

## MEMORANDUM FOR DIVISION AND DISTRICT COUNSELS

SUBJECT: Deadlines for FOIA Denial Appeals.

1. It has recently come to my attention that there is some confusion as to the proper amount of time within which a requestor may appeal an initial denial to the Army General Counsel.
2. Department of Defense regulations require that the appeal be filed so that is received by the Army General Counsel within 60 days of the initial denial. Accordingly, the initial denial letter should have the following language in the last paragraph:

...You must send your appeal in sufficient time to reach the Secretary of the Army no later than 60 calendar days from the date of this letter.....

In theory, the time it takes for the appeal to be forwarded to this office and then to the Army General Counsel takes time away from the requestor. As a practical matter, the requestor is not going to know how many days he "actually" has since he does not know how long our system will take to process his request.

3. Because of these ambiguities, this office has never rejected an appeal for untimeliness. We considered it in one case, but Army General Counsel indicated that they were not concerned and would consider the appeal. Moreover, even if we were to reject an appeal on this ground, the requestor could simply file another identical request and appeal that denial since there is no "double jeopardy" prohibition for FOIA denials.
4. In summary, language informing the requestor of the regulatory deadlines for filing appeals should be in any denial letter. However, unless the appeal request is received after a clearly excessive delay or would prejudice our ability to process the appeal, (e.g. 6 months or more), treat the appeal as if it were timely notwithstanding the technical violation of the DOD regulations.
5. This guidance should be added to the CECC-K Freedom of Information Act Guidance Deskbook.

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