

FREEDOM OF INFORMATION ACT (FOIA)

Release of non-Privacy Act CDIs/reports of investigation

You have requested guidance concerning the release of an unsubstantiated commander directed investigation report (CDI) that, although not the Privacy Act record of an individual, contains personal identifiable information of individuals. Such a report can take many forms, such as an audit report concerning a particular Air Force process; an investigative report about security measures taken to protect an Installation; the awarding of a contract, or an Inspector General unit compliance inspection report.

These types of non-Privacy Act investigative reports, although not focused on the conduct of a particular individual and not considered the Privacy Act record of an individual, may contain personal information about Air Force employees and others, such as names, duty titles, email addresses, home addresses, phone numbers, salaries, dates of birth, educational information, and even social security numbers.

Unlike a report of investigation focused on the alleged misconduct of a particular individual and considered the Privacy Act record of the subject investigated, the release of unsubstantiated non-Privacy Act report of investigation that is focused on an organization's mission or an Air Force process, does not necessarily 'per se' harm the reputation of a particular individual if released under the FOIA. In other words, the interest a person has in their public reputation is not necessarily adversely affected by releasing non-Privacy Act reports of investigations concerning a "subject matter" issue, as opposed to a report of investigation identified by the name of the subject of the investigation.

Applying the above analysis to the request for the non-Privacy Act report of investigation in question, personal identifying information of witnesses, the complainant, the investigating officer and other individuals named in the report are usually properly redacted under the FOIA privacy exemptions, (b)(6) and (b)(7)(C), assuming it has been determined that the balancing test to apply in determining the applicability of those exemptions has found the personal privacy interest of each of those individuals being identified in the report is not outweighed by the general public's interest.

Also, taking into consideration the President's 'reasonable foreseeable harm' FOIA policy, information could also discretionarily be withheld under FOIA exemption (b)(5), which incorporates all of the civil litigation discovery privileges the Air Force could assert against a person suing the Air Force in civil court. Other FOIA exemptions, such as FOIA exemption (b)(4) concerning protecting the proprietary information of a business or individual contained in the report, may also be applicable to particular types of information discussed in the report of investigation.

But, in general, unlike unsubstantiated Privacy Act record CDIs or reports of investigation pertaining to the alleged misconduct of a targeted individual (i.e., the subject of the report),

unsubstantiated non-Privacy Act unclassified reports of investigations/CDIs are usually releasable, at least in part.

OpJAGAF 2015/17 20 November 2015