of privacy policies which you may want to adopt or tailor as appropriate for your web site can be found at http://cio.ost.dot.gov. Should we receive complaints from our constituents about privacy concerns with respect to your web site, we will re-consider continuing to provide linkage to your web site from ours."

(2) Additionally, all Coast Guard web pages using a hyperlink to a non-DOT web site will provide an "exit page" with the following or similar language:

"You are now leaving the United States Coast Guard web site. USCG web sites contain many links to other organizations, such as state/local governments, educational institutions, and non-profit associations. While we offer these electronic linkages for your convenience in accessing transportation-related information, please be aware that when you exit a Coast Guard web site, the privacy policy stated on our web sites may not be the same as that on other web sites. Are you sure you wish to proceed?"

The Operations System Center web team has automated this exit page message for your convenience. It is available at http://cgweb.uscg.mil/webinfo/. Click on FAQS and then Technical FAQS. The link you want is: "Why must I add a privacy policy notice for links that go to content external to DOT and how do I do this?"

B. Scrubbing Web Sites for All Privacy or Other Sensitive Information

1. FirstGov is a web portal that was launched to connect and index all government information and services. FedSearch enables extensive and in-depth searches for information on Federal Government web sites, including databases and files that may be accessed.

2. Before launching the FirstGov web site, we were asked to do the following:

   a. Ensure compliance with privacy and web policies in accordance with Chapter 15-E and Policy on Coast Guard Use of Internet /Worldwide Web, COMDTINST 5230.56.

   b. Scrub public web sites of all privacy or other sensitive data. Please see Chapters 6, 8, 12, 13, 14, and 15 of this Manual for a discussion of what that data would include.

3. We must continue to scrub Coast Guard websites to protect the privacy of individuals or other sensitive information.

C. Use of "Cookies" on Coast Guard Internet Web Sites

1. The Coast Guard must post clear privacy policies at principal web sites; major entry points to web sites; and web sites where the agency or contractors operating on behalf of the agency collect substantial personal information from the public. Coast Guard contractors must also comply with this policy when operating web sites on behalf of agencies. Further, "cookies" or other

technology used to track the activities of users over time and across different web sites shall not be used except as described below. There are two categories of cookies:

a. "Persistent cookies" include any technology that collects user-identifying information such as extensive lists of previously visited sites, e-mail addressees, or other information to identify or build profiles on visitors to Coast Guard publicly accessible web sites. Persistent cookies are authorized only if:

   (1) there is a compelling need to collect such information;

   (2) appropriate publicized technical procedures are established to safeguard the information; and,

   (3) the Secretary of Transportation has personally approved the collection.

These policies are consistent with the Policy on Coast Guard Use of Internet/Worldwide Web, COMDTINST 5230.56 and Coast Guard Intranet (CGWeb) Policy, COMDTINST 5230.57 on unauthorized use of the web.

b. "Session cookies" describe place-keeper technology used to retain content during an individual user session, and are authorized only if users are advised of what information is collected or stored, why it is being done, and how it is to be used. Session cookies are discarded upon completion of a session or expire based on a short time frame and are not used to track personal information.

2. Use of cookies is not restricted on Coast Guard intranet (internal network) web sites. Such web sites are subject to security monitoring under COMDTINST 5230.57. Consequently, users should not have an expectation of privacy.

3. All Coast Guard web sites as well as contractor web sites operated on behalf of agencies, must comply with standards set forth in the Children's Online Privacy Protection Act of 1998 with respect to collecting personal information online at web sites directed to children.

FREEDOM OF INFORMATION ACT ANNUAL REPORT
(UNIT NAME)
U.S. COAST GUARD
FY --------

RCN-5260-1

I. Basic Information Regarding Report

Name, telephone number, and e-mail address of person to be contacted with questions about the report:

II. How to Make a FOIA Request

A. Name, address, and telephone number of component that receives FOIA requests:

Commandant (G-CIM-2)
United States Coast Guard
2100 Second Street SW
Washington DC 20593
202) 267-6929

B. Brief description of the agency's response-time ranges.

C. Brief description of why some requests are not granted.

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

1. Brief description of type(s) of information withheld under each statute.

2. Statement of whether a court has upheld the use of each statute.

V. Initial FOIA/PA Access Requests

A. Number of Initial Requests.

1. Number of requests pending as of end of preceding fiscal year:

2. Number of requests received during current fiscal year:

3. Number of requests processed during current fiscal year:

4. Number of requests pending as of end of current fiscal year:

B. Disposition of initial requests.

1. Number of total grants:

2. Number of partial grants:

3. Number of denials:

Number of times each FOIA exemption used (counting each exemption once per request).

(1)	Exemption 1	
(2)	Exemption 2	
(3)	Exemption 3	
(4)	Exemption 4	
(5)	Exemption 5	
(6)	Exemption 6	
(7)	Exemption 7(A)	
(8)	Exemption 7(B)	
(9)	Exemption 7(C)	
(10)	Exemption 7(D)	
(11)	Exemption 7(E)	

4. Other reasons for nondisclosure (total):

a.	No records	
b.	Referrals	
c.	Request withdrawn	
d.	Fee-related reason	
e.	Records not reasonably described	
f.	Not a proper FOIA request for some other reason	
g.	Not an agency record	
h.	Duplicate request	
i.	Other reason (please describe)	

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1. Number of appeals received during fiscal year:

2. Number of appeals processed during fiscal year:

B. Disposition of appeals.

1. Number completely upheld:

2. Number partially reversed:

3. Number completely reversed:

Number of times each FOIA exemption used:

(1)	Exemption 1	
(2)	Exemption 2	
(3)	Exemption 3	
(4)	Exemption 4	
(5)	Exemption 5	
(6)	Exemption 6	
(7)	Exemption 7(A)	
(8)	Exemption 7(B)	
(9)	Exemption 7(C)	
(10)	Exemption 7(D)	
(11)	Exemption 7(E)	
(12)	Exemption 7(F)	

4. Other reasons for nondisclosure (total):

a.	Remanded appeals	
b.	Withdrawn	
c.	Other reason (please describe)	

VII. Compliance with Time Limits/Status of Pending Requests

A. Median processing time for requests processed during the year.

1. Simple requests (if multiple tracks used).

   a. number of requests processed:

   b. median number of days to process:

2. Complex requests (specify for any and all tracks used).

   a. number of requests processed:

   b. median number of days to process:

3. Requests accorded expedited processing.

   a. number of requests processed:

   b. median number of days to process:

4. Requests not using multi-track processing.

   a. Number of requests processed:

   b. Median number of days to process:

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year:

2. Median number of days that such requests were pending as of that date:

VIII. Comparisons with Previous Year(s)

A. Comparison of numbers of requests received:

B. Comparison of numbers of requests processed:

C. Comparison of median number of days requests were pending at the end of fiscal year:

D. Other statistics significant to agency:

E. Improve timeliness of FOIA performance and to make records available to the public (e.g., backlog-reduction efforts; specification of average number of hours per processed request; training activities; public availability of new categories of records).

IX. Costs/FOIA Staffing

A. Staffing levels (in work years)

1. Number of full-time FOIA personnel:

2. Number of personnel with part-time or occasional FOIA duties:

3. Total number of personnel:

B. Total costs (including staff and all resources).

1. FOIA processing (include appeals processing):

2. Litigation-related activities (estimated):

3. Total costs:

4. Comparison with previous year(s) (including percentage of change):

C. Statement of additional resources needed for FOIA compliance.

IX. Fees

A. **Total amount of fees collected by agency for processing requests:**

B. **Percentage of total costs:**

FORMAT FOR INDIVIDUAL "BIENNIAL" PRIVACY ACT REPORT

RCN-5260-2

Source: COMDTINST M5260.3 (series) and
5 U.S.C. §552a

Each executive agency of the Federal government is required by the Privacy Act to provide an annual statement to Congress on the status of Privacy Act implementation over the previous two years. Individual USCG commands are polled by Headquarters on an annual basis. The consolidated statement for the Coast Guard is compiled by Commandant. Chap. 20 of COMDTINST M5260.3 (series) assigns responsibility for completing and forwarding the individual report to Commandant (G-SII-2).

SECTION A - Plans for Reducing the Amount of Personnel Record-keeping (Information maintained about individuals) during the next Calendar Year.

1. Summarize any major achievements in protecting personal information during the past year. Also, outline plans for the next year.

2. Outline plans for reducing the number and scope of systems of records during the next year.

3. Describe any overall changes or trends in record-keeping patterns. Summary shall include:

   a. Kinds of systems. Indicate any systems of records which have been created or discontinued during the reporting period.

   b. Computers. Has there been an increased or decreased emphasis on the use of computers for record-keeping?

   c. Changes to functions. Have any existing systems of records been expanded to serve additional functions?

SECTION B - Administration of the Act

1. Administration. Does your area of cognizance have any recommendations for improvement of the administration of the Privacy Act?

2. Effect. What effect has the Act had on administration within your area of cognizance?

3. Evaluation. Indicate whether the following provisions of the Manual have generally achieved their purpose and include any suggested alternative means of achieving these ends.

   a. Are disclosure accounting instructions adequate and if not, why?

   b. How has the Manual's limitations on maintaining only that information necessary for an authorized function affected mission accomplishment?

   c. Has your area of cognizance experienced any problems with the requirement to publish systems notices in the Federal Register prior to implementation of the system?

   d. Has your area of cognizance experienced any problems maintaining standard of accuracy, relevance, timeliness and completeness?

   e. What has been the effect of the requirement to review and validate records before their release outside the Coast Guard?

   f. How has the provision of restrictions on record-keeping describing how an individual exercises rights guaranteed by the First Amendment affected your area of cognizance?

4. Report the results of any review of routine use disclosures for each system of record required to be conducted every three years.

5. Report the results of the required review of exemptions authorized for each system of records in order to determine whether the exemption(s) is still needed.

6. Report the results of the required review of each system of records notice. For each system notice provide the following:

a. Date of last review for accuracy.

b. Is the system notice accurate? (Yes/No)

c. Date amended notice was published in the Federal Register. (If 6.b is no).

SECTION C - Effects of the Act on Collection and Disclosure

1. Has the requirement that information be collected to the extent possible from the individual, affected local procedures and/or practices? If so, how and to what extend?

2. Has there been a change in the willingness of individuals to provide information about themselves? Has the Privacy Act statement made a perceptible difference?

3. Has there been a change in the amount and/or quality of information available from third party sources? Are pledges of confidentiality regularly requested?

4. Has it become necessary to develop alternative sources of information affected operating procedures?

5. How have the Act's limitations on the disclosure of information affected the exchange of information?

6. How have state and local Privacy and Freedom of Information laws affected the exchange of information?

SECTION D. – Other Problem Areas and recommendations for Act with other laws, such as the Change (Address any problems which have arisen in connection with the Privacy Act in addition to the areas discussed above. This section might include the interface of the Privacy Freedom of Information Act, veteran's benefits, public assistance, or tax laws; or relations with the states or the private sector. Recommendations for changes, either in administration polices or the law itself should be provided, and should include specific language where possible.)

SECTION E - Exercise of Individuals Rights

This part of the report addresses individual rights. Do not include requests for access to service or health records by current Coast Guard military or civilian personnel--unless the request refers to either the Privacy Act or Freedom of Information Act. All other written requests by individuals for access to or amendment of their own record must be included in the report.

1. Requests:

   a. Number of requests returned due to lack of sufficient information to identify the system to which access was sought.

   b. Number of requests for notice of the existence of records only.

   c. Number of requests from current or prior Federal employees

   d. Number of Privacy Act requests which cited:

      (1) Privacy Act

      (2) Freedom of Information Act

      (3) Both Acts

      (4) Neither Act

      (5) Total requests (1+2+3+4)

2. Access

   a. Total number of requests for access received.

   b. Number of requests for access totally granted.

   c. Number of requests for access totally partially denied.

   d. Number of requests for access totally denied.

e. Number of times each exemption was invoked:

(J)(2)

(k)(1)

(k)(2)

(k)(3)

(k)(4)

(k)(5)

(k)(6)

(k)(7)

f. Number of request for access to exempt systems:

(1) Number totally granted.

(2) Number partially granted.

(3) Number totally denied.

3. Amendments.

a. Total number of requests for amendment received.

b. Number totally granted.

c. Number partially granted.

d. Number totally denied.

BIENNIAL COMPUTER MATCHING ACTIVITY REPORT
RCN-5260-3

The following information shall be attached to the "Biennial" Privacy Act Report:

1. A list of the names and positions of the members of the Data Integrity Board--indicating the name of the Board Secretary, his/her mailing address, and telephone number.

2. A listing of each matching program--by title and purpose--in which the Coast guard participated during the reporting year. This listing should indicate names of participant agencies, include a brief description of the program, and provide a citation which includes the date of the Federal Register notice describing the program.

3. For each matching program, an indication of whether the cost/benefit analysis performed resulted in a favorable ratio. The Data Integrity Board must explain why the agency proceeded with any matching program with an unfavorable ratio.

4. For each program for which the Board waived a cost/benefit analysis: reasons for the waiver and the results of match, if tabulated.

5. A description of each matching agreement the Board rejected and an explanation of why it was rejected.

6. A listing of any violations of matching agreements that have been alleged or identified, and a discussion of any action taken.

7. A discussion of any litigation involving the agency's participation in any matching program.

8. For any litigation based on allegations of inaccurate records, an explanation of the steps the Coast Guard used to ensure the integrity of its data, as well as the verification process it used in the matching program--including and assessment of the adequacy of each.

SAMPLE LETTER FOR USING THE FREEDOM OF INFORMATION ACT TO RESPOND TO A PRIVACY ACT REQUEST FOR INFORMATION FROM AN EXEMPT SYSTEM

This letter is in response to your request of [date] in which you requested a copy of all files pertaining to the investigation of [description of incident or case number].

The investigation you seek is exempt from disclosure under exemption(s) (j)(2) and/or (k)(2) of the Privacy Act of 1974, 5 U.S.C. 555a. Your request is therefore being processed under the Freedom of Information Act, (FOIA) (5 U.S.C. 552), as it will allow you partial access to the information you seek.

However, in order to avoid an unwarranted invasion of the personal privacy of others involved in this case, their names, social security numbers, addresses, and other personal indentifying data have been deleted as per exemption [(b)(7)(c) or (b)(6)] of the FOIA.

[Names and titles of individuals involved] participated with me in making this decision. You have the right to appeal this decision within 30 days of the date you receive this denial. Your appeal should be addressed to Commandant (G-SII-2), U. S. Coast Guard, 2100 2nd Street SW, Washington, DC 20593-0001, and should include all information and arguments upon which you base your request.

Sincerely,

[Name]
Rear Admiral, U. S. Coast Guard Director, Systems Directorate

SAMPLE LETTER TO SUBMITTER (BE SURE TO ATTACH COPIES OF THE DOCUMENTS THAT ARE AT ISSUE)

Dear ___,

This office has recently received a request under the Freedom of Information Act (FOIA), 5 U.S.C. §552, for _____. Our search for information responsive to this request has revealed the following document(s), which you provided to the Coast Guard:

_____,
_____.

We have determined that these documents may qualify for exemption under 5 U.S.C. §552(b)(4) as commercial or financial information that is privileged or confidential. Commercial or financial information is considered confidential if its disclosure is likely to impair the government's ability to obtain the necessary information in the future or cause substantial competitive harm to the source of the information.

To make a determination regarding the release of the above document(s), the Coast Guard must have a detailed justification of the reasons your company believes the information requested should not be released under exemption (b)(4) of the FOIA. We believe you are in the best position to explain any commercial sensitivity of the information contained in these documents.

In this regard, please provide this office with a specific, detailed description concerning how disclosure of this information would cause substantial harm to your company's present or future competitive position. Some factors you may wish to describe to help us understand your position are: (1) the general custom or usage in your business regarding this type of information, (2) the number and position of persons who have, or have had, access to this type of information, (3) the types and degrees of commercial injury that release would cause you, and (4) the length of time the information will need to be kept confidential.

If there are any additional factors that support nondisclosure, please include them in your statement as well.

Information that is known through custom or usage in your trade, business, or profession, or information that any reasonably educated person would know must be released. Self-evident statements or reviews of the general state of the art normally must be released.

In order for this office to comply with FOIA's statutory time limits, we must have your response within ten (10) days. If we have not heard from you by that date, we will assume that your firm has no objection to disclosure of this information in its entirety.

We will carefully consider the justification you provide us and will endeavor to protect your proprietary information to the extent permitted under law. Should we disagree with your position regarding some or all of the information requested, and determine it to be releasable, we will provide you with advance notice of our decision so that you may take whatever steps you consider appropriate to protect your interests.

Your response and justification should be sent to the attention of _____ at _____. If you have any questions regarding this matter, you may contact _____ at _____.

Sincerely,

/s/

Encl: Describe documents at issue

THIS ENCLOSURE HAS BEEN REMOVED.

DIRECTORATE FREEDOM OF INFORMATION ACT (FOIA) COORDINATOR

A. MAJOR DUTIES

This position is located in the Administration and Coordination Staff, _____ Directorate. The primary responsibility is to serve as the Directorate FOIA Coordinator. The incumbent is responsible for coordinating all Directorate responses to FOIA requests and for advising of the implications and requirements of the Act.

Develops internal guidelines and standard operating procedures for the preparation and review of responses to FOIA requests within the Directorate. Updates guidance as changes occur in applicable statutes, regulations, or policies. Reviews and interprets new and established directives, regulations, statutes, and delegations of authority related to FOIA, for potential impact on Directorate operating policies and work processes. Ensures that internal guidelines and operations are realistic and in compliance with mandatory requirements.

Develops, maintains, and monitors a Directorate tracking system for FOIA requests and ensures that all requests are logged through the Headquarters' FOIA Coordinator. Establishes appropriate deadlines for responses and ensures that deadlines are met. Receives and analyzes each request, forwarding it to the appropriate staff element for action. When necessary, prepares interim responses to the requesters. Reviews responses for completeness, format, and to ensure that they comply with applicable law and policy. If a request involves records from more than one element within the Directorate, assures that all responsive records are retrieved and prepares a coordinated response for signature. Ensures that applicable fees are assessed and collected.

Provides advisory services on FOIA issues. Serves as the central resource person on all procedural and non-legal issues relating to FOIA, including sources of FOIA training.

B. FACTORS

I. KNOWLEDGE REQUIRED BY THE POSITION

Knowledge of the FOIA, other applicable statutes, applicable regulations, and policies.

Knowledge of the organization, functions, and operations of the Directorate and the Coast Guard in general in order to effectively track and coordinate responses to FOIA requests.

Skill in applying conventional fact finding, analytical, and problem solving methods and techniques to evaluate the effectiveness of internal guidelines for processing FOIA requests, and for initiating improvements in the process.

Skill in written and oral communication sufficient to prepare and review responses to FOIA requests. Knowledge and skill in using management

information systems, office automation systems and processes, and computer applications and techniques for use in tracking FOIA requests.

Ability to establish and maintain effective relationships with all levels of management, as well as with coworkers, subordinates, and requesters.

II. SUPERVISORY CONTROLS

Work is performed under the general supervision of the Chief of the Administration and Coordination Staff. Responses to FOIA requests are completed in accordance with established guidelines and time frames. The employee independently carries out the successive steps to complete work assignments, and routine problems are normally resolved by the employee without assistance from the supervisor. The supervisor provides assistance on controversial issues which are not covered by standard operating procedures or applicable precedents.

III. GUIDELINES

Guidelines consist of the provisions of the FOIA, applicable regulations, Executive branch policy, and applicable Coast Guard directives. Where guidelines or precedent situations are not applicable to specific work assignments, the incumbent is required to use judgment in researching applicable policy and in making the necessary modifications and adaptations to suit the specific situation. The incumbent analyzes current guidelines, and as required, makes recommendations for changes.

IV. COMPLEXITY

Assignments involve analyzing requests for information and making decisions regarding the appropriateness of the release of such information. The work requires the application of well-defined limits and controls on the release of information. The resolution of some problems with respect to release of information may require some slight modification of guidelines or strategies to accommodate new aspects of an issue. The work requires extensive coordination with various individuals to complete assignments accurately and consistently.

V. SCOPE AND EFFECT

The purpose of the work is to ensure the appropriate release of information concerning agency activities requested through the FOIA. The work ensures that responses to requests for information are timely, and that legal requirements are met.

VI. PERSONAL CONTACTS

Personal contacts are with management officials throughout the Directorate and other offices within Coast Guard Headquarters as appropriate. Contacts also include coordinators of the FOIA program and members of the general public, media, and industry and their legal representatives requesting information under FOIA.

VII. PURPOSE OF CONTACTS

Contacts are made with management officials to distribute FOIA requests and to ensure that responses are submitted by the action office in a timely manner. Other contacts within the Coast Guard are made to coordinate work efforts relative to the responsibilities of the position. Contacts with the general public, media, and industry and their legal representatives are made to obtain, clarify, or provide facts or information directly related to the work.

VIII. PHYSICAL DEMANDS

The work is primarily sedentary, with some walking and standing required as well as carrying light books and papers. No special physical qualifications are required.

IX. WORK ENVIRONMENT

Work is performed in a typical office environment.

U.S. DEPARTMENT OF TRANSPORTATION
PERFORMANCE APPRAISAL FORM
(Generic Performance Standards)

See:
Dept. of Transp., USCG, CG-3430.8 (Rev. 2-92)
Previous Edition Obsolete.

Complete Block G on the form as follows:

Oversees the administration of FOIA within the Directorate. Establishes guidelines and develops procedures for monitoring the status of FOIA requests and responses. Distributes FOIA requests for processing within the directorate and monitors the status of responses. Assures that all requests are logged through the Headquarters' FOIA coordinator and that copies of all responses are provided to the Headquarters' FOIA coordinator. Provides advice and guidance to Directorate record holders regarding the FOIA process and applicable exemptions. Reviews responses for accuracy and compliance with applicable guidance before responses are sent to requesters. Provides data for required reports. Keeps the Assistant Commandant informed of processing trends. Provides information about FOIA training to others in the Directorate responding to FOIA requests. Assures that applicable fees are assessed and collected.

SAMPLE FOIA COORDINATOR DESCRIPTION OF DUTIES BLOCK FOR OER

2. DESCRIPTION OF DUTIES:
Directorate FOIA Coordinator: Oversees the administration of FOIA within the Directorate; establishes guidelines and develops procedures for monitoring the status of FOIA requests and responses; ensures the proper distribution and tracking of FOJA requests; collects and accounts for applicable fees; provides training and advice to directorate personnel; prepares reports and keeps the Assistant Commandant informed on FOIA issues.