



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF, G-1
2461 EISENHOWER AVENUE
ALEXANDRIA, VA 22332-0300

31 January 2008

DAPE-CPD

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Freedom of Information Act (FOIA) and Privacy Act (PA) Release
Procedures for Referral/Selection Records

1. References:

a. Federal Register, 32 CFR Part 518, The Freedom of Information Act Program;
Final Rule, 22 February 2006.

b. Federal Register, 32 CFR Part 505, The Army Privacy Program; Final Rule,
10 August 2006.

c. DoD 5400.11-R, Department of Defense Privacy Program, May 14, 2007.

d. DoD 5400.07, Department of Defense Freedom of Information Act (FOIA)
Program, January 2, 2008.

2. Enclosure 1 is intended to serve as general guidance for processing Freedom of Information Act (FOIA) and Privacy Act (PA) requests concerning referral/selection records and other records that are maintained under the purview of the Initial Denial Authority for civilian personnel records (see partial listing at Enclosure 2).

3. In addition to the FOIA, the applicability of the PA to any request must also be considered whenever requesters seek records about themselves contained in a PA system of records, even if the requester does not cite the PA in the request. Current guidance for processing requests under the PA is found at Reference b and c.

4. Please ensure that appropriate attention is given to the fee schedules prescribed in Reference a.

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5. If you have any questions regarding this guidance, please feel free to contact this office at the following address: Office of the Deputy Chief of Staff, G-1, Policy and Program Development Division, ATTN: DAPE-CPD-EP (Ms. Vickie Harris/FOIA), 2461 Eisenhower Avenue, Alexandria, VA 22332-0300. You can also contact Ms. Vickie Harris at (703) 325-7275 or via email at vickie.harris1@us.army.mil.

Encls

NANCY HILL
Acting Chief, Policy and Program
Development Division

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ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY

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CF:

DEPUTY CHIEF OF STAFF FOR INTELLIGENCE, ATTN: DAMI-CP

ASSISTANT G-1 FOR CIVILIAN PERSONNEL

DIRECTOR CIVILIAN HUMAN RESOURCES AGENCY

ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE
AFFAIRS), ATTN: SAMR-PO

GENERAL COUNSEL

THE JUDGE ADVOCATE GENERAL, ATTN: DAJA-LE

Freedom of Information Act (FOIA) and Privacy Act (PA) Release Procedures for Referral/Selection Records

1. This guidance is provided to help ensure that requests for this type of information are processed consistently throughout the Department of the Army (DA). It is intended to provide general guidelines only. Documents should be reviewed both as to responsiveness and releasability on a case-by-case basis.
2. The DA officials listed in reference a, as Initial Denial Authorities (IDAs) are the only officials authorized to deny a FOIA request for records. Officials listed in Appendix B to 32 CFR Part 505, as Denial Authorities (formerly Access and Amendment Refusal Authorities) are the only officials authorized to deny a request for records subject to the PA. The Denial Authority for civilian personnel records and other documents involving civilian personnel matters is the Chief, Policy and Program Development Division, Office of the Deputy Chief of Staff, G-1, Headquarters, Department of the Army.
3. We ask that you verify with the requester whether he/she is willing to accept the responsive records with protected information redacted, prior to forwarding the request to us for determination. If the requester agrees to accept the records in redacted format, you may release the records in that format; no further action will be required by this office as the IDA. If requester does not agree to accept the document(s) in a redacted format, the document(s) in question must be forwarded to this office for release determination and a direct response to the requester.
4. Requests forwarded to this office must be done so under cover letter that will include a brief outline that identifies the request and all documents, name, phone number and email address of the point of contact and must contain the following:
 - a. (Tab A or 1) The original FOIA request and envelope (if applicable);
 - b. (Tab B or 2) The response letter;
 - c. (Tab C or 3) Copies of all records entirely released, single-sided;
 - d. (Tab D or 4) Copies of administrative processing documents, including extension letters and "no records" certificates, in chronological order;
 - e. (Tab E or 5) Copies of all records partially released or entirely denied, single-sided. For partially released records, mark in yellow highlighter (or other readable highlighter) those portions withheld; and

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f. (Tab F or 6) Legal opinion(s).

g. A “no records” certificate, if appropriate. Requirements for completion of a “no records” certificate are set forth in 32 CFR 518.16(f)(1). In the case of a “no records” response, ensure that you provide a detailed “no records” certification that meets the above requirements.

h. Copies of any other correspondence to and/or from the requester regarding the request;

i. Copy of a completed DD Form 2086, Freedom of Information (FOI) Processing Cost or DD Form 2086-1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, and an indication as to whether **any applicable** fees have been paid;

j. Verification that the requester has been advised of the estimated fee assessment and has expressed a willingness to pay all applicable fees (To comply with the procedural requirements of reference a, willingness to pay fees should be expressed in the FOIA request itself; however, it may be reflected in subsequent correspondence from the requester, or by memorandum for record from someone who has discussed the matter with the requester).

k. The command’s recommendation to deny the request in whole or in part.

5. Since operating activities receive a large volume of requests from individuals who have applied for a particular vacancy and were not selected, we are providing the following guidance on handling these requests.

a. These requests are often for “all records” relating to the vacancy announcement; however, sometimes specific records—such as the selected candidate’s application—are requested. Such documents are ordinarily filed in a general file on the vacancy itself, and since they are not retrieved by an individual’s name, social security number or other personal identifier, they are not subject to the **Privacy Act**. The release determination in such cases should be made only under the FOIA.

b. Exemption 6 of the FOIA, 5 USC 552(b)(6), protects information in personnel, medical and similar files from release when disclosure of the information would constitute a clearly unwarranted invasion of personal privacy. Such information is eligible for protection if no public interest would be served in the release of the

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information, or if the public interest in disclosure fails to outweigh the potential harm to an individual's privacy. The public interest must fall within FOIA's core purpose of shedding light on an agency's performance of its duties. A balancing of the public interest against the privacy interest must be done in either case.

c. The general rule is that most information, other than purely personal data pertaining to the selected candidate, is releasable. This includes the resume (or equivalent form). The resume must be redacted to delete the following personal information:

- home address
- home telephone number or personal beeper/cellular phone number
- social security number
- age
- place and date of birth
- other names used
- marital status and date of marriage
- race and/or ethnic background
- lowest pay willing to accept
- salary, if not federal service (salary for persons in the federal service is releasable.)
- name and phone number of supervisors (if not federal service, or if not a general office number)
 - whether an employer may be contacted regarding the applicant's work record
 - information as to the type of discharge an individual received from military service
- information regarding any veteran's preference claim
- information regarding any medical condition or disability
- an individual's party or union affiliation
- membership in organizations other than those related to the employee's or applicant's profession or those related to the position held or applied for
- foreign languages (unless work-related)
- education not related to the position held or applied for
- reasons for leaving or wanting to leave past or current employment
- other background information which is not work-related
- criminal history (unless it shows fitness for the job)
- information concerning references

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- information concerning relatives who work for the government (but release if the relative works for or supervises the applicant)
- reasons for job termination

As mentioned above, if the requester does not agree to accept redacted documents, the documents in question must be forwarded to this office for release determination and a direct response to the requester.

6. Evaluation reports and support forms submitted by the selectee as part of his/her application packet are protected in large part under Exemption 6; however, pursuant to 5 USC 552(b), any reasonably segregable portion of the record should be provided to the requester after deletion of the portions which are exempt. Duty description narratives, performance elements, and performance standards should be withheld under Exemption 6 when they are so intertwined with the performance appraisal that their disclosure would reveal how the individual was rated. They should also be withheld under Exemption 2. Consider whether this information might be subject to withholding under any other FOIA exemption(s). The award and step increase boxes on the evaluation form should be redacted, even if favorable or blank, and withheld under Exemption 6.

7. Release the redacted application, including the redacted resume (or equivalent), of selectee. If the selectee refused the offer, or if the vacancy announcement was cancelled, do not release the selectee's application. This is to protect the individual's privacy interest in, for example, the fact that he/she was looking for other employment. Withhold in their entirety, based on Exemption 6, the applications, including the resume (or equivalent), of non-selectees. The applications of non-selectees need not be reviewed for redaction and partial release because disclosure of the qualifications of people who were not appointed is unnecessary for the public to evaluate the competence of the selectee. However, the applications must be retained and a copy forwarded to the IDA due to the possibility of an appeal or litigation.

8. Release redacted Rating & Ranking Worksheets (redact names and personal identifiers of non-selectees; release the names and the final scores for the selectees/requester). The final scores for the non-selectees may be released provided their identities will not otherwise be revealed under the circumstances. Scores should not be released if they indirectly reveal other protected information, such as an individual's veteran's preference or disability status or the details of the crediting plan.

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9. Although performance appraisals themselves are ordinarily protected from release under Exemption 6 as discussed above, the Supervisory Appraisal form of the selectee, used for seeking a promotion is releasable since it relates directly to the Knowledge, Skills and Abilities of, and qualifications for, the position being advertised. Likewise, when the selectee uses a "Supplemental Qualifications Statement" form as part of his/her application, the information on the line on that form which indicates the candidate's overall performance rating is releasable. Before releasing, redact items "b" and "c" under exemption 6. NOTE: NSPS performance appraisals – data that should not be released are in the following blocks: "3", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T".

10. Crediting Plans, which are used to determine the qualifications of an applicant for employment, are withheld under Exemption 2 of the FOIA, 5 USC 552(b)(2). Exemption 2 protects information related solely to the internal personnel rules and practices of an agency, if release might allow individuals to circumvent the rule or practice, substantially hindering the effectiveness of a significant agency function. Releasing the crediting plan would allow an applicant to circumvent the plan by specifically tailoring his or her application, and might thereby give an unfair advantage to a potential job applicant. There should be no discretionary release of crediting plans; however, any reasonably segregable portion of the record should be provided to the requester after deletion of the portions which are exempt. For example, while those portions of the crediting plan that reveal the weights for the selection criteria will be withheld, those portions that merely repeat the Knowledge, Skills and Abilities listed in the Vacancy Announcement should be released.

11. Consider whether the panel ratings and final score of the applicants (selectee and non-selectees) should be withheld under Exemption 5 as pre-decisional deliberative material, or under Exemption 2, if it reveals details of the crediting plan. If the requester was an applicant, the requester's name may be released. The names and identities of the raters or panel members will ordinarily be protected from release under Exemption 6. In some cases, the names may be released if doing so will not reveal the particular ratings they gave, and determination is made that the public interest in disclosing this information outweighs the privacy interests of the rater or panel member.

12. Exemption 2 also protects the criteria established for interviewing prospective employees, as well as proposed examination/interview questions and answers.

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13. Exemption 3 of the FOIA, 5 USC 552(b)(3), protects from release information that is specifically exempted from disclosure by another statute. One such statute is 10 USC 130b, which provides an exemption for personally identifying information regarding any member of the armed forces assigned to an overseas unit, a sensitive unit, or a routinely deployable unit, as well as any employee of the Department of Defense or of the Coast Guard whose duty station is with any such unit.

14. Vacancy Announcements and the associated Position Descriptions and Classification Evaluation Statements are ordinarily released in response to a FOIA request.

15. Some of the requests are for statistics only. Information pertaining to age, race, and sex may be released if the requester would not be able to identify particular individuals based on these statistics.

Categories of Records Covered:

Academic discipline; career program; citizenship; date of birth; educational level; employee tenure; Federal Employees Group Life Insurance (FEGLI); Federal Employees Health Benefits (FEHB); Thrift Savings Plan (TSP); functional classification; name of employee; nature of action; occupational series; pay basis, pay plan; rate determinant; physical handicap; position occupied and tenure; military status; salary; service computation date; sex; social security number; special program identifier; step or rate; submitting office number; training data, including cost, non-duty hours, on-duty hours, principal purpose, special interest program, date of completion; type of appointment; unit identification code; veteran's preference; work schedule; organizational and position data; retention data; adverse action data; Fair Labor Standards Act (FLSA) coverage; cost of living allowances; transportation entitlements; cost codes; leave category; salary history; wage clearance and access data; performance/suggestion/cash awards; reemployment rights; training agreement; reserve status; vessel operations qualifications; Government driver's license; food handler's permit; intern recruitment and training data; career management data including performance/potential ratings; employee evaluation; qualifications; achievements; dependent data; overseas sponsor information; state address; home address; leave data; foreign language code.

Records maintained for military personnel participating in department-wide incentive awards and training programs sponsored by operating civilian personnel offices.

Grievance records that are maintained by the servicing civilian human resources personnel office are also included. This covers current or former employees of the Department of the Army who have submitted grievances in accordance with 5 CFR 771 or through a negotiated grievance procedure.