



Applying the Freedom of Information Act



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Purpose

The purpose of this presentation is to provide an overview of the Freedom of Information Act (FOIA), FOIA regulations, FOIA exemptions, and explain TRICARE Management Activity's (TMA) role in implementing FOIA regulations and increasing the Federal Government's openness and transparency.



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Objectives

- Upon completion of this presentation, you should be able to:
 - Comply with the FOIA statute and apply DoD FOIA policy to facilitate the Open Government Initiative
 - Identify how to mitigate risks and penalties associated with the timely and accurate response of FOIA requests



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What is FOIA?

- FOIA is a law that ensures public access to United States government records
 - FOIA requires agencies to make records available to the public unless one of the nine exemptions or one of the three law enforcement exclusions under the Act applies to a particular request
 - FOIA applies to federal agencies and does not create a right of access to records held by Congress, the courts, or by state or local government agencies
 - Each federal agency is responsible for meeting its FOIA obligations



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Federal Statutes and Regulations

- FOIA enacted in 1966 (5 United States Code [USC] § 552) and amended several times
- Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007
- President Barack Obama signed two presidential memoranda and an executive order regarding FOIA and transparency, January 21, 2009
- Attorney General Eric Holder issued a memorandum directing all Executive Branch departments and agencies to apply a presumption of openness for FOIA, March 15, 2009
- OPEN FOIA Act of 2009: Addresses a range of administrative and procedural issues



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DoD Statutes and Regulations

- The following DoD policies support the Federal Government's FOIA Program:
 - DoD Regulation 5400.7-R, "DoD Freedom of Information Act Program", September 4, 1998
 - DoD Directive 5400.07, "DoD Freedom of Information Act Program", January 2, 2008



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FOIA Exemptions

- TMA may apply one or more of the following exemptions when determining the release of information:
 - (b)(3): **STATUTORY** – Applies to information specifically exempted by a statute establishing particular criteria for withholding; the language of the statute must clearly state that the information will not be disclosed
 - (b)(4): **PROPRIETARY** – Applies to information such as trade secrets and commercial and financial information obtained from a person on a privileged or confidential basis which, if released, would result in competitive harm to the company



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FOIA Exemptions (continued)

- (b)(5): **PRIVILEGED** – Applies to inter- and intra-agency memoranda which are deliberative in nature; for internal documents which are part of the decision-making process, and contain subjective evaluations, opinions, and recommendations
- (b)(6): **PRIVATE** – Applies to information, which, if released, would constitute a clearly unwarranted invasion of the personal privacy of individuals



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FOIA Exemptions (continued)

- (b)(7): **LAW ENFORCEMENT** – Applies to records or information compiled for law enforcement purposes that:
 - Could reasonably be expected to interfere with law enforcement proceedings
 - Would deprive a person of a right to a fair trial or impartial adjudication
 - Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others
 - Disclose the identity of a confidential source
 - Disclose investigative techniques and procedures, or
 - Could reasonably be expected to endanger the life or physical safety of any individual



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Open Government Initiative

- President Obama and the Office of Management and Budget launched the Open Government Initiative on December 8, 2009
 - Objective: To support a more transparent, participative, and collaborative Federal Government
 - Plan of Action: Implement the Open Government Directive requiring each agency to support the Federal Government's presumption of openness



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Open Government Initiative (continued)

- Open Government cornerstones:
 - Transparency: Promotes accountability by providing the public with information about what the government is doing
 - Participation: Allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society
 - Collaboration: Improves the effectiveness of government by encouraging partnerships and cooperation within the Federal Government, across levels of government, and between the government and private institutions



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Open Government Initiative (continued)

- The Open Government Directive requires that each agency:
 - Publish government information online: Proactively expand access to information by making it available online in open formats, rather than waiting for specific requests under FOIA; reduce FOIA backlog by 10% each year
 - Improve the quality of government information: Designate a high-level senior official to be accountable for the quality and objectivity of, and internal controls over, the federal spending information publicly disseminated



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Open Government Initiative (continued)

- The Open Government Directive requires that each agency:
 - Create and institutionalize a culture of open government: Coordinate efforts to implement existing mandates for federal spending transparency and provide a forum to share best practices on innovative ideas to promote participation and collaboration
 - Create an enabling policy framework for open government: Identify impediments to open government and to the use of new technologies and clarify guidance and/or propose revisions to such policies to promote greater openness in government



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TMA and FOIA Requests

- Each TMA office appointed a FOIA point of contact (POC) for its respective office who is responsible for:
 - Ensuring that the Federal Government actualizes FOIA and related directives, including the timely response to all FOIA requests
 - Mitigating the risks and penalties associated with the lack of communication between the government and the people
 - Responding to action memorandum from TMA FOIA Office and provide documents for release with the appropriate completed/signed forms



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FOIA Requests

- Any FOIA requests that come directly to one's office should be forwarded to the TMA FOIA Office for proper coordination with the designated FOIA POC
 - FOIARequests@tma.osd.mil
 - FOIA requests by individuals for information about themselves are sent to the appropriate Privacy Officer to be processed as a Privacy Act request



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- You should now be able to:
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Resources

- DoD Regulation 5400.7-R, “DoD Freedom of Information Act Program”, September 4, 1998
- “Freedom of Information Act (5 USC § 552) with Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007”, December 12, 2007
- DoD Directive 5400.07, “DoD Freedom of Information Act Program”, January 2, 2008
- Presidential Memorandum for the Heads of Executive Departments and Agencies, “The Freedom of Information Act”, January 21, 2009



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Resources (continued)

- Executive Order 13489, “Presidential Records”, January 21, 2009
- Attorney General Memorandum for the Heads of Executive Departments and Agencies, “The Freedom of Information Act”, March 19, 2009
- To subscribe to the TMA Privacy and Civil Liberties Office E-News, go to:
<http://www.tricare.mil/tma/privacy/maillinglist.aspx>
- E-mail FOIARequests@tma.osd.mil for subject matter questions



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