

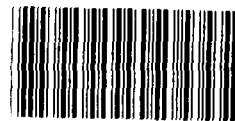
GAO

Report to the Chairman, Committee on  
Government Operations  
House of Representatives

February 1986

# FREEDOM OF INFORMATION

## Release of Service Members' Addresses to a Political Campaign Committee



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**National Security and International  
Affairs Division****B-221956**

February 21, 1986

The Honorable Jack Brooks  
Chairman, Committee on Government Operations  
House of Representatives

Dear Mr. Chairman:

Your November 12, 1985, letter (see app. III) asked us to determine if a Reagan-Bush Campaign Committee request to the Department of Defense (DOD) for the names and official business addresses of military personnel was processed according to DOD policy and regulations. This report summarizes the steps DOD took to process this request and identifies those that were not in accordance with DOD regulations.

The Freedom of Information Act (FOIA), Public Law 89-487, dated July 4, 1966, provides the public access to government records. DOD's FOIA program is managed within the Office of the Assistant Secretary of Defense for Public Affairs; specifically, the Directorate for Freedom of Information and Security Review. While the Directorate provides DOD-wide guidance and oversight, most FOIA requests are processed by the military services and other DOD components. In 1984, over 71,000 FOIA requests were processed DOD-wide.

In October 1984, the Reagan-Bush Campaign Committee made an FOIA request for the names and official business addresses of military personnel with voting residences in 20 states (see app. II). DOD provided the requested information for almost 1.4 million service members to the Committee on October 17, 1984. The Committee paid \$1,442 for this information.

We compared how DOD processed the Campaign Committee's request to applicable DOD instructions, directives, and regulations. We identified instances where DOD deviated from established procedures. Specifically:

- The requested names and business addresses were compiled before the office responsible for controlling FOIA requests within the Office of the Secretary of Defense became involved (see p. 13).
- Coordination with DOD components occurred after the names and business addresses had been compiled (see p. 17). In the case of the services, this coordination occurred after the decision was made to release the requested data to the Committee (see p. 17).

- The military services, the DOD components with the greatest proprietary interest in the material being released, did not process the request (see p. 19).

We also noted that DOD did not consider the impact of providing the requested information on a Navy denial of similar information being litigated at the time (see p. 19).

As agreed with your office, we are providing a detailed summary of how DOD processed the request and why some of the regulations were not followed (see app. I). We did not obtain agency comments on the report; however, we discussed the results of our work with key DOD officials to ensure the accuracy of the facts.

As you requested, we do not plan to distribute this report further until 30 days from its issue date unless you publicly announce its contents earlier. At that time, copies will be sent to the Secretary of Defense; the Director, Office of Management and Budget; and the Director, Office of Personnel Management. In addition, copies will be provided to others upon request.

Sincerely yours,



Frank C. Conahan  
Director



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## Abbreviations

DFOISR	Directorate for Freedom of Information and Security Review
DMDC	Defense Manpower Data Center
DOD	Department of Defense
FOIA	Freedom of Information Act
MP&FM	Military Personnel and Force Management
OASD(MI&L)	Office of the Assistant Secretary of Defense for Manpower, Installations and Logistics
OASD(PA)	Office of the Assistant Secretary of Defense for Public Affairs
OSD	Office of the Secretary of Defense



# How the Department of Defense Processed the Reagan-Bush Campaign Committee's Request

By letter dated October 2, 1984, the Reagan-Bush Campaign Committee requested DOD to provide the names and official business addresses of military personnel with homes of record<sup>1</sup> in 16 selected states. The letter was later amended to include four additional states. In satisfying the request, DOD released almost 1.4 million names and addresses to a major political party's reelection campaign committee.

This was not the first time DOD had released names and addresses of military personnel for voter information and registration purposes. We learned of three other instances from DOD personnel.

- In 1978, DOD released the names and official business addresses of military personnel with homes of record in Puerto Rico to the Puerto Rican Election Commission. The information was compiled by the Defense Manpower Data Center (DMDC) and released on the promise that it would be made available to all political parties in Puerto Rico. We were told this was not an FOIA request.
- In mid 1984, the Air Force and the Navy released the names and business addresses of Air Force and Navy reserve component personnel to a Virginia attorney representing the Libertarian Party. The requests, addressed to the military services under the FOIA, were satisfied by the military services, not by DMDC.
- During the period 1979-83, DOD released information similar to that requested by the Reagan-Bush Campaign Committee to the State of New York. DOD's Federal Voting Assistance Office<sup>2</sup> arranged the release of the information from the military services' finance centers. We were told that these data were not provided under FOIA.

We do not know how many requests for service members' names and addresses DOD has received and satisfied because the FOIA program within DOD is decentralized. Each component maintains its own records and, even at the component level, the information may not be available because the program is further decentralized to lower unit levels. For example, Air Force officials told us FOIA requests are handled by the Air Force's 26 major commands and the bases responsible to these commands. We were told that of the military services, only the Army has centralized files on FOIA requests.

<sup>1</sup>All service members are required to declare a "home of record", which establishes where he or she votes.

<sup>2</sup>The Department of Defense's Federal Voting Assistance Office is responsible for encouraging and enhancing voting by military personnel.



Names and business addresses of military personnel can be obtained through means other than requests under the FOIA. For example, the congressional delegate from Guam received names and official business addresses of military personnel with homes of record in Guam through the Navy's Office of Legislative Affairs. The New York State and Puerto Rican requests, mentioned earlier, are two additional examples.

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## **DOD Guidance for Handling FOIA Requests**

DOD instructions, directives, and regulations guide personnel in making decisions on and responding to FOIA requests. Within the Office of the Assistant Secretary of Defense for Public Affairs (OASD(PA)), the Directorate for Freedom of Information and Security Review (DFOISR) is the principal office for all of DOD for directing and administering the FOIA program. Most FOIA requests are processed by the various DOD components possessing the data requested. However, any Office of the Secretary of Defense (OSD) component receiving an FOIA request must promptly refer the request to DFOISR. In turn, DFOISR is responsible for entering the request into a control system, preparing a case file, forwarding the request to the component having responsibility for answering the request, and monitoring that component's progress in answering the request.

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## **Other Requests for Names and Addresses of Military Personnel Received After October 1984**

We identified seven Members of Congress and 14 others who have, since October 1984, asked OSD for the names and business addresses of military personnel whose homes of record or residences are in their states.

Congressional requests for such information are processed by DFOISR using the same DMDC data base used for the Reagan-Bush Campaign Committee's request. According to DFOISR, it does so because the services could not agree on a standard fee for address lists. However, our review of DFOISR records showed that congressional requesters were not charged fees for the information. The OSD General Counsel's office has determined that if congressional requesters are using the address lists in conjunction with their mailing privileges—which are only to be used if the public's interest is being served—providing the lists benefits the general public and no fee will be charged.

OSD also has received 14 requests from private individuals, insurance companies, news media, realtors, communication firms, marketing firms, and others for military address lists since October 1984. In each case, DFOISR forwarded the request to the appropriate military services for

action and sent a letter to each requester stating where the request had been sent. For example, a typical letter read in part:

"Because of the size and complexity of the Department of Defense (DOD), there is no central repository for all DOD records. The several Components of the DOD, including the Military Departments and Defense Agencies, operate their own Freedom of Information offices to respond to requests for records for which they are responsible. This office is responsible for responding to requests for records in the Components of the Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff.

Based upon the above, combined with the fact that the information you seek is Service-generated data, your request has been transferred to the Military Departments and the U.S. Marine Corps for direct response to you."

In December 1985, both the Republican and Democratic National Committees submitted almost identical requests for the names and business addresses of all active duty military personnel. The Committees stated that they intended to use the data to inform service members about candidates and issues.

We were told DFOISR plans to process the two Committee requests in the same manner as congressional requests because the data will eventually be used in the reelection campaigns of Members of Congress. At the time of our review, DFOISR had not decided whether releasing the information could be considered as benefiting the general public and therefore should be provided without charge. This request, however, is not unlike the Reagan-Bush Campaign Committee's request, for which a \$1,442 fee was charged.

One Committee representative asked to be put on a "distribution list" for all quarterly updates of this type of information. DFOISR advised him the Committee would have to request the data on a quarterly basis.

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## **DOD Concerns on Releasing Names and Business Addresses of Military Personnel**

DOD officials who were involved in processing the Reagan-Bush Campaign Committee's request are now examining the adequacy of DOD policies to control the release of names and business addresses of military personnel. They generally believe lists of military personnel and their addresses should not be routinely released to the public and are concerned nothing in the FOIA or the Privacy Act allows DOD to deny requests for such data.

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Before February 1985 DOD routinely denied commercial sources access to service members' names and business addresses on the basis of its intended use. However, in February 1985, a District Court ruled that a requester's intended use of the information was not relevant in deciding whether or not to release it. Consequently, DOD no longer denies requests for the names and addresses of military personnel from commercial sources, even though the data released might be subsequently sold to others.

DOD is concerned about the potential effect releasing names and business addresses will have on dissidents' ability to harm or harass service personnel. For example, a DOD official told us that if someone disagrees with a particular unit's deployment, knowing addresses of individuals in that unit would allow that person to send hate mail or threaten service members or their families.

A December 1985 Defense Privacy Board<sup>3</sup> draft decision memorandum generally protects "...disclosure of names and duty addresses of members assigned to units that are sensitive, routinely deployable, or stationed in foreign territories." The Privacy Board believes release of such information

"...can constitute a clearly unwarranted invasion of personal privacy because disclosure of such information poses a security threat to those service members when it reveals information about their degree of involvement in military actions in support of national policy, the type of military unit to which they are attached, and their presence at or absence from their households."

The draft memorandum states that exceptions to this policy require approval from the OASD(PA). The Privacy Board Executive Secretary told us that because of the February 1985 District Court ruling, this new policy was needed because the existing Defense Privacy Board policies were no longer sufficient to routinely deny address lists to commercial sources.

The proposed Defense Privacy Board policy leaves it to the services to define which units and service members fall into these categories. While the policy memorandum has not yet been approved in OSD, the Navy issued interim procedures to implement the Defense Privacy Board guidance in December 1985. These procedures restrict the release of information on service members stationed overseas or assigned to routinely

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<sup>3</sup>The Defense Privacy Board is the principal policymaker for DOD in matters concerning the invasion of the privacy of service personnel.

deployable ships, aviation squadrons and operational staffs, and units such as seal teams and security group commands. A Navy FOIA representative said that the interim procedures were necessary because the Navy had no policy on releasing names and addresses of service members.

Other DOD concerns on the release of such information include greater workloads, unrecovered costs, and an increasing volume of unsolicited and unofficial mail at military units. In addition, DOD officials told us they object to requesters selling these lists to others for a profit. While these concerns could apply to other types of FOIA requests, DOD officials specifically mentioned them with regard to the requests for service members' names and addresses.

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## **Objective, Scope, and Methodology**

The objective of our review was to determine if the Reagan-Bush Campaign Committee's request was processed in accordance with DOD regulations, and if not, why not. To accomplish our objective, we interviewed Mr. E.C. Grayson, who signed the Committee's request, the former Assistant Secretary to whom the request letter was addressed, and other DOD personnel involved in processing it, including those in the Office of the Assistant Secretary of Defense for Manpower, Installations and Logistics (OASD(MI&L)); OASD(PA); OSD General Counsel; DMDC; the Federal Voting Assistance Office; the Defense Privacy Board; and the military services' headquarters. We made our review from November 1985 through February 1986.

Since the Campaign Committee's request was made over a year ago and little documentation existed concerning the request, we relied heavily on interviews to determine the actions taken on the request. We could not always reconcile contradictory statements regarding how the request was processed.

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## **How the Request Was Processed**

The following synopsis of events surrounding the Reagan-Bush Campaign Committee's FOIA request is based on our interviews with Mr. Grayson, the former Assistant Secretary of Defense for MI&L and other DOD personnel involved in responding to the request.

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## **Initial Contacts Between the Committee and DOD**

According to Mr. Grayson, during the week of September 25, 1984, he telephoned the Director of DOD's Federal Voting Assistance Office to discuss the status of projects that Mr. Grayson had been involved with when he was the Principal Deputy Assistant Secretary of the Navy for

Manpower and Reserve Affairs. While conferring with the Director, Mr. Grayson learned that in 1978 the names and official business addresses of military personnel had been provided by DMDC to the Puerto Rican Election Commission. It occurred to Mr. Grayson that Republican senatorial campaign staffs might be able to use the names and official duty addresses of military personnel with homes of record in their states for voter-solicitation purposes. However, Mr. Grayson did not mention to the Director that he intended to ask DOD for such data.

According to Mr. Grayson, on about September 28, 1984, he asked the Deputy Assistant Secretary of Defense for Military Personnel and Force Management (MP&FM) and his military assistant for the names and addresses of service personnel. Mr. Grayson, believing the Puerto Rican request was under the FOIA, thought he could obtain the information through the FOIA since a precedent had already been established for its release. Mr. Grayson told us the Deputy for MP&FM was unwilling to provide the information without the approval of his superior, the Assistant Secretary of Defense for MI&L.

Mr. Grayson told us that on or about October 3, 1984, he met with the then Assistant Secretary of Defense for MI&L to obtain his concurrence. At this meeting, Mr. Grayson gave the Assistant Secretary the formal FOIA request letter for the names and business addresses of military personnel. The Assistant Secretary read the request letter and initialed it with a "K" (see app. II), which, according to Mr. Grayson and other DOD personnel, indicates he saw the letter. Mr. Grayson then took the letter to the Office of the Deputy for MP&FM and gave it to the Deputy's military assistant to arrange for DMDC to prepare the response.

Mr. Grayson told us that he expressed the following two concerns during his contacts with MI&L personnel:

- The data be provided by the middle of October 1984; otherwise, it would be too late to be useful to the campaign.
- The data be released according to established DOD policies and procedures because he knew the nature of the request might open it to public scrutiny and he did not want to embarrass the President, the Committee, or DOD. He told us that his concerns over propriety caused him to seek the awareness and concurrence of senior managers in OASD(MI&L).

We asked Mr. Grayson what arrangements were made as a result of these contacts. He stated, as far as he could remember, they were

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- the data would be provided from the consolidated data bank at DMDC;
- the data would be provided by the middle of October, if DMDC could do it;
- the military assistant to the Deputy for MP&FM would facilitate the request; and
- his request would not be put into formal DOD FOIA channels until it was known whether DMDC could provide the data on time.

We contacted the former Assistant Secretary of Defense for MI&L to discuss his recollection of contacts with Mr. Grayson. He stated he met with Mr. Grayson on the Committee's request, but he could not recall the date. In addition, he stated he did not specifically approve or deny Mr. Grayson's request at this meeting because of concerns it might be an improper partisan request. According to the former Assistant Secretary, he told Mr. Grayson to put the request into OASD(PA) FOIA channels. This was done because the Assistant Secretary did not believe he was the appropriate person to act on the request.

The former Assistant Secretary said he does not recall if or when he saw the October 2 request letter from the Campaign Committee. However, he said the initial "K" on the letter does indicate he saw it at some time, but does not mean that he approved MI&L action on the request.

After the meeting with Mr. Grayson, the former Assistant Secretary said he was not informed of anything that occurred on the request until after the addresses were released. He said he first became aware of the release from news articles in the press. His knowledge of the events surrounding DOD's processing the request comes from a March 1985 memorandum from his Deputy for MP&FM, which explained how the request was processed.

According to this memorandum, the request was received in MI&L and forwarded to DMDC to compile the records. The memorandum also stated that MI&L sent the request to DFOISR for approval and to the OSD General Counsel's office for legal review. MI&L never sent the request to DFOISR for approval. Also, the memorandum did not describe the actual sequencing of these actions and implies that the request was handled according to regulations which, as discussed later, was not the case.

We also discussed the initial meetings, as recalled by Mr. Grayson, with the Deputy for MP&FM and his then military assistant, but neither could recall

- any involvement of the former Assistant Secretary of Defense for MI&L, in the request or his specific approval to release the information;
- ever talking with Mr. Grayson about the request, although the Deputy for MP&FM told us that it was possible he had spoken with Mr. Grayson on the matter; and
- any agreement to withhold the request from the normal FOIA channels.

The military assistant was uncertain about how he received the request but believed the first he learned of it was when the letter was placed on his desk. He also stated that he was unaware of what the normal FOIA channels were.

**The Request Was Not Forwarded to DFOISR**

MI&L's handling of the FOIA request was inconsistent with DOD regulations. Any requests for OSD-held information addressed to other than DFOISR are supposed to be forwarded to it. While not specifically addressed in DOD regulations, DFOISR's interpretation of this is that OSD components are not supposed to take any action on FOIA requests prior to DFOISR's involvement. However, DFOISR did not become involved until 7 working days after the request had been received in OSD and until the data had been compiled.

We were unable to determine conclusively why MI&L did not forward the request promptly to DFOISR. According to Mr. Grayson, the delay in sending the request to DFOISR was due to an agreement to first determine whether DMDC (which is under the control of OSD) would be able to provide the data by the middle of October. If the date could be met, Mr. Grayson said the plan was to send the request through channels. In contrast, the former Assistant Secretary said he told Mr. Grayson to put the request into FOIA channels because it was not appropriate for him to handle it. Regardless of any arrangement, the request was not provided to DFOISR by either Mr. Grayson or MI&L officials.

The Deputy for MP&FM and his former military assistant told us they did not recall the arrangement with Mr. Grayson to delay sending the request to DFOISR. The military assistant said he did not know FOIA requests received in OSD were to be sent to DFOISR for handling. We were not able to reconcile Mr. Grayson's recollection with that of MI&L personnel. Other officials in MI&L and DMDC involved in processing the request told us that they knew the request was supposed to be promptly submitted to DFOISR, but they assumed that this had been done and consequently never raised the question.

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According to personnel in OASD(PA) and OASD(MI&L), DOD officials do not always take the FOIA procedures very seriously. Several said the major emphasis in DOD is to satisfy the request first, then worry about the required processes. They said the level of awareness about FOIA procedures was very low in DOD.

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**MI&L and DMDC Begin**  
**Processing the Request**

Prior to arranging for DMDC to prepare the requested data, the military assistant to the Deputy for MP&FM told us he consulted with the MI&L legal advisor to determine whether the law or regulations prohibited release of the data. The legal advisor told us he did not consult with the FOIA legal advisor in the OSD General Counsel's office before advising the military assistant that there was no reason why the information could not be released to the Committee. He believed the public interest was being served by helping to increase voter turnout. However, the Executive Secretary of the Defense Privacy Board expressed the opinion that DOD's effort to increase voter turnout among service members by itself is not a valid reason for releasing lists of military personnel names and addresses.

The MI&L legal advisor also told us he recommended the military assistant send a copy of the request to the OSD General Counsel's office for concurrence, which the military assistant said he did. The OSD legal counsel told us, while she remembers seeing the request letter, she does not recall the circumstances.

After obtaining advice from the MI&L legal advisor, the military assistant arranged to have the information prepared for release by DMDC. The Director, DMDC, told us this was the first he knew of the Committee's request. He told us he initiated action immediately to compile the addresses because MI&L controls the personnel data in DMDC. The Director, DMDC, told us he noticed the request letter was addressed personally to the Assistant Secretary and it had not been put into proper FOIA channels. He then referred it to the Defense Logistics Agency's FOIA contact point because DMDC is part of that Agency. Meanwhile, DMDC, using three separate data files, prepared 20 computer tapes containing the names and official business addresses of military personnel to satisfy the Committee's request.

**MI&L Did Not Adequately**  
**Coordinate the Committee's**  
**Request**

DOD regulations provide that all who have a proprietary interest in data being released have a voice in the decision on whether to release it. Heads of OSD components are required to coordinate requests for data



with other OSD and DOD components that have a significant interest in the requested record before making final decisions on its releasability. However, MI&L compiled the information without coordinating with DFOISR, the military services, or others outside OASD(MI&L). We were told by the MI&L FOIA point of contact he was not notified of the request.

If the Committee's request had been forwarded promptly to DFOISR, it would have been involved in coordinating the request. However, according to DFOISR officials, since MI&L did not forward the request, they should have coordinated the request with others in DOD. The services should have been contacted since they were the source of the data contained in the DMDC tapes. According to a DOD instruction, MI&L should also have coordinated with the OSD General Counsel, which provides advice and assistance on FOIA matters.

DOD regulations also require heads of OSD components to refer cases to DFOISR for review and evaluation when issues raised are of unusual significance, precedent setting, or otherwise require their guidance. We asked MI&L personnel why, given the size and nature of the request, they did not seek advice from DFOISR. The MI&L officials explained they did not think the request was unusually significant. The military assistant to the Deputy for MP&FM told us he viewed the request as merely something else he had to do for his superior. The Deputy for MP&FM told us he did not view the request as unique and did not focus his attention on it because of the large volume of mail that crosses his desk daily.

With regard to precedent, the Committee's request was apparently the first of its kind received in MI&L. According to DOD officials, only three similar requests (discussed on p. 6) had been received in DOD prior to this one.

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## **DFOISR Takes Control of the Request**

On October 12, the Air Force advised DFOISR about the Committee's request. DFOISR officials told us no one there was aware that MI&L and DMDC were processing the request until then.

According to Air Force FOIA and DFOISR officials, DFOISR became aware of the request as a result of questions raised by the Air Force. The Air Force liaison at DMDC called the FOIA coordinator in Air Force headquarters and advised her there were restrictions in the Air Force on mass mailings, voiced concern about releasing nearly 300,000 Air Force names and addresses, and asked who was going to pay the shipping

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costs for the tapes from DMDC in Monterey, California, to Washington, D.C. The Air Force FOIA coordinator then called DFOISR about the request.

At this point, the two accounts of the subsequent events differ. The Air Force FOIA coordinator stated that she called DFOISR and voiced a strong objection to releasing the information. The DFOISR official remembers the conversation being about an FOIA request involving a large number of military addresses and problems with shipping the tapes. In addition, he said the Air Force FOIA coordinator may have mentioned the Air Force objected to the release. However, he stated if a strong objection had been voiced, he would not have released the data until the Air Force's objections were resolved.

DFOISR officials told us that, after they heard from the Air Force FOIA coordinator, they immediately acted to control the request. They first contacted MI&L to determine the nature of the request. They learned the tapes had been prepared and DFOISR advised MI&L not to release the tapes but to send them to DFOISR. In addition, DMDC was advised that DFOISR would assume control of the request and asked that it not be processed by the Defense Logistics Agency's FOIA office.

DFOISR then prepared the necessary paperwork to monitor and control the request, established a suspense date for responding to the request, and forwarded the paperwork to OASD(MI&L) for approval. DFOISR officials also coordinated the request with the OSD General Counsel, the Defense Privacy Board, and the military services.

DOD regulations require that the initial determination to release or deny a request be reported to the requester within 10 working days after a request is received by the official designated to respond. According to DFOISR officials, in this case it would be DFOISR, the point of control for requests for OSD-held data.

If DFOISR had received the request on October 3, in accordance with DOD regulations, the suspense date would have been October 17. As it developed, DFOISR took control of the request on October 12. DFOISR set the suspense date at October 26. We found, however, that although the suspense date was originally set for October 26, it was backdated to October 17. DFOISR personnel said that setting the October 17 suspense date was a judgment on their part. The official who backdated the request said he did so in order to complete the request within 10 working days of when it was received in DOD, not at DFOISR.

DFOISR Establishes October 17, 1984, as the Suspense Date

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Neither the FOIA nor Defense regulations require DOD to fully satisfy a request within 10 working days. What is required is to notify the requester within 10 working days whether requested data will be released. DFOISR officials told us that, regardless of the FOIA and the regulations, Department of Justice guidance says that an FOIA request should be fully satisfied within 10 working days by providing the requested records.

DFOISR officials told us the suspense date change was inconsequential because the tapes were ready for release when the suspense date was set. DFOISR officials stated there were no hidden motives for their action. They also said because the coordination took place just before the suspense date, the services probably believed it was a foregone conclusion that the data would be released.

**DFOISR Coordinates the Request**

DFOISR, soon after it became involved, coordinated the request with OSD General Counsel, the Defense Privacy Board, and the military services. However, the coordination with the services took place after the requested data had been compiled by DMDC and DFOISR had decided it should be released.

According to DFOISR officials, coordination by DFOISR with the OSD General Counsel is not routine because it usually occurs only when a request is denied or appealed. The OSD FOIA legal counsel told us she consulted with legal counsels in the military services who had no problem with releasing the data to the Campaign Committee. She also contacted the White House General Counsel's office to inform them of the request. She told us the White House legal staff was not aware of the request, but saw no reason not to release the information. She then advised DFOISR that grounds to withhold this information did not exist under FOIA's exemptions or under a Defense Privacy Board policy.

Although coordination with the Defense Privacy Board is done only periodically, DFOISR coordinates with it on some requests with privacy implications. The DFOISR official called the Privacy Board because releasing names and addresses of military personnel is addressed in DOD's privacy regulations. The Privacy Board Executive Secretary consulted with various individuals within and outside DOD and advised DFOISR that the information could not be withheld for privacy considerations.

DFOISR also coordinated with FOIA contact points in the Army, Navy, and Air Force. According to DFOISR officials, these calls were advisory and were not made to seek permission to release the information because DFOISR had already decided to release the data. Service FOIA personnel told us that since the coordination occurred so close to the suspense date, they perceived DFOISR was merely informing them of its decision to release the data. The Marine Corps was not consulted, which DFOISR officials explained as an oversight. We were told DFOISR, in retrospect, believed the Navy could speak for the Marines because the Navy is responsible for Marine Corps FOIA policy.

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### **DOD Completes Processing the Request**

On October 17, 1984, 10 working days after the request had been received at OSD, the Deputy for MP&FM provided his authorization for DFOISR to release the information. Since OASD(MI&L) was the component that controlled the information, the approval authority in MI&L had to sign the paperwork. The Deputy for MP&FM said that although he is an approval and denial authority in MI&L FOIA cases, most approvals come after requests have been fully staffed and the information has been determined to be releasable by OSD staff. He stated he always takes the staff's recommendations on whether to approve or deny the requests.

On October 17, DFOISR called Mr. Grayson and told him he could pick up the tapes. Representatives of the Committee were given the tapes on that date after paying the \$1,442 processing fee. We received two explanations on why the Committee was charged a fee. The OSD FOIA legal advisor stated that it was because the requester did not ask for a waiver. The DFOISR FOIA specialist told us it was because the information released was not considered as primarily benefiting the general public. The processing fee was calculated by DMDC in Monterey, California. The cost of computer time was automatically generated and the personnel time was manually computed. We were told that the cost computation forms were included with the tapes that were sent to Washington, D.C.

Mr. Grayson stated the data were used in Senate campaigns. The information was provided without charge to the state campaign committees along with suggested letters to the addressees. Because some of the states did not use the information (i.e., some did not have senators up for reelection and for other reasons), Mr. Grayson estimated about 750,000 addresses were used to mail out literature.

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## The Services Should Have Processed the Request

DOD components are required to "ordinarily refer" an FOIA request for a record they hold, which was originated by another DOD component or contains substantial information obtained from another component, to that component for direct response. DOD components cannot release or deny such records without prior consultation with the other component. The military services were the source of the data compiled by DMDC and it was substantially that of the services. Therefore, the DOD components with the greatest proprietary interest in the data in this case are the military services.

DFOISR officials stated the policy at the time of the request was to have the services respond directly to the requester. Prior to the Committee's request, requests for service members' names and addresses, except for the request from the Puerto Rican Election Commission, were handled by the services. All similar requests addressed to OSD components which have been received since the Campaign Committee's request have gone to DFOISR for referral to the services, except for congressional requests.

DFOISR officials told us that if MI&L had initially referred the request to DFOISR, they may have sent it to the services for processing. DFOISR officials also told us they could have referred the request to the military services after taking control of it. However, they decided to allow MI&L to release the DMDC records because the requested information had already been compiled by DMDC and the services did not object to its release.

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## Impact on Court Case Not Considered

At the time of the Reagan-Bush Campaign Committee's request, a complaint had been filed on DOD's refusal to release, on privacy grounds, names and business addresses of Marine Corps personnel in certain units in Quantico, Virginia, to an agent for the John Hancock Mutual Life Insurance Company. The Committee's request was processed without any apparent consideration by the DOD officials involved of the effect release of the data would have on this case.

An FOIA requester has the right to bring suit in a U.S. District Court to obtain a record that has been denied. The insurance representative filed a complaint against the Navy on June 19, 1984, in the District Court, District of Columbia. The Navy filed a litigation report with the Department of Justice, which went to court for the Navy, on July 20, 1984. On February 5, 1985, the court found the Navy could not refuse to furnish the information on the grounds of an invasion of privacy.

The court noted the Navy's denial on the grounds that the release would result in unwanted solicitation and potential threat to military security was undercut by DOD's routine release of similar information. The court noted that the Navy Times routinely publishes similar personnel information, although not in the same detail, and that DOD provided similar information to the Reagan-Bush Campaign Committee under the FOIA. Also, the court's decision stated that the invasion of privacy must result from the actual furnishing of the documents rather than from the subsequent use of the information furnished.

The court stated DOD's inconsistent approach to releasing names and addresses invalidated its reasons for denials. The judge did, however, recognize that the use the plaintiff wanted to make of the data was not envisioned by the Congress in enacting the FOIA.

Defense regulations state that FOIA managers should be aware of relevant FOIA litigation because it provides insight into the use of the nine exemptions in the law. FOIA "litigation status sheets" are used in DOD to record litigation information and are forwarded to DFOISR.

No one in OSD, the services, or any other DOD component involved in the Committee's request who we interviewed considered the effect releasing the data to the Committee would have on the litigation in process. This was because no one except Navy FOIA personnel were aware that the case had been filed. It was not until March 1985 that the Navy sent a status sheet on this case to DFOISR. According to a DFOISR official, litigation status sheets are not always submitted by components. An Air Force official stated he has first learned of Air Force FOIA court cases through the press because no one told him about them. Also, the headquarters Marine Corps FOIA official told us she was not aware of the court case at the time of the Committee's request, although it was the Marines the Department of Justice was ultimately representing.

Department of Justice and Navy legal personnel advised us that releasing the data to the Committee had a detrimental effect on the case, but it was difficult to determine just how damaging it was. The Navy attorney said simply because another requester is in court seeking the release of similar information is not a basis to deny FOIA requests. We were told by the Navy attorney that since there are a great number of approval authorities within DOD, it is hard to effect coordination among them on release of information which could relate to litigation.

# The Reagan-Bush Campaign Committee Request Letter

## REAGAN-BUSH '84

The President's Authorized Campaign Committee

October 2, 1984

K  
Hon. Lawrence B. Korb  
Assistant Secretary  
Manpower Installations & Logistics  
Department of Defense  
Washington, D.C.

Dear Dr. Korb:

We have recently learned of the availability of lists of members of the Armed Forces with their official business addresses. This is a Freedom of Information request.

We would greatly appreciate lists of such service members whose home of record is within the following states:

Arkansas	Iowa	New York	W. Virginia
California	Massachusetts	South Carolina	
Colorado	Michigan	Tennessee	
Florida	Mississippi	Texas	
Hawaii	North Carolina	LOUISIANA	
Illinois	New Jersey	NEB	
		NEW HAMPSHIRE	

If there is a charge for running such a list, please let me know.

Your assistance is greatly appreciated.

Very respectfully,

  
E.C. Grayson

EG/sma

cc: H. Cameron  
J. Rousselot

440 First Street N.W., Washington, D.C. 20001 (202) 383-1984  
Paid for by Reagan Bush '84 Paul Laxalt, Chairman, Angela M. Buchanan Jackson, Treasurer

# Chairman Brooks' Request Letter to GAO

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NINETY-NINTH CONGRESS

## Congress of the United States House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

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WASHINGTON, DC 20515

November 12, 1985

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Honorable Charles A. Bowsher  
Comptroller General  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear General:

The House Committee on Government Operations has specific legislative jurisdiction over the Freedom of Information Act (FOIA). As committee Chairman, I am requesting a GAO investigation into the circumstances surrounding the Defense Department's fulfillment of an October 1984 FOIA request from the Reagan-Bush Campaign Committee.

On October 2, 1984, the Reagan-Bush Campaign Committee submitted to DOD, under the auspices of the FOIA, a request for the names and official work addresses of about 1.4 million servicepersons with a home of record in 20 specified states. This request was submitted to the former Office of the Secretary of Defense for Manpower, Reserve Affairs and Logistics, which processed it, approved the release of the information, and used its manpower records to satisfy the request. My understanding is that the proper channel for handling such requests is through OSD/Public Affairs and its special assistant for FOIA matters. In addition, the request was satisfied even though the Marine Corps was in Federal court attempting to deny the same information to the John Hancock Insurance Company on the basis of national security and privacy. These two circumstances create concerns about whether DOD acted in accordance with its regulations and policies.

Therefore, I am requesting a GAO report which answers the following questions:

- What are the DOD regulations and policies relative to processing and approving FOIA requests within DOD?
- Was this FOIA request handled in accord with those regulations and policies?



Appendix III  
Chairman Brooks' Request Letter to GAO

Honorable Charles A. Bowsher

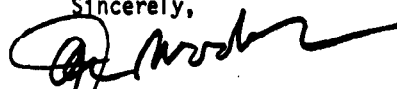
-2-

November 12, 1985

The objective is to determine if the request was processed and approved according to the Department's policies and regulations. If the investigation shows that the request was not properly handled, I would also request that your staff, to the extent possible, determine why the regulations were not followed. It would be appreciated if this review could be completed by February 14, 1986.

Thank you for your attention to this request. I look forward to your response. With every good wish, I am

Sincerely,



JACK BROOKS  
Chairman



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