

## MEMORANDUM FOR SEE DISTRIBUTION

**SUBJECT: FOIA Administration Reorganization (Delegation of Initial Denial Authority)**

1. Reference:

- a. Office of the Chief Counsel Memorandum, 27 October 1988, FOIA Administration Reorganization (Delegation of Initial Denial Authority to Division Counsels).
- b. Office of the Chief Counsel Memorandum, 18 November 1991, FOIA Administration Reorganization (Delegation of Initial Denial Authority to Laboratory Counsels).
- c. CECC-K Memorandum, 7 February 1992, Local Denial Authority for Fee Waiver Request.
- d. CECC-K Memorandum, 13 October 1992, Delegation of Authority for No Records Denials.

2. Through this memorandum I am delegating full initial denial authority (IDA), which includes authority for fee waiver and "no records" denials, to all Division Counsels, with authority, where applicable, to redelegate any or all of his/her IDA to a District Counsel. Such redelegation will be to District Counsels without authority to redelegate. Delegations and redelegations may be exercised by an officially "acting" Division or District Counsel. Division Counsels are also authorized to delegate the IDA over FOIA requests for the Divisions' own records to a District Counsel. Division Counsels may also transfer processing of initial FOIA requests to a District.

3. Counsel offices processing initial denial actions will be responsible for the legal adequacy of their determinations. This includes assuring that the denial follows Corps, Army and Justice Department Policy, and complies with the FOIA. Divisions will have quality assurance and command and control responsibilities for denial determinations issued under redelegations to its District Counsels. HQUSACE will assume that role where Division Counsels exercise the IDA. All Counsel offices must notify their higher authority of FOIA requests and denials that may be nationally significant or precedential.

4. Denial letters will instruct that appeals be sent directly to the Counsel Office which denied the request. That Counsel Office will prepare an "appeals package" and forward it directly to HQUSACE. Districts with denial authority also will provide a copy of the appeal documents to the Division, as required by the Division Counsel. HQUSACE will forward the package to the Army General Counsel.

5. This guidance supersedes referenced delegations 1a, 1c, and 1d. FOIA Guidance Deskbook, numbers 1, 2, 21, and 23 should be removed from the Deskbook. A new Index will be issued.

6. This delegation is effective for all FOIA requests received after 1 June 1995. Each Division must provide a written copy of any re-delegation, to this office (ATTN: CECC-T).

FOR THE COMMANDER:

Encl

LESTER EDELMAN  
Chief Counsel

DISTRIBUTION:

CDR, LOWER MISSISSIPPI VALLEY DIVISION, ATTN: CELMV-OC  
CDR, MISSOURI RIVER DIVISION, ATTN: CEMRD-OC  
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CDR, SOUTHWESTERN DIVISION, ATTN: CESWD-OC  
CDR, TRANSATLANTIC DIVISION, ATTN: CETAD-OC

CF (w/ encl):

ALL DISTRICT, OPERATING DIVISION, FOA, AND LABORATORY COUNSELS

DECISION MEMORANDUM WITH RATIONALE AND IMPLEMENTATION  
GUIDANCE FOR DELEGATION OF FREEDOM OF INFORMATION ACT  
INITIAL DENIAL AUTHORITY

DELIVERY OF LEGAL SERVICES TASK FORCE RECOMMENDATION NO. 8

I have reviewed and decided to adopt the Legal Services Task Force Recommendation that the Freedom of Information Act initial denial authority (IDA) be delegated to the action office. This recommendation is consistent with giving more responsibility and discretion to the Division and District Counsels and putting the operational functions at the District level.

RATIONALE

Prior to December 1988, my office was the IDA for all Corps of Engineers Freedom of Information Act (FOIA) requests. I delegated the IDA to the Division Counsels for all requests in the Division by memorandum dated 27 October 1988. CEHEC-OC was considered a Division for the purposes of that delegation and was given IDA over the Laboratories. The Division Counsels were not given the authority to re-delegate the IDA. IDA was transferred from CEHEC-OC to the Laboratory Counsels by memorandum dated 18 November 1991, due in part to a realignment of HEC Counsel functions. On 7 February 1992, I gave the Division Counsels the authority to delegate fee waiver denial authority to the District Counsels, and on 13 October 1992 I gave Division Counsels the authority to delegate "no records" denial authority to the District Counsels. My office retained the IDA for requests at HQUSACE.

IDA was transferred to the Division Counsels in 1988 to quicken the Corps' response in denial actions, improve the quality of the decision making, put decision making closer to the action office and increase the responsibility and authority of the Divisions.

That same rationale also supports allowing the Division Counsels to redelegate denial authority to the District Counsels. Giving Division Counsels full IDA, with the authority to redelegate the IDA to the District Counsels, will give the Division Counsels more discretion over the FOIA programs within their Divisions. Giving District Counsels denial authority will give increased responsibility to the District and will empower the Divisions to put the operational functions in the District where they should be performed and will eliminate multiple reviews. It will improve the denial process by reducing the number of attorneys that have to become involved in the denial action.

Assignment of responsibility and accountability for execution, management, and oversight will assure quality, responsiveness, timeliness, and effectiveness/efficiency of this function.

## IMPLEMENTATION

I am delegating full IDA to Division Counsels, with the authority to redelegate, where applicable, any or all of their IDA to the District Counsels. The delegation will authorize Division Counsels to delegate the IDA over FOIA requests for the Divisions' own records to a District Counsel, and to transfer processing of initial FOIA requests to a District. Laboratory Counsels retain their IDA, pursuant to Reference 1b. Operating Division Counsels and FOA Counsels will have full IDA, as set forth herein.

Each Division Counsel who delegates IDA to a District Counsel must provide a written copy of that delegation, to CECC-T. The redelegation letter will provide that the redelegation is to the District Counsel without authority to redelegate. Delegated or redelegated IDA may be exercised by an officially "acting" Division or District Counsel.

Counsel exercising the IDA will be responsible for ensuring that denials comply with Corps, Army, DoD, and Justice Department policies and regulations, and the FOIA. The Division Counsel will be responsible for oversight and quality assurance of District denials, including ensuring consistency within the Division. Division Counsels should take whatever steps they consider necessary to accomplish this role. Copies of denial letters should not be sent to HQUSACE.

Denial letters should advise requesters to forward appeal letters through the denying office to the Army General Counsel. When an appeal is received, the responsible Counsel will put an "appeals package" together and forward it directly to HQUSACE, with a copy to the Division as required by the Division Counsel. HQUSACE will review the appeals package for completeness and will conduct a cursory legal review before forwarding it to the Army General Counsel. Primary responsibility for the legal adequacy of FOIA actions, release or denial, lies with the action office. Extreme deference will be shown to the denial determinations unless they directly conflict with law or policies.

Higher authority must be notified of any nationally significant, precedential, or controversial FOIA requests before issuing an initial denial determination.

When the CMIS system is revised, it should include an FOIA log in program. The new CMIS system will then be used by all FOIA Officers to track FOIA actions.

My office will retain certain residual FOIA responsibilities. I will maintain my oversight responsibilities over the Corps' FOIA program. CECC will continue to provide guidance and advice to Corps Counsel Offices, and establish policies for processing FOIA requests Corps-wide. CECC will review all appeals for completeness before they are forwarded to Army General Counsel's Office, and will conduct a cursory legal review. CECC will coordinate appeals and all other FOIA issues with the Army General Counsel. CECC will also prepare the Corps' Annual FOIA Report.

LESTER EDELMAN  
Chief Counsel