



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECC-T

1 June 1995

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Freedom of Information Act Requests for Safety Accident Reports.

1. There has been some confusion regarding the processing of Freedom of Information Act (FOIA) requests for USACE accident investigation reports. The Headquarters Safety and Occupational Health Office (CESO) established procedures in the USACE Suppl 1, to AR 385-40, Change 1, 1 Apr 93, for processing FOIA requests for accident reports. The initial denial authority (IDA) for accident reports is the U.S. Army Safety Center at Fort Rucker, Alabama (CSSC-ZJA).
2. Procedures for responding to FOIA requests for accident reports vary depending upon the type of accident. FOIA requests for accident reports involving *Government personnel and Government property* are processed by the U.S. Army Safety Center. FOIA requests for *Corps contractor employee and contractor property accident reports and Corps recreational accident reports* are processed by the District FOIA office. The procedures to be followed are addressed below.
3. FOIA requests for reports involving *Government personnel and Government property* accidents ("Army" accidents) are governed by paragraph 1-10a, AR385-40. See also paragraph a. of USACE Suppl 1, to AR 385-40, Change 1, 1 Apr 93. AR385-40 categorizes "Army" accidents as Class A, B, C, D, E (aviation incidents) and F (FOD aviation incidents).
 - a. AR385-40 requires all FOIA requests for Class A, B, and C ground accident reports and aviation accident reports to be referred to the U.S. Army Safety Center. Therefore, Corps FOIA Officers should send all FOIA requests for such accident reports, along with a copy of the requested documents, directly to: Commander, U.S. Army Safety Center, ATTN: CSSC-ZJA, Fort Rucker, AL 36362. Class A, B, and C accidents are defined in AR385-40, paragraph 2-2.
 - b. District FOIA offices may respond directly to requests for Class D ground accident reports pursuant to the requirements outlined below. A Class D accident is generally an Army accident resulting in less than \$10,000 total property damage, or an injury or occupational illness with no lost time or 1 or more days of restricted activity, see AR 385-40, paragraph 2-3(d).
 - c. These requirements only apply to reports of "Army" accidents as defined in paragraph 2-2 of the regulation; i.e. accident reports submitted on DA Forms 285, DA Forms 2397R and the tape of Federal Employees' Compensation Act claims from the Labor Department.
4. FOIA requests for *Corps contractor employee and contractor property accident reports and Corps recreational accident reports* are not within the scope of AR 385-40. They should be

processed, along with Class D ground accident reports, pursuant to paragraph b. of the USACE Suppl. 1, to AR 385-40, Change 1, 1 Apr 93. That paragraph requires the FOIA officer to follow the standard initial FOIA processing procedures; to log in the FOIA request and obtain a copy of the accident report (usually Eng Form 3394, or a Board of Investigation Report). The report should then be reviewed for releasability in coordination with the District Safety Officer.

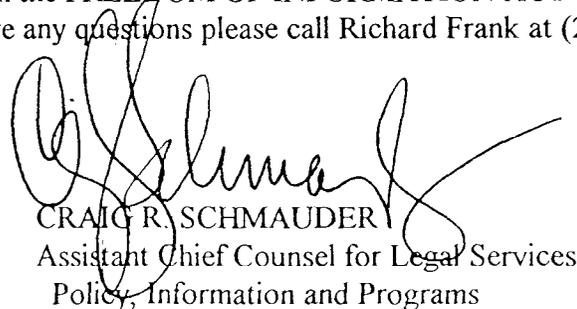
a. As a general rule accident reports should not be released in their entirety. Exemption 5, deliberative process privilege, is usually used to withhold the conclusions and recommendations in the report. Safety reports derive conclusions and make recommendations, to the Commander and Headquarters, regarding potential causes of accidents and courses of action to deter like accidents. They are prepared prior to final determination of the accident cause and prior to adoption of a policy or remedy. Conclusions and recommendations in the Accident Investigation Report should therefore not be released without the approval of CESO.

b. Since the deliberative process privilege does not generally apply to factual information, the factual portion of the report is usually released. If, however, the facts are inextricably intertwined with the conclusions, or the release of factual information would reveal the recommendation or harm the deliberative process (by changing the way facts are gathered or written), they can be withheld. Exemption 6 may also be needed, to withhold personal information.

c. The FOIA Officer will process the request, usually releasing the factual information (subject to the concerns outlined in the previous paragraph). The Counsel Office will prepare a recommended denial action, for withholding the conclusions and recommendations. The recommended denial, along with the FOIA request, correspondence with the requester and complete and redacted versions of the accident report will be forwarded, to the U.S. Army Safety Center for an initial denial determination. A separate copy of the denial package will be sent to CECC-T, except that only the facts and portions redacted should be included. If the FOIA Officer thinks that the conclusions and recommendations should be released, a justification will be send to CECC-T for review. Conclusions and recommendations will not be released without CESO approval.

d. The U.S. Army Safety Center has determined that release of the conclusions and recommendations in accident reports would harm the government's interests, and that they are not susceptible to discretionary release under the White House/Reno memo. The Safety Center has focused on the harm to the integrity of the accident investigation report process as a whole. Accident reports are different than other types of investigation reports, they can only be used for accident prevention purposes, and are carefully protected.

5. This guidance should be included in the FREEDOM OF INFORMATION ACT GUIDANCE Deskbook, issued by CECC-T. If you have any questions please call Richard Frank at (202)761-0027.



CRAIG R. SCHMAUDER
Assistant Chief Counsel for Legal Services
Policy, Information and Programs