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United States Coast Guard

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COMDTNOTE 5260
NOV 29 1999

COMMANDANT NOTICE 5260

CANCELLED: NOV 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.

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	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
A	2	2	2	2	2	2	2	2	1	1	1	1	1	1	1	1	1	1	1		1	1				
B	1	8	20*	1	12	3	10	10	3	10	3	3	2	10	1	2	2	25	1	2	2	1	3	1	1	1
C	3	2	1	3	1	1	1	1	1	1	3	1	2	2	1	10	1	1	3	1	1	1	1	2	1	1
D	1	1	1	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1	1	1	1
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REMOVE PAGES	INSERT PAGES
-------	2-5 thru 2-6
21-1 thru 21-5	21-1 thru 21-6

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

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 "Regulations and Administrative"

G. N. NACCARA
Director, Information and Technology

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.

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. "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.

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

AB. "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.)

AC. "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.

AD. 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 21. SPECIAL INSTRUCTIONS FOR PROCESSING FOIA REQUESTS AT HEADQUARTERS AND SELECTED UNITS

A. Definitions. As used in this chapter only, "Directorate" means G-A, G-H, G-L, G-M, 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 DFC 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 DFC 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 FOIA Intranet site on a quarterly basis. DFCs and all personnel to whom any of the functions of the DFC 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 DFC 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.