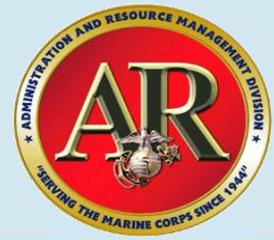


# HEADQUARTERS MARINE CORPS



**MARINES**  
THE FEW. THE PROUD.

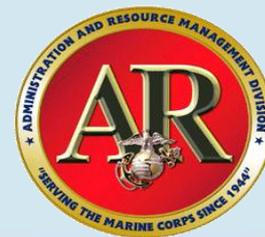


## THE FREEDOM OF INFORMATION ACT PROGRAM

**NEW SUPERVISORS ORIENTATION**  
**HQMC FOIA**



# FREEDOM OF INFORMATION ACT



## ➤ MANDATED BY CONGRESS

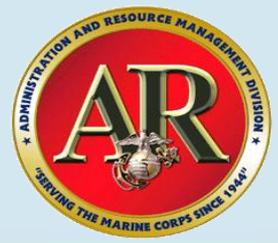
- DOJ ISSUES FOIA GUIDANCE - <http://www.justice.gov/oip/index.html>
- SECNAVINST 5720.42F (<http://foia.navy.mil> (Resource Materials))
- 32 C.F.R. 701, "Department of the Navy Freedom of Information Act"

## ➤ BACKGROUND

FOIA enacted: 1966, Title 5 U.S.C. Section 552, amended several Times; Significant amendment: 1996 (E-FOIA), 2007 (Open Gov), 2009 (President/Vice President)

FOIA is a disclosure statute that pertains to agency records. It provides public access to information in Federal agencies records to ensure informed citizenry.





# FREEDOM OF INFORMATION ACT

## ➤ FOIA REQUESTERS

- Who can seek access to records? Just About Anybody
- Foreign Govt, Businesses

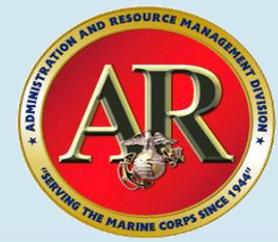


- **Exception** - Foreign Intelligence, Federal Agencies, Fugitives



- **Who is not subject to the FOIA?**
- Federal Government, State Government, Executive Branch Govt – President, etc.

# FREEDOM OF INFORMATION ACT

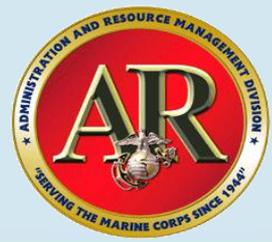


## What Are Agency Records?

- Documents that are either created or obtained by an agency and are under the agency's control at the time the request is made. Ex. paper documents, tapes, photos, electronic records, reports, emails, audios, and recordings. \*\*Agency must provide records in the format requested (if readily available).

## What Are Not Considered Agency Records?

- Non-tangible Items [persons memory or oral communications]
- Tangible Objects [furniture, wall paintings, equipment, etc.]
- Individual's Personal Records [maintained for convenience of employee & are not subject to agency records retention regulations], ex. personal emails, telephone msgs. supervisor's memory joggers, staff's personal notes.

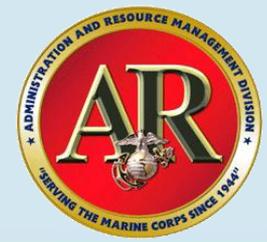


# FREEDOM OF INFORMATION ACT

- **THREE WAYS THE PUBLIC CAN ACCESS AGENCY RECORDS**
- **(a)(1): Info published in Federal Register**
- **(a)(2): Information that must be made available for public inspection and copying;**
- **(a)(3): The agency must make records available upon request by the public.**



# FOIA EXEMPTIONS



- **Exemption (b)(1) – Records classified records Executive Order**
- **Exemption (b)(2) – Records related solely to internal practices of the agency “For Official Use Only (FOUO)”**
- **Exemption (b)(3) – Permits the withholding of information under other U.S. Title Codes**
- **Exemption (b)(4) – Contractual Records, trade secrets and commercial financial information obtained from person considered privilege/confidential information.**
- **Exemption (b)(5) – Inter- or intra- agency records generated for litigation, pre-decisional that would not be available by law to a party other than the agency in litigation.**
- **Exemption (b)(6) - Protects personal information on individuals**

# FOIA EXEMPTIONS



## Exemption (b)(6) Continued

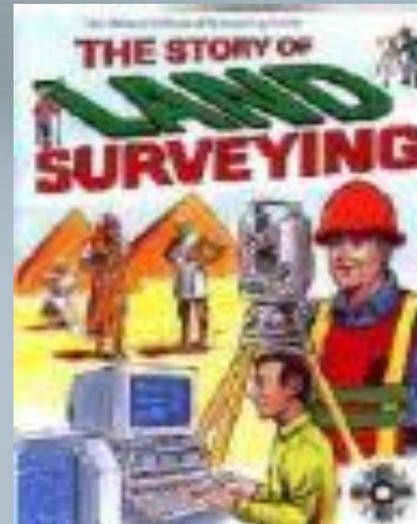
# INFO WE PROTECT

- **Social Security Numbers**
- **Base Addresses (w/o names of occupants)**
- **Date of Birth**
- **Employment Applications/ratings**
- **Drug test results and facts showing participation in rehabilitation programs**
- **Names of employees who hold Gov't issued travel cards including card data**
- **Leave balances (types of leave used)**
- **Religion, race, national origin**
- Home Addresses & phone numbers**
- Names**
- Security Clearance Records**
- Derogatory Information**
- Performance ratings**
- Financial, credit, medical data**
- Mother's maiden name; other names used; family data**

# FOIA EXEMPTIONS

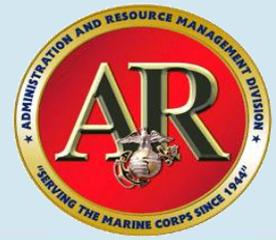


- **Exemption (b)(7)** – Investigative Records that are compiled for law enforcement purposes.
- **Exemption (b)(8)** – Records related to examination, operating or condition reports prepared by financial institutions.
- **Exemption (b)(9)** - Covers geological/geophysical Records  
ex. waterways, wells



**U**

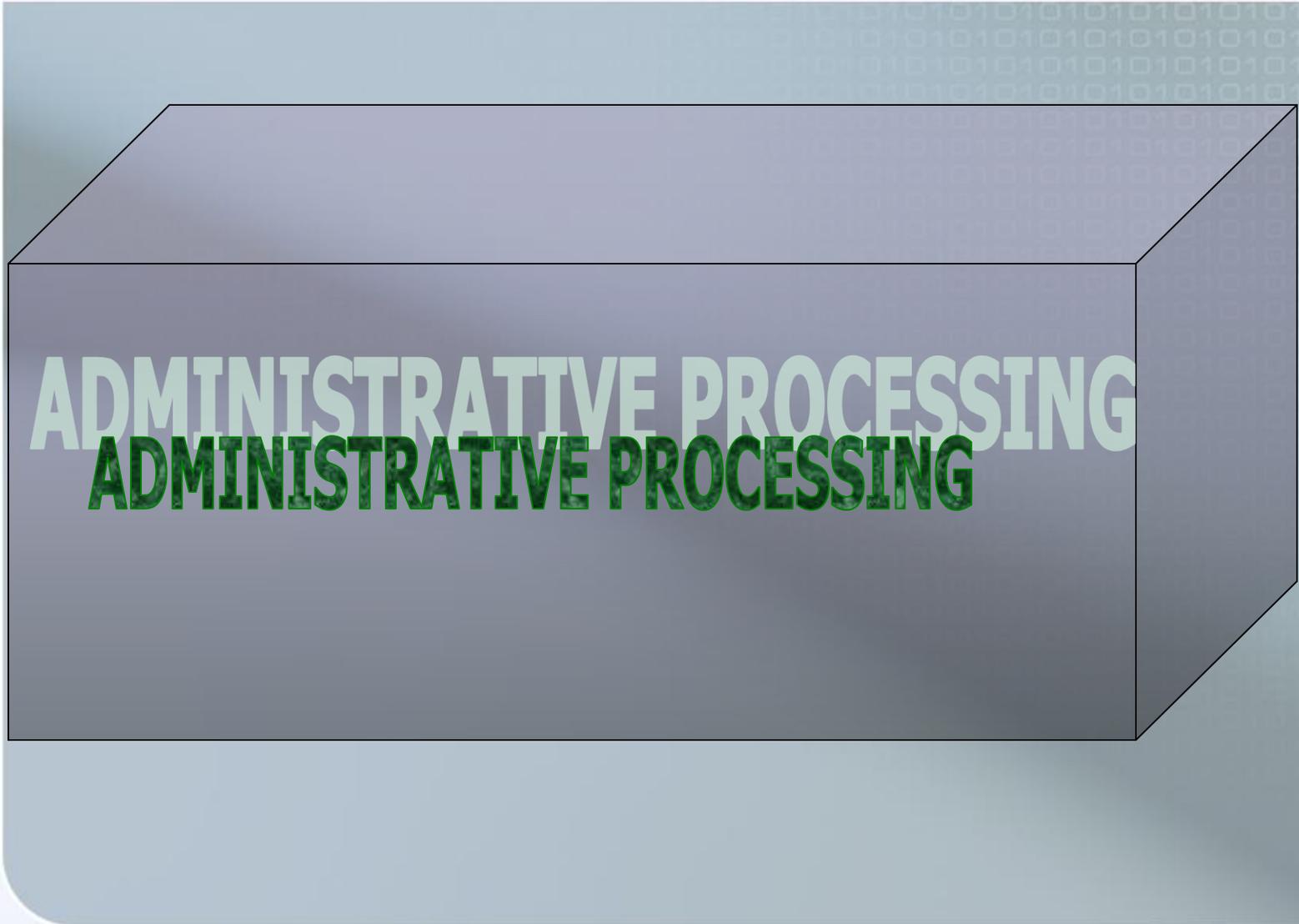
# FREEDOM OF INFORMATION ACT

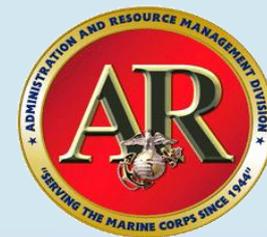


**S**

**M**

**C**



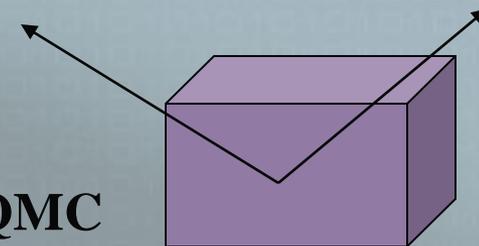


# ADMINISTRATIVE PROCESING

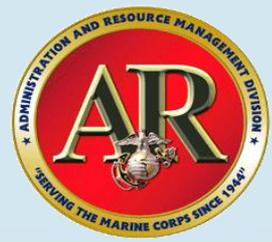
- Upon receipt of a written request, an agency FOIA officer must:
  - **Review** request, **coordinate** search with staff agency, **make** efforts to search all physical & electronic records, **ascertain** adequacy of records search in light of the scope of the request, **issue** release/response to the requester - 20 working days;

## Record Custodian/Tasked Office's Responsibilities

- To respond = w/in 10 days.
- To do “reasonable” search
- Think outside the box searching. POC: HQMC  
Records Management Office: (703) 614-1081
- -Retention standards, check: *Marine Corps Records Management Manual [SECNAVINST M-5210.1]*
- Record time used to search/duplicate responsive material.
- Records too extensive? Contact the FOIA officer



# ADMINISTRATIVE PROCESSING



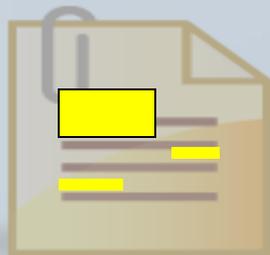
## Reviewing Identified Records – Records Custodian

**Identify** which document is responsive to each request items.

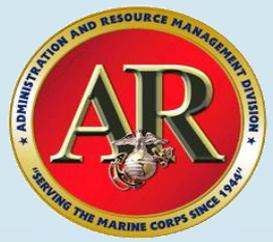
**Review** each page line-by line, use yellow highlight [only] to mark information or draw a big yellow “X” across page. Document the Total # of pages. Preference: E-form [email, CD-Rom]. Cite reason for withholding information.

**Annotate** “no records” for each record item, if none were found.

**Explain** the search – what system of records, man-hours used, identify personnel (professional, clerical, executive)



# FOIA APPEALS



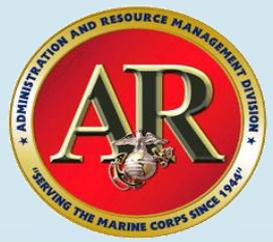
## REQUESTERS CAN APPEAL:

- *Failure to respond within a timely fashion\**
- *Denial/partial denial of information\**
- *Adequacy of search\**
- *No records response\**

## PROVIDE THE APPELLATE AUTHORITY WITH:

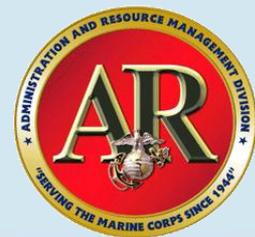
- *copy of request*
- *copy of response/other related correspondence*
- *copy of responsive documents, clean, redacted*
- *justification*

# What is the Standard for an Agency Search?



To prevail in a FOIA action, the agency must show that it made "*a good-faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.*"

See, Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 890 (D.C. Cir. 1995)



# FOIA - OPEN GOV'T ACT OF DEC 2007

**The Open Government Act of 2007 has changed the penalties for inadequate searches:**

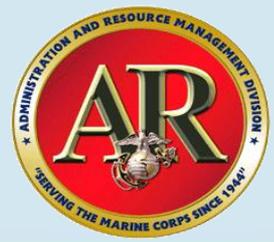
*A plaintiff may be awarded attorney(s) fees and costs due to an inadequate search*

*Attorneys fees and costs will now be paid from annual appropriations of an agency*

*FOIA decisions now carry much greater significance (fn.)*

Fn. **See** (generally), DOI Memorandum on Freedom of Information Act Amendments (Apr. 28, 2008)

# OFFICE RECORDS

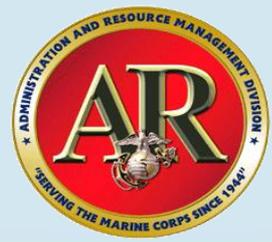


**FAMILIARIZE YOURSELF WITH OFFICE FILES**

**ARE THEY GOVERNED BY RETENTION  
STANDARDS OR RELEASE REGULATIONS?**

**HOW LONG ARE DOCUMENTS MAINTAINED?**





# HQMC FOIA/PA POINTS OF CONTACT

- Ms. Teresa D. Ross, Program Manager, USMC FOIA/PA
- Ms. LaDonne White (LD), Deputy, USMC PA Coordinator
- FOIA Coordinator (Vacant)
- Ms. Mary Malone, FOIA Specialist
- Ms. Barb Gonzales, FOIA Specialist
- Ms. Tracy Clarke, FOIA Admin



FOIA Office:(703) 614-4008

DSN: 224-4008

Fax: (703) 614-6287

FOIA mailbox: [smb.hqmc.foia@usmc.mil](mailto:smb.hqmc.foia@usmc.mil)

CMC, HQMC (ARSF), FOB#2 Navy Annex, Rm. 3134

Washington, DC 20380-1775

# QUESTIONS?

