

FREEDOM OF INFORMATION ACT

Release of General Officer 360 Assessment Records

You have asked whether General Officer 360 Assessment records would be releasable if requested under the Freedom of Information Act (FOIA), 5 USC § 552. Although we caution that it is problematic that a federal agency can completely keep from the public records associated with the job performance of senior leaders, in our opinion, balancing the public's right to know such information against the personal privacy interests of general officers' concerning General Officer 360 Assessment program records would normally result in the Air Force withholding these records under FOIA exemption (b)(6), 5 U.S.C. § 552(b)(6).

The General Officer 360 Assessment is a developmental tool conducted annually through the Senior Leader Career Management System. It is intended to provide candid, anonymous feedback to general officers (GOs), but is not currently tied to promotion, assignment, or training opportunities. Further, although these assessments are not required by regulation or direct order, general officers are encouraged to participate in the program.

The assessment process begins with the GO completing a self-assessment. The GO then rates every other GO in his/her chain of command, and must rate at least five additional GOs inside and/or outside his/her organization. All of these assessments are anonymous. Senior Executive civilians, colonels, GS-15s and Command Chiefs are also invited to provide an anonymous assessment on the first GO in their chain of command.

The final assessment report contains a score indicating where the GO's performance ranks among his/her peers. This score is compiled from the GO's self-assessment and anonymous comments, but does not include numeric ranks or names; rather, it merely denotes whether the GO ranks in the "top," "middle," or "bottom" of his peer group. The final assessment similarly does not contain significant information about the GO; the only identifying information is his/her name. Any anonymous comments are also provided in the report.

Federal Agency records must be released pursuant to a FOIA request unless the Agency can withhold the information under one of nine FOIA exemptions (5 U.S.C. § 552(b)(1)-(9)), or a FOIA exception. Documents responsive to FOIA requests are reviewed on a case by case basis for release, depending on the facts and circumstances at the time the request is made. In a variety of circumstances, any government document could be required to be released under FOIA. In general, the public, media and Congress has a higher interest in government records associated with the job performance and conduct of senior officials.

In the case of GO 360 Self-Assessment records, FOIA exemption (b)(6) would be the primary FOIA exemption that would allow the Air Force to withhold the records from release under the FOIA, although it is possible that other FOIA exemptions could apply on a case by case basis.

FOIA exemption (b)(6), 5 U.S.C. § 552(b)(6), requires an Agency to withhold personal information of individuals contained in Air Force records after conducting a balancing test to determine whether the public interest in the information outweighs the privacy interest of the individual. Specifically, the balancing test weighs the privacy interests of individuals named in a document against the general public interest in disclosure. The public interest in disclosure is one that will “shed light on an agency’s performance of its statutory duties.” *Dep’t of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989). All facts and circumstances concerning the reasonable privacy expectation of individuals whose personal information is requested is considered in applying the balancing test, to include the individual’s seniority/rank, Air Force duties, etc.

In the case of GO Self-Assessment records, the Air Force would analyze, in part, what the records show about the GO’s performance of his/her official duties and similar information of a public interest, against the GO’s personal privacy interest in keeping from the public self-assessment records that a GO initiated, for which the Air Force is not otherwise using to make any official governmental decision. Should the Air Force in the future expand the use of these assessments, such as using 360 reviews for performance evaluations or other official actions, the Air Force’s analysis would change. Similarly, if there is a significant event which created a strong public interest in the release of a particular self-assessment, the balancing test would shift toward release of the requested records. In short, the higher the public interest in a particular GO’s conduct or job performance, the more difficult it may be to successfully apply FOIA exemption (b)(6) to justify withholding.

In our view, in a normal situation the required balancing analysis of FOIA exemption (b)(6) would result in withholding of GO Self-Assessment records.

OpJAGAF 2015/8 9 September 2015