

BY ORDER OF
THE COMMANDER

HEADQUARTERS, UNITED STATES FORCES, JAPAN
USFJ INSTRUCTION 37-132



17 Jun 2016

Information Management

**U.S. FREEDOM OF INFORMATION ACT (FOIA) PROGRAM/
JAPANESE FREEDOM OF INFORMATION LAW (JFOIL)**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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PURPOSE: This instruction implements *U.S. Pacific Command (USPACOM) Freedom of Information Act (FOIA) Program*; delegates Initial Denial Authority; designates an office as a point of contact for FOIA matters; establishes policies and procedures; and delegates authority and responsibilities in administering the Freedom of Information Act Program within USFJ.

SUMMARY OF REVISIONS

HQ USFJ Instruction 37-132 is revised for administrative reasons. This update reflects: 1) guidance on potential recovery of costs IAW DoD instruction and policy on staffing downgraded classified documents for potential release under FOIA criteria, 2) clarifies denial authority for FOIA cases in HQ USFJ, 3) updates responsibilities throughout for HQ USFJ directorates and components, and 4) updates responsibilities for FOIA requests involving force protection issues and matters of physical security, base defense, and law enforcement.

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1. Scope:

1.1. This instruction is applicable to all USFJ staff and service components.

2. Policy: It is the policy of the Commander, US Forces, Japan (COMUSJAPAN) to ensure information on USFJ operations and activities is made available to the public IAW appropriate

laws & regulations. Records will be withheld from disclosure to the public only when they meet the exemption criteria in DoD Regulation 5400.7-R, *DoD FOIA Program*. Additionally, information provided by, otherwise made available by, or produced in cooperation with a foreign government or international organization may be withheld from disclosure under United States Code, Title 10, Section 130c (10 USC 130c).

3. Responsibilities:

3.1. The COMUSJAPAN is responsible for:

3.1.1. Implementing the DoD and USPACOM Freedom of Information Act directives.

3.1.2. Coordinating FOIA requests/responses with the US Embassy or the Government of Japan (GOJ). This includes providing information copies of FOIA cases to the US Embassy, as appropriate.

3.2. Service Component Commanders are responsible for:

3.2.1. Ensuring the Installation FOIA Managers forward requests concerning HQ USFJ's mission, facilities/plans, or having HQ USFJ - GOJ bilateral interest to USFJ/J12. The requests should be faxed to DSN 225-8271. If fax machines are unavailable, mail the request to FOIA Coordinator, COMUSJAPAN/J12, APO AP 96328-5068.

3.2.2. Ensuring Installation FOIA Managers provide USFJ/J12 information copies of released documents when requested.

3.2.3. Ensuring Service Component FOIA Managers comply with this instruction.

3.2.4. Processing any FOIA cases referred by HQ USFJ, under the purview of their respective service directives.

3.3. The Chief of Staff, HQ USFJ is:

3.3.1. Appointed by the COMUSJAPAN to serve as the Initial Denial Authority (IDA) for the HQ USFJ Staff. Further information on denial/appeal procedures is contained in DoD Regulation 5400.7-R. Appeals made by requesters above the HQ USFJ IDA will be directed to Director, Administrative & Management & Washington Headquarters Services, Directorate for Freedom of Information & Security Review (DFOISR), Room 2C757, 1155 Defense Pentagon, Washington D.C. 20301-1155.

3.3.2. Responsible, within HQ USFJ, for tasking directorates to process FOIA requests in areas where they have purview. Tasks are levied via staff summary sheets or other approved task management options at the discretion of J02.

3.3.3. Responsible for reviewing and signing all HQ USFJ correspondence relating to denials, partial denials, and appeals to ensure they are properly documented and meet the exemption criteria in DoD Regulation 5400.7-R.

3.4. The Director, USFJ/J1, is appointed FOIA Coordinator and Disclosure Authority for HQ USFJ.

3.4.1. The FOIA Coordinator (USFJ/J1) will:

3.4.1.1. Process FOIA requests IAW USCINCPACINST 5720.16C, DoD Regulation 5400.7-R, and this instruction. Ensure headquarters personnel are familiar with the basic provisions of the FOIA.

3.4.1.2 Establish internal handling procedures for coordinating all FOIA requests and appeals in accordance with the applicable directives, to include coordination with ASD Public Affairs Office, USPACOM, Joint Secretary, HQ USFJ Public Affairs (USFJ/J021), and HQ USFJ Staff Judge Advocate (USFJ/J06).

3.4.1.3. Prepare correspondence to the original requester stating acknowledgment of USFJ's initial receipt of a FOIA request.

3.4.1.4. Provide guidance to the commander and staff on the proper handling and processing of FOIA requests/appeals and administer and coordinate the processing of requests for coordination under the Japanese Freedom of Information Law (JFOIL).

3.4.1.5. Provide assistance to USFJ directors and staff action officers with tabulating any costs involved and preparing a bill for a requester if required.

3.4.1.6. Staff an edited unclassified copy of a document as a standard FOIA request through directorates should J24 recommend declassification of a classified document (either partial or whole) reviewed as part of a FOIA request.

3.4.2. The Disclosure Authority (USFJ/J1) will:

3.4.2.1. Ensure the FOIA requester receives a response within the time limits set forth in DoD Regulation 5400.7-R.

3.4.2.2. Review all FOIA requests for scope and type of information requested. Review will also include, but is not limited to, determining which directorates will have information requested, whether the information may be bilateral in nature, etc. Prepare staff correspondence, for J02 approval, to directorates having purview off information.

3.4.2.3. Following appropriate directorate responses, coordinate FOIA packages through the Staff Judge Advocate (USFJ/J06), whether the information requested is approved for disclosure, denied, or partially denied. The Staff Judge Advocate will determine whether or not a decision to deny release of information can be defended in litigation

3.4.2.4. Sign correspondence approving disclosure of requested documents.

3.4.2.5. Forward denial, partial denial, and appeal responses for Chief of Staff signature.

3.4.2.6. Submit reports to appropriate headquarters in accordance with applicable directives.

3.5. The Staff Judge Advocate (USFJ/J06) will:

3.5.1. Review all FOIA requests, responses, denials, partial denials, billing matters, and appeals for legal sufficiency.

3.5.2. Provide legal guidance to the commander and staff on the proper handling and processing of FOIA requests/appeals.

3.5.3. Provide legal guidance on requests for coordination on JFOIL cases.

3.6. HQ USFJ Directorates will:

3.6.1. When tasked by J02, thoroughly research, copy, and process FOIA requests in areas where they have purview.

3.6.2. Review requested classified documents to determine if they can be declassified for release to the public through the Security Manager (USFJ/J24). Should a document being reviewed for security under FOIA be declassified by the required declassification authority (either in whole or in part) directorates will work with J1 in staffing an edited version as a FOIA for possible release under FOIA guidance.

3.6.3. If documents are not available, make a recommendation to J1 to submit a negative reply, or refer the FOIA request to another governmental agency (i.e., service component, embassy, etc.)

3.6.4. Ensure all documents are properly marked, to protect USFJ information. Information that has not been given a security classification but may be withheld from the public in accordance with the FOIA should be marked "For Official Use Only" (FOUO) in accordance with DoD 5400.7-R, Chapter IV. Proper marking of documents, especially those shared with other governments or international organizations, helps protect USFJ documents from improper public release. Mark documents at creation when possible.

3.7. USFJ/J5 will coordinate FOIA requests having bilateral interest through US Embassy to GOJ and provide information copies as appropriate.

4. Fees:

4.1. Although fees will not likely be required for all FOIA requests, HQ USFJ and service components may collect fees as allowed by DoD instruction. Guidance set forth in DoD Instruction 5400.7-R, *DoD Freedom of Information Act Program*, September 1998, will apply. Components will follow their respective service guidance.

4.2. Within HQ USFJ, Directorates involved in researching, processing, and reproducing FOIA information will log their efforts on DD Form 2086, FOIA Processing Cost, and submit completed forms to J1. J1 will tabulate costs and determine if any charges apply. If a requester desires a fee waiver, J1 will make a recommendation based on the requester's claimed status and proposed use of information regarding the public interest. J1 will coordinate the recommendation with J06 for approval by J02. If a requester's status is clear and bill is warranted J1 will prepare a summary of costs and correspondence for J02's release. Billing will only occur after processing of a FOIA request is completed and information is determined releasable. If a requester remits payment, USFJ/J026 or component financial management officer will provide guidance on payment processing and information approved for release will be sent. If a requester appeals a bill, they will be advised to contact DFOISR.

5. Exemption from Release 10 USC 130c:

5.1. United States Code, Title 10, Section 130c (10 USC 130c) allows information to be withheld from release under FOIA if the information was provided by, otherwise made available by, or produced in cooperation with a foreign government or international organization. However, the foreign government or international organization must withhold the information from public release, and one of the following three conditions must be met:

5.1.1. The foreign government or international organization requests in writing that the information be withheld; or,

5.1.2. The information was provided or made available to the U.S. government on the condition that it not be released to the public; or,

5.1.3. National security officials in the Department of Defense have specified in regulations that releasing the information or category of information would have an adverse effect on the ability of the United States Government to obtain the same or similar information in the future.

5.2. If a FOIA request is for information that may be covered under 10 USC 130c, and the foreign government or international organization has made no statement concerning whether they want the information withheld from public release, USFJ/J1 in coordination with USFJ/J5 must contact the government or organization and request its views in writing. The statement must address whether the government or international organization is withholding the information from public release, whether they request that the information be withheld from public release, and whether it was provided to the US with the condition that it not be released to the public. Some GOJ information offices are listed in Attachment 2.

5.3. For specific rules concerning information provided by a foreign government or international organization and more than ten years old see 10 USC 130c or contact USFJ/J06.

5.4. If a FOIA requester asks for documents or information protected from release by 10 U.S.C. 130c, the appropriate USFJ response is to recommend the Chief of Staff, USFJ/J02, deny release and provide the following statement in a written response: "The information/part of the information you requested is exempt from disclosure in accordance with Title 10, Section 130c of the United States Code (U.S.C.) which applies to certain sensitive information of foreign governments and international organizations. It is / These portions are therefore denied pursuant to Title 5, U.S.C., Section 552(b)(3) which applies to information specifically exempted by statute establishing particular criteria for withholding."

5.5. A Japanese, U.S. or third country citizen, FOIA requestor or local government may ask for documents from the Joint Committee or another group, committee or organization in which USFJ or a USFJ component is a member. USFJ may be asked to coordinate on a proposed release of information held by one of these groups. In these cases, refer to the rules, regulations or procedures for that group and coordinate any response with J06 and the office with primary responsibility for the group. For example, under a Joint Committee agreement dated 23 June 1960, Joint Committee minutes and documents will not be released without mutual agreement of the representatives of the GOJ and the United States. Additionally, the "General Guidelines" of the Tripartite Liaison Committee on Okinawa says: "The Committee will make public releases only when approved by all members." Other groups may have similar rules. However, local or prefectural freedom of information ordinances may require local or prefectural governments to release information. Therefore, USFJ representatives may want to insure that sensitive information is not reflected in the group's minutes or in documents shared with local or prefectural governments.

6. Processing Japanese Freedom of Information Law (JFOIL) Coordination Requests.

6.1. Staff members of HQ USFJ and the component services may be asked to consult or coordinate with GOJ personnel, or Points of Contact (POCs), on the releasability of documents. Requests for HQ USFJ or component service assistance on JFOIL issues will be forwarded from the appropriate GOJ office to the proper FOIA manager for HQ USFJ or the service component with primary responsibility for the topic that is the subject of the documents. FOIA managers will process and suspense the requests for assistance.

6.1.1. The FOIA managers for USFJ are:

6.1.1.1. For HQ US Forces, Japan, contact USFJ FOIA coordinator at DSN 225-4318 (Unit 5068 APO AP 96326), commercial number: 011-81-3117-75-4318; Fax number: 225-8271 or commercial 011-81-3117-75-8271)

6.1.1.2. For US Army, Japan, contact USARJ FOIA Coordinator at DSN 263-7034 (Unit 45005, Attn: APAJ-IM-ASD, APO AP 96343-5005, commercial number: 046-251-1520 Ext. 263-7034; Fax number: 263-3643 or commercial 046-251-1520 Ext. 263-3643).

6.1.1.3. For US Air Forces, Japan, contact the 374th Airlift Wing FOIA Manager, at DSN 225-8644 (374 CS/SCSR (FOI), Unit 5081, APO AP 96328-5081, commercial number: 011-81-3117-55-8644; Fax number 225-8294 or commercial 011-81-3117-55-8294).

6.1.1.4. For US Navy Forces, Japan, contact CNFJ FOIA Coordinator at DSN 243-9985 (CNFJ/N00J, PSC 473 Box 12, FPO AP 96349-0012, commercial number: 0468-21-1911 Ext. 243-9985; Fax number 243-7760 or commercial 0486-21-1911 Ext. 243-76760).

6.1.1.5. For US Marine Corps, Japan, contact the FOIA Coordinator, Marines Corps Bases Japan, at DSN 645-7424 (Commanding General, Unit 35001, FPO AP 96373, commercial number: 011-81-6117-45-7424, Fax number 645-3754 or commercial 011-81-6117-45-3754).

6.2. JFOIL requests for coordination will be processed as follows:

6.2.1. If the document requested under the JFOIL is in Japanese, the FOIA manager will request an English translation.

6.2.2. If the document requested under the JFOIL is information provided by, otherwise made available by, or produced in cooperation with the GOJ (see paragraph 4 on 10 USC 130c) the FOIA manager will request the GOJ Point of Contact provide the following specific information in writing:

6.2.2.1. The GOJ should report whether it normally withholds the information from public release.

6.2.2.2. If the US government received a FOIA request for the information, would the GOJ request that the information be withheld, or did the GOJ previously request that the information be withheld from public release

6.2.2.3. Was the information provided or made available by the GOJ to the U.S. government on the condition that it not be released to the public

6.2.3. The FOIA manager will forward the request to the appropriate USFJ or component office for recommendations. The FOIA manager will give the office 10 days to complete the recommendation (including coordination with other appropriate offices) and return it to the FOIA manager. The responding action officers will address the following questions in a written response, using the JFOIL Analysis Table at Attachment 1 as a guide:

6.2.3.1. Would this information or document be released under a US FOIA request? What would be edited? Under what FOIA exemption authority?

6.2.3.2. Does the office recommend that the GOJ release the information? The threshold for recommending that GOJ not release information is that to do so would cause possible harm to US – Japan relations. Factors to consider include:

6.2.3.2.1. Documents relating to the Joint Committee are not released except with the mutual consent of the GOJ and the United States. Requests concerning Joint Committee documents must be coordinated with the Secretary, Joint Committee, HQ USFJ/J03.

6.2.3.2.2. Force protection issues should be considered and J3 will review all requests for coordination that involve force protection. Issues involving physical security, base defense, or law enforcement will be directed to J023, Provost Marshall, for review

6.2.3.2.3. Will the privacy interests of US personnel be affected by the release?

6.2.3.2.4. Any other reasonable or logical factors, such as the public relations effects of the release of the information, or the personal effects on US personnel.

6.2.3.2.5. If an office within USFJ considers that the release of a document will cause possible harm to US - Japan relations, they must explain that in writing in their response to their FOIA manager.

6.2.4. Offices will identify a point of contact on their response to clarify any questions. Action officers are responsible for coordination through the following offices:

6.2.4.1. The Staff Judge Advocate: Mandatory for all requests.

6.2.4.2. The Security Manager: If the request involves mandatory declassifying documents or releasing classified information.

6.2.4.3. Director, Public Affairs for any public affairs or public relations issues.

6.2.5. After appropriate office action officers review the request, make the appropriate recommendation on releasability and coordinate it through the appropriate offices, they will return the request to their FOIA manager for further processing. The FOIA release authority will take final action on any documents if the HQ USFJ or component Service recommends release by GOJ. This action will be a memo or letter to the GOJ. The FOIA initial denial authority will take final action on any documents if the HQ USFJ or component Service recommends GOJ not release the documents. USFJ is the final release authority. This allows USFJ to govern SOFA execution and manage alliance expectations.

6.2.6. The procedures in paragraph 5 are for processing JFOIL requests, which are based on a Japanese national Freedom of Information Law. However, there are also local or prefectural freedom of information ordinances in Japan. When processing requests for coordination of release of information based on local or prefectural ordinances, contact USFJ/J06. USFJ will process any such requests in accordance with paragraph 5. But, because local or prefectural ordinances govern release of information held by the local or prefectural government, USFJ is not subject to those ordinances but may be asked to coordinate on a possible release of information. USFJ may decide on a case-by-case basis to either consent to or voice objection to the release of information.

7. REFERENCES

- 7.1. DoD Directive 5400.7, *DoD Freedom of Information Act Program*.
- 7.2. DoD Instruction 5400.10, *Office of Secretary Defense Implementation of DoD Freedom of Information Act Program*.
- 7.3. DoD Regulation 5400.7-R, *DoD Freedom of Information Act Program*.
- 7.4. DoD Regulation 5200.1-R, *DoD Information Security Program Regulation*.
- 7.5. USCINCPACINST 5720.16C, *U.S. Pacific Command (USPACOM) Freedom of Information Act Program*.
- 7.6. Japanese Freedom of Information Law (effective 1 April 2001).
- 7.7. Joint Committee Agreement, 23 June 1960.



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Attachments:

1. JFOIL Analysis Table
2. GOJ Information Offices

ATTACHMENT 1

This table is an analysis tool to assist with requests for coordination of JFOIL cases.

<u>FOIA Request?</u>	<u>JFOIL Request?</u>	<u>Possible Harm to Relations?</u>	<u>Decision Options (DO)</u>
<u>Yes</u>	<u>Yes</u>	<u>No</u>	DO 1 - FOIA releasable, no basis for objection to GOJ release. DO 2 - FOIA not releasable on basis of _____. No basis for objection to GOJ release.
<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	DO 3 - FOIA releasable. Object that GOJ release will "pose risk of damage to trustful relations with the US," but that the US must release the information requested unless the GOJ formally files a similar objection. DO 4 - FOIA not releasable on basis of _____. Object that GOJ release will "pose risk of damage to trustful relations with the US."
<u>Yes</u>	<u>No</u>	<u>No</u>	DO 5 - FOIA releasable. DO 6 - FOIA not releasable on basis of _____.
<u>Yes</u>	<u>No</u>	<u>Yes</u>	DO 7 - FOIA releasable, consult GOJ. Advise GOJ that we believe release will "pose risk of damage to trustful relations," but that the US must release the information requested unless the GOJ formally files an objection. DO 8 - FOIA not releasable on basis of _____. If the GOJ requested our views, we would object that release will "pose risk of damage to trustful relations with the US."
<u>No</u>	<u>Yes</u>	<u>No</u>	DO 9 - FOIA releasable based on preliminary analysis. No basis for objection to GOJ release. DO 10 - FOIA not releasable based on preliminary analysis. No basis for objection to GOJ release.
<u>No</u>	<u>Yes</u>	<u>Yes</u>	DO 11 - FOIA releasable based on preliminary analysis. Object that release will "pose risk of damage to trustful relations with the US," but advise that the US must release the information if requested under FOIA

			unless the GOJ formally files a similar objection. DO 12 - FOIA not releasable based on preliminary analysis. Object that GOJ release will “pose risk of damage to trustful relations with the US.”
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"Possible Harm to Relations" refers to US – Japanese relations. "Decision Options" provide suggested appropriate responses to the GOJ. These are provided to promote logical and consistent responses.

ATTACHMENT 2

GOJ Information Offices

Government Authority	Address	Telephone
Cabinet Secretariat	1-6-6, Nagata-cho Chiyoda – Ku, Tokyo	03-5253-2111(ext.82885)
Cabinet Legislation Bureau	3-1-1, Kasumigaseki, Chiyoda – Ku, Tokyo	03-3581-7271(ext.2117)
Security Council of Japan	1-6-1, Nagata-cho Chiyoda – Ku, Tokyo	03-5253-2111(ext.82885)
National Personnel Authority	1-1-1, Kasumigaseki, Chiyoda – Ku, Tokyo	03-3581-5311
Cabinet Office	1-6-1, Nagata-cho Chiyoda – Ku, Tokyo	03-5253-2111(ext.82885)
Min. of Public Management, Home Affairs, Posts and Telecommunications	2-1-2, Kasumigaseki, Chiyoda – Ku, Tokyo	03-5253-5111(ext.5198)
Ministry of Justice	1-1-1, Kasumigaseki, Chiyoda – Ku, Tokyo	03-3580-4111
Ministry of Foreign Affairs	2-5-5, Shibadaimon, Minato – Ku, Tokyo	03-6402-2976
Ministry of Finance	3-1-1, Kasumigaseki, Chiyoda – Ku, Tokyo	03-3581-4111(ext.5623)
Ministry of Education, Culture, Sports, Science, Technology	3-2-2, Kasumigaseki, Chiyoda – Ku, Tokyo	03-3581-4211(ext.2570)
Ministry of Health, Labor and Welfare	1-2-2, Kasumigaseki, Chiyoda – Ku, Tokyo	03-5253-1111(ext.7126)
Ministry of Agriculture, Forestry and Fisheries	1-2-1, Kasumigaseki, Chiyoda – Ku, Tokyo	03-3502-8111(ext.2197)
Ministry of Economy, Trade and Industry	1-3-1, Kasumigaseki, Chiyoda – Ku, Tokyo	03-3501-1035(direct)
Ministry of Land, Infrastructure and Transport	2-1-3, Kasumigaseki, Chiyoda – Ku, Tokyo	03-5253-8111(ext.21554)
Ministry of Environment	1-2-2, Kasumigaseki, Chiyoda – Ku, Tokyo	03-3581-3351(ext.6194)
Board of Audit	3-2-1, Kasumigaseki, Chiyoda – Ku, Tokyo	03-3581-3251(ext.2198)