

FREEDOM OF INFORMATION ACT

Creating A Record To Satisfy A FOIA Request

You have asked whether the Air Force is required to “create” a record that does not currently exist as requested by a Freedom of Information Act (FOIA) requester, in order to satisfy the FOIA request. Neither the FOIA or DoD policy requires creating a record; however, DoD policy encourages records to be created when doing so is reasonably feasible and will result in a more useful response to a requester. *See* DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*, paragraph C1.5.8.1. Further, the FOIA requires, whenever feasible, that a record that does exist be provided in the form and format requested by the requester. 5 U.S.C § 552.

In our view, a record should be “created” and provided to the requester if the information requested is readily available statistical information; or creating the record is a normal business practice of the Air Force unit, such as compiling information from an electronic database for senior leadership or Congress; or creating or compiling the record is otherwise reasonable and does not adversely impact other Air Force missions.

Applying the above requirements to your situation indicates a record should be created in order to satisfy the request. In your case, the requester has requested a report that states how many types of certain crimes under the Uniform Code of Military Justice were committed at Base X during fiscal years 2015 and 2016. The Air Force does not maintain a discrete document with the requested information, but the information can be readily compiled into a report or other document from an electronic database. Such reports concerning particular crimes occurring at Air Force bases have been compiled for senior leadership and Congress upon request. Under these facts and circumstances, we believe creating the same type of document/record for the FOIA requester is reasonable; it is also a “business as usual” approach; or otherwise will not cause a significant interference with the operation of the system from which the data is being extracted. *See* DoD 5400.7-R_AFMAN 33-302, paragraph C1.5.8.2.