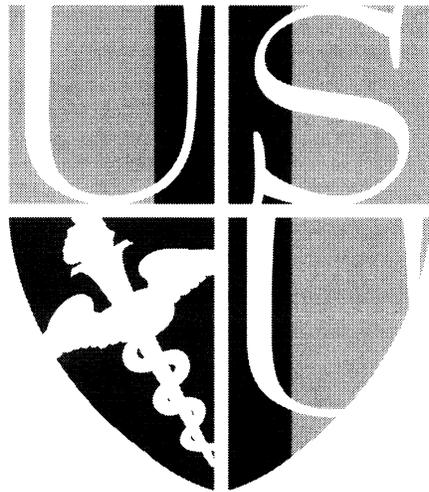


**USUHS  
INSTRUCTION  
5402**





# UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES



## SUBJECT: Freedom of Information Act (FOIA)

### Instruction 5402

APR 12 2000

(VAM)

#### ABSTRACT

This Instruction implements DoD requirements for Freedom of Information requests by providing policies and responsibilities with respect to the FOIA Act, release of information, and initial denial authority.

**A. Reissuance and Purpose.** This Instruction reissues Uniformed Services University of the Health Sciences (USUHS) Instruction 5402<sup>a</sup>, and implements DoD Directive 5400.7<sup>b</sup>, DoD Instruction 5400.10<sup>c</sup>, and DoD Regulation 5400.7-R<sup>d</sup> in their entirety, and assigns responsibility for the effective administration of the Freedom of Information Act Program.

**B. References.** See *Enclosure 1*.

**C. Applicability.** The provisions of this Instruction apply to all personnel assigned to the USUHS and the Armed Forces Radiobiology Research Institute (AFRRI).

**D. Policies.** It is USUHS policy that:

1. The public has a right to information concerning the activities of its Government. Activities will be conducted in an open manner and provide the public with a maximum amount of accurate and timely information, always consistent with the legitimate public and private interests of the American people;

2. USUHS personnel are expected to comply with the provisions of the FOIA in both letter and in spirit;

3. The USUHS will conduct its activities in an open manner consistent with the need for security and adherence to other requirements of laws and regulations; and

4. When a member of the public complies with the procedures set forth in DoD Instruction 5400.10<sup>c</sup> for obtaining USUHS records, the request will receive prompt attention; a reply will be dispatched within 10 working days unless a delay is authorized by the appropriate authority.

**E. Definitions.** See *Enclosure 2*.

**F. Responsibilities.**

1. The Vice President, Administration and Management shall:

- a. Coordinate all FOIA requests directed to the USUHS with the Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs) (ASDPA);

b. Assign responsible USUHS activities to review agency records within their possession to see if such records are responsive to the FOIA request;

c. Coordinate with the Office of General Counsel (OGC) on the range of recommendations available to him/her, regarding whether requested agency records may be released and obtain a legal opinion on whether the requested records are specifically exempt from disclosure;

d. Provide in a timely manner the determination of the Initial Denial Authority and/or records, as appropriate. The Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs) (ASDPA) handles the actual release and appeals process; and

e. As delegated by the President, USUHS, provide the Initial Denial Authority for all matters arising out of review of University FOIA requests. He/she has the authority to withhold

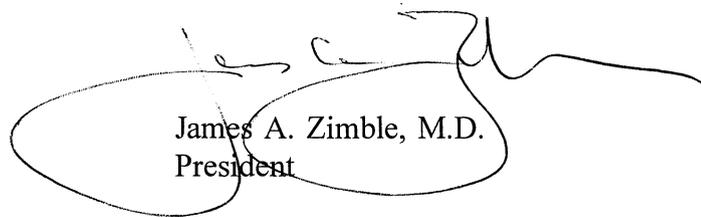
records requested under the FOIA, if they belong to one or more of the nine categories of records exempt from mandatory disclosure under DoD Directive 5400.7<sup>b</sup> and DoD Regulation 5400.7R<sup>d</sup>.

2. Individuals in direct receipt of a request for records, whether or not it invokes the FOIA shall immediately hand carry the request to the VAM for action. The time sensitive processing requirements mandate the earliest possible notification.

3. Individuals/activities assigned to review agency records pursuant to a FOIA request shall:

a. Assign the highest priority to determine whether any documents responsive to the FOIA request are in the USUHS systems of records;

b. Provide the records, or in the alternative, advise the VAM that no records responsive to the FOIA request were found.



James A. Zimble, M.D.  
President

Enclosures:

1. References
2. Definitions

**REFERENCES**

- (a) USUHS Instruction 5402, "Freedom of Information Act (FOIA)" dated November 22, 1994 (hereby cancelled)
- (b) DoD Directive 5400.7, "DoD Freedom of Information Act (FOIA) Program" dated September 29, 1997
- (c) DoD Instruction 5400.10, "OSD Implementation of DoD Freedom of Information Act Program," dated January 24, 1991
- (d) DoD Regulation 5400.7-R, "DoD Freedom of Information Act (FOIA) Program," dated September 1998
- (e) Title 5, United States Code, Chapter 5, Section 552, "Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings"



## DEFINITIONS

1. FOIA Request. A written request for USUHS records, made by a member of the public which explicitly invokes either the FOIA, DoD Directive 5400.7<sup>b</sup>, or the USUHS Instruction.

2. Agency Record:

a. The products of data compilation, such as all books, papers, maps, photographs, machine-readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business, and in DoD's possession and control at the time the FOIA request is made;

b. The following **are not** included within the definition of "agency record":

(1) objects or articles such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence,

(2) administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. Normally, computer software (including source code, object code, and listings of source and object codes, regardless of medium) is not an agency record. (This does not include the underlying data that is processed and produced by such software and that may in

some instances be stored with the software.) Exceptions to this position are outlined in Paragraph 2.c., below,

(3) anything that is not a tangible or documentary record, such as an individual's memory or oral communication,

(4) personal records of an individual not subject to agency creation or retention requirements, thus created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use, and

(5) information stored within a computer for which no computer program exists for the retrieval of the requested information;

c. In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare and shall be treated on a case-by-case basis. Examples of these instances are:

(1) when the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA,

(2) where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DoD Component. Examples are computer models used to forecast budget outlays, to calculate retirement system costs, or for optimization models on travel costs, or

(3) for guidance on release determinations of computer software, see DoD Regulation 5400.7R<sup>d</sup>;

d. A record must exist and be in the **possession and control** of the USUHS at the time of the request to be considered subject to this Instruction and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request; and

e. If unaltered publications and processed documents (such as regulations, manuals, maps, charts, and related

geophysical materials) are available to the public through an established distribution system, with or without charge, the provisions of Title 5, USC, Chapter 5, Section 552<sup>e</sup> normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the Federal Register also require no processing under the FOIA. In such cases, the requestor should be directed to the appropriate source to obtain the record.