

FREEDOM OF INFORMATION ACT

Release of Misconduct Reports of Investigation

You have requested guidance concerning the release of reports of investigation (ROI) to a Freedom of Information Act (FOIA) requester who asks for the ROI (or ROIs), without reference to the subject's name. For instance, media FOIA requesters may ask for "all reports of investigation on your base, in which it was alleged an individual did xxx."

In this case, the FOIA requester seeks a copy under the FOIA (i.e., a public release by the Air Force) of an unsubstantiated report of investigation alleging that a Major discriminated against the FOIA requester. However, the FOIA requester did not ask for the ROI by referencing the name of the subject or any witness, but rather by the case number. Accordingly, if the report can be properly redacted to fully protect the identity of the subject of the report as well as witnesses other than the FOIA requester, the Air Force release of the report via the public venue of the FOIA will not result in the Air Force violating the privacy interest of the subject/witnesses by itself identifying the subject/witness to the public. In other words, with a properly redacted ROI to a requester who does not make a by name request for a report, the Air Force's release, in conjunction with the FOIA request itself, will not identify who was the subject. We note, of course, that in most cases a FOIA requester asks for the ROI by the name of the subject. If that had been the case here, then consistent with withholding of unsubstantiated allegation reports of investigation, release of this unsubstantiated report involving an O-4, for which there is no general public interest, would not be permissible under the FOIA.

In this case, your office recommends release of the ROI, except as redacted under FOIA exemptions (b)(6) and (b)(7)(C). As noted by SAF/IGQ, FOIA Exemption 6, 5 U.S.C. section 552(b)(6), requires withholding of information in personnel, medical, and similar files where disclosure "would constitute a clearly unwarranted invasion of personal privacy." Exemption (b)(7)(C) applies to similar information in records compiled for a law enforcement purpose, where release could constitute an unwarranted invasion of personal privacy. In applying Exemption 6 and 7(C), a balancing test is done weighing the privacy interests of individuals named in a document and the public interest in disclosure of the information requested. In this case, as noted below, there is no general public interest in this two year old allegation case. 5 U.S.C. § 552; DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*.

In this case, the subject's name and witness names have been redacted. In order to make this release legally sufficient to properly protect an inappropriate release of the identity of the subject/witnesses, where the allegations against the subject was not substantiated, we further recommend that the subject's/witnesses duty title and any reference to the race or sex of the subject or witnesses also be redacted.

Again, only because the requester is not asking for the ROI by the name of the subject is release with redactions legally sufficient of this unsubstantiated allegation ROI. If the request for this unsubstantiated report of investigation had been made by reference to the subject's name, the Air

Force would have been required to withhold the complete report from public release through the FOIA process.

Finally, on a related subject, we have previously noted that the Air Force investigative organization can revise its AFI and Privacy Act System of Record Notice to afford a complainant a copy of ROIs in all cases of which they were the complainant - with proper redactions - as a Privacy Act routine use release under section (b)(3) of the Privacy Act, 5 U.S.C. § 552a(b)(3). Doing so allows for the automatic release of final ROIs to complainants, properly redacted, without the need for the complainant to make a formal request under the FOIA for the ROI.

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