

## FREEDOM OF INFORMATION ACT

### Release of Environmental Documents to Environmental Regulators

You asked how to handle requests for environmental records made by federal, state, and local environmental officials and regulatory agencies. Release information and documents about installation environmental issues and programs in accordance with the provisions of applicable environmental law and regulations, environmental permits and licenses, consent orders, compliance orders, memoranda of agreement, and similar sources of environmental requirements. In the absence of an environmental requirement to release material to state and local regulatory agencies, release environmental records in accordance with Freedom of Information Act (FOIA), 5 U.S.C. § 552, rules.<sup>1</sup> Consult AFLOA/JACE (servicing Environmental Liaison Officer, if any, Regional Counsel, or one of the Branch Chiefs at the Field Support Center) for guidance on making voluntary releases to federal regulators since the FOIA does not apply to requests from federal agencies.

When providing regulators reports, plans, and other information to satisfy requirements of statutes, regulations, permits, or other applicable requirements, installations should be aware that such mandatory releases technically are not releases to the public under FOIA. That means failing to make redactions in such releases to regulators does not prohibit the Air Force from making redactions when the same material is requested under FOIA. However, we may lose some control over how regulators will handle our documents. To minimize that loss of control, installations should appropriately mark all For Official Use Only (FOUO) documents at creation. Mark documents that will be released outside DoD with the following expanded FOUO warning:

“This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Exemption(s) [insert numbers], 5 U.S.C. §§ 552(b) [insert numbers] applies/apply. Further distribution is prohibited without the approval of [owner’s organization, office symbol, phone].”

Another way to safeguard FOUO information is by using the following language in any transmittal or cover letter:

“This document is being forwarded to your organization as required by [insert reference to environmental driver for the release]. This document is being provided for official use only and remains the property of the United States Air Force. Consequently, the forwarding of this document to your organization is not a release under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Due to the sensitivity of the information, this document must be appropriately safeguarded. You may not make the information publicly available, and you must limit disclosure to those who need the information to carry out their duties. Because this document is being provided for limited purposes, it must be returned

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<sup>1</sup> For a discussion of releasing environmental records to the public and non-governmental entities, see OpJAGAF 2015/X, XX December 2015.

to the appropriate Air Force organization or destroyed when it is no longer needed.

Should you receive a request for this document or information contained in this document (whether under the FOIA, a state version of that act, or any other type of request), you must: 1) refer the request to [AF organization contact information], and 2) notify the requestor of the referral.”

A third way to protect Air Force sensitive environmental information is by including protective language in memoranda of agreement (MOAs) or cooperative agreements with regulators and other entities (e.g., local fire departments or other emergency responders) to whom the Air Force might be providing such information. These agreements should contain the following provisions:

“[The non-DoD entity] acknowledges that any environmental documents provided to it are being provided for official use only and remain the property of the United States Air Force. The forwarding of such documents by the United States Air Force is done for the purpose of complying with applicable environmental statutes and regulations and, consequently, is not a release under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Due to the sensitivity of the information in these documents, [the non-DoD entity] agrees to appropriately safeguard these documents. [The non-DoD entity] agrees that it will not make the documents or information publicly available. [The non-DoD entity] agrees to limit disclosure only to those who need the information to carry out their duties. Because these documents are being provided for limited purposes, they must be returned to the appropriate Air Force organization or destroyed when they are no longer needed.

Should [the non-DoD entity] receive a request for any of these documents or information contained in these documents (whether under the FOIA, a state version of that act, or any other type of request), [the non-DoD entity] agrees to: 1) refer the request to [AF organization contact information], and 2) notify the requestor of the referral.”

## **CONCLUSION**

Release of environmental records to environmental regulatory agencies must comply with any applicable environmental laws, regulations, permits, administrative orders, memoranda of agreement, and similar sources of environmental requirements. In the absence of an affirmative requirement to release a specific record, follow FOIA rules for releases to state and local regulators. The FOIA does not apply to federal agencies, so consult AFLOA/JACE for guidance on making voluntary releases to federal regulators.