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June 21, 2022

This is in response to your Freedom of Information Act request that was received by this office on May 23, 2022 and was assigned FOIA case number 2022040. Your request is for the OIG FOIA Standard Operating Procedure.

Enclosed is the DOL OIG's FOIA Inspector General Directive in its entirety.

You have the right to appeal this response within 90 days from the date of this letter. Should you decide to do this, your appeal must state, in writing, the grounds for appeal, together with any statement or arguments. Such an appeal should be addressed and directed to the Solicitor of Labor, citing OIG/FOIA No.2022040, Room N-2428, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or foiaappeals@dol.gov. Please refer to the Department of Labor regulations at 29 CFR 70.22 for further details on your appeal rights.

Should you need to discuss your request, feel free to contact this office at FOIA.PrivacyAct@oig.dol.gov or the DOL FOIA Public Liaison, Thomas Hicks at 202-693-5427. 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 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Kim Pacheco

Kimberly J Pacheco

DOL OIG FOIA

Office of Information Disclosure

Enclosure

FOIA IGD (thirteen pages)



OIG Manual

U.S. Department of Labor
Office of Inspector General

Transmittal Sheet

Date: 01/22/2021

IGD 5-300

INFORMATION: Policy for Handling Requests Under the Freedom of Information Act and the Privacy Act

This directive prescribes policies, establishes uniform procedures, and assigns responsibilities for responding to Freedom of Information Act (FOIA) and Privacy Act requests for the Office of Inspector General (OIG) records.

This directive rescinds IGD 5-300, Procedures for Handling Freedom of Information Act (FOIA) and Privacy Act requests, dated 09/05/2003

This Directive is effective immediately and will remain in effect until canceled or superseded. It requires implementation of action items, and contains information of a continuing nature.


Acting Inspector General



Inspector General
Directive

Title: **POLICY FOR HANDLING REQUESTS
UNDER THE
FREEDOM OF INFORMATION ACT
AND PRIVACY ACT**

Number: 5-300

Date: January 22, 2021

1. PURPOSE.

This directive prescribes policies and assigns responsibilities for Department of Labor, Office of Inspector General (OIG) employees to carry out their responsibilities under the Freedom of Information Act (FOIA), as amended (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a). This directive rescinds IGD 5-300, Procedures for Handling Freedom of Information and Privacy Act requests, dated September 5, 2003.

2. SCOPE.

This directive applies to all OIG components, offices, employees, and contractors. The OIG's policy is to provide the public prompt access to information in accordance with the requirements and intent of the FOIA and to protect individual privacy interests consistent with the Privacy Act.

3. POLICY

The policy of the OIG is to provide full and responsible disclosure of identifiable records and information consistent with the FOIA and the Privacy Act, 5 USC §§ 552 and 552a, respectively. Departmental policy, as well as OIG policy, provides that any written request for records (via mail, facsimile or electronic mail), regardless of whether the request cites the

FOIA or the Privacy Act, will be answered in accordance with the procedures found in the FOIA, the Privacy Act, and in 29 C.F.R. Part 70.

4. AUTHORITIES

- a. 5 U.S.C. § 552
- b. 5 U.S.C. § 552a
- c. 29 C.F.R. Part 70.
- d. DLMS 1-1100

5. BACKGROUND.

- a. Freedom of Information Act (FOIA).

The Freedom of Information Act (5 USC §552) is a disclosure statute which provides that any individual has the right (enforceable in court) to request access to records maintained by the federal government that are not in the public domain. The FOIA provides for disclosure of all releasable information with the exception of information protected by any of the nine FOIA exemptions (see Appendix A).

- b. Privacy Act.

The purpose of the Privacy Act, 5 U.S.C. § 552a, is to balance the government's need to maintain information about individuals with individuals' rights to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. It applies to records that are contained in a system of records that are routinely retrieved by an individual's name or personal identifier. To be covered by the Privacy Act, the records must contain certain personal information about individuals, which may include, but are not limited to an individual's education, benefits, financial transactions, medical history, investigative and/or criminal history, and employment history.

c. Joint FOIA/Privacy Act Requests.

A request for information received by the OIG may be identified as a FOIA request, a Privacy Act request, or as a joint FOIA/Privacy Act request when the requestor seeks records about themselves that may be contained in a Privacy Act system of records. The policy for handling joint FOIA/Privacy Act requests is to review the request under both statutes to ensure that the maximum amount of information is disclosed within the constraints of the law.

5. RESPONSIBILITIES.

The authority for releasing OIG maintained information to the public rests with the Inspector General. This authority has been delegated to the OIG Freedom of Information Act/Privacy Act Officer (FOIA Officer).

- a. The OIG FOIA Officer or its designee is responsible for:
 - 1. Ensuring compliance with the public information requirements prescribed in 5 U.S.C. §552(a)(2) (including making available for public inspection and copying: final opinions, unpublished statements of policy and interpretations adopted by the agency, certain administrative staff manuals, and certain frequently requested records, along with creating a general index of the frequently requested records);
 - 2. Coordinating with other Departmental agencies, offices and staff, as appropriate, including always contacting the relevant DOL agency FOIA Officer(s) before referring or forwarding a request to them and advising the DOL FOIA Officer whenever a request is received that involves multiple DOL agencies/offices and may require coordination;
 - 3. Coordinating, processing, and controlling all FOIA/Privacy Act requests directed to the OIG;
 - 4. Requesting and obtaining responsive records and information from the OIG component offices possessing such records;

5. Reviewing and redacting (if FOIA exempt portions are found) all documents prior to their release to the requestor;
6. Consulting with the Office of Legal Services for purposes of assisting in making a release determination;
7. Preparing response letters to requesters and documenting exemptions for materials withheld;
8. Preparing FOIA/Privacy Act reports of a statistical or administrative nature which may be requested by Members of Congress, by agency officials, by the Department of Justice Office of Information Policy, or as required by law;
9. Maintaining appropriate records concerning FOIA/Privacy Act policies, procedures, requests, responses, and related correspondence;
10. Monitoring the number of FOIA requests that have not been responded to within the statutory timeframe (backlog) through monthly and quarterly reporting;
11. Developing procedures (e.g., guidelines, standards, handbooks, and training materials) that relate to implementation of the FOIA;
12. Maintaining the OIG's FOIA website and electronic FOIA Library;
13. Managing the OIG's Electronic FOIA tracking system; the centralized, web-based application for OIG standardized tracking, management, and reporting of FOIA requests;
14. Providing assistance to the Office of the Solicitor's Office of Information Services in coordinating selected high profile and/or multi-bureau requests; and
15. Providing training on FOIA and PA issues to OIG employees, as required.

b. The Office of Legal Services (OLS) assigns attorneys who are responsible for:

1. Providing guidance and legal interpretations of FOIA, along with legal reviews of FOIA determinations and appeals, as necessary;
2. Assisting in the development of FOIA policy;
3. Coordinating with OCPR and the FOIA Officer regarding requests for agency records that are made to the OIG by an official Congressional committee or subcommittee concerning a subject within its jurisdiction; and
4. Making the final decision on the appropriateness of invoking FOIA exclusions (in coordination with the DOL Office of the Solicitor and the Department of Justice's Office of Information Policy).

c. The Office of Congressional and Public Relations (OCPR) is responsible for:

1. Coordinating with the FOIA Officer and OLS regarding requests for agency records that are made to the OIG by an official Congressional committee or subcommittee concerning a subject within its jurisdiction;
2. Referring requests for agency records that are made to the OIG by individual members of Congress on behalf of individual constituents to the FOIA Officer so that the request can be processed under the FOIA; and
3. Coordinating with the FOIA Officer when a request for agency records is made by individual members of Congress or their staffs.

d. All OIG Executives, Managers, and Supervisors are responsible for:

1. Ensuring compliance with the FOIA, the Department's FOIA regulations and policy;
2. Designating a point of contact to serve as the primary contact for the OIG FOIA Officer and staff;
3. Ensuring that their offices assist the FOIA Office when requested;
4. Searching, or ensuring that their component files are searched for responsive records or information when requested by the FOIA Office;
5. Determining and reporting the status of the audit, complaint, or investigation related to the request (i.e., open, closed, pending);
6. Forwarding copies of the responsive records to the FOIA Office along with any relevant background information that may aid the FOIA Office's review of the records, within the requested time frame and/or requesting an extension from the FOIA Office with the stated reason; and
7. Providing documentation to the FOIA office of the search, to include the name of the staff member(s) who conducted the search, the files searched, and if applicable, the estimated volume of material and anticipated response time if the search will exceed the requested due date.

e. All OIG employees must:

1. Respond promptly to all requests for records or information/data received from the FOIA office with copies of the responsive records or provide a "no records" response to the FOIA office by the date requested. Identify the files that were searched and the name of the staff member who conducted the search and provide this information with the response to the OIG FOIA office for the FOIA administrative record. For large complex searches, the FOIA office will also request the component office to provide a written estimate that includes the amount of search time required to locate records

and the estimated volume of records (hard copy and electronic) responsive to the request; and

2. Accept written FOIA and Privacy Act requests for OIG records¹ from the public. It is not necessary that the requests specifically cite or refer to the FOIA or the Privacy Act. Any request for OIG records, or information which may be contained in OIG records, is considered to be a formal request;
 - a. If a FOIA request is received directly by an OIG employee for records that are already publicly available, the employee should refer the requestor to the OIG's external website;
 - b. If a FOIA request is received directly by an OIG employee; for records that are not already publicly available, the employee should advise the requestor that their request is being forwarded to the OIG FOIA office. Additionally, within three business days of receipt of a request for OIG records that are not already publicly available, the OIG employee shall forward the request to the OIG FOIA/PA Office: FOIA.PrivacyAct@oig.dol.gov;
 - c. If verbal requests for records from the general public are received by an OIG employee, the employee should advise the requestor to submit the request in writing to FOIArequests@dol.gov; mail their request to DOL OIG FOIA Office, 200 Constitution Ave, RM S-5506, Washington, DC 20210; or submit a request through the on-line FOIA portal.

6. REQUESTS FROM OTHER DOL AGENCIES, OTHER FEDERAL AGENCIES, OR STATE/LOCAL GOVERNMENT AGENCIES.

The provisions of the FOIA do not apply to Federal agencies, including other DOL agencies, making requests for OIG records. However, requests for OIG records from state and local government agencies are considered

¹ "OIG records" refers to records that are in the OIG's custody or control, whether created or received by the OIG. This would include, for example, records received from another DOL agency that are contained in OIG's files.

FOIA requests. In all of these situations, the responsibilities established in section 5, above, should be used when such requests are received.

7. CONGRESSIONAL REQUESTS.

- a. Requests for agency records that are made to the OIG by an official Congressional committee or subcommittee concerning a subject within its jurisdiction are not subject to the FOIA and are coordinated by OCPR, OLS, and the FOIA Office. In the event that an OIG employee receives such a request, the employee should immediately forward the request to OCPR.
- b. Requests for agency records that are made to the OIG by individual members of Congress on behalf of individual constituents are processed as Freedom of Information Act requests and are handled in queue. Such requests are handled in coordination with OCPR.
- c. Requests for agency records that are made to the OIG by individual members of Congress or their staffs are handled in coordination with OCPR.

8. SUBPOENAS ISSUED TO OIG EMPLOYEES.

OIG employees who receive a subpoena or other court order to provide testimony related to their official OIG duties, or to provide OIG documents, should immediately inform the Office of Legal Services. No documents or information should be provided without consulting with the Office of Legal Services. See IGD 5-600, "Subpoenas Served on OIG Employees."

9. EFFECTIVE DATES AND CANCELLATION

This directive rescinds IGD 5-300-1, Procedures For Handling Freedom Of Information, Privacy Act And Congressional Requests, dated 9/5/03.

This Directive is effective immediately and will remain in effect until canceled or superseded. It requires implementation of action items, and contains information of a continuing nature.

THE FREEDOM OF INFORMATION ACT EXEMPTIONS AND EXCLUSIONS

The Freedom of Information Act, 5 U.S.C. Section 552, as amended, generally provides that any person has a right, enforceable in court of access to federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

EXEMPTIONS

Exemption 1 of the FOIA, protects from disclosure national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with the substantive and procedural requirements of an executive order. (The applicable executive order currently in effect is Executive Order 12,356). 5 U.S.C. § 552(b)(1)

Exemption 2 of the FOIA exempts from disclosure records "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2).

Exemption 3 of the FOIA allows the withholding of information prohibited from disclosure by another statute only if that statute: (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. 5 U.S.C. § 552(b)(3), as amended (emphasis added).

Exemption 4 of the FOIA protects trade secrets or commercial or financial information obtained from a person (which is) privileged or confidential" 5 U.S.C. § 552(b)(4).

Exemption 5 of the FOIA protects inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency. 5 U.S.C. § 552(b)(5).

Exemption 6 permits the government to withhold all information about individuals in personnel and medical files and similar files where the disclosure of such information **would** constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6). Of course, this exemption cannot be invoked to withhold from a requester, information pertaining only to himself.

Exemption 7 of the FOIA protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information **(A)** could reasonably be expected to interfere with enforcement proceedings; **(B)** would deprive a person of a right to a fair trial or an impartial adjudication; **(C)** could reasonably be expected to constitute an unwarranted invasion of personal privacy; **(D)** could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; **(E)** would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or **(F)** could reasonably be expected to endanger the life or physical safety of any individual" 5 U.S.C. § 552(b)(7), as amended.

Exemption 8 of the FOIA covers matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. 5 U.S.C. § 552(b)(8).

Exemption 9 of the FOIA covers geological and geophysical information and data, including maps, concerning wells. 5 U.S.C. § 552(b)(9).

EXCLUSIONS

The Freedom of Information Reform Act of 1986 created an entirely new mechanism for protecting certain especially sensitive law enforcement matters under new subsection (c) of the FOIA. These three new special protection provisions, referred to as record "exclusions," now expressly authorize federal law enforcement agencies, for especially sensitive records under certain specified circumstances, to "treat the records as not subject to the requirements of (the FOIA)." 5 U.S.C. §§ 552(c)(1), (c)(2), (c)(3).

The first of these provisions, known as the "(c)(1) exclusion," provides as follows:

Whenever a request is made which involves access to records described in subsection (b)(7)(A) and --

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section. 5 U.S.C. § 552(c)(1).

The second exclusion created by the FOIA Reform Act applies to a narrower situation, involving the threatened identification of confidential informants in criminal proceedings. The "(c)(2) exclusion" provides as follows:

Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of [the FOIA] unless the informant's status as an informant has been officially confirmed. 5 U.S.C. § 552(c)(2).

The third of these special record exclusions pertains only to certain law enforcement records that are maintained by the FBI. The new "(c)(3) exclusion" provides as follows:

Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counter intelligence, or international terrorism, and the existence of the records is classified information as provided in [Exemption 1], the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of (the FOIA). 5 U.S.C. § 552(c)(3).

To use the statutory exclusions, an agency must:

1. Consult with the DOJ's Office of Information Policy prior to using an exclusion to ensure that the exclusion is warranted and that exclusion is consistently applied;
2. Publicly report each year, as part of their Chief FOIA Officer Report, on the number of times, if any, that an exclusion was used;
3. Include on their FOIA websites a brief description of the three exclusions; and
4. For those agencies that could possibly invoke an exclusion, include individual notification about the existence of exclusions in their response letters.

These exclusions are limited to criminal law enforcement records or certain national security-related records maintained by the FBI, all agency components that maintain these records should include the following notification language in responses to all their requests:

"For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist."