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Description of document: Animal and Plant Health Inspection Service (APHIS)
Freedom of Information Act (FOIA) Standard Operating
Procedures (SOP) 1982-2022 (some records undated)

Requested date: 22-May-2022

Release date: 26-August-2022

Posted date: 26-September-2022

Source of document: Freedom of Information Act Request
Animal and Plant Health Inspection Service
Director, Freedom of Information and Privacy Act Staff
4700 River Road, Unit 50
Riverdale, MD 20737
Fax: 301-734-5941
[USDA FOIA Public Access Website \(PAL\)](#)

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Animal and Plant
Health Inspection
Service

Marketing and
Regulatory
Programs

Legislative and
Public Affairs

Freedom of
Information

4700 River Road
Unit 50
Riverdale, MD
20737-1232

August 26, 2022

Re: Your FOIA Request 2022-APHIS-03761-F

This reply is the final response to the Freedom of Information Act (FOIA) request you submitted to the APHIS FOIA Office on May 22, 2022. You requested the following information:

"A copy of each FOIA Standard Operating Procedure (SOP) at APHIS. Please apply the foreseeable harm test, and discretionary release of what may be b(5) records, and the presumption of openness."

Your request was processed by the APHIS Legislative and Public Affairs (LPA) program offices, which conducted a custodial search for responsive records. A total of 68 pages of records responsive to your request, which we are releasing in their entirety to you today.

You may contact Joseph Tangredi, the analyst who processed your request, at (301) 851-4061 as well as Ms. Abbey Fretz, our FOIA Public Liaison, at (301) 851-4100 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with this response, you may submit an administrative appeal. **APHIS would prefer that you submit an administrative appeal by email to: FOIA.MRP.Appeals@usda.gov.** In the alternative, if you can't email your appeal, you may submit your appeal in writing to: Administrator, Animal and Plant Health Inspection Service, Ag Box 3401, Washington, DC 20250-3401. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this response. Please reference case number 2022-APHIS-03761-F and add the phrase "FOIA APPEAL" in the subject line of your email or to the front of the envelope. To assist the Administrator in reviewing your appeal, please provide specific reasons why you believe modification of this determination is warranted

If you have any questions pertaining to this response, please contact Joseph Tangredi at (301) 851-4061.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Woods", enclosed within a thin black rectangular border.

For:

Tonya G. Woods

Director

Freedom of Information & Privacy Act

Legislative and Public Affairs

Enclosure

FOIA ADMINISTRATIVE CHECKLIST

TASK	COMPLETED
Initiate Case Log	
Organize/setup Administrative file	
Download/Scan request in PDF file format to electronic case file	
Copy of all Search Requests in Administrative file	
Place copy of Ack letter in Administrative file	
Copy of Response letter placed in Administrative file	
Copy of Response letter placed in Outgoing Letter file	
Copy of Response letter placed in Weekly Report file	
Partial Responses logged into database	
Partial Responses scanned and saved as *(Response_X).pdf	
Calculate # of days open and shred date	
Log out in database	
Scan administrative documents and save as *(Administrative).pdf	
Scan Response and save as *(Response).pdf (Final response as *(Response_X).pdf	
Label folder with closing disposition, closing date, shred date and file retention information	
Log out in media case database (if applicable)	
Copy of Response Letter in Microsoft Word format saved to F:\XX (FY case received in)	
E-records saved to CD and placed in file	
E-records saved to F:\E-Cases\Closed in FY XX (FY case closed in)	
If AC case, E-records saved to F:\E-Cases\Closed in FY XX\Trish	
Report case closed in weekly report	
Log out in appropriate log book	



United States
Department of
Agriculture

Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

Legislative and
Public Affairs

Freedom of
Information

4700 River Road
Unit 50
Riverdale, MD
20737-1232

DATE: March 19, 2013

TO: APHIS Freedom of Information Act Staff
APHIS Freedom of Information Act Program Liaisons

FROM: Tonya G. Woods
Director
Freedom of Information & Privacy Acts
Legislative and Public Affairs

SUBJECT: Guidance on Freedom of Information Act Time Extensions

Based on guidance provided by the Office of the General Counsel, this memorandum issues guidance concerning time extensions, including how and when to request an extension under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and USDA's FOIA regulations (7 C.F.R. 1.16).

Time Limits

In order to comply with FOIA, agencies generally must respond to properly submitted FOIA requests within 20 working days of receipt (excluding weekends and legal holidays). However, there are some exceptions to this general rule that will be explained in this guidance. If agencies fail to meet these deadlines, FOIA requesters may immediately file a lawsuit to get access to the requested information. Litigation is costly and time-consuming for the agency, in particular because the agency is likely to pay attorney's fees from appropriated funds. For these reasons, it is important that APHIS's FOIA staff make every effort to comply with the deadlines.

The general 20 working day time clock begins as soon as a proper FOIA request is received by the agency. A proper FOIA request is in writing and described in enough detail to enable APHIS personnel to locate the records with a reasonable amount of effort.

APHIS may seek to extend the 20-working-day response time required by FOIA under certain circumstances described below.

Voluntary Time Extension

According to USDA regulations, APHIS may request a voluntary extension (see 7 CFR 1.16(d)). Specifically, the section details that APHIS and a requester may agree upon an



Safeguarding American Agriculture
APHIS is an agency of USDA's Marketing and Regulatory Programs
An Equal Opportunity Provider and Employer

specify clearly the total time agreed upon. In the event that you anticipate that APHIS may not meet the 20-working day deadline, the best practice is to first contact the requester to see if he or she will agree to a voluntary time extension. Because it is voluntary, the requester may decline to agree. This does not change the agency's obligation under the FOIA and the agency should continue to process the request during this time period in an effort to meet the statutory deadlines. If a voluntary extension cannot be obtained from the requester, the agency should consider whether unusual circumstances exist, as described below, that would warrant an extension and notice to the requester. However, staff should be cautioned not to focus too much time and energy on efforts to secure an extension, when the real focus should be on responding to the request.

Please follow the below steps¹ when requesting a voluntary time extension:

1. Voluntary extensions should be requested as soon as APHIS determines that it may not meet the statutory timeframe. Do not wait until the deadline!
After receiving a request, the FOIA staff should contact the program staff promptly to discuss the request, including whether an extension may be necessary. Moreover, the program office should promptly notify the APHIS FOIA Office if an extension is needed. Let the FOIA staff know why an extension is necessary, estimate how much time is needed, where the records are, and how many records there are. This information will be helpful to the FOIA staff in communicating with the requester.
Extensions can be necessary for various administrative reasons (this is not an exhaustive list):
 - a. There are a large volume of documents to search for and/or review that cannot be completed within 20 working days
 - b. The records been archived and need to be retrieved from separate locations
 - c. The records contain confidential business information
 - d. Necessary APHIS employees are on leave and the records cannot be compiled in their absence.
2. The FOIA staff will contact the FOIA requester and propose a reasonable schedule for production of the records, including an anticipated end date. The proposed schedule should include routine partial releases such as weekly or bi-weekly. To that end, the program staff should provide records to the FOIA staff as the records are gathered so that the FOIA staff can make partial releases, rather

¹ This is intended as general guidance only because the specific facts of a situation may make a different course of action more appropriate.

than waiting until the compilation is complete, if the response deadlines will be an issue.

3. Any agreed upon extension will be in writing and will include the agreed upon timeframe and an agreed upon production schedule. A sample letter of a voluntary time extension is included as Attachment 1. In each instance of a written extension, APHIS will identify the APHIS and Departmental FOIA public liaison so that the requester can discuss any issues about the request, scope, or time extension, etc.
4. During the processing of a request APHIS will communicate with the requester and advise them of the status of their request. Make reasonable efforts to return all phone calls/emails received by APHIS FOIA Office within 24 hours.

Extension as a Result of Unusual Circumstances

In the event that the FOIA requester is not amenable to a voluntary extension of time, **under limited circumstances**, APHIS still may extend the time beyond the 20-working-day deadline. FOIA permits agencies to extend the time period for response by **10 working days if and only if necessary because of** "unusual circumstances" as defined by FOIA. See below for details.

Unlike a voluntary extension of time, APHIS does not need to obtain the permission of the FOIA requester to make an "unusual circumstances" extension; instead, APHIS must only provide the requester with written notification within 20 working days of receipt of the request detailing the "unusual circumstances" and provide the date (10 working days beyond the 20 working day deadline) when APHIS will complete the processing of the request (see Attachment 2).

FOIA defines "unusual circumstances" as one of three situations:

1. **The need to search for and collect the requested records from field facilities or other establishments.**

NOTE: This situation applies only when: there are multiple APHIS program offices that need to search for records (for example, a program will perform searches in 10 different state offices); the records are archived in a federal records center or other document storage facility and will take a certain time period to retrieve; and/or contractors are maintaining APHIS records and the documents will be retrieved from contractor files. One or two offices searching for records **DOES NOT** constitute an unusual circumstance under this provision.

2. The need to search for, collect, and appropriately examine a voluminous amount of records.

NOTE: Coordinate with the APHIS program offices to determine the volume of documents. Although there is no set number, we generally advise that voluminous means thousands of pages of responsive records.

APHIS should make reasonable efforts to make routine partial releases of records after consulting with the requester about any priority records.

3. The need for consultation with another agency or with more than two components within USDA that has a substantial interest in the determination of the request.

NOTE: In order for consultation to be warranted, the records should contain information of interest to another federal agency or component of USDA. For example, records that are co-written by APHIS and another USDA component or federal agency or records that contain information that would impact APHIS and another agency. The APHIS FOIA Office should establish a timeframe with the other Federal agency and USDA component with their FOIA review will be complete.

The FOIA only permits APHIS to take a single 10-day extension if unusual circumstances are present, with one exception. In accordance with the USDA FOIA regulations, once that initial 10-day extension has been taken, if APHIS anticipates that the 10-working-day extension will still not be enough time to respond to the request in view of the unusual circumstances, APHIS should contact the requester again to give the requester an opportunity to either modify the request so that it can be processed within the applicable time limit or arrange for an alternate time frame for processing the request (see Attachment 3). Requests are modified, for example, by changing the scope of the request, narrowing dates of responsive records, providing agreed-upon partial releases, and/or providing only releasable records. If the requester refuses to narrow the scope of the request and then files suit against the agency, the Court may take that refusal into account when considering whether "exceptional circumstances" exist in order to permit the agency to continue processing records diligently while the Court retains jurisdiction over the case. Keep in mind that this litigation consideration is really the only practical import of these extension letters in that a court may view the agency's efforts favorably if and when a FOIA request ends in litigation. However, none of these letters prevent a requester from moving to litigation as soon as the 20 working days has passed, and the letters will not absolve the agency from liability for record production or attorney fees.

Practice Tips:

- The FOIA permits APHIS to take a single 10-day extension if unusual circumstances are present and this extension requires notice to the requester within the first 20 working days of the request, excluding weekends and holidays.
 - a. APHIS must first take and provide notice of a 10-day extension. This will allow the agency 30 working days, rather than 20 working days, to complete a response to the request. APHIS should contact the requester in writing, confirm all of the unusual circumstances that apply to their request and explain to the requester that 10 additional days are needed. In each instance of a written extension, APHIS will identify the APHIS and Departmental FOIA public liaison so that the requester can discuss any issues about the request, scope, or time extension, etc.
 - b. In some instances, once the additional 10 day period has been extended, APHIS may find that the 10 additional working days is not sufficient to fully process a FOIA request in view of the unusual circumstances. APHIS should work with a requester to voluntarily establish an alternative timeframe before an additional extension is taken. Keep in mind that this additional extension must still relate to the unusual circumstances and deadlines should not be further extended because the FOIA staff has not completed its work on the request because of backlogs, absences, etc.
 - i. APHIS should again contact the requester about any additional time needed to process the request.
 - ii. APHIS should again write to the requester to give the requester an opportunity to either modify the request so that it can be processed within the applicable time limit or arrange for an alternate time frame for processing the request. In each instance of a written extension, APHIS will identify the APHIS and Departmental FOIA public liaison so that the requester can discuss any issues about the request, scope, or time extension, etc.
 - iii. APHIS should set up a production schedule and provide partial releases.
 - c. An unusual circumstances extension for an additional 10 working days or some other timeframe needs to be confirmed in writing and should outline what unusual circumstance applies. For example, APHIS will provide the requester with how many offices need to be searched, how many pages need to be searched for and reviewed, and/or how many pages need to be

referred to another agency to review, etc. In each instance of a written extension, APHIS will identify the APHIS and Departmental FOIA public liaison so that the requester can discuss any issues about the request, scope, or time extension, etc.

Time deadlines under FOIA are extremely important. For that reason, APHIS FOIA must make every reasonable effort to comply with all deadlines, including any negotiated or “unusual circumstances” extensions. Do not make arbitrary or unrealistic deadlines: it is important to work with the requester to determine a due date that takes into consideration the program offices, the number of records, and the review time needed to process a request. Finally, once you have agreed to a production schedule – meet it. In the rare event of an emergency that prevents meeting a deadline, be courteous and inform the requester. These customer service tips will help APHIS to avoid unnecessary litigation in the future.

As a reminder, APHIS is obligated by law to provide timely responses to properly submitted FOIA requests. If APHIS fails to respond within the time limits, the agency risks legal action in Federal court to produce responsive records. Litigation may result in expense to the agency due to attorney’s fees and extended staff hours. In addition, processing FOIA requests under litigation or administrative appeal can disrupt the processing of other requests. Communication between the requester and APHIS should help reduce administrative appeals and prevent litigation. It is important as a matter of practice to properly arrange for time extensions and request modifications as needed in a timely manner.

Please direct any questions regarding this guidance to the FOIA Director by telephone at (301) 851-4102 or by email at FOIA.Office@aphis.usda.gov.

Attachments (3)

SAMPLE LETTER-VOLUNTARY TIME EXTENSION

Send via Email with Return Receipt or Certified Mail/Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester
Associated Company (if applicable)
Street Address
City, State Zip Code

Dear Mr./Ms.(Name of Requester):

This is in response to your Freedom of Information Act (FOIA) request # received by our office on _____. A copy of your request is attached.

In accordance with 7 C.F.R. 1.16(d), on (Month, Date, Year), you agreed to an extension of time for the processing of your request. Our response is now due to you by (Month, Date, Year).

Or

In accordance with 7 C.F.R. 1.16(d), on (Month, Day, Year) you agreed to an extension of time for the processing of your request. Our final response is now due to you by (Month, Date, Year). We agree to make rolling releases of responsive records that are subject to release under FOIA on a (weekly, bi-weekly, monthly, or specific day) basis until such time as your FOIA request has been fully responded to, or we reach the due date indicated above.

Or

In accordance with 7 C.F.R. 1.16(d), on (Month, Day, Year) you agreed to (Any voluntary agreement reached with the requester).

If you have questions, you may contact the (Analyst name) on 301-851-xxxx. You may also contact the main office at 301-851-4102 or by email to FOIA.Officer@aphis.usda.gov. Additionally, Ray Payton, the USDA Public Liaison is available to assist with your request and may be reached at 202-720-XXXX to discuss any concerns about your request. Finally, please continue to check the status of your request online through the USDA Public Access Link (PAL) at <https://efoia-pal.usda.gov/palMain.aspx>.

Sincerely,

Tonya G. Woods
Director
Freedom of Information & Privacy Acts
Legislative and Public Affairs

Attachment 2

Unusual Circumstances - 10 –day Extension Letter

Send via Email with Return Receipt or Certified Mail/Fed-Ex with Receipt Notification

Requester Name
Requester Company Name (If Applicable)
Requester Address
City, State Zipcode

Dear FOIA Requester:

This is in response to your request received on (date). Your FOIA was assigned case number FOIA (number). A copy of your FOIA request is enclosed.

As provided in our regulations at 7 CFR Part 1, (1.16)(a), our office is providing you with written notice that we will need ten (10) additional working days to process your request. An extension is necessary because of the (CHOOSE REASON(s) TO INSERT FROM THE LIST BELOW and PROVIDE AN EXPLANATION AS TO THE CIRCUMSTANCE:)

The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request. (Explain to the requester the amount of offices - ex. We have determined that the request must go to 4 Wildlife Services Area Offices). (Please note - In view of the fact that many, if not most of APHIS FOIA requests are sent to field offices separate from HQ, I would use this sparingly. The structure of APHISs FOIA process cannot automatically land each request in this category. Consider if a program office has to search many different office or buildings/structures where files may have been archived.)

OR

The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are sought in a single request. (Explain to the requester the amount of pages - ex. The requested records consist of over 1500 pages)(Please note – **Always do a rolling release in this circumstance – discuss with the requester what documents are a priority, or arrange a steady review and release schedule.**)

OR

The need to consult with another agency that has a substantial interest in the determination of the request, or among two or more components within the same agency that have a substantial subject-matter interest in the request. (Explain to the requester - The documents you request contain information of interest of the Department of Interior (DOI). Our office needs to consult with DOI in the reviewing of the requested documents. Or if the documents involve another USDA agency other than APHIS and consultation about release is needed)

The 10-day extension authorized by FOIA under these circumstances extends the date upon which your response is due to [month, day, year of new 10-day due date] .

You (may also contact OR have contacted) (Analyst name) on 301-851-xxxx to [PICK ONE: discuss the change to the request due date, narrow the scope of your request, or arrange an alternative timeframe for our response to you] (Please note – Preferably, contact with the requester has already been made to advise of the unusual circumstance and discussion of ways to resolve it are underway). [These discussions and agreements should be discussed here in this paragraph]

You may also contact the main office at 301-851-4102 or by email to FOIA.Officer@aphis.usda.gov. Additionally, Ray Payton, the USDA public Liaison is available to assist with your request and may be reached at 202-720-XXXX to discuss any concerns about your request. Finally, please continue to check the status of your request online through the USDA Public Access Link (PAL) at <https://efoia-pal.usda.gov/palMain.aspx>.

Sincerely,

Tonya G. Woods
Director
Freedom of Information & Privacy Acts
Legislative and Public Affairs

Enclosure

Attachment 3

Unusual Circumstances - More than a 10 –day Extension Letter

Send via Email with Return Receipt or Certified Mail/Fed-Ex with Receipt Notification

Requester Name
Requester Company Name (If Applicable)
Requester Address
City, State Zipcode

Dear FOIA Requester:

This is in further response to your request received on (date). Your FOIA was assigned case number FOIA (number). A copy of your FOIA request is enclosed.

As provided in our regulations at 7 CFR Part 1, (1.16)(a)(1), our office previously provided you with written notice on (Month, Date, Year) that we would need 10 additional working days to respond to your request, which set a new due date of (Month, Date, Year) for our response. In accordance with 7 C.F.R. 1.17, we are notifying you that we will be unable to meet the (Month, Date, Year) due date. As described in our previous letter, we sought additional time because of (CHOOSE REASON(s) TO INSERT FROM THE LIST BELOW and PROVIDE AN EXPLANATION AS TO THE CIRCUMSTANCE:)

The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request. (ex. We have determined that the request must go to 4 Wildlife Services Area Offices).

The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request. (ex. The requested records consist of over 1500 pages).

The need to consult with another agency or with more than two components within the same agency. (ex. The documents you request contain information of interest of the Department of Interior (DOI). Our office needs to consult with DOI in the reviewing of the requested documents)

(Provide an explanation here as to why extension of time was not sufficient – still searching for records, still reviewing large volume, still consulting.) We anticipate that we can respond to your request by (Month, Date, Year). We encourage you to contact (Analyst Name) on 301-851-xxxx to discuss limiting the scope of your request or to arrange an alternative timeframe for processing the request. (Preferably, contact with the requester has been made already to advise of the unusual circumstances and discussions of ways to resolve it are underway. These discussions and any agreements should be set forth here instead.)

You may also contact the main office at 301-851-4102 or by email to FOIA.Officer@aphis.usda.gov. Additionally, Ray Payton, the USDA public Liaison is available to assist with your request and may be reached at 202-720-XXXX to discuss any concerns about your request. Finally, please continue to check the status of your request online through the USDA Public Access Link (PAL) at <https://efoia-pal.usda.gov/palMain.aspx>.

Sincerely,

Tonya Woods
Director
Freedom of Information & Privacy Acts
Legislative and Public Affairs

Enclosure

Appeal Instructions

When preparing an appeal package, you will create two written parts. First is the OGC memo that will outline the request and appeal. This is where you will make your argument to uphold the original withholdings. (If withheld information is being entirely overturned, it does not need to go to OGC). Outlined in this document is the structure of the appeal memo. Be thorough, yet concise. Be sure to include case law or OGC legal opinions, if relevant.

The second part of the package is a draft letter to the requester for the Administrator's signature. Again, the memo should thoroughly explain the Agency's decisions to uphold denied information, yet be concise. This letter must be double-spaced and clearly marked DRAFT. It should also include an OGC concurrence line at the bottom, to indicate OGC agrees. (If OGC doesn't agree with either our recommendation or letter, they will often re-write and send us that)

OGC Memo Outline & Examples

I. Facts

Briefly describe the initial request, summarizing the records sought and our response. To the extent possible, use simple, bulleted format, for example:

- Requestor sought all documents relating to Vacancy Announcement 123, VMO Field Specialist – Elephants, including but not limited to names of all applicants on certificate and rankings. *If dates are important, include them, but don't get bogged down in things not relevant to the appeal. Remember, OGC is looking to see if we applied the FOIA & exemptions correctly.*
- Provided 18 responsive pages. Redactions made pursuant to Exemption 6 were:
 - List of eligible candidates
 - Social Security Numbers – all applicants
 - Date of Birth – all applicants
 - Home addresses & Phone numbers – all applicants
 - Work experience & locations not related to vacancy – all applicants
 - Education information including names and locations of institutions and dates attended – all applicants
 - All Information related to references
 - Applicants response to KSA's (knowledge, skills and abilities)

II. Basis for Appeal

Summarize what & why the requester is appealing

Requester is specifically appealing the withholding of the following three categories of information:

- educational qualifications & information, including name and location of school and dates attended
- responses to KSA's
- List of candidates on the certificate for the job

His appeal is based on his belief that this information does not warrant an invasion of personal privacy.

III. FOIA Analysis

Start with any changes to withholdings... any reversals you are making.

After further consideration, we have determined that the KSA responses do not qualify for withholding under Exemption 6. Therefore, that information will be released to the requester. *> Insert case law (Write) See Jones v. USDA*

In addition, we have also determined that name and location of higher education institutions attended also is not an invasion of personal privacy and that information will also be released to the requester.

Now, begin your discussion of what should be continued to be withheld. Briefing describe the information and your analysis for withholding, including citing any case law you can find that supports your determination. Remember, use brief statements, bullet items when you can. Keep it clear and concise. Follow the same outline you used above in Basis for Appeal... for example, if you listed: List of Candidates on the certificate for the job, use that same heading for your analysis to make it easier for OGC to cross-reference.

IV. Conclusion

Summarize the appeal, your analysis, any reversals or recommended up-holdings.

CLOSE CASE PROCEDURES

This section
will be
completed
by
Kewanda or
Shirley

- ☐ Make 3 copies of the response letter
 - o Copy to file
 - o Copy to weekly report folder
 - o Copy to outgoing letter folder } **located across from Bev's office**
- ☐ Records to be released
 - o 25 pages or more copy the records to a CD-ROM and finalize the CD
 - label the CD-ROM with case number and date of response
 - o Less the 25 pages – print and send a hard copy
- ☐ Prepare envelope - envelopes must contain the
 - o meter mail code 74
 - o Unit No. 50
- ☐ Update dbase system (**very important**) (see database guidance)
 - o Make sure that **ALL** fields are completed and accurate
 - o to complete the #Days open field – use the work day calculation excel file (see attached sheet)
 - file located at:
 - f drive
 - access
 - file name work day calculaton.xls
- ☐ Update case folder – at the top of folder between the two labels (i.e. MH P/D 8/24/06)
 - o Write your initials
 - o Write closed code used (i.e. F/R, P/D, N/R, etc)
 - o Date closed
- ☐ Scan all documents from the hard file that is not currently in the e-case file (label folder - ADMIN File)
 - o Emails
 - o Search request result sheet from program(s)
 - o Log sheet
 - o Any other paper not already in e-cases
- ☐ Save the entire case folder to a CD-ROM which will be filed with the case folder
 - o Label the CD-ROM - FOIA case number, date closed and number of CD's if more than 1 (i.e. FOIA 06-462 8/24/06 disk 1 of 2)
- Revised* - ☐ ~~If the redacted records contain any inspection reports they must be pulled out and saved to a separate file~~
 - o ~~Label file "case number and inspection reports (i.e. 06-462 inspection reports)"~~
 - o ~~Save the file in the Tricia folder located in the current FY "closed in FY folder"~~
 - ~~Go to:~~
 - ~~F drive~~
 - ~~E-case folder~~
 - ~~Select the current "Closed in FY ___ folder"~~
 - ~~Tricia folder~~
- Revised* - ☐ **DO NOT** Delete the records Copy from the file
- Revised* - ☐ Move the entire case folder to the current "closed in FY__" folder on the F drive in e-cases
 - o Put the file in the monthly folder
- ☐ Log out request in the appropriate year log book – located near Ms. Bev's office
- ☐ Place on floor in from of mailboxes for filing

EO 12600 Notice Sample Letter

EO 12600 Submitter Folder SOP

Attachment 1: Letters Defined

April 2022

Letter or Email Title	Definition of Letter	USDA Title 7 Subtitle A Part 1	Template Name
1 st Letter to Submitter			
EO 12600 Notice - Form Name YYYYMMDD (Date of Letter) Example Title: EO 12600 Notice - VS 10-13 (20220411)	1 st letter to submitter (CBI) informing the submitter of the FOIA request and facts about exemption 4.	1.8 (d)(1) The component must promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the component determines that it may be required to disclose the records, provided: (i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or (ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4 but has not yet determined whether the information is protected from disclosure.	
Letter or Email Title	Definition of Letter	USDA Title 7 Subtitle A Part 1	Template Name
Email / Letter Response from Submitter			
Submitter Objection - Form Name YYYYMMDD Or Reply From Submitter No Objection - Form Name YYYYMMDD Example Title: Submitter Objection - VS 10-13 (20220411)	Submitter's response to 1 st letter (submitter notice) objecting to any disclosure of information.	1.8. (f)(2) If a submitter objects to disclosure of any portion of the records, the submitter must provide the component with a detailed written statement that specifies all grounds for withholding the particular information. The submitter must show why the information is a trade secret or commercial or financial information that is privileged or confidential.	
NOI No Response - Form Name YYYYMMDD Or	2 nd letter to submitter. Submitter failed to respond to 1 st letter	1.8. (f)(2) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to	

EO 12600 Notice Sample Letter

<p>NOI – No Response from Submitter Form Name YYYYMMDD</p> <p>Example Title: Notice of Intent - VS 10-13 (20220411)</p> <p>Example Title: Submitter Objection - VS 10-13 (20220411)</p>	<p>(submitter notice) after at least two attempts from analyst to notify submitter.</p>	<p>disclosure of the information. The component is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.</p>	
<p>Submitter No Objection - Form Name YYYYMMDD</p> <p>Example Title: Submitter Objection - VS 10-13 (20220411)</p>	<p>Submitter agrees with releasing documents in full.</p>		
Letter or Email Title	Definition of Letter	USDA Title 7 Subtitle A Part 1	Template Name
2 nd Letter - Decision Letter to Submitter			
<p>NOI Agreement - Form Name YYYYMMDD (<i>Optional</i>)</p> <p>NOI Granted and Deny in Part - Form Name YYYYMMDD</p> <p>Example Title: Submitter Objection - VS 10-13 (20220411)</p>	<p>2nd letter to submitter.</p> <p>Response from agency that we intend to release information / documents over the objections of the submitter.</p>	<p>1.8. (g) Notice of intent to disclose over submitter's objection. If a component decides to disclose confidential commercial information over the objection of a submitter, the component will give the submitter written notice, which will include:</p> <p>(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;</p> <p>(2) A description of the information to be disclosed or copies of the records as the component intends to release them; and</p> <p>(3) A disclosure date subsequent to the notice.</p>	

EO 12600 Notice Sample Letter

Letter or Email Title	Definition of Letter	USDA Title 7 Subtitle A Part 1	Template Name
Lawsuit			
Notice of FOIA Lawsuit Form Name YYYYMMDD	Letter to submitter informing them of a lawsuit seeking disclosure of records they submitter to the agency.	1.8. (h) Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component will promptly notify the submitter.	
Corresponding notice to requester Form Name YYYYMMDD (Does Not Need to be in folder)	Letter to requester regarding EO 12600 actions being taken.	1.8. (i) The component must notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.	

EO 12600 Notice Sample Letter

Letter or Email Title	Definition of Letter	USDA Title 7 Subtitle A Part 1	Template Name
Appeals			
Appeals of adverse determinations Form Name YYYYMMDD	Response from requester to appeal withholding of confidential commercial information.	1.9. (a) If a requester is dissatisfied with a component's response to his or her request, the requester may submit a written appeal of that component's adverse determination denying the request in any respect.	

EO 12600 Notice Sample Letter

Attachment 3: Sample Letters

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EO 12600 Notice Sample Letter



United States Department of Agriculture

January 19, 2022

Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

Legislative and
Public Affairs

Freedom of
Information

4700 River Road
Unit 50
Riverdale, MD
20737-1232

William Chase, DVM
Kestrel, Inc.
3350 Ashworth Road
Waukeg, IA 50263
Kestrel18@aol.com

Dear Dr. Chase:

On November 22, 2021, we received a Freedom of Information Act (FOIA) request, tracking number 2022-APHIS-00876-F, from Inkar Castellanos, seeking information concerning Kestrel, Inc., which is detailed in the enclosed request.

A review of the records reveals that the 9 pages of records enclosed may contain confidential commercial or business information ("CBI") within the meaning of FOIA Exemption 4, 5 U.S.C. 552(b)(4). Exemption 4 protects from public disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

In order to determine whether certain information is exempt from release, APHIS must first establish that the information is commercial or financial and that it was obtained from a person, company, organization, state government, or other outside entity. Next APHIS must establish that the information is "confidential," which means that the information is of the type not ordinarily or actually released by the submitter (hereinafter referenced as "CBI"). If the government provided assurances that such information to be submitted by a person will be kept confidential, then that assurance may provide additional, although not independently sufficient, ground for applying Exemption 4.

Whenever APHIS cannot readily determine whether responsive records contain CBI, the agency should obtain and consider the views of the organization that submitted the information. See Executive Order 12,600 (copy enclosed) and 7 C.F.R. § 1.12. In addition, the agency should provide the organization with an opportunity to object to any decision to disclose the information. My office is enclosing **9 pages** of records that contains information that may be protected from disclosure as CBI.

In reviewing the enclosed records, please **highlight** information you believe meets the Exemption 4 criteria and prepare a detailed, written justification to support protection of the designated information as CBI. You must explain fully all grounds upon which disclosure is opposed; specifically, you must explain item-by-item why the information is kept confidential and would not ordinarily be released. If you did not mark or otherwise communicate that the information is "privileged" or "confidential" commercial or financial information, or a trade

EO 12600 Notice Sample Letter

secret, when it was submitted to the government, you should explain why, despite the absence of such a confidentiality claim that the information is of the type you do not ordinarily or actually release.

Please note that when documents contain information that qualifies as exempt from disclosure, the entire document is not necessarily exempt. The FOIA specifically provides that any reasonably segregable portions of a document must be provided to a requester after deletion of the portions that are exempt. For that reason, please specifically indicate which portions of the records that you believe contain CBI. Please be aware that comments provided by your organization in response to this letter may be subject to disclosure under FOIA.

We appreciate receiving your response to this notice no later than **5pm U.S. Eastern Time on Wednesday, January 26, 2022**). Please be advised that APHIS will be operating under strict time constraints. If your organization does not object to disclosure of this information, please notify APHIS of this position in writing. Any comments should be sent by email to **Joseph Tangredi** at:

Animal and Plant Health Inspection Service
Legislative and Public Affairs
Freedom of Information Act – EO12600 Response
4700 River Road, Unit 50
Cubicle #2B.03.6
Riverdale, Maryland 20737-1232
Phone: 301-851-4061; Fax: 301-734-5941
Email: joseph.tangredi@aphis.usda.gov

If your firm objects to the release of the information, APHIS will consider your response carefully in making a final determination. Should APHIS decide to release any of the information, we will advise you in writing before such disclosure takes place in order to provide your organization with an opportunity to seek judicial intervention. If you have any questions, please contact Joseph Tangredi of my staff at (301) 851-4061.

Sincerely,



/For:
Tonya G. Woods
Director
Freedom of Information & Privacy Act
Legislative and Public Affairs

EO 12600 Notice Sample Letter

1. Copy of FOIA Request
2. Responsive Records (1 page)
3. Executive Order (E.O.) 12600

APHIS DIRECTIVE 156.1
10/19/82

FREEDOM OF INFORMATION ACT/PRIVACY ACT GUIDELINES

I. PURPOSE

- A. Outlines the policy and procedure for administration of the Freedom of Information Act (FOIA) and the Privacy Act (PA).
- B. Provides guidelines on the responsibility for APHIS personnel who maintain Agency records.
- C. Gives guidelines for APHIS personnel who maintain records that contain personal information.

II. REPLACEMENT HIGHLIGHTS

Replace APHIS Directive 156.1 (4/14/78) and APHIS Directive 460.1 (8/9/74) with this Directive. This revision incorporates changes in regulations and clarifies actions needed to assure compliance with these laws.

III. AUTHORITY

This Directive is in compliance with 5 U.S.C. 301, 552, 552a; the Paperwork Reduction Act of 1980 (Public Law 96-511); and the Office of Management and Budget Circular No. A-108, as amended.

IV. POLICY

It is APHIS policy to:

- A. Collect only that information needed to accomplish program objectives. Personal information obtained from or about individuals must be obtained from the subject individual when possible.
- B. Maintain accurate, relevant, and complete records.
- C. Protect the personal privacy of individuals by not making clearly unwarranted disclosures of personal information.
- D. Make available for public inspection any records or information unless disclosure is prohibited by law or would impair one of the interests protected by exemptions of FOIA (see VI).

V. DELEGATION OF AUTHORITY

The Administrator has overall responsibility for compliance with the FOIA/PA. This authority has been delegated to the FOIA Coordinator to:

- A. Ensure that APHIS records are maintained in compliance with these Acts.
- B. Ensure that APHIS policy is consistent throughout the Agency.
- C. Make the initial determination whether specific records are exempt from any provisions of the Acts.
- D. Serve as a central source of information about these Acts for the benefit of APHIS officials.
- E. Provide assistance on problems or questions with regard to policy

or specific types of information that cannot be answered at the local level.

- F. Disclose and account for records contained in a system of records in accordance with Attachment 2.
 - 1. Prepare a transmittal letter for each disclosure subject to accounting except those used in USDA or required under the FOIA.
 - 2. Include the name and address of the person or agency to whom disclosed.
 - 3. Maintain a copy of the transmittal letter with the record.
 - 4. Make every reasonable effort to inform the subject individual when record is made available (under subpoena or other compulsory legal process) once that process becomes a matter of public record.

All FOIA/PA requests should be forwarded to the Coordinator for review:

FOIA/PA Coordinator
APHIS, U.S. Department of Agriculture
6505 Belcrest Road, Room 262
Hyattsville, MD 20782
FTS: 436-8099 COMM: (301) 436-8099

VI. PRIVACY ACT REQUIREMENTS

- A. The Privacy Act provides requirements for collecting, maintaining, and disclosing personal information obtained by Government offices from or about individuals. Personal information includes, but is not limited to:
 - 1. Home address,
 - 2. Home telephone number,
 - 3. Social security number,
 - 4. Personal financial data (excluding salary),
 - 5. Medical records,
 - 6. Religious affiliation, and
 - 7. Educational attainments.

The Act limits the disclosure of such information in order to protect individuals against unwarranted invasions of personal privacy. The Privacy Act applies to all records maintained in the APHIS systems of records (as defined by the Act). See Attachment 1 for a list of these systems.

It also gives individuals the right to review records containing personal information about them.

- B. Collecting Personal Information. All information collections from any non-Federal Government, business, institutions, groups, or individuals must first be cleared through the Office of Management and Budget as prescribed in OMB Circulars A-40 and A-108. Personal information obtained from and about individuals should include only what is relevant and needed to serve the purpose for

which it is collected. The purpose must be authorized by law. An APHIS official planning to collect information from individuals must be aware that personal information collected may be subject to the Privacy Act. Therefore, do not collect personal information if the Agency purpose can be accomplished without it. Obtain information directly from the subject individual when possible. Forms used to collect information must include a Privacy Act statement which specifies:

1. General. Advises the individual of the Privacy Act;
2. Authority. whether granted by statute or by executive order of the President which authorizes the solicitation of the information.
3. Purposes and Uses. The principal purpose or purposes for which the information is intended to be used. Routine uses of the information.
4. Effects of Nondisclosure. Whether the disclosure of the information is mandatory or voluntary and the effects on the individual for not providing all or any part of the requested information.

Do not keep records describing how any individual exercises rights guaranteed by the first amendment unless:

-) Specifically authorized by statute or by the individual about whom the record is maintained; or
 -) Pertinent to, and within the scope of, an authorized law enforcement activity (such as records maintained on APHIS employees that are necessary as a result of the employer/employee relationship).
- C. Access to Records. Official Personnel Files (OPF's) and records included in the Office of Personnel Management Government-wide systems of records. However, APHIS maintains these records. Employees may request access to their individual records to insure that the information maintained is correct. Contact FSO for access to your OPF, and HRD for confidential administrative records.

Program operating levels maintain some personnel records, as authorized by APHIS Directive 408.1, Official Personnel Files and Work Folders, and APHIS Directive 408.2, Personnel Records at Program Operating Levels. Employees may request access to these records by contacting the office that maintains the record.

Refer to the Coordinator a request for access to records in an APHIS system of records (see Attachment 1) by the individual (or the individual's representative) who is the subject of the records, unless releasable under FOIA provisions of this Directive.

Refer to the Coordinator requests from an individual for information contained in a system of records which contains personal information about another person. All requests for personal information, whether from the person concerned or from a third party, will be treated as requests under provisions of both the FOIA and PA.

- D. Social Security Numbers. The Privacy Act prohibits denial of any right, benefit, or privilege provided by law to an individual who refuses to disclose his or her social security number, unless

disclosure is required by Federal statute or by regulation adopted before January 1, 1975.

1. When requesting a social security number, tell the individual:
 - a. Whether disclosure is mandatory or voluntary,
 - b. The statutory authority for soliciting the number, and
 - c. What uses will be made of it.
 2. State and local governments operating under a cooperative agreement with APHIS must provide this information when requesting social security numbers. It is an APHIS responsibility to see that this is done.
- E. Mailing Lists. In no event shall release of any list of names and home addresses of employees of the Department, or of farmers, persons, organizations, or firms, for political purposes be considered to be in the public interest; nor shall release for commercial solicitation purposes be considered to be in the public interest unless release is specifically authorized by the individuals named therein. Selling or renting an individual's name and address is also prohibited.
- F. Records Maintenance and Security.
1. Keep systems of records accurate, complete, up to date, and relevant to Agency purposes. Make a reasonable effort to see that information is correct and up to date before disclosing any personal information.

See the APHIS Records Management Handbook for procedures.

2. Safeguard APHIS systems of records against unauthorized access. Only USDA personnel who need information in order to carry out an Agency purpose can have access to these records. Use appropriate methods to safeguard records. Obtain advice concerning security requirements and equipment from the APHIS Classified Material Control Officer:

Information Management Branch
Administrative Services Division
Room 262, Federal Building
Hyattsville, MD 20782
FTS: 436-8520
Comm: (301) 436-8520

3. Any person who wishes to inspect or obtain copies of any record available at the Field Service Office should submit a request to:

Field Servicing Office, Director
APHIS, U.S. Department of Agriculture
100 North Sixth Street
Butler Square West, 5th Floor
Minneapolis, MN 55403

G. Changes in Systems and New Systems. Notify the Coordinator when a significant change in the use or operation of one of the APHIS systems of records (shown in Attachment 1) is being considered if such a change will:

1. Increase the number or types of individuals on whom records

are maintained;

2. Expand the type or amount of information maintained;
3. Increase the number or categories of agencies or other persons who may have access to the records;
4. Alter the manner in which the records are organized, changing the nature or scope of those records (e.g., combining two or more existing systems);
5. Modify system operation at its location(s), altering the procedures by which individuals can exercise their rights under the Privacy Act and USDA regulations; or
6. Change the equipment configuration on which the system is operated, creating the potential for greater access (e.g., adding a telecommunications capability).

Also notify the Coordinator if personal information is collected for a new or expanded purpose not included in one of the existing APHIS systems.

VII FREEDOM OF INFORMATION ACT REQUIREMENTS

Freedom of information Act is a disclosure statute designed to allow ease access to documents held by the administrative agencies of the executive branch of the Federal Government. Each Agency has the responsibility to expedite all releasable information as prescribed by the FOIA.

- A. Responding to Requests. Offices should continue to make available, on request, information customarily released. The FOIA requires a response in 10 working days, excluding Saturdays, Sundays, and legal public holidays, after the receipt of the request by the Agency. Offices should respond to the Coordinator's referrals upon receipt of the copied request. Referrals should be made to the Coordinator within 5 days of receipt.

APHIS responds to requests for information and disclosure to the fullest extent possible without infringing upon nine specified, protected interests, or exemptions. Program offices are expected to advise the Coordinator of any such interests upon referral. The five exemptions most pertinent to APHIS are:

1. Exemption 3. Material which is specifically exempted from disclosure by statute. Example: The report to Congress required by the Animal Welfare Act, disclosure of which, prior to release by the appropriate congressional committees, is prohibited by 7 U.S.C. 2155.
2. Exemption 4. Trade secrets and commercial or financial information obtained from a person and privileged or confidential. Examples: Certain scientific and technical data including confidential product formulas and processing methods; certain confidential (as defined by Federal courts) commercial and financial data, including, in proper cases, sales statistics, share of the market, inventories, and production data. (NOTE: To deny data under this exemption, offices must provide facts in each instance to show that release will cause substantial harm to the competitive interests involved.)
3. Exemption 5. Interagency and intraagency memorandums, written in the process of reaching a policy decision,

containing opinions and recommendation, the release of which would tend to inhibit a frank exchange of ideas among the decisionmakers. Examples: Information, material, and dockets on regulations prior to publication in the Federal Register are exempt; Agency budget material before the budget is transmitted to Congress, is also exempt. Factual material in memorandums is not exempt, nor is material that is expressly incorporated into a final policy decision.

4. Exemption 6. Personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption protects personal information contained in records, the disclosure of which might be harmful or embarrassing to the individual, unless the seriousness of such effects is outweighed by the public interest in disclosure.
5. Exemption 7. Investigatory records compiled for law enforcement purposes, but only under conditions specified in the Act. Examples: Records compiled for enforcement of Animal Welfare Act, Horse Protection Act, and Animal Quarantine laws. (NOTE: Routine inspection reports do not qualify under Exemption 7.)

FOIA requests should be in writing unless the request is for records routinely made available. An employee may accept a verbal request if circumstances dictate. The person receiving a verbal request should obtain as detailed a description of the records as possible.

- B. Denial of Information. Only the Coordinator, in consultation with designated program FOIA representatives, may deny initial FOIA requests. Offices may justify, at the time of submission to the Coordinator, any information that is to be protected from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Refer questionable requests promptly to the Coordinator and,

1. Describe the problem and justify the recommended action, or
2. Advise the requestor to deal directly with the Coordinator, according to procedures established by Department and APHIS.

Inform the requestor that FOIA time limitations do not begin until the Coordinator receives the request.

- C. Charges. Routine charges for copying are 10 cents per page for requests involving over 30 pages of material. (Examples: 24 pages of material - fees are waived, and no charge is made; 35 pages of material charge is \$3.50).

Search charges may be appropriate under certain circumstances. Contact the Coordinator for guidance on the assessment of these fees.

Payment will be collected to the fullest extent possible in advance or at the time the requested materials are furnished. No information will be provided unless payment is received.

Advise the requestor to pay the Coordinator by check made payable to: "Treasurer of the United States."

Agencies can waive or reduce fees when "furnishing the information can be considered as primarily benefiting the general public."

Signed By

Harry Mussman

LIST OF APHIS PRIVACY ACT SYSTEMS OF RECORDS

A. Regulatory Actions (PPQ). The system consists of case files on violators and contains copies of violation report forms, compliance agreements, employee or other witness statements, warning notices, Office of the General Counsel recommendations to the U.S. Department of Justice, and court disposition documents.

B. Records of Accredited Veterinarians (VS). The system includes name of accredited veterinarian, State in which accredited, State license number, college and date of graduation, and score on accreditation examination. The system also includes material pertaining to alleged violations of accreditation standards. If allegations are proven true, the records include the disposition of the case which may be revocation of accreditation.

C. Animal Quarantine Regulatory Actions (VS). The system consists of investigatory and case files of alleged violations of quarantine laws and contains the alleged violator's name and address, type of infraction, and documentation of the alleged infraction. The files include closed cases as well as the current status of those cases remaining unresolved.

D. Animal Welfare and Horse Protection Regulatory Actions (VS). The system consists of investigatory and case files of alleged violations of the Animal Welfare and Horse Protection Acts and contains the alleged violator's name and address, type of infraction, and documentation of the alleged infraction. The files include closed cases as well as the current status of those cases not resolved.

E. Candidates for Animal Disease Control Positions in Foreign Countries (VS). The system consists of the candidate's resumes of previous job and educational experience.

F. Brucellosis Information System (VS). This system includes name of herd owners whose animals or herds are tested, studied, or restricted because of brucellosis; livestock markets, slaughter establishments, and livestock dealers (including agents and brokers) handling livestock covered by the program; milk processing plants receiving milk or cream from dairy farms; laboratories conducting brucellosis program tests or procedures; State, Federal and contractual personnel engaged in program activities.

DISCLOSURES UNDER THE PRIVACY ACT TO PERSONS OTHER THAN THE SUBJECTS OF THE RECORDS

When Individual's Written Consent and an Accounting is Required

Type of Disclosure	Condition	Consent	Accounting
Disclosure within USDA	On a need to know basis for purpose originally intended.	No	No
Disclosure to public	(1) Required to be released under FOIA.	No	No
	(2) Not required to be released.	Yes 1/	Yes
Disclosure for routine use 2/	Must be described in the Federal Register notice.	No	Yes

To Bureau of Census	For authorized census activity.	No	Yes
Disclosure for statistical research and reporting.	Not in individually identifiable form (cannot be reasonably deduced); and only after receipt of written statement from requester stating purpose; certifying use only as statistical records; made a part of accounting.	No	Yes
Disclosure to National Archives	Historical or other value. (44 U.S.C. 2103)	No	Yes
Disclosure for law enforcement purposes	(1) Receipt of written request from the law enforcement agency, specifying purpose and particular record wanted.	No	Yes
	(2) As a routine use.	No	Yes
Disclosure for emergency situation	Compelling circumstances affecting health and safety of an individual; and notification to last known address.	No	Yes

- 1/ Unless released pursuant to a routine use.
2/ Attachment 3 describes routine uses for APHIS systems of records.

Type of Disclosure	Condition	Consent	Accounting
Disclosure to Congress	(1) As a body.	No	Yes
	(2) To the office of a member of Congress as a routine use.	No	Yes
Disclosure to GAO	For performance of duties by GAO	No	Yes
Disclosure pursuant to court order.	Competent jurisdiction.	No	Yes
All others	Not prohibited by law.	Yes	Yes

ROUTINE USES OF APHIS SYSTEMS OF RECORDS

ROUTINE USES 1	SYSTEM OF RECORDS
A. Any record within these systems may be referred to another Federal, State, local, or foreign agency when:	PPQ Regulatory Actions VS Accredited Veterinarians VS Quarantine Regulatory Actions VS Animal Care Regulatory Actions VS Brucellosis Information System
- The agency has responsibility for investigating or prosecuting a violation of law or for enforcing or implementing the statute, rule, regulation, or other order pursuant thereto; AND/OR	
- The information available indicates a violation of law.	

B. Any record within the system may be referred to a court, magistrate, or administrative counsel (or to opposing counsel in a proceeding before any of the above) when information constitutes evidence or is sought in the cause of discovery.

C. Any record within the system may be referred to a Congressional office in response to an inquiry from the Congressional office made at the request of an individual.

D. Any record within the system may be referred to the Department of Justice when the information will be helpful in:

- The defense of suits against the United States or its offices, OR

- Initiating suits to cover claims made by the United States Department of Agriculture.

E. Any record within these systems of

Health Officials or to the State Veterinary Examining Boards to certify that a particular individual is indeed accredited.

F. Any record to advise scientists in animal health and related fields of potential use of their qualifications by international organizations and/or foreign governments.

PPQ Regulatory Actions
VS Accredited Veterinarians
VS Quarantine Regulatory
Actions
VS Brucellosis Information
System

VS Accredited Veterinarians
records may be referred to
State Animal

Candidates for positions in
Foreign Countries.

1/ The term "Routine Use" was introduced to recognize the practical limitations of restricting use of information to explicit and expressed purposes for which it was collected. The "routine use" provision essentially permits agencies to disclose a record to recipients not foreseen (or not enumerated) by the authors of the Privacy Act, without the prior written consent of the record's subject.

DISTRIBUTION: G03

OPR: OPA

**APHIS Implementation
of the
Freedom of Information Act (5 U.S.C. 552)**

Presented by

**Legislative and Public Affairs
Freedom of Information Staff**

USDA, APHIS, LPA, FOI
4700 River Road Unit 50
Riverdale, MD 20737

Staff Phone: (301)734-8296
Fax: (301) 734-5941

Implementation of the Freedom of Information Act (5 U.S.C.552)

What is the purpose of the Freedom of Information Act?

The purpose of the Freedom of Information Act (FOIA), is to:

- ❖ Provide the public access to Agency records that already exist,
- ❖ Shed light on how agencies perform their statutory duties, and
- ❖ Make the government accountable for its actions by allowing citizens to make requests for information.

How? What? Who?

APHIS accepts and receives written and e-mail FOIA requests for information and records in a wide range of subject areas that include permits, licenses, investigative files, personnel files, correspondence, and other records. Written and e-mail requests come from organizations, environmental & animal advocacy organizations, news media, law firms, businesses, as well as individuals. Some requesters request information that they think the Agency might keep on file.

The following are not entitled to records under the FOIA:

- ❖ Fugitives from justice,
- ❖ Federal Agencies, and
- ❖ Those who owe money for previous FOIA requests.

What are records?

All records generated in the course of APHIS' business are subject to release under the FOIA. By records, we mean records that are in APHIS' electronic and paper files at the time a request is placed.

How are FOIA requests received?

FOIA requests are normally sent directly to the FOIA office, and then, copies of the requests are sent to the appropriate program area to search for the records. However, some offices receive FOIA requests directly. In such cases, the receiving office should forward a copy of the request to the FOIA staff.

What if I receive a request for information?

If you receive a phone call or a written request for records or information that your office does not normally give out, then chances are that the requester needs to make a written FOIA request for the information. In general, Agency records that are not published, bound or in brochure format for public dissemination, or that are not found on the web page, would be “FOIAble.”

Functional vs. FOIA Requests

Staff offices should process requests for the following information directly:

- ❖ APHIS Directives, regulations, Federal Register articles,
- ❖ Pamphlets, brochures, news releases, fact sheets, annual tables, etc.,
- ❖ Other routine records where there is no question of releasability, and
- ❖ Information about the Agency and its programs when the request does not include a request for actual documents.

What if I receive a subpoena for the production of records?

Subpoenas for the production of documents (a.k.a. subpoenas duces tecum), when the USDA is not a party in the litigation, are handled as FOIA requests. Forward such subpoenas to your FOIA Liaison with the responsive records.

What if I receive a subpoena for testimony or deposition?

Subpoenas for testimony or deposition, when no Agency records are requested, do not go through FOIA. Agency employees may not testify or give depositions without prior approval from the Administrator and/or Program Deputy Administrator with concurrence from the Office of General Counsel. Contact your supervisor for instructions.

What is the role of APHIS Programs in response to FOIA requests?

Program areas are responsible for searching and collecting the responsive records from APHIS files and providing them to the FOIA Liaison within 7 workdays of receipt of the incoming request. Some requests are difficult to interpret or may require clarification. Please contact the FOIA staff or Program FOIA Liaison if you have questions. When the FOIA office requests records, one copy of each responsive record located, including draft documents, must be provided, unedited, to the FOIA office.

What if search, collection, and duplication of the records interferes with mission-related work?

Unfortunately, fulfilling FOIA requests may interfere with the performance of mission-related work. However, the Agency is obligated to be responsive to FOIA requesters. If a particular request involves an extensive search for a large volume of records, please contact the FOIA Liaison with an estimated number of search hours and the volume of responsive records.

The FOIA office will contact the requester in an attempt to narrow the scope of the request and provide a fee estimate for processing the request. Refusal on the part of the requester to reasonably modify their request is a factor that the courts will consider if the Agency is challenged on the timeliness of its response.

What if the Program is unable to locate responsive records?

If no records are located, the FOIA office must have a written response from the employee of the responding office with a statement explaining the “no records” response. Typical examples of no records determinations include: records retention schedule, the Agency does not maintain this type of information, and this request should be referred to another agency.

What if there are concerns about the contents of the requested records?

You are encouraged to inform the FOIA staff or the Program FOIA Liaison if documents are particularly sensitive or if you have concerns about their release. The FOIA staff appreciates input from employees and considers concerns before making release determinations.

Should the Agency create records in response to FOIA requests?

Please do not create records in response to questions that are posed as FOIA requests. Certain situations may relieve the administrative burden of copying a voluminous amount of records in which a list may be more customer friendly. However, the FOIA covers records that are in the file at the time the request is received. If the responsive information is maintained in a database, the program area of primary responsibility will be required to retrieve the information.

Can a Program or employee withhold or deny information to the FOIA staff?

It is not within any program’s or employee’s authority to withhold or deny information to the APHIS FOIA staff or to edit records before sending them to the FOIA office.

The APHIS FOIA Officer (when making initial release determinations) and the APHIS Administrator (on appeals of initial release determinations) are the only individuals authorized by law to deny Agency records or portions of information to requesters of records under the FOIA.

What Types of Information are Protected by the FOIA?

The following nine types of information are prohibited from release under the FOIA:

1. As authorized by Executive Order or classified national security information.
2. Internal personnel rules and practices, including:
 - ❖ Trivial administrative data, and
 - ❖ More substantial data where release would circumvent agency rules.
3. Information exempt from release by other federal statutes.
 - ❖ 7 U.S.C. 8401, Regulation of Certain Biological Agents and Toxins
4. Confidential business information, as defined by the Act, and trade secret information from the private sector.
5. Inter- and intra-agency privileged material, including:
 - ❖ Pre-decisional advice, opinions, recommendations,
 - ❖ Attorney-client communications, and
 - ❖ Attorney-work products.
6. Personnel, medical, and similar files where release could result in a clearly unwarranted invasion of privacy.
 - ❖ For federal workers, releasable items include current and past grades, gross salary, job description, performance elements, SF-171s.
7. Law enforcement records, but only those where release:
 - ❖ Could interfere with enforcement proceedings,
 - ❖ Would deprive a person of the right to an impartial adjudication,
 - ❖ Could constitute an unwarranted invasion of privacy,
 - ❖ Could disclose the identity of a confidential source,
 - ❖ Would disclose law enforcement techniques, methods, guidelines, and
 - ❖ Could endanger the life or physical safety of any individual.
8. Supervision, examination, and operation of banks.
9. Geological and geophysical data concerning wells.

Are Agency records provided free of charge to FOIA requesters?

According to USDA regulations, APHIS is able to charge if the assessable fees exceed \$25. FOIA requesters may seek fee waivers for their requests. The FOIA fee waiver provision “was enacted to ensure that the public would benefit from any expenditure of public funds for the disclosure of public records.” Therefore, fee waiver determinations are made on a “case-by-case” basis, and the requesters bear the burden of establishing that the fee waiver standard has been satisfied.

The fee waiver standard consists of two prongs: public interest and commercial interest. The public interest prong determines whether disclosure of the requested information would be in the public interest through the likelihood of significantly contributing to public’s current understanding of government operations or activities. The commercial interest prong determines if disclosure of the requested records is primarily in the public interest. If there is a commercial interest, it must be less than the public interest to warrant a fee waiver.

Below is a matrix of the fee waiver factors needed to be analyzed in fee waiver determinations.

FEE WAIVER CRITERIA		
Prong	Factor	Description
Public Interest	One	Whether the subject of the request concerns the operations or activities of the government.
	Two	Whether the disclosable information has informative value.
	Three	Whether disclosure will contribute to the general public’s understanding of the subject.
	Four	Whether disclosure will “significantly” contribute to current public understanding of the subject.
Commercial Interest	Five	Whether a commercial interest exists and the magnitude of such interest.
	Six	Which is the primary interest in disclosure (public or commercial interest).

If a fee waiver is denied, how does the FOIA office make fee determinations?

When a fee waiver request is denied, a fee category determination is made based on the information provided about the requester. Fee categories determine what fees can be charged for the processing of FOIA requests (see Fee Categories and Charges matrix on next page).

What fees can be assessed for processing FOIA requests?

According to USDA regulations, the FOIA office can assess processing fees as follows:

FOIA FEE SCHEDULE		
Clerical Search & Review	Professional Search & Review	Duplication
\$10 per hour	\$20 per hour	\$0.20 per page

Can a requester submit multiple requests in order to avoid being charged fees?

If the FOIA office can reasonably determine that a requester (or group of requesters) is breaking down a request into a series of requests to avoid the assessment of fees, the FOIA Officer can aggregate those requests for fee assessment. One factor that can be considered in aggregation is the time period in which the requests were placed.

Can the FOIA Office request an advance payment of actual or estimated fees?

If estimated or actual fees exceed \$250, the FOIA Officer can request an advanced payment of fees prior to duplication of the requested records.

FEE CATEGORIES AND CHARGES					
Level	Types of Requesters	Requester Descriptions	What Can Be Charged		
			Search	Review	Duplication
1	Commercial Use	A use or purpose that furthers the requester's commercial, trade or profit interest.	All	All	All
2	Educational Institution	An educational institution operating a program(s) of scholarly research.	None	None	In excess of the first 100 pages.
	Noncommercial Scientific Institution	A noncommercial institution operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product of industry.			
	News Media Representative	Any person actively gathering information of current interest to the public for an organization that is organized and operated to publish or broadcast news to the general public. For example, a reporter for <u>The Washington Post</u> .			
3	All Others	All requesters who do not fall within either of the preceding levels.	In excess of the first two hours.	None	In excess of the first 100 pages.

FOIA Procedures

- When case is assigned to you – Set the hardcopy folder up...
- Create a software folder with the FOIA request number identified in Microsoft word; (F: \E-cases\Bevelyn\07-xxx-AC, VS, WS (program office)
- In Adobe Acrobat, Go to [E-cases] then go to [Incoming Request] then go to [2006 or current year].
- Look for the FOIA number file that corresponds with your hard copy file.
- Copy the document and paste in your E-case/Bevelyn/FOIA number folder, the franked version of the request and the clean copy of the request will come up.
- Extract the clean version and save it in Adobe Acrobat – save as: 07-xxx (request). Go to Document option; then go to Pages and then go to Extract - this is the location where identify and extract the pages)
- Then the franked version can be saved as 07-xxx (franked request). At the end, give the clean request sheet/letter to the requester when burning the CD.
- Do the Search Sheet Request, Acknowledgement letter (which you sign yourself) and Case Log on the same day you receive the request or NLT 48 hours from receipt of case.
- E-mail the search sheet request to the appropriate program giving them 7 work days to complete the search and return the appropriate records -- also attach the franked request letter to the same e-mail. This will help the program liaison keep the corresponding search together with the request upon return to this office.
- Examples of how the files will be saved are: 07-xxx (search sheet); 07-xxx (acknowledgement); and 07-xxx (case log).
- Put tabs in the folder. The tabs will be titled: Request, Admin., and Records (which are the documents received from the program). The franked and clean request versions go in the request section. The Case Log, Search Sheet and Conversation Notes (Phone, e-mail, etc.) will go in the Admin. section.
- When the record(s) come from program(s), scan the records in Adobe Acrobat and save as, for example: 07-xxx (master). Once you start and finish reviewing the master and placing all the red explanation brackets, save as: (for example) 07-xxx (reviewed). That electronic copy will go to Suzi along with the draft letter.

- Punch holes in the hardcopy record(s) and folder, and then clip the two together so the record won't fall out of the folder.
- Prioritize media requests first.
- Break-up your records from different programs into groups of 200 pages in hardcopy and scanning because there could be issues with saving data at times.
- When ready for review to Suzi and/or Lesia present your request file folder with tabs separating the sections.
- The request(s) that result in 'No Records' and 'Referrals' do not burn a file copy CD.
- If you have records that are less than 20 pages do not burn onto CD, just print the records and mail.
- When sending draft (release letter, withholding letter, etc.) to Suzi and/or Lesia, it goes without letterhead.
- Suzi will not date stamp the letter, but will send it back to you with edits or Ok it with her SMG initials and date it. If there are no changes to be made to the reviewed copy, you will save the record as: (for example) 07-xxx records.
- If there are edits/corrections to be made, make the corrections and put the final on top of the draft for Lesia's knowledge and signature then paper clip it to the front of the folder.
- Hopefully, there is nothing wrong with the final. If there is you will receive the final letter back from Lesia and have to make changes. You never want this to happen.
- When the final is done correctly without any mistakes you will receive the letter back with the date stamp on it and Lesia's signature.
- Now, scan the final letter in .PDF file and save as for example: 07-xxx response
- Then make 4 copies of the final letter with the date stamp on it and Lesia's signature.
- One copy will go in your chron file (hardcopy folder). One copy will go in the request folder file. And one copy is Cindy's copy for her tray labeled 'Staff Outgoing Letters'. Finally one copy is Glendora's case.
- We then log out the request with the results identified. We log out the request in the fiscal year book that it belongs in and scratch it off the board.

CLOSING AND MAINTAINING THE ELECTRONIC FILE

ELECTRONIC FILE FOLDER

After you have created your CDs, you need to clean up your e-case file folder.

- For a request that does not contain **partial releases**, your file should only have the following files in your folder:

XX-XXX(Master).pdf
XX-XXX(Reviewed).pdf
XX-XXX(Administrative).pdf
XX-XXX(Request).pdf
XX-XXX(Response).pdf
XX-XXX (Records).pdf
XX-XXX(Out of scope).pdf, **If Applicable**
XX-XXX(Non-responsive).pdf, **If Applicable**
XX-XXX(duplicate).pdf, **If Applicable**

- For a request that contains **partial releases**, your file should have the following files in your folder:

XX-XXX(Master).pdf
XX-XXX(Request).pdf
XX-XXX(Administrative).pdf

Additional folders for each partial:

XX-XXX (Master partial 1)
XX-XXX(Reviewed partial 1).pdf
XX-XXX(Response partial 1).pdf
XX-XXX(Records partial 1).pdf
XX-XXX(Out of scope partial 1).pdf, **If Applicable**
XX-XXX(duplicate).pdf, **If Applicable**
XX-XXX(Non-responsive partial 1).pdf, **If Applicable**

- If you received **records from multiple programs** your file should only have the following files in your folder:

XX-XXX(Master_program).pdf
XX-XXX(Reviewed_program).pdf
XX-XXX(Administrative).pdf
XX-XXX(Request).pdf
XX-XXX(Response).pdf
XX-XXX (Records).pdf
XX-XXX(Out of scope_program).pdf, **If Applicable**
XX-XXX(Non-responsive_program).pdf, **If Applicable**
XX-XXX(duplicate_program).pdf, **If Applicable**

*****See complete CLOSE CASE PROCEDURES**

FOIA Litigation: **Standard Operating** **Procedure**



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FOIA Litigation: Standard Operating Procedure

I. How does APHIS become aware of a lawsuit?

1. The APHIS Freedom of Information Act (FOIA) Office can become aware of new FOIA litigation in several ways:
 - a) Direct notification by the USDA Office of General Counsel (OGC)
 - b) Monitoring of the office PACER account
 - c) Monitoring the websites of non-profits like the Humane Society of the United States (HSUS), People for the Ethical Treatment of Animals (PETA), and other groups that are frequent FOIA requesters and/or litigants. These groups sometimes announce lawsuits on their sites before they are filed, or on the day of filing.
2. When the APHIS FOIA Office is alerted about a new lawsuit, the FOIA Director will assign the case to a FOIA Analyst to work on from start to finish.
3. The Analyst to whom the case has been assigned is called the **Lead** and has management of the entire case.

II. Notification of litigation by USDA/OGC

1. The General Law Division (GLD) is the section of the USDA Office of General Counsel (OGC) responsible for tracking FOIA litigation and working with the assigned Assistant U.S. Attorney at the U.S. Department of Justice (DOJ) to defend a lawsuit

2. USDA/OGC is usually the first to know within USDA about new FOIA litigation
3. Brian Mizoguchi (phone 202-720-7219) is the current director of the GLD, as of 2019
4. Upon receipt of a Complaint and a Summons, the Director of the GLD will assign the lawsuit to a specific attorney within the GLD
5. Thereafter the assigned OGC/GLD attorney will become the primary point-of-contact between the APHIS FOIA Office and OGC for legal and procedural questions about the case
6. The assigned Assistant U.S. Attorney (AUSA) at DOJ is another contact our office regularly deals with in litigation cases
7. The assigned AUSA will represent APHIS in court proceedings, including trial
8. The APHIS Lead on the case should know who the assigned USDA/OGC and DOJ attorneys are

III. Service of Process

1. Service of Process (“service”) refers to the official delivery of a lawsuit and receipt of a copy by the defendant (e.g., USDA). Service includes a copy of the Complaint and the Summons.
2. The service date (date when the Complaint is received and signed for by the defendant agency) drives other deadlines such as the date for filing the Answer to the Complaint.

3. The Lead should note and record the service date (which may be stamped on the Complaint and Summons, or provided by OGC), and report it to the FOIA Director.
4. From the Department of Justice's FOIA Guide: *"An agency has thirty from the date of service of process to answer a FOIA Complaint, not the usual sixty days that are otherwise permitted by Federal Rule of Civil Procedure 12(a). While courts are not required to automatically accord expedited treatment to FOIA lawsuits, they may do so 'if good cause therefor is shown.'"*
5. The 30-day time to file the Answer means 30 calendar days; but if the 30th calendar day falls on a Saturday, Sunday or Federal holiday, then the last day to file the Answer is the next business day.
6. Courts sometimes grant extensions to file the Answer, but you should rely on this only if OGC or the Assistant US Attorney notifies us that an extension has been granted.

IV. Who is served?

1. Service of process adheres to Rule 4 of the Federal Rules of Civil Procedure
2. Rule 4 sets forth the procedure for service of process when a party files suit against a federal agency:

(2) Agency; Corporation; Office or Employee Sued in Official Capacity. To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer or employee.

3. Both the Assistant US Attorney for the judicial district where the action is brought (usually the D.C. Federal District) and USDA are served. When USDA receives the Complaint, OGC is notified.
4. If the lawsuit involves APHIS, OGC then notifies the APHIS FOIA Office.

V. When Litigation is Received – First Steps

1. The case is assigned a FOIAXpress number. This number will look like a normal FX case number, but will have the suffix “L”. The L cases will be logged in initially by Andrea McNally, but later FOIA intake staff will do it.
2. The FX litigation (“L”) case record is linked in FX to the initial FOIA request(s) and to the FOIA appeal(s) connected with the litigation.
3. A specific litigation case folder is created here: F:\E-Cases\LITIGATION on the F drive. Andrea McNally, or a dedicated Intake Team member, will create these folders.
4. All files and records concerning the underlying FOIA request(s) and appeal(s) are placed in the LITIGATION folder so the Lead will have easy access to them.
5. Copies of the litigation pleadings, including the Complaint and any other motions and pleadings we receive, are placed in the L folder and in the FOIAXpress Correspondence folder of the litigation case.
6. Upon logging in the new litigation, the underlying FOIA request(s) and/or appeal(s), if they are still open, are closed

by Andreas McNally or by a designated member of the FOIA Intake Team.

VI. Litigation Received – Next Steps

1. The Lead should get the official service date from OGC. The service date is important because it determines important deadlines for subsequent actions.
2. The Lead should keep case notes in a Word document which should be stored in the LITIGATION case folder in E-Cases, so they can be accessed by the FOIA Director, supervisors and others. The notes should include the service date, name(s) of OGC/GLD attorney and Assistant U.S. Attorney assigned to the litigation, and other important information, as well as copies of the Complaint and any motions or other court pleadings received.
3. The Lead should call any issues or events of important to the case to the attention of their supervisor and the FOIA Director immediately, as well as tracking them in the case notes. The case notes should provide a chronological picture of the litigation.

VII. Answering the Complaint

1. Remember the 30 calendar day answer deadline (see Section III, above).
2. Do not use or rely on FOIAXpress (FX) to determine dates or deadlines!
3. Instead, be careful and look at underlying case documents:

- a. Be aware that dates on court pleadings may sometimes be incorrect
 - b. Wrong years have been seen on some court documents
 - c. Sometimes you will find no records or close-out dates in FX
- 4. Sometimes dates in FX will have to be corrected to match what was actually done
- 5. OGC attorney and/or Assistant U.S. Attorney will provide guidance on the Answer (and AUSA will file the Answer)
- 6. OGC may ask the FOIA Office for responses to the allegations in the Complaint. When providing APHIS' responses, work with those who are familiar with the facts of the case (e.g., the analyst who handled the original request; the program FOIA liaison who provided the documents, etc.)
- 7. OGC might ask us to provide a declaration or a sworn statement (affidavit). These are sometimes offered to provide the court with a detailed factual account: how the agency handled initial request; how program officials performed the records search, etc.

VIII. Production of Records – Working with OGC

- 1. Most FOIA litigation seeks either new records, or the reissuance of already released records, with redactions removed from previously redacted records.

2. The Lead should understand the basis of the litigation and what the Plaintiff is seeking. The best way to get this information is by reading the Complaint.
3. The Lead should determine what OGC needs to respond to the lawsuit.
4. The lead should determine how OGC wants to review the records:
 - a. Does OGC want to vet the records?
 - b. Does OGC want to review all the records, or just a sample?
 - c. Does OGC want a new search or searches performed?
 - d. Does OGC want OGC equities sent to them first, for their review?
5. Do not send any records to OGC without letting them know first (via email or phone) that records are being sent. OGC should know when we send them records, the number of pages, if the package contains all the records or just part, and any other pertinent information.
6. The Lead should be aware of all deadlines during this process, including court deadlines referenced by the Assistant U.S. Attorney.

IX. More on working with OGC

1. You may have questions for OGC on applying, changing or justifying redactions; deadlines; declarations, affidavits or a Vaughn Index.

2. If you ask a question of OGC and don't get an answer, then call or ask again until you get your answer
3. Sometimes FOIA litigation is related to non-FOIA litigation filed by a Plaintiff against USDA (the non-FOIA litigation may concern the same program, parties or issues); be aware of this and ask OGC how this may affect our response, review and production of documents.
4. When OGC asks you how long it will take to accomplish certain tasks (e.g., document review), think through in advance all the work you will need to accomplish the task in the time period you gave them. It is better to propose a longer deadline than one that is too short for you to get all the work done.
5. Make sure to update OGC or the AUSA regularly on the progress of your review. Ask them how often they would like updates (once a week is usually sufficient).

X. When is a Vaughn Index necessary?

1. It depends on the case. Early in the litigation, the Lead should ask OGC or the Assistant US Attorney if they think a Vaughn Index may be necessary.
2. A Vaughn Index is a summary, in table or spreadsheet form, of the documents being produced in litigation, along with justifications for withholding the portions redacted.
3. If a Vaughn Index is necessary, the Lead should carefully consider the type of documents being produced, the complexity of the redactions, the number of pages, etc., and select a format from the ones provided in the samples (in

the GUIDANCE folder in E-Cases), or a format suggested by OGC or the Assistant US Attorney.

4. **Willis v. FBI, No. 17-1959, 2019 WL 2138036 (D.D.C. May 16, 2019) (Jackson, J.)** The court determined that when the government's declaration not only identifies the withheld material, but also provides a clear and specific explanation as to why disclosure of that information would constitute unwarranted invasion of privacy, then there is no need for a Vaughn Index (of the items withheld under Exemption 4) because the declaration accomplished the purpose of the Vaughn Index.
5. If a Vaughn Index is required and the records are voluminous, be sure to get a good head start because the creation of the index can be time consuming!

XI. Preparing a Vaughn Index

1. A Vaughn Index should list all items redacted, their page numbers (i.e., Bates Stamp numbers), a brief description of the records (including dates of correspondence, email senders' and recipients' names where applicable, etc.), the FOIA Exemption(s) applied, and the agency's justification for the redactions.
2. Justifications for redactions should cite the applicable FOIA Exemption(s), and should be as specific as possible without identifying the information being withheld, or disclosing it in any way. The FOIA Exemption should be connected with the justification in a logical manner, i.e., state the issue (what kind of information is being withheld), the rule (the

- elements of the FOIA Exemption), then apply the information (facts) to the rule, and finish by stating a conclusion (i.e., that the information has been withheld in full or in part).
3. DOJ's Office of Information Policy says that a Vaughn Index should be "Factual; relatively detailed; non-conclusory; non-argumentative; made in good faith."
 4. Per DOJ, most courts will accept a Vaughn Index in which specific codes or symbols are used as shorthand in place of lengthy narratives for the justifications, which saves a lot of time.
 5. For instance, an alphanumeric code such as "A1", "A2", "B1", "B2", etc., may be used, where each symbol refers to a specific justification statement. A key of the codes and their corresponding justification statements should be provided with the index.

XII. Settlements and Award of Fees

1. Generally a settlement is reached between the Plaintiff and the Government
2. If the Plaintiff prevails on any substantial issue in the case, the court may award attorneys' fees to the Plaintiff
3. Attorneys' fees may become part of the settlement agreement unless successfully disputed
4. The court may also direct the agency to take certain steps to release records, and these instructions may also become part of the settlement agreement

5. Generally a settlement has been reached once the requester has started receiving records
6. The agency can dispute the requested attorneys' fees (for example, if the Plaintiff's counsel say they had 4 people reviewing the same documents, and charge for all 4 – the agency can dispute demands like this)
7. The Lead should closely review the settlement terms and look for items that can be reasonably disputed
8. Any disputes to the terms of a proposed settlement agreement must be raised by the agency in a timely fashion

XIII. Summary of Request for Fees

1. After receiving the request for fees from OGC, the Lead writes a summary or synopsis of fees of the settlement to include the following:
 - a. The amount of money the Plaintiff is seeking
 - b. Whether the FOIA Office or the Program Office (or both) are at fault
 - c. The FOIA Office's current litigation budget (Note: the FOIA Office can go to the Program Office for additional funds if necessary)
2. The Lead should present the summary of fees to the FOIA Director
3. The FOIA Director will authorize the payments and notify the LPA Director
4. This generally occurs after the production of records

XIV. Settlement Agreements and Payments

1. Samples of Settlement Agreements will be placed in the Litigation folder in E-Cases
2. The agency must send information to the Assistant US Attorney (AUSA) concerning what is required for the Plaintiff to be paid
3. Generally the agency has 45 days to pay fees
4. Sometimes the Plaintiff owes debts to the agency that could offset some or all of the fees. The Lead should determine if this is the case.
5. There is an OMB form (pursuant to the Paperwork Reduction Act) which must be filled out to accompany fee payments.
 - a. LPA has an “unapproved vendor form” which may be used (although some AUSAs accept it and some do not)
 - b. The FOIA Director has an unofficial form prepared which the AUSA may also accept
 - c. Determine which form the AUSA needs

XV. Additional resources (hyperlinks)

- [Sample Vaughn Index formats](#) and more are in our GUIDANCE folder
- DOJ Office of Information Policy [Litigation Considerations](#) slide presentation
- DOJ FOIA Guide chapter on [Litigation Considerations](#)
- Public Access to Court Electronic Records ([“PACER”](#))

**APHIS Implementation
of the
Privacy Act (5 U.S.C. 552a)**

Presented by

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Implementation of the Privacy Act (5 U.S.C. 552a)

What is the purpose of the Privacy Act of 1974?

The purpose of the Privacy Act (PA), is to:

- ❖ Place limitations on the collection, use, and dissemination of personally identifiable information maintained by federal government agencies about individuals and contained in an agencies systems of records.

What is a “System of Records”?

- ❖ Any group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Can an agency disclose any Privacy Act information?

- ❖ Under the Privacy Act, an agency cannot disclose any information about an individual contained in a system of records to another person or agency without the prior written consent of the individual, unless the disclosure is authorized by law.

What types of disclosures are authorized?

- ❖ The Privacy Act authorizes 12 exceptions under which an agency may disclose information in its records without consent. (5 U.S.C. 552a(b)).

For example, the Privacy Act authorizes the agency to disclose a record:

- ❖ for a “routine use,” defined in the Act as a use of a records for a purpose which is compatible with the purpose for which it was collected;
- ❖ to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties; or,
- ❖ to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

Do I have the right of access to agency records maintained on myself?

The Privacy Act grants individuals the right:

- ❖ of access to agency records maintained on themselves;
- ❖ to amend that record if it is inaccurate, irrelevant, untimely, or incomplete; and,
- ❖ to sue the government for violations of the Act.

What is a Privacy Impact Assessment?

In accordance with Office of Management Budget Memo M-03-22, dated September 26, 2003, and the E-Government Act of 2002, a privacy impact assessment (PIA) is an analysis of how information is handled:

- ❖ to ensure handling conforms to applicable legal, regulatory, and policy requirements regarding privacy;
- ❖ to determine the risks and effects of collecting, maintaining and disseminating information in identifiable form in an electronic information system; and,
- ❖ to examine and evaluate protections and alternative processes for handling information to mitigate potential privacy risks.

When to conduct a PIA:

- ❖ before developing or procuring IT systems or projects that collect, maintain or disseminate information in identifiable form from or about members of the public;
- ❖ before initiating a new electronic collection of information in identifiable form for 10 or more persons (excluding agencies, instrumentalities or employees of the Federal government); and,
- ❖ where a system change creates new privacy risks, PIAs are required to be performed or updated.

What requirements must agencies meet when establishing or revising a Privacy Act system of records?

In addition to the aforementioned PIA requirements, the agency is required to publish in the Federal Register a notice including such information as:

- ❖ the name and location of the system;
- ❖ the categories of individuals on whom records are maintained in the system; and,
- ❖ each routine use of records contained in the system.

When collecting information on a form (that is to be entered in a Privacy Act system of records), an agency is required to notify individuals of:

- ❖ the authority authorizing the solicitation of the information and whether disclosure of such information is mandatory or voluntary;
- ❖ the principal purposes for which the information is intended to be used; and,
- ❖ the routine uses that may be made of the information.

In addition to the Privacy Act, there are other government-wide statutes that relate to the protection of individually identifiable information.

- ❖ The FOIA provides that the public has a right of access to federal agency records, except for those records that are protected from disclosure by nine stated exemptions.

Two exemptions in FOIA protect personal privacy interests from disclosure. The first exemption allows the federal government to withhold records or information about individuals in personnel and medical files when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

The second exemption allows the federal government to withhold records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement or information could reasonably be expected to constitute an unwarranted invasion of personal privacy.

- ❖ The Paperwork Reduction Act of 1995 requires the Office of Management and Budget to provide central guidance for and oversight of federal agencies' information management activities, including activities under the Privacy Act. Also this Act requires federal agencies to ensure compliance with the Privacy Act and coordinate management of the requirements of FOIA, the Privacy Act, the Computer Security Act, and related information management laws.

- ❖ The Computer Security Act of 1987 provides for improving the security and privacy of sensitive information in federal computer systems. The Act defines “sensitive information” to include any unclassified information that, if lost, misused, or accessed or modified without authorization, could adversely affect the national interest, conduct of federal programs, or the privacy to which individuals are entitled under the Privacy Act. The Computer Security Act requires federal agencies to identify their computer systems that contain sensitive information, establish training programs to increase security awareness and knowledge of security practices, and establish a plan for the security and privacy of each computer system with sensitive information.

Example - Privacy Act Issue

In the absence of a Privacy Act (PA) statement on APHIS Form 345-R (Time and Attendance Log (T&A)), is an employee required to provide his/her Social Security Number (SSN) on the T&A?

Purpose of the PA

The purpose of the PA is to place limitations on the collection, use, and dissemination of personally identifiable information maintained by Federal government agencies about individuals and contained in a system of records.

In the Beginning.....

The initial burden for the collection and use of personal information is placed upon applicants (members of the public) for initial entry into Federal employment. Among other things, a SSN is required on the application or resume. These personal information requirements are outlined in every vacancy announcement. Upon entry into the Federal service, employees are required to fill out additional paperwork authorizing the release of information for background investigations, tax withholding, etc. PA statements are placed on these forms to notify and inform employees of additional uses of personal information above and beyond those for which the information has been previously required or provided.

Absence of a PA Statement on the T&A

When collecting information on a form (that is to be entered in a PA system of records), an agency is required to notify individuals of: (1) the authority authorizing the solicitation of the information and whether disclosure of such information is mandatory or voluntary; (2) the principal purposes for which the information is intended to be used; and, (3) the routine uses that may be made of the information.

The official notification exists in a publicly available PA system notice, USDA/OP-1, Personnel and Payroll System for USDA Employees (attached), which covers personnel records, including T&As. There are no additional uses of the information contained on the T&A. Therefore, a PA statement is not required on the T&A.

PA Exception Number One - "Need to Know"

The PA authorizes 12 exceptions under which an agency may disclose information in its records without consent. (5 U.S.C. 552a(b)).

The first of these exceptions 5 U.S.C. 552a(b)(1) pertains to the “need to know” within the Agency “to those officers and employees of the agency which maintain the records and who have a need for the record in the performance of their duties.” The “need to know” exception authorizes the intra-agency disclosure of a record for necessary, official purposes.

SSN - Voluntary but Necessary

The employee timekeeper is responsible for maintaining and submitting T&A information into the National Finance Center (NFC) pay system, and therefore, has an official “need to know” the SSN of each employee within the work unit. The pay system is setup around the uniqueness of social security numbers. The disclosure of the SSN on the log sheet is voluntary. However, the SSN is needed to input T&A information into NFC’s Personal Computer-Time and Attendance Remote Entry (PC-TARE) system in order for an employee to receive salary payments. Access to an employee’s record through the PC-TARE system can only be made through entering the SSN. Failure to include the SSN may result in the employee not receiving salary payments.

Additional Information

If there are any additional questions or concerns, please feel free to contact me directly on (301) 734-5267.

Michael Marquis
Assistant Director
Freedom of Information
Legislative and Public Affairs

2022-002 Procedural Guidance/Information: Filing Closed Requests, Appeals, Litigation on Share Drive F

1. Date Released: April 12, 2022
2. Purpose / Scope: To enforce proper records management of FOIA/PA records per the General Records Schedule (GRS) 4.2. This procedure will bring consistency to storing closed initial, appealed and or litigated administrative FOIA files on the F drive. Additionally, this procedure will enhance the Analyst's ability to destroy records that have met the retention period.
3. Authority: Tonya Woods, Director
4. Reference: GRS 4.2: Information Access and Protection Records
<https://www.archives.gov/files/records-mgmt/grs/grs04-2.pdf>
5. Author: Michelle Moreno and Sophie
6. Personnel Concerned / Distribution: All LPA FOIA / PA Analysts
7. Effective Date: Immediately
8. Procedure:

8.1. Filing closed administrative folder

- 8.1.1. Once a request is closed in FOIA Express, the administrative file on share drive F (F:\E-Cases) should also be closed.
- 8.1.2. To close a request on the share drive, the FOIA Analyst should ensure all documents related to the closed case are properly filed in the administrative folder.
- 8.1.3. The complete administrative file should be moved to the correct closed folder. The closed folders are located as follows: F (F:\E-Cases). If the request was closed in FY 21 the folder should be filed in the FY 21 folder, regardless of the FY the request was received. If the request was closed in FY 22, the request should be filed in the FY 22 folder.
- 8.1.4. Once within the correct FY folder, as noted in 8.3., the FOIA Analyst should locate the month folder that the request was closed and placed the administrative FOIA folder within that month.
Example: Request closed in FY 22 in October. The administrative FOIA folder should be placed in the FY 22 folder. Then go to the October folder and place the request there.
- 8.1.5. This closed initial record is the official record. Any records maintained elsewhere is a copy and should only be retained for training and or educational purposes.

8.2. Filing closed FOIA Appealed Requests

- 8.2.1. To close an Appeal on the share drive, the FOIA Analyst should ensure all documents related to the appeal are in the administrative folder.
- 8.2.2. Make a copy of the closed folder and move it to F:\APPEALS – CLOSED
- 8.2.3. This closed appeal record is the official record. Any records maintained elsewhere is a copy and should only be retained for training and or educational purposes.

8.2.3. **Need monthly folders**

8.3. Filing closed FOIA Litigation Requests

8.3.1. If the closed folder is litigated, a copy of the closed folder is moved to F:\E-Cases\LITIGATION

8.3.2. **Need monthly folders**

8.3.3. This closed litigated record is the official record. Any records maintained elsewhere is a copy and should only be retained for training and or educational purposes.

FOIA Standard Operating Procedures

RECEIVING REQUESTS, CORRESPONDENCE, AND RECORDS

AM Procedures (FOIA Assistant A):

- At 7 a.m., all requests received after 5:00 p.m. on the previous day and any received on the current day should be retrieved by FOIA Assistant from the FOIA Officer email box located on the Lotus Notes database, stamped with the date received, and submitted to supervisor for review by 7:15 a.m.
- Supervisor will review requests for clarity, requester type, and track; select the programs to search for records; assign a FOIA Specialist to process each request; and return the requests to FOIA Assistant by 8:30 a.m.
- FOIA Assistant will stamp each request with a due date (if applicable), log each request into FOIAXpress (FX), and stamp each request with the case number generated by FX by 10:00 a.m.
- At 9:00 a.m., all requests should be retrieved by FOIA Assistant from the FOIA Officer email box located on the Lotus Notes database, stamped with the date received, and submitted to supervisor for review by 9:15 a.m.
- Supervisor will review requests for clarity, requester type, and track; select the programs to search for records; assign a FOIA Specialist to process each request; and return the requests to FOIA Assistant by 10:30 a.m.
- FOIA Assistant will stamp each request with a due date (if applicable), log each request into FX, and stamp each request with the case number generated by FX by 12:00 p.m.
- At 11 a.m., all requests should be retrieved by FOIA Assistant from the FOIA Officer email box located on the Lotus Notes database, stamped with the date received, and submitted to supervisor for review by 11:15 a.m.
- Supervisor will review requests for clarity, requester type, and track; select the programs to search for records; assign a FOIA Specialist to process each request; and return the requests to FOIA Assistant by 12:30 p.m.
- FOIA Assistant will stamp each request with a due date (if applicable), log each request into (FX), and stamp each request with the case number generated by FX by 3:30 p.m.

PM Procedures (FOIA Assistant B):

- At 1:00 p.m., all requests should be retrieved by FOIA Assistant from the FOIA Officer email box located on the Lotus Notes database, stamped with the date received, and submitted to supervisor for review 1:15 a.m.
- Supervisor will review requests for clarity, requester type, and track; select the programs to search for records; assign a FOIA Specialist to process each request; and return the requests to FOIA Assistant by 2:30 p.m.
- FOIA Assistant will stamp each request with a due date (if applicable), log each request into (FX), and stamp each request with the case number generated by FX by 4:00 p.m.

FOIA Standard Operating Procedures

RECEIVING REQUESTS, CORRESPONDENCE, AND RECORDS

- At 2:30 p.m., all requests should be retrieved by FOIA Assistant from the postal mailbox located in the General Services Room, stamped with the date received, and submitted to supervisor for review by 2:45 p.m.
- Supervisor will review requests for clarity, requester type, and track; select the programs to search for records; assign a FOIA Specialist to process each request; and return the requests to FOIA Assistant by 4:00 p.m.
- FOIA Assistant will stamp each request with a due date (if applicable), log each request into FX, and stamp each request with the case number generated by FX by 6:00 p.m.
- At 3:00 p.m., all requests should be retrieved by FOIA Assistant from the FOIA Officer email box located on the Lotus Notes database, stamped with the date received, and submitted to supervisor for review NLT 3:15 p.m.
- Supervisor will review requests for clarity, requester type, and track; select the programs to search for records; assign a FOIA Specialist to process the request; and return the request to FOIA Assistant by 4:00 p.m.
- FOIA Assistant will stamp each request with a due date (if applicable), log each request into FX, and stamp each request with the case number generated by FX by 6:00 p.m.
- At 5:00 p.m., all requests should be retrieved from the FOIA Officer email box located on the Lotus Notes database, stamped with the date received, and submitted to supervisor for review
- Supervisor will review requests for clarity, requester type, and track; select the programs to search for records; assign a FOIA Specialist to process the request; and return the request to FOIA Assistant by 8:00 a.m. the following business day.
- FOIA Assistant will stamp each request with a due date (if applicable), log each request into FX, and stamp each request with the case number generated by FX by 9:30 a.m.

FOIA Assistant A will log in correspondence and records received each day by 11:00 a.m. and received on the previous day after 5:00 p.m.

FOIA Assistant B will log in correspondence and records received each day after 11:00 a.m.

ALL DOCUMENTS RECEIVED FOR THE WEEK MUST BE LOGGED IN BY 6:00 P.M. FRIDAY