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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

RRD S 7640.13

**Subject: Processing of Freedom of Information Act
Requests**

Date: 3/2/2020

Sunset Review: 3/2/2025

To: All Regulations and Rulings Division (RRD) Employees

1. Purpose.

This Standard Operating Procedure (SOP) details the duties of the Disclosure Specialist, including how requests for records under the Freedom of Information Act (FOIA) are processed, within the Regulations and Rulings Division (RRD).

2. References.

- a. The FOIA – 5 U.S.C. 552.
- b. Treasury Disclosure of Records Regulations –31 CFR Part 1.
- c. Confidentiality and Disclosure of Tax Returns and Return Information – 26 U.S.C. 6103.
- d. Freedom of Information Act Handbook – Departmental Disclosure Office –T.D. P 25-05.
- e. Department of Justice Freedom of Information Act Guide.

3. Definitions.

- a. Administrative Appeal—A request by a person for an administrative review of the initial denial, in whole or in part, of a request made under the FOIA.
- b. Disclosure Specialist—A specialist within RRD designated to manage the TTB Disclosure Program.

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- c. FOIA Liaison— An employee appointed by a Division Director or other office supervisor within TTB to respond to requests from the Disclosure Specialist to locate documents in response to FOIA requests.
- d. Perfected Request—A FOIA request for records that conforms in every respect to the rules and procedures contained in Treasury’s regulations at 31 CFR Subpart A and therefore is ready for processing.

4. FOIA Background.

The FOIA, 5 U.S.C. 552, provides that any person has a right, enforceable in court, to obtain Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by any of three special law enforcement provisions.

As a general rule, any person can make a request for records under FOIA; a “person” includes an individual, a foreign citizen, a partnership, a corporation, an association, or other private entity, as well as a foreign, State or local government. Exceptions to this rule are Federal agencies and fugitives. In addition, because of the Intelligence Authorization Act of 2003, Federal agencies in the intelligence community are precluded from disclosing records in response to any FOIA request that is made by any foreign government or international governmental organization, either directly or through a representative. The FOIA treats all requesters equally with regard to accessibility to records; however, in certain instances, distinctions are made in order to determine the fee category, fee waiver requests, and requests for expedited processing.

Publicly available records may not be subject to a specific FOIA request. Sections 552(a)(1) and (2) of the FOIA, specify information that is required to be made publicly available, including regulations, rules of procedures, statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register, agency organization and descriptions of available forms. If an agency has not made a record publicly available that the FOIA requires to be made public, a person may request access to, or a copy of, that record; however, once the record has been made publicly available, it cannot be the subject of a specific request for disclosure.

5. Exemptions and Exclusions.

Under the FOIA, there are nine exemptions and three exclusions that authorize the withholding of records from disclosure. In applying these exemptions, the President, in a memorandum for the heads of executive departments and agencies dated March 19, 2009, emphasized a policy that there is a presumption of disclosure—in the face of doubt, openness prevails. More specifically, the

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President stated that an agency should not withhold information simply because it may do so legally, because, as a technical matter, the records fall within the scope of a FOIA exemption; the President stated “I strongly encourage agencies to make discretionary disclosures of information.” Of the nine exemptions, only one—disclosure prohibited by another statute—is non-discretionary.

The nine exemptions, which are found in 5 U.S.C. 552(b), are:

- a. Records classified as secret. Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order [section 552(b)(1)(A)].
- b. The agency’s internal personnel rules. Records related solely to the internal personnel rules and practices of an agency [section 552(b)(2)].
- c. Disclosure prohibited by another statute. Records specifically exempted from disclosure by statute (other than the Privacy Act of 1974, codified at 5 U.S.C. 552b), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld [section 552(b)(3)].
- d. Privileged and confidential information. Trade secrets and commercial or financial information obtained from a person and privileged or confidential information [section 552(b)(4)].
- e. Inter-agency or intra-agency memoranda or letters. Records that would not be available by law to a party other than an agency in litigation with the agency [section 552(b)(5)].
- f. Personal Information about an individual. Personnel and medical files and other similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy [section 552(b)(6)].
- g. Law enforcement records. Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
 - (1) Could reasonably be expected to interfere with enforcement proceedings;
 - (2) Would deprive a person of a right to a fair trial or an impartial adjudication;

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- (3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
 - (4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
 - (5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
 - (6) Could reasonably be expected to endanger the life or physical safety of any individual [section 552(b)(7)].
- h. Records concerning financial institutions. Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions [section 552(b)(8)].
- i. Records concerning wells. Geological and geophysical information and data, including maps, concerning wells [section 552(b)(9)].

Certain records that fall under exemption (b)(7)(A) [records or information compiled for law enforcement purposes where production of such records or information could reasonably be expected to interfere with law enforcement proceedings] may be treated as not subject to the requirements of the FOIA, that is, exempt from disclosure. These types of records, which are more fully described in section 552(c)(1), (2), and (3), include:

- a. Those where the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe the subject of the investigation is unaware of the investigation or proceeding and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings. Only during such time as that circumstance continues may the agency treat the records as not subject to the FOIA.
- b. Informant records maintained by a criminal enforcement agency requested by a third party according to the name or personal identifier of the informant where an informant's status as an informant has not been officially confirmed.

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c. Certain Federal Bureau of Investigation records.

6. Taxpayer Information and Records.

TTB collects and maintains excise tax records under the authority of the Internal Revenue Code of 1986, as amended (IRC). Section 6103 of the IRC (26 U.S.C. 6103) states that tax returns and return information shall be confidential and that, except as specifically authorized by section 6103 or other provisions of the IRC, no officer or employee of the United States shall disclose returns or return information. Section 6103 also imposes severe civil and criminal sanctions for improper disclosure of such information. As a general rule, any record that TTB obtains or maintains pursuant to its authority under the IRC is considered tax return information, and the requirements of section 6103 apply. As noted above, subsection (b)(3) of the FOIA exempts from disclosure records that are specifically prohibited from disclosure by statute. Thus, unless section 6103 contains specific authority that allows or mandates the release of taxpayer information, such release is prohibited by section 6103 of the Internal Revenue Code. As such, this taxpayer information is prohibited from disclosure by statute and falls under the FOIA exemption from disclosure in section 552(b)(3).

7. Reverse FOIA.

A reverse FOIA action is one in which the submitter of information to an agency seeks to prevent the agency from revealing that information about its policies, operations or products to a third party in response to the third party's FOIA request. Typically, the submitter contends that the requested information falls within the privileged and confidential information exemption to disclosure under FOIA. If TTB is uncertain of whether a submitter would consider information to be covered by the privileged and confidential information exemption to disclosure, and is contemplating releasing that information to the requestor, prior to any disclosure of the information the submitter should be notified and given an opportunity to provide TTB with information on how the information is "customarily treated" by the submitter.

8. Initial Processing of Requests for Information.

a. Incoming requests.

The RRD secretary receives FOIA requests via mail or fax and places them in the Disclosure Specialist's mailbox. TTB does not accept a request submitted by e-mail, unless it includes a scanned attachment with a signature. The Disclosure Specialist stamps the request with the "FOIA Received" date stamp that is located on the Disclosure Specialist's desk.

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b. FOIA Database.

The Disclosure Specialist uses the FOIA database to keep track of incoming FOIA requests and to maintain sufficient data for the required reports. When a new FOIA request is received, the Disclosure Specialist:

- (1) Opens the TTB FOIA database using a password.
- (2) Creates a new FOIA record by selecting 'Create New FOIA Assignment.'
- (3) Fills in all of the fields on the first two pages of the database record. The information from the requester's letter is used to fill in the 'General Information.' This includes the name, address, category, and type of the requester and a description of the requested information. The TTB office(s) that may have the records and the employee(s) in the office(s) who will search for responsive records is inserted into the 'Disclosure Information' section on page two of the database record.
- (4) Saves and closes the entry.

c. Misdirected requests.

If TTB receives a misdirected request, that is, one that does not request disclosure of TTB records, the Disclosure Specialist forwards a copy of the request to another appropriate agency that may have responsive records and alerts the requester that the receiving agency will respond directly. This process is often used for requests for records under the control of Bureau of Alcohol, Tobacco, Firearms and Explosives. If the Disclosure Specialist does not know of another agency that might have responsive records, the Disclosure Specialist notifies the requester in writing that the request was sent to or received by TTB in error. The Disclosure Specialist updates the FOIA database to reflect the action taken.

d. Preparing the FOIA File Folder and the Hanging Folder.

When a FOIA request pertains to records in the possession or control of TTB, the Disclosure Specialist creates a FOIA file folder. The Disclosure Specialist writes the newly created record number from the database on a manila folder tab. The inside of the folder contains the following:

- (1) Left side—The Disclosure Specialist staples a copy of the Document Note Sheet (TTB F 9500.3) – (See Attachment A—the form is available on the TTB Intranet), enters the file number and current date on the form, and enters notes on each action taken on the file as it occurs.

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- (2) Right side—The Disclosure Specialist inserts the incoming request with the FOIA number in the upper right corner along with a copy of the Record Search Form, (TTB F 9500.2) – (See Attachment B—the form is available on the TTB Intranet).

The file folders that pertain to active FOIA requests are stored in hanging folders that are labeled with the file number.

9. Reviewing the FOIA Request.

The Disclosure Specialist reads and determines if the request for records is a perfected request and whether any request for expedited processing or fee waiver is included. The Disclosure Specialist also determines if the request is being made under the Privacy Act of 1974. If the request is a Privacy Act request, the Disclosure Specialist will consult with the Director, RRD, concerning the appropriate action to be taken.

a. Perfected Requests.

In order to be ready for processing, that is—considered a “perfected request,” the FOIA request must meet all of the requirements of Treasury FOIA regulations found in 31 CFR 1.5. The request must:

- (1) Be made in writing and signed by the requester;
- (2) State that it is made pursuant to the FOIA or Treasury disclosure regulations;
- (3) Include information that will enable the processing office to determine the fee category of the user;
- (4) Be addressed to TTB or be forwarded to TTB by another Federal agency. In order for a request to be properly processed in TTB, RRD must receive the request;
- (5) Reasonably describe the requested records. The requester may not simply “fish” for information. There is no requirement that TTB create a record to satisfy a request. A proper FOIA request is for records, not to for a response to questions. If the request is overly broad or unclear, the Disclosure Specialist will ask the requestor to narrow the scope of the request or to clarify the request;
- (6) Provide the address where the determination letter and any requested records are to be sent; and

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(7) Include an agreement from the requester to pay fees for the search, duplication, or review, as appropriate.

b. Non-perfected Requests.

If a request does not meet all of the requirements for a perfected request, the Disclosure Specialist notifies the requester of the imperfection and suspends the processing of the request. The requester has 20 days to perfect the request, otherwise the file is closed.

c. Request for Expedited Processing.

A requester may ask for expedited processing. To request such processing, both the envelope and the request itself must be clearly marked, "Expedited Processing Requested." The requestor must demonstrate a "compelling need" for this expeditious treatment and meet all other requirements contained in the Treasury regulations. (See 31 CFR 1.5(e)).

d. Request for Fee Waiver.

The requestor may ask for a waiver of fees. Under 31 CFR 1.7(d), fees may be waived or reduced when it is determined, based on the requestor's submission, that a waiver or reduction of fees is in the public interest, because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requestor. A requester is not eligible for a fee waiver solely because of indigence or inability to pay. In lieu of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria or reduction of fees found in section 1.7(d).

10. Handling Requests for Expedited Processing and Fee Waiver.

- a. Requests for expedited processing and fee waiver must be reviewed and determined first. The Disclosure Specialist reviews any such request and makes a recommendation to the Director, RRD. If it is determined that a request for expedited processing or fee waiver will be granted, the Disclosure Specialist continues to process the request for records.
- b. If it is determined that the request for expedited processing or fee waiver will be denied, the Disclosure Specialist prepares a letter informing the requestor of the decision. The Disclosure Specialist must notify the requestor of a denial of expedited processing or fee waiver, by letter, within 10 business days. In either

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case, the denial letter must include notification to the requester of his or her right to appeal the denial.

11. Obtaining Responsive Documents.

a. Assignment Distribution.

The Disclosure Specialist distributes to the appropriate FOIA Liaison(s), by hand delivery, fax, or e-mail, the assignment to locate records that are responsive to the FOIA request. The assignment includes a copy of the incoming letter, Record Search Form, and, if faxed, a copy of the fax cover sheet. The fax cover sheet is placed in the right side of the FOIA file folder.

b. Acknowledgements and Extensions.

If the Disclosure Specialist determines that the request is complex or for any other reason may take an extended amount of time to gather records and prepare the response, the Disclosure Specialist prepares, signs and mails an acknowledgement letter to the requester. A boilerplate acknowledgement letter is online at P:/Reg_Div/FOIA – Sample Letters. If it appears that more than 20 days is required for locating records and responding to the request, the Disclosure Specialist may extend the 20-day time period in accordance with Treasury regulations at section 1.5(j)(1), and notify the requester of this extension in the acknowledgement letter. (See Time Limit in section 12 of this SOP.)

12. Responding to the Request.

a. Time Limit.

The decision to release, redact in part, or withhold a requested record and issue a response to the requester must be made within 20 working days after the receipt of the request. The Disclosure Specialist makes an initial assessment of the time it will take to respond to the request. If the Disclosure Specialist believes that compliance with the 20-day time limit is problematic, he or she takes appropriate action to: extend the time limit under section 1.5(j)(1) of the Treasury regulations; ask the requestor to agree to limit the scope of the request; or ask the requestor to agree to a voluntary extension of the 20-day period pursuant to section 1.5(i)(4) of the Treasury regulations.

b. Review of Records and Applying Exemptions and Exclusions.

If the FOIA Liaisons locate records, they will provide copies of such records to the Disclosure Specialist in their entirety and without alteration. The Disclosure

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Specialist makes copies of the records for use as a working copy and places the original copies in the file folder. The Disclosure Specialist then reviews the working copy to identify information that is covered by the request and information that is not covered by the request as follows:

- (1) Nonresponsive Records—Where a record provided by the FOIA Liaison is not within the scope of the request, the Disclosure Specialist temporarily sets aside that record from the rest of the working copy records and marks the record as a non-responsive record.
- (2) Partially Exempt Records—Where only a portion of a responsive record is exempt from disclosure, the Disclosure Specialist considers whether that portion of the record must be blocked out (redacted). Each redaction must be done with a black marker or other method that obscures the visibility of the information. The applicable exemption, for example “(b)(1),” must be cited in the margin of the record where the redaction appears.
- (3) Records Entirely Withheld—Where entire pages or groups of pages are withheld under one or more exemptions, the Disclosure Specialist removes those pages from the working copy and replaces them with an Information Withholding Cover Sheet (TTB F 9500.4) — (See Attachment C—the form is available on the TTB Intranet), listing the number of withheld pages, exemption(s) cited, and consecutive page numbers.
- (4) Records That May Be Subject to Reverse FOIA—Where the Disclosure Specialist is uncertain whether information may be subject to the privileged or confidential exemption from disclosure, the Disclosure Specialist shall consult with the Director, RRD, to determine if it is necessary to contact the submitter of the information.

c. Preparing a Response to the Requestor.

- (1) In preparing records for release, the Disclosure Specialist makes a copy of each redacted working copy record to ensure that protected information is fully obscured. The copy of the working copy will be the record released to the requestor. The Disclosure Specialist places the original working copy (with all of the non-responsive, redacted, and entirely withheld records) in the FOIA file (or in the Hanging folder, if the working copy contains a voluminous amount of documents) to serve as documentation of the records obtained in the search and how those records were reviewed and designated for disclosure in response to the request.

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- (2) The Disclosure Specialist drafts a letter to respond to the request for records. Samples of responsive language are available in the sample letters folder on the Disclosure Specialist's G:/ drive.
- (3) If there are responsive records that are redacted or withheld in their entirety so as to constitute a denial of the request in whole or in part, the Disclosure Specialist includes a statement in the draft letter of the exemptions applied and an explanation of each exemption, as well as a statement informing the requestor of his or her right to appeal the denial. The Disclosure Specialist also prepares a Document Cover Sheet (TTB F 9500.1) – (See Attachment D—the form is available on the TTB Intranet) to accompany the letter.
- (4) If there are no responsive records, the Disclosure Specialist prepares a response letter stating that no records responsive to the request were found and informing the requester of his or her right to appeal and enclosing the Document Cover Sheet and an invoice, if applicable.
- (5) If all requested records are released without redaction, the Disclosure Specialist prepares a letter indicating that the records are being released and encloses an invoice for any applicable fees. A fully responsive release of records without redaction does not require a Document Cover Sheet and no statement of appeal rights is included.

d. Preparing the Package for Signature.

The Disclosure Specialist prepares a yellow correspondence folder. The folder is assembled in accordance with RRD S 7640.4 - Preparation of Outgoing Correspondence.

e. Updating Database.

At the appropriate time, the Disclosure Specialist continually updates the FOIA Database with required information. This information includes:

- (1) Search and review information;
- (2) Number of pages released;
- (3) Exemptions applied;
- (4) Disclosure/exemption codes in the database such as full grants, partial disclosures, denials, etc., which may be needed in preparing the annual report;

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- (5) Date of response;
- (6) Number of days open;
- (7) Any comments; and
- (8) Appeal information.

When an invoice for fees is required, the Disclosure Specialist creates and prints an automated invoice from the FOIA database software.

f. Submitting the Package for Signature.

The Disclosure Specialist provides the yellow signature folder to the Assistant Director, Deputy Director, or Director, RRD, for review and signature. When the yellow folder with the signed letter is returned to the Disclosure Specialist, he or she date stamps the copies and handles the correspondence in accordance with RRD S 7640.4 - Preparation of Outgoing Correspondence.

13. Appeals.

The Disclosure Specialist receives and controls the processing of an administrative appeal filed in response to a denial, in whole or in part, of the initial FOIA request. The Assistant Administrator, Headquarters Operation (AAHQ) is the TTB officer designated to decide appeals. The Office of Chief Counsel (OCC) drafts the appeal response for the AAHQ. The appeal must set forth the basis for the disagreement with the initial denial and must be received within 35 days of the date of the initial denial.

- a. The requester may appeal an initial denial when:
- (1) Access to records is denied in whole or in part;
 - (2) The requester is informed that no responsive records exist;
 - (3) There is an adverse determination of the requester's fee category;
 - (4) There is denial of the request for fee waiver or reduction; or
 - (5) Expedited processing is denied.

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- b. The Disclosure Specialist makes the file available to OCC and the AAHQ for the appeal process. The file contains, as appropriate to the decision being appealed:
- (1) The initial FOIA request;
 - (2) Any correspondence between TTB and the requester acknowledging the request and negotiating the scope, fees, or time required to respond to the request;
 - (3) Any document discussing the status of the request;
 - (4) Any index that may have been prepared at the discretion of the Disclosure Specialist;
 - (5) Any other notes or memoranda generated because of the FOIA request;
 - (6) The initial decision and any interim responses;
 - (7) Copies of any records or information released; and
 - (8) Copies of any records or information withheld.

Once the AAHQ signs the appeal decision, the Disclosure Specialist is responsible for mailing the appeal decision to the appellant and recording all appeal information in the FOIA database.

14. FOIA Reports.

The Disclosure Specialist is responsible for preparing several reports concerning requests for information under the FOIA. The Disclosure Specialist uses data collected in the FOIA Database to assist in completing these reports. These reports include:

- a. Weekly FOIA Council Report—This report is submitted weekly to the Disclosure Office, Department of the Treasury, Departmental Offices (DO). The report consists of weekly activities, including requests received, pending, and closed, the date received and closed, as well as overdue appeals.
- b. FOIA Monthly Report—This report is submitted monthly to DO and consists of the following data:
 - (1) Monthly production;
 - (2) Monthly backlog;

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- (3) Appeals pending;
 - (4) Appeals overdue;
 - (5) Litigation report;
 - (6) Year-to-date pending; and
 - (7) Year-to-date overdue.
- c. Annual Disclosure Report—This report is submitted at the end of each fiscal year to DO. DO collects submissions from all Treasury Bureaus and prepares a comprehensive report and submits it to the Department of Justice. DO determines the data collected in this report.

Amy Greenberg
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