governmentattic.org

"Rummaging in the government's attic"

Description of document:	Federal Highway Administration (FHWA) Freedom of Information Act (FOIA) Standard Operating Procedure (SOP) 2018-2021
Requested date:	22-May-2022
Release date:	08-July-2022
Posted date:	23-January-2023
Source of document:	FOIA request FOIA Officer (HATS-20) Federal Highway Administration 1200 New Jersey Avenue SE Washington, D.C., 20590-9898 Email: foia.officer@dot.gov

July 8, 2022

FOIA Control Number:
2022-0129
In Reply Refer To:
FHWA-HAD-1

This is in reply to your Freedom of Information Act (FOIA), dated May 22, 2022, FOIA Control Number 2022-0129, to the Federal Highway Administration (FHWA). In your request you ask for a copy of each (internal) FOIA Standard Operating Procedure (SOP) at the FHWA FOIA Office. We interpret your request as seeking the SOPs that are currently in use.

In accordance with the FOIA, 5 U.S.C. § 552, enclosed the records responsive to your request. We have reviewed 32 pages of records; 32 pages are being released in full. There are no fees assessed with this request.

You have the right to seek dispute resolution services from the FHWA FOIA Public Liaison, Jim Spratt, FOIA.PublicLiaison@dot.gov, via phone (202) 366-4240; or the Office of Government Information Services (https://www.archives.gov/ogis) via phone (202) 741-5770/toll free 1(877) 684-6448; fax (202) 741-5769; or e-mail ogis@nara.gov.

If you need any further assistance regarding this request, please do not hesitate to contact Amanda Eley at Amanda.Eley@dot.gov.

Sincerely,

Daniel Olsen

Daniel Olsen
Government Information Specialist

Enclosures

DFS-North FOIAXpress (FX) Assignment & Update Procedures

- District of Columbia
- Delaware
- Massachusetts (L)
- Maryland
- Maine (L)
- New Hampshire (L)
- New Jersey

- New York (L)
- Ohio
- Pennsylvania (L)
- Rhode Island
- Vermont
- DFSN (L)

Licensed Users denoted by (L). Subject to change based on Division needs & license availability.

FOIAXpress License Holder	Division Offices Covered	Backup FX User
Jana Shaffer (ME)	ME, VT, OH, NJ	Jennifer Brown
Doug Broughton (PA)	PA, DC, MD	Susie Tingler
Alex Kramer (NH)	NH, CT, DE, RI	Susie Tingler
Donna (Vikki) Musolino (NY)	NY	Jennifer Brown
Susie Tingler (DFS-N)	Support	
Jennifer Brown (MA)	MA	Alex Kramer

The HQ FOIA Office logs in and assigns all requests sent to FHWA Headquarters, including the Turner-Fairbank Highway Research Center, received by the FHWA FOIA inbox (FOIA.Officer@dot.gov), or submitted through the National FOIA Portal (www.FOIA.gov), which routes to the FOIA inbox as of March 2018.

All other actions for Division and Federal Lands requests, including intermediate actions such as extensions for unusual circumstances, placing a request on hold, and request closeout, are performed by the assigned Primary FX User.

DFSN FOIA Technical Lead
- Track/update the FOIA.DFSNorth@dot.gov email group every quarter/monthly(?) and send changes to FOIA Intake Team
- Generate monthly(?) reports

Glossary
Action Office: The Division Office processing the request: conducting the search, reviewing records for responsiveness, communicating with the requester, and drafting the agency's interim/final response.

Primary Action Office: If a request is assigned to multiple offices, one office will be designated as the Primary Action. The Primary Action Office is the only office that will correspond with the requester directly.

Logging in and Assigning

1. Division's Licensed FX User (or backup as necessary) creates request in FX. FX can be accessed at https://foiaxpress.dot.gov/FOIAXpress/ and requires VPN connection.

2. Division's Licensed FX User assigns themselves as Primary User (the system will automatically copy the Primary User to the Secondary User list).

3. Division's Licensed FX User adds group *DFS North - FHWA* as Secondary User.

4. Division's Licensed FX User drafts acknowledgment letter and sends to requester. The acknowledgment letter is automatically added to *Correspondence Log* if using FX to send.

If using Outlook to send the acknowledgment letter, the Division's Licensed FX User **must manually save** the acknowledgment letter to *Correspondence Log*. Click Add From > Disk to add the signed acknowledgment letter; Click the Save to Disk radio button; Indicate Delivery Mode and Dispatch Date; give the file a name such as "Acknowledgment Letter"; Click Save to Disk.

The acknowledgment letter will now show as saved in the *Correspondence Log* tab.

5. Division's Licensed FX User updates request number under the More Actions tab to reflect the Division Office (the "Action Office") that is processing the request. In the event of multiple action offices, this abbreviation will reflect the Primary Action Office. *Example: 2022-0054 being processed by the Maryland should be renamed 2022-0054-MD. This is for system tracking purposes only; it is not necessary to add the state abbreviation to correspondence with the requester.*
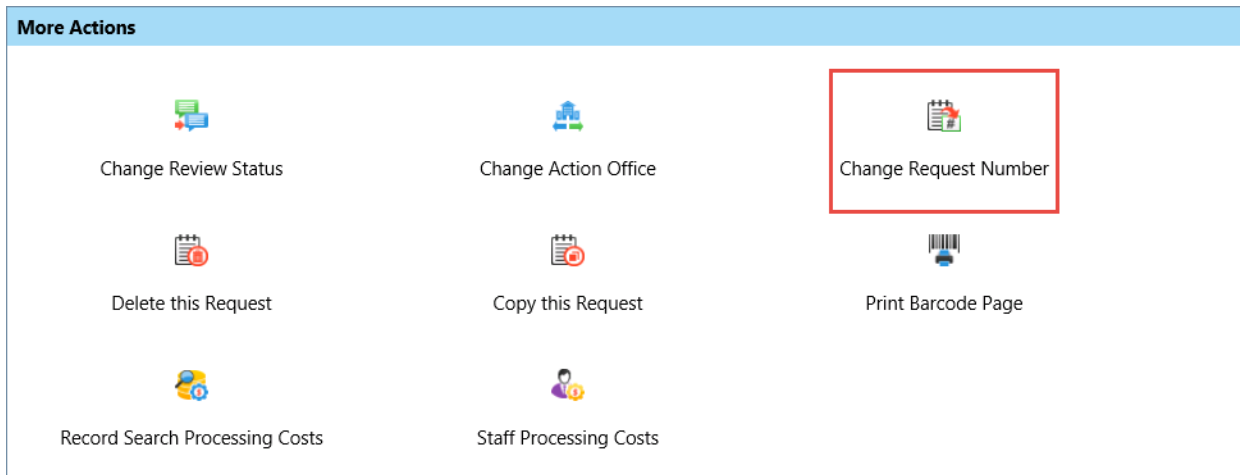
More Actions		
Change Review Status	Change Action Office	Change Request Number
Delete this Request	Copy this Request	Print Barcode Page
Record Search Processing Costs	Staff Processing Costs	

Assignment Notifications:
1. System Generated – Primary User assigned receives system generated email from FX upon assignment.
2. System Generated – DFS North FOIA Inbox (FOIA.DFSNorth@dot.gov) receives system generated email from FX upon assigned of Secondary User Group.
3. Manually via Outlook according to DA/DDA preferences and search assignment needs.

Intermediate Actions

For detailed instructions on taking intermediate actions such as extensions for unusual circumstances, placing a request on hold, or preparing a fee invoice, refer to the Online Manual under the Help dropdown. Interim responses should be added to the *Correspondence Log* as necessary.

Request Closeout

1. Division's Licensed FX User uploads signed final response letter to the Correspondence Log. If using FX to send to the requester, the system automatically will automatically add to the log.

If using Outlook to send the final response letter, the Division's Licensed FX User **must manually save** the letter to *Correspondence Log*. Click Add From > Disk to add the signed letter; Click the Save to Disk radio button; Indicate Delivery Mode and Dispatch Date; give the file a name such as or "Final Response Letter"; Click Save to Disk.

2. Division's Licensed FX User enters disposition by clicking *Final Actions*.

3. Division's Licensed FX User enters processing costs under More Actions tab > Record Search Processing Costs.
Processing costs for the current FY can be found on the FOIA StaffNet page, http://staffnet.fhwa.dot.gov/foia/fees.htm.
If fees are collected, they should <u>not</u> be duplicated as a processing cost.
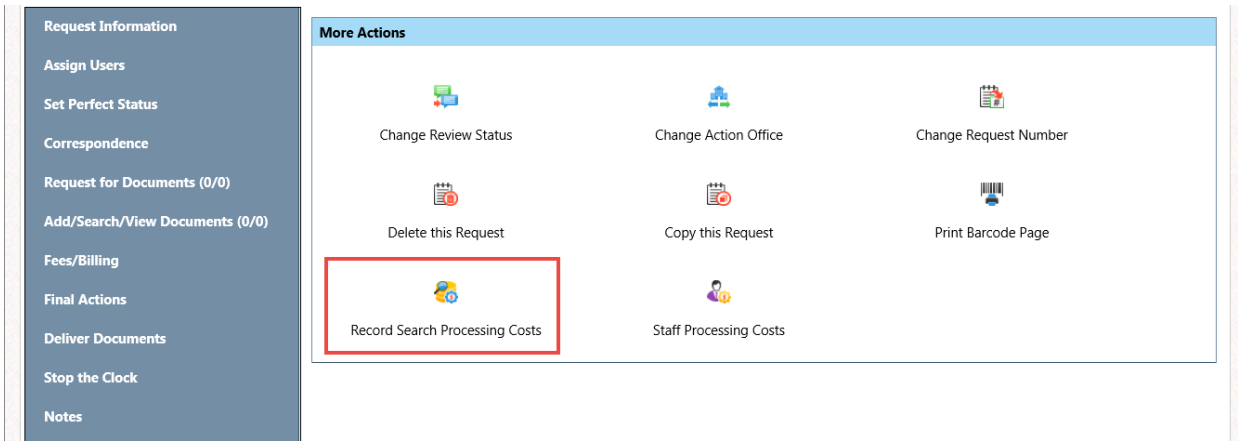
4. Division's Licensed FX User closes request. The *Close Request* section is not visible unless a Final Action has been saved.
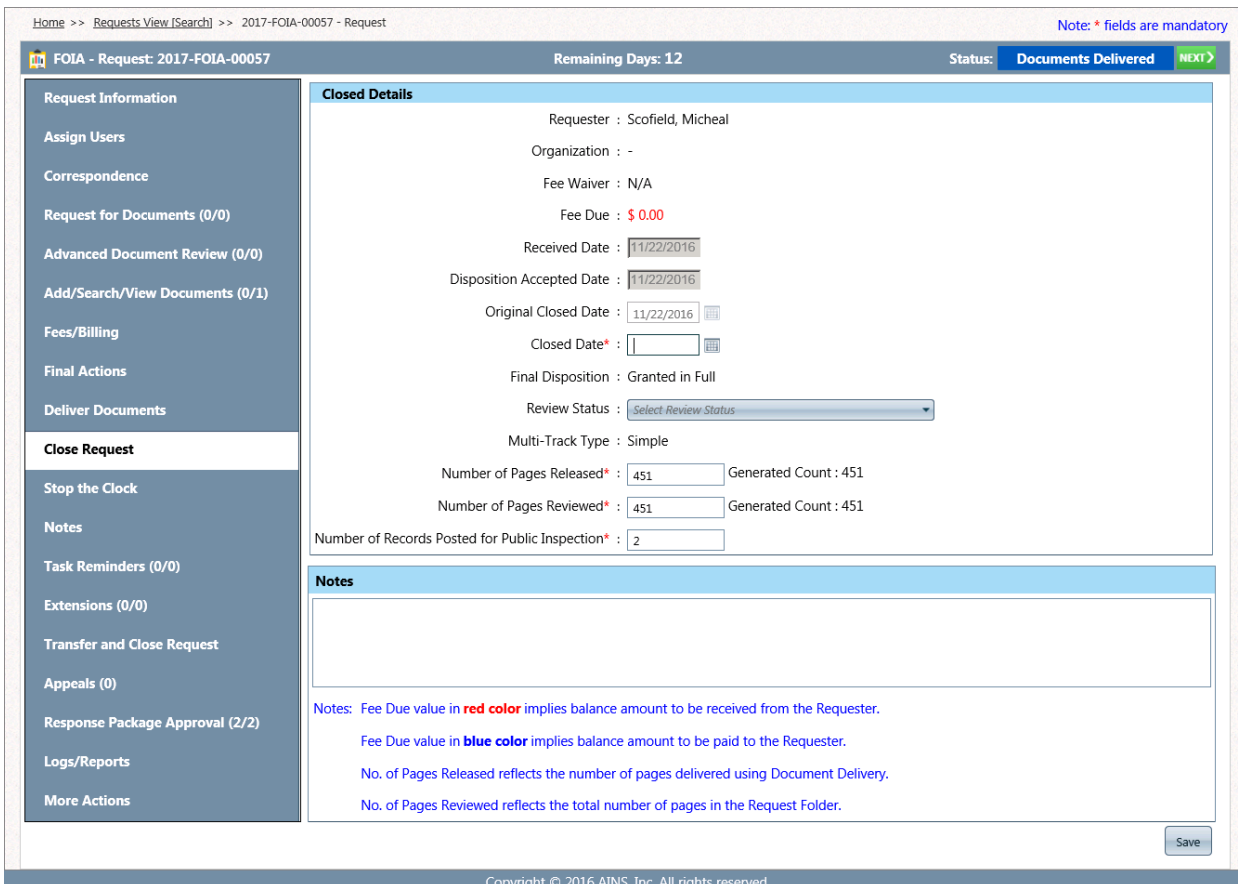
Note: **_Closed Date_** should match the date of the final response letter; this is the date that stops the clock in terms of processing days. _Closed Date_ is **NOT** the date a user physically closes in FX.

Closeout Notifications:
3. Manually via Outlook according to DA/DDA preferences.

FOIA EXEMPTIONS AND EXCLUSIONS CHECKLISTS
(LAST UPDATED 11/30/20)

DISCLAIMER: This checklist is not exhaustive and is not intended to be a comprehensive list of all possible FOIA issues.

EXEMPTIONS:

EXEMPTION 1: NATIONAL SECURITY INFORMATION

Protects information: (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) is in fact properly classified pursuant to such Executive order. See 5 U.S.C. § 552(b)(1) (2012).

Preliminary Considerations

Is the requested information:

☐ **Currently** classified under an Executive order; AND

☐ **Properly** classified under an Executive order?
Review page-by-page within the document

Other Considerations

☐ If the existence or nonexistence of the information itself is classified, was a Glomar response issued? (Glomar = refusal to confirm or deny the existence of the requested information).

☐ Consider segregability of all unclassified, non-exempt information?

☐ Was the requester contacted to discuss the possibility that the requested records contain classified information?

EXEMPTION 2: INTERNAL PERSONNEL MATTERS

Protects records that are "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2).

ALL 3 STEPS MUST BE MET

Step 1: Must Relate to "Personnel" Rules & Practices
☐ Do the records relate to "personnel rules and practices"? Examples: *Rules and practices dealing with human resources matters, such as: hiring and firing; work rules and discipline; compensation; and benefits.*

Step 2: Must Relate "Solely" to Rules & Practices
☐ Do the records relate solely to rules and practices?

Step 3: Must be "Internal"
☐ Did the agency keep the records internally for its own use?

*Note: Exemption 2 may not be applicable to records in which there is a genuine and significant public interest even if the records otherwise meet the above criteria for withholding.

EXEMPTION 3: OTHER STATUTES

Incorporates certain nondisclosure provisions contained in other federal statutes. See 5 U.S.C. § 552(b)(3).

Subparts of Exemption 3

Subpart A: Allows the withholding of information if both subparts are met:

☐ (A)(i) The statute requires that the matters be withheld from the public in such a manner as to leave no discretion, OR

☐ (A)(ii) The statute establishes particular criteria for withholding or refers to particular types of matters to be withheld; AND

Subpart B:

☐ If the statute was enacted after the OPEN FOIA Act of 2009, it must specifically cite to this paragraph.

Other Considerations

☐ Evaluate the statute's withholding provision.

☐ Cite to the applicable statute.

See List of Statutes Found to Qualify under Exemption 3 on the DOJ Office of Information Policy's FOIA Resources page: https://www.justice.gov/oip/foia-resources

EXEMPTION 4: COMMERCIAL INFORMATION

> Protects *trade secrets* and *commercial or financial* information obtained from a person which is privileged or confidential. <u>See</u> 5 U.S.C. § 552(b)(4).

Preliminary Considerations

Do the records concern trade secrets or commercial or financial information? If so, they may be withholdable under Exemption 4, and are not subject to discretionary release (Trade Secrets Act).

- ➤ **If records concern Trade Secrets**, go to <u>Section A</u>; do not go to Section B.

- ➤ **If records concern Commercial or Financial Information**, go to <u>Section B</u>.

A. Trade Secrets Analysis

- ☐ Does the record concern trade secrets? <u>Y/N</u> "Trade secret" is defined as "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." <u>Public Citizen Health Research Group v. FDA</u>, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

*<u>Note</u>: If YES, you do not need to apply the foreseeable harm standard.

B. Commercial or Financial Information Analysis
MUST SATISFY ALL 3 STEPS

Step 1: "Commercial" or "Financial" Information?
- ☐ Does the record consist of commercial or financial information? <u>Y/N</u>

Step 2: "Obtained From a Person"?
- ☐ Was the record obtained "from a person"? (*generally any person or entity other than a federal agency*) <u>Y/N</u>

Step 3: "Privileged or Confidential"?
- ☐ Is the record privileged or confidential? <u>Y/N</u> (*go to next section for analysis*)

Analysis Under <u>Argus Leader</u>:

- ☐ <u>Step 3a</u>: Does the submitter customarily keep the information private or closely held? (May, in appropriate contexts, be determined from industry practices concerning the information.) <u>Y/N</u>
  - ➤ If YES, go to <u>Step 3b</u>.
  - ➤ If NO, the information is <u>not</u> confidential.

- ☐ <u>Step 3b</u>: Did the government provide an express or implied assurance of confidentiality when the information was shared with the government? <u>Y/N</u>
  - ➤ If YES, the information is confidential under Exemption 4 (this is the situation in <u>Argus Leader</u>).
  - ➤ If NO, go to <u>Step 3c</u>.

- ☐ <u>Step 3c</u>: Were there express or implied indications at the time the information was submitted that the government would publicly disclose the information? <u>Y/N</u>
  - ➤ If YES, and no other sufficient countervailing factors exist, the submitter could not reasonably expect confidentiality upon submission and so the information is <u>not</u> confidential under Exemption 4.
  - ➤ If NO, the information <u>is</u> "confidential" under Exemption 4 (the government has effectively been silent, so a submitter's practice of keeping the information private will be sufficient to warrant confidential status).

Please also see OIP's official guidance page for further information, available at: <u>https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential</u>

EXEMPTION 5: CIVIL DISCOVERY PRIVILEGES

> Protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5).

Step 1: Check Threshold
- ☐ Are the records inter-agency or intra-agency? (*did not pass outside the agency*) <u>Y/N</u>. If YES, move to <u>Step 2</u>. If NO, Exemption 5 does not apply.

<u>Exceptions</u>: Consultant corollary and common interest doctrine. Refer to <u>Exemption 5 Guide, pages 3-13</u>.

Step 2: Applicable Privilege?
Is there an applicable civil discovery privilege? Check if any of these privileges apply:

- ☐ **Deliberative process privilege**: (*Prevents harm to agency decision-making process*; Must be <u>Predecisional</u> AND <u>Deliberative</u>)

  - ➤ <u>Predecisional</u>: Information was created before the adoption of an agency policy. The information does NOT consist of statements of final policy.

- Deliberative: Communications are offered in support of the agency's decision-making process (such as recommendations and opinions).

  Considerations:
  - Generally, there is a duty to segregate out facts.

  - Exception: Facts are inextricably intertwined (factual material is so inextricably connected to the deliberative material that its disclosure would expose or cause harm to the agency's deliberations).

- **Attorney work-product privilege**: (*Protects material prepared by or at the direction of an attorney AND in reasonable anticipation of litigation*)

  - Has been extended to cover: non-attorneys supervised by attorneys and documents prepared by an attorney not employed as a litigator.

    Considerations:
    - Was the document prepared in anticipation of foreseeable litigation?

    - Does not apply to documents created in an agency's normal course of business.

    - No duty to segregate out facts.

- **Attorney-client privilege**: (*Protects confidential communications between an attorney and his or her client relating to a legal matter for which the client has sought legal advice*)

  - Is the communication confidential? (*Note: the underlying subject matter can be known to third parties*)

  - Can apply to civil, administrative, and criminal proceedings.

EXEMPTION 6:
See Combined Analysis under 7(C)

EXEMPTION 7: THRESHOLD

Protects "records or information compiled *for law enforcement purposes*, but only to the extent that the production of such law enforcement records or information" could be expected to cause one of the harms outlined in the subparts. 5 U.S.C. § 552(b)(7).

Three Parts of Threshold Analysis:
1. "records or information"
2. "compiled"
3. "for law enforcement purposes"

Recompilations: Information not initially obtained or generated for law enforcement purposes may still qualify if it is subsequently compiled for a valid law enforcement purpose at any time prior to when the government invokes the exemption.

EXEMPTION 7(A):
PROTECTING INVESTIGATIONS

Protects information compiled for law enforcement purposes if disclosure "*could reasonably be expected to interfere with enforcement proceedings*." 5 U.S.C. § 552(b)(7)(A).

Threshold – *Compiled or recompiled for law enforcement purposes*?

BOTH STEPS MUST BE MET

- **Step 1: Is the Law Enforcement Proceeding Pending?**

Pending: Exemption 7(A) is not designed to endlessly protect law enforcement information. It may only apply to enforcement proceedings which are:
1. **Pending** (still ongoing/active),
2. **Prospective** (concrete or identifiable plan in the future), OR
3. **Preventative**

Duration of Exemption 7(A): It may protect information for longer periods of time, in circumstances where a suspect is still at large, the crime remains unsolved, or there are concrete future proceedings. It may apply to closed investigations, if records substantially relate to another proceeding (e.g., prosecution of a co- defendant, or further investigation of the same subject).

Law Enforcement "Proceedings": Include criminal, civil, and regulatory or administrative proceedings. Agency must be able to point to a specific pending or contemplated enforcement proceeding, rather than just the possibility of future action.

- **Step 2: Release Reasonably Expected to Cause Articulable Harm?**

Examples:
1. Witness reprisals or deterrence from future cooperation;
2. Loss of the ability to control or shape the investigation;
3. Release would allow a target to evade detection or destroy evidence; OR
4. Release would prematurely reveal the government's strategy or evidence.

*Note:
- Agencies have a duty to segregate information that is not reasonably expected to cause articulable harm to a pending law enforcement proceeding.

- Agencies do not need to provide requesters with a

page count for a withholding in full if providing that fact may harm the investigation.

EXEMPTION 7(B): PROTECTING PROCEEDING IMPARTIALITY

Covers information compiled for law enforcement purposes if disclosure "*would deprive a person of a right to a fair trial or an impartial adjudication*." 5 U.S.C. § 552(b)(7)(B).

Threshold – *Compiled or recompiled for law enforcement purposes?*

Washington Post Two-Part Test

☐ 1. A trial or adjudication is pending or truly imminent; AND

☐ 2. It is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings.

PROTECTING PERSONAL PRIVACY UNDER EXEMPTIONS 6 AND 7(C)

Exemption 6: Protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a *clearly unwarranted invasion of personal privacy*." 5 U.S.C. § 552(b)(6).

Exemption 7(C): Protects information, compiled for law enforcement purposes, when disclosure "could reasonably be expected to constitute an *unwarranted invasion of personal privacy*." 5 U.S.C. § 552(b)(7)(C).

Follow the 4 Steps (Steps 1 – 4 Below) in Order

Step 1: Check Threshold

☐ **Exemption 7(C)**: Compiled or recompiled for law enforcement purposes? Y/N
  ➤ If YES, go to Step 2. If NO, continue. Exemption 7(C) does not apply.

☐ **Exemption 6**: "Personnel, Medical, & Similar Files"
  ➤ Is the record a personnel, medical, or similar file? Y/N. If YES, go to Step 2. If NO, Exemption 6 does not apply.

*Note: For "Similar Files" ask whether it pertains to a particular individual(s).

Step 2: Privacy Interest Implicated?

☐ Is there a significant (not de minimis) privacy interest in the requested information? If YES, move to Step 3.

If NO, neither Exemption 6 nor Exemption 7(C) applies.

Relevant Considerations:
➤ Is the subject of the request deceased? *Consider whether relatives would be offended by sensitive, graphic details pertaining to the deceased.*

➤ Are the records public, and if they were once released, are they now practically obscure?

➤ Does the record concern a federal employee?

➤ Did the subject of the request consent to the release of the records?

➤ Do the records pertain to a corporation? *Corporations have no privacy interests.*

Step 3: FOIA Public Interest in Disclosure?

☐ Does disclosure serve the core purpose of the FOIA, to shed light on an agency's performance of its statutory duties? Y/N If YES, move to Step 4. If NO, then Exemption 6 and/or Exemption 7(C) apply.

Relevant Considerations:
➤ Must be a nexus between information requested and the FOIA public interest.

➤ Public Servant Accountability (one type of FOIA public interest):
  ➤ Requesters must produce evidence which would warrant a belief by a reasonable person that the alleged government impropriety might have occurred (bald allegations do not suffice).
  ➤ Consider the level of responsibility held by a federal employee and the type of wrongdoing committed by that employee.

Step 4: Balance the Interests

☐ If there is a significant privacy interest in non-disclosure and a FOIA public interest in disclosure, balance those competing interests.

*Note: This balance is more likely to tip in favor of disclosure under Exemption 6 than under Exemption 7(C).

6/7(C): Targeted Third Party Requests

Preliminary Considerations:
➤ Targeted Request = Request seeks records concerning identifiable individual(s).

➤ First consider Glomar Response, then consider Categorical Denial. If those responses are not

appropriate, search for the responsive records and redact exempt information.

(1) **Glomar Response (no search; protects the third party's privacy interest as to whether the government maintains records on him/her)**
- ☐ Targeted request? *Such as a request for subject of an investigation.*

- ☐ Has there been an <u>official acknowledgment</u> ("official and documented disclosure") of the subject of the request, or an <u>admission</u> by the subject of the request? <u>Y/N</u> (*If YES, Glomar response is generally not appropriate; go to the Categorical Denial checklist below*).

  <u>Important considerations</u>:
  - ➤ *Who* made the acknowledgment? *Component within agency vs. another agency.*

  - ➤ *How* was the acknowledgment made? *The formality of admission is important.*

- ☐ Would acknowledging the existence of such records typically cause an unwarranted invasion of personal privacy?

- ☐ Is there (1) consent, (2) proof of death, OR (3) an overriding public interest? <u>Y/N</u> (*If YES, Glomar response is not appropriate*).

(2) **Categorical Denial (no search; protects the third party's privacy interest in the contents of the records)**

- ☐ Targeted request?

- ☐ Is the *category* of responsive records the basis for withholding?

- ☐ Is there (1) consent, (2) proof of death, OR (3) an overriding public interest? <u>Y/N</u> (*If YES, Categorical Denial is not appropriate*).

(3) **Search and Redact**: Search for records and apply exemptions if a Glomar Response or Categorical Denial is not appropriate.

EXEMPTION 7(D): CONFIDENTIAL INFORMANTS

Protects information compiled for law enforcement purposes if: (1) disclosure "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, (2) "in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source." 5 U.S.C. § 552(b)(7)(D).

Threshold – *Compiled or recompiled for law enforcement purposes?*

Confidential Source?

- ☐ Individual or Institution? If YES, continue.

"<u>Confidential</u>": Signifies that the agency received the information with the understanding that it would use it only for law enforcement purposes. Issue is often whether the source had this understanding that the material would remain confidential, or whether the agency actually maintained the information as confidential.

"<u>Source</u>": A broad term that includes more than just informants. The 1986 FOIA Amendments added examples of Exemption 7(D) sources, but courts have found others.

Express or Implied Promise of Confidentiality?

- ☐ Express OR Implied? If YES, apply 7(D).

Agencies must protect confidential sources whenever:
(1) Law enforcement officials gave an *express* promise of confidentiality (and the agency must have some evidence in the records that an express promise was given at the time information was received), OR

(2) It is *reasonable* to infer that such a promise was *implied* by the circumstances.
  - ➤ Consider the nature of the crime or criminal activity and the source's relationship to it.

EXEMPTION 7(E): TECHNIQUES, PROCEDURES, & GUIDELINES

Protects information compiled for law enforcement purposes if disclosure "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." 5 U.S.C. § 552(b)(7)(E).

Threshold – *Compiled or recompiled for law enforcement purposes?*

First Clause – ***Techniques & Procedures***

☐ Technique or Procedure? AND

☐ Not well-known to the public?

Courts Split on "Risk of Circumvention" Requirement: It is unclear whether a determination that disclosure would risk circumvention of the law is required for techniques and procedures.

Second Clause – ***Law Enforcement Guidelines***

☐ Law enforcement guideline? AND

☐ Disclosure could reasonably be expected to risk circumvention of the law?

EXEMPTION 7(F): PHYSICAL SAFETY

Agencies may withhold information that "could reasonably be expected to endanger the life or *physical safety of any individual*." 5 U.S.C. § 552(b)(7)(F).

Threshold – *Compiled or recompiled for law enforcement purposes?*

☐ Disclosure "could reasonably be expected to endanger the life or physical safety of any individual"?

Federal Law Enforcement Personnel: 7(F) may be used to protect federal law enforcement personnel who deal with serious categories of criminal offenders. Protection may remain in force even after personnel have retired.

Third Parties & Informants: 7(F) may protect the identities of third parties if the circumstances suggest that the third party could face danger as a result of disclosure.

EXEMPTION 8: FINANCIAL INSTITUTIONS

Protects 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).

*Note: This exemption is very specific and rarely used. Courts have given the exemption a very broad scope, holding that it protects a wide range of bank reports for the purpose of protecting the security of the financial institution.

Three-Part Test

ALL 3 PARTS MUST BE MET

☐ 1. Agency responsible for supervision of the financial institution in question?
➢ This means the agency in question must supervise or regulate financial institutions.

☐ 2. Materials concern a financial institution? AND

☐ 3. Materials relate to an examination, operating, or condition report?

EXEMPTION 9: GEOLOGICAL / GEOPHYSICAL DATA

Protects "geological and geophysical information and data, including maps, concerning wells." 5 U.S.C. § 552(b)(9).

☐ Information/data concerning wells?

*Note: This exemption is very specific and rarely used. It has been applied to protect data related to various types of "wells," with little regard to the type of well or the substance removed from it. The legislative history of this exemption suggests that Congress was acknowledging that the release of geological and geophysical data can easily compromise valuable underground deposits of many different types.

EXCLUSIONS: (c)(1), (c)(2), & (c)(3)

☐ The FOIA exclusions are very rarely employed because the criteria for invoking them are very stringent. If it appears that an exclusion may be applicable to records, please contact OIP's exclusion experts for approval (202-514-FOIA).

☐ If an exclusion is applicable, the records at issue are not subject to the requirements of the FOIA.

(c)(1) EXCLUSION

"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).

☐ Step 1: Do the records satisfy the standards for withholding under Exemption 7(A)?

☐   <u>Step 2</u>: Do the records concern a possible violation of <u>criminal</u> law?

☐   <u>Step 3</u>: Does the Government have reason to believe the following: (1) the subject of the investigation or proceeding is unaware of its pendency; and (2) disclosure of the <u>existence</u> of records could interfere with law enforcement proceedings?

(c)(2) EXCLUSION

"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 (c)(2) exclusion protects the existence of informant records about an individual when such records are specifically requested by a third party.

(c)(3) EXCLUSION

"Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, 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).

*<u>Note</u>: The (c)(3) exclusion <u>only</u> applies to certain FBI records, the existence of which are classified. Such records must pertain to foreign intelligence/counterintelligence or international terrorism.

FOIA EXPEDITED PROCESSING CHECKLIST

DISCLAIMER: This checklist is not exhaustive and is not intended to be a comprehensive list of all possible FOIA issues.

EXPEDITED PROCESSING

<u>FOIA</u>: The FOIA requires agencies to issue regulations that provide for the expedited processing of FOIA requests for requesters who demonstrate "compelling need," or for any other case deemed appropriate by the agency. <u>See</u> 5 U.S.C. § 552(a)(6)(E)(i).

<u>DOT Regulations</u>: 49 CFR 7.31 and 7.32

1) <u>First standard</u>: Expedited treatment will be granted where <u>not</u> doing so could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

2) <u>Second standard</u>: The requester must show that there is an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.

Expedited Processing Overview - Checklist (<u>Check all that apply</u>):

☐ Is the requester seeking expedited processing? (If NO, stop).

☐ Has the requester provided a certified statement explaining the basis for the request for expedited processing? (If NO, deny).

☐ Was the appropriate standard - under which expedition is sought - considered? (*see standards to make this determination*)

☐ Was the requester notified of the determination within 10 calendar days of receipt of the request to expedite?

*<u>Note</u>: DOT components must designate a specific track for requests that are granted expedited processing.

2 Expedited Processing Standards & Relevant Considerations (<u>Check any and all that apply</u>):

<u>ONLY 1 STANDARD MUST BE MET</u>

☐ Standard 1 Met?
<u>Consider the following</u>:
➤ Does the requester explain how the lack of expedited treatment would pose an imminent threat to the life or physical safety of an individual?

☐ Standard 2 Met?
<u>Consider the following</u>:
➤ Is there a particular urgency to inform the public about an actual or alleged federal government activity? *Consider that the existence of numerous articles published on a given subject can be helpful in establishing breaking news value.*

➤ Would a delay compromise a significant recognized interest?

➤ Is information dissemination the primary activity of the requester?

*<u>Note</u>: Check if a copy of the determination memo is maintained in the file, if applicable.

FOIA FEE-RELATED PROCESSING CHECKLISTS
(LAST UPDATED 1/1/22)

DISCLAIMER: This checklist is not exhaustive and is not intended to be a comprehensive list of all possible FOIA fee issues.

<u>FOIA</u>: The FOIA provides for three categories of requesters. <u>See</u> 5 U.S.C. § 552(a)(4)(A)(ii) (2012).

<u>DOT Regulations</u>: 49 CFR 7.41

Categories of Requesters (<u>Check appropriate box below</u>)

☐ **Commercial-Use Requester**

Requester seeks the information for a use or a purpose that furthers a commercial, trade, or profit interest. Turns on the use to which the information will be put, not on the identity of requester.

<u>Assessable Fees</u>: Search, review, and duplication (*see Types of Fees*).

☐ **"Favored" Requesters: Three Types**

1. "<u>Educational Institution</u>": Must have a program of scholarly research and request must serve research goal.

2. "<u>Noncommercial Scientific Institution</u>": Operates solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

3. "<u>Representative of the News Media</u>": Any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Entity must be organized and operated to publish or broadcast news to the public and can include news organizations that disseminate solely on the Internet.

➢ *Freelance journalists* qualify if there is a solid basis for expecting publication through a news media entity.

➢ *Bloggers* may qualify.

➢ The request must support the news-dissemination function.

<u>Assessable Fees</u>: Duplication but receive up to 100 pages free of charge (*see Types of Fees*).

☐ **All Others**

All requesters that are not considered Commercial-Use or"Favored".

Assessable Fees: Search and duplication but receive up to 100 pages and up to two hours of search time free of charge (*see Types of Fees*).

Types of Fees

Search: All time spent searching for and retrieving responsiverecords or information.

Duplication: The per-page cost (or actual cost if not a paperrelease) of the materials to be released to the requester.

Review: All that is necessary to review the material to determine if it can be released and all that is necessary to prepare its release.

Other Pertinent Considerations:
  ➢ See attached fee schedule (49 CFR 7.42).

  ➢ If a component does not comply with the statutory timelimits, and there are no unusual or exceptional circumstances, the component (1) cannot charge searchfees; and (2) cannot charge duplication fees for educational institutions, noncommercial scientific institutions, or representatives of the news media.

Certain limitations on charging fees:
  ➢ If the fees are $20 or below, components cannot chargefees.

  ➢ If estimated fees are above $20, components must provide a breakdown of fees for search, review, or duplication (unless the requester has indicated a willingness to pay as high as those anticipated) and secure a firm commitment to pay; must also provide notice to non-commercial use requesters that they areentitled to 100 pages of duplication and two hours ofsearch at no charge.

FEE WAIVERS

FOIA: Fees shall be waived or reduced "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

DOT Regulations: Set forth five factors that put the statutory standard (above) into effect. See 49 CFR 7.43(c). The first four of these factors concern the "public interest" test; the fifth factor concerns whether the requester's interest in the records is primarily commercial.

Preliminary Considerations: A fee waiver must be specifically requested. Further, there must be assessable fees associated with the request; otherwise, the fee waiver request is moot.

Applying the Standard – Factors 1-5:

☐ **The "Public Interest" Requirement (Check this box if Factors 1-4 are satisfied)**

➢ **Factor 1**: Does the subject matter of the request concern the operations or activities of the federal government? Y/N

➢ **Factor 2**: Are the records to be disclosed likely to contribute to public understanding of Federal Government operations or activities? (*check that the records are not already publicly available, are not administrative or trivial in nature, and speak to the subject matter of the request*). Y/N

➢ **Factor 3**: Will disclosure contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons? Y/N

➢ **Factor 4**: Will disclosure contribute

significantly to public understanding of Federal government operations or activities? *Factor 2 must be met before Factor 4 can be met.* Y/N

*Note: *If answered NO to any of the above questions, do not proceed. Fee waiver criteria have not been met*.

☐ **Requester's Commercial Interest: (Check this box if disclosure of the information is not primarily in the commercial interest of the requester)**

  ➢ **Factor 5**: Does the requester have a *commercial interest*, i.e., one which furthers the commercial, trade, or profit motive of the requester? Y/N

  ➢ If yes, *which is greater*, the identified public interest (grant fee waiver) or the identified commercial interest (deny fee waiver)? *This is a balancing test*.

FOIA FEES
Effective January 1, 2022

Searcher Grade (Or Equivalent)	Rate	
GS 1-8	$28.00/hour	
GS 9-12	$46.00/hour	
GS 13-14	$72.00/hour	
GS 15 and above	$98.00/hour	

Notes: Rates are based on locality pay for the DC metro area (Washington, D.C.-Baltimo rounded to the nearest dollar.

Duplication Cost: $0.10 per page (not larger than 8.5 x 14 inches).

Certification charges: $10.00 (with DOT seal), $5.00 (true copy without Seal).

FOIA PROCESSING CHECKLIST
(LAST UPDATED 11/30/20)

EXPEDITED PROCESSING

☐ Request for Expedited Processing
☐ Grant Expedited Processing. If YES: Under what standard. Circle all that apply: 1 2
☐ Explanation: _____

FEE WAIVER

☐ Request for Fee Waiver
☐ Fee Waiver Granted
☐ Fee Waiver Denied. If YES: Under what factors?
Circle all that apply: 1 2 3 4 5
Explanation: _____

CATEGORY OF REQUESTER

☐ Commercial-Use Requester
Reason: _____
☐ Educational, Noncommercial Scientific Institution or Representative of the News Media?
Reason: _____
☐ All Others
☐ Reason: _____

SEARCH

☐ Was a search conducted? If YES, where:
    ☐ Email: _____
    ☐ Database: _____
    ☐ Hard Drive: _____
    ☐ Paper: _____
    ☐ Other: _____

☐ Name of searcher: _____

☐ Documented location(s) searched and search process?
☐ Hours searched: _____

EXEMPTIONS USED

Mark all that apply:

Exemption 1
Exemption 2
Exemption 3
Exemption 4
Exemption 5 DPP/AWP/ACP
Exemption 6
Exemption 7(A)
Exemption 7(B)
Exemption 7(C)
Exemption 7(D)
Exemption 7(E)
Exemption 7(F)
Exemption 8
Exemption 9

Notes (Exemptions Used):
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

DISCRETIONARY RELEASE

☐ Consider discretionary release
Explanation: _____

REFERRALS, COORDINATION, & CONSULTATIONS

☐ Any referral, consultation, or coordination
Explanation: _____

RECORDS MAINTAINED IN FILE

Mark all that apply

☐ **Request letter**
☐ **Acknowledgment letter**
☐ **Analysis of expedition** (analysis of applicable statutory standards) (N/A)
☐ **Case notes** (with analysis for complex requests and any related research)
☐ **Documentation of search** (including search memos, responses to search memos, and search results) (N/A)
☐ **Referrals, coordination, & consultations** (and any responses) (N/A)
☐ **Emails/other correspondence related to the requester** (N/A)
☐ **Response(s) to requester**
☐ **Copy of redacted responsive records** (with exemptions clearly marked) (N/A)
☐ **Copy of unredacted responsive records** (originals) (N/A)
☐ **Copy of all responsive records withheld in full and released in full** (N/A)

APPEALS

Provide all records (above) to HCC and also consider:
➢ Is the request currently in litigation?
➢ Untimely appeal?

FOIA REFERRALS, COORDINATION, & CONSULTATIONS CHECKLIST
(LAST UPDATED 11/30/20)

DISCLAIMER: This checklist is not exhaustive and is not intended to be a comprehensive list of all possible FOIA issues.

REFERRALS

> In the absence of a processing agreement, when an agency/component locates records which originated with another agency/component, the records ordinarily should be referred to the originating agency/component for processing and direct response to the requester.

Threshold Considerations

☐ Is the entity that will receive the referral subject to the FOIA? <u>Y/N</u>. If NO, do not refer the records and see the Consultations section below.

☐ Check whether there are standard processing procedures for the records/information at issue.

Standard Procedures for Making a Referral

☐ Identify records appropriate for referral to other agencies/components as soon as practicable during the course of processing a request.

☐ Prior to making the referral, review the records for any equity your agency/component may have and include your disclosure recommendations in the referral memorandum.

☐ Include the following in the referral package:

    (1) FOIA request number assigned by your agency/component;
    (2) A copy of the FOIA request;
    (3) Date the request was received by your agency/component;
    (4) <u>Referred records</u>, including a <u>copy with recommendations</u> and a <u>clean copy</u>;
    (5) Preliminary determination (provide a recommendation even if the recommendation is to refer); AND
    (6) Agency/component point of contact.

☐ Send the referral package to the originating agency/component as soon as practicable during the course of your processing.

☐ Include the original FOIA request number in any correspondence with the requester concerning the referred documents.

☐ The referring agency/component shall advise the requester of the referral, provide the name of the agency/component to which the referral was directed, and include that agency's/component's FOIA contact information. (*<u>Note</u>: If the records are law enforcement/intelligence records, see Coordination section before informing the requester.)

☐ The referring agency/component shall document the referral and maintain a copy of the referred records.

Standard Procedures Upon Receipt of a Referral

☐ Assign your own agency's/component's tracking number to the referral so that you can readily track it.

☐ Prepare an acknowledgment of receipt of the referral for the requester. The acknowledgment should include:

    (1) The name of the agency/component that made the referral;
    (2) Your agency's/component's tracking number;
    (3) The original FOIA request tracking number assigned by the referring agency/component; AND
    (4) A telephone number or email address the requester can use to obtain status information on the referred records.

☐ Track the referral as you would an incoming request.

☐ Place the referred documents in the appropriate processing track at your agency/component according to the date the FOIA request was first received by the agency/component <u>making the referral</u>, NOT the date your agency/component received the referral.

☐ Include the <u>original request number</u> from the referring agency/component AND <u>your agency's/component's referral number</u> in any correspondence with the requester concerning the referred documents.

☐ Include the referral in your Annual FOIA Report.

EXCEPTION TO STANDARD PROCEDURES FOR MAKING REFERRALS: COORDINATION

An agency/component may locate in its files law enforcement records originating with a law enforcement agency or classified records originating with an agency that is a member of the Intelligence Community. When responding to requests that include those records, it is sometimes necessary to use modified procedures in order to avoid inadvertently revealing a sensitive fact that could invade someone's personal privacy or damage national security interests. Under such modified procedures, the agency/component that originally received the request will typically respond to the requester itself, after coordinating with the law enforcement or Intelligence Community agency that originated the records.

☐ Upon identification of unacknowledged law enforcement or Intelligence Community records, contact the agency/component originating such records to inquire whether that agency's/component's involvement in the matter can be publicly acknowledged without invading personal privacy or causing national security harms.

➢ Provide copies of the request and the requested records as necessary to facilitate this process.

➢ The agency/component that originated the records shall promptly respond to the agency/component in receipt of the request.

☐ Did the agency/component that originated the records advise that there are no privacy or national security harms at risk by virtue of its involvement? Y /N

➢ If YES, then the standard referral procedures can be followed, and the agency/component receiving the referral will respond directly to the requester according to the standard referral process.

➢ If NO, the agency/component in receipt of the request should coordinate with the agency/component that originated the records to determine how the records should be handled under the FOIA.

☐ The agency/component that originated the records should assign a tracking number to the documents that are the subject of the coordination.

➢ The originating agency/component should account for the handling of any coordination in its Annual FOIA Report.

☐ During coordination, the agency/component that received the FOIA request shall respond to status inquiries made by the requester.

☐ The originating agency/component should promptly provide status updates to the receiving agency/component.

☐ In order to preserve the privacy and law enforcement interests, the originating agency/component should promptly provide its views on the records so that they can be readily incorporated into the receiving agency's/component's response letter.

☐ The receiving agency/component should provide the requester with the release determination for the records that are the subject of the coordination.

CONSULTATIONS

Most commonly arises when an agency/component locates records in response to a request that originated with the agency/component, but which contain information of interest to another agency/component. Consultations are also appropriate when an agency/component locates records in its files that originated with an entity that is not subject to the FOIA. In these situations, the agency/component processing the request should consult with that other agency/component or equity holder to obtain its views prior to disclosure of the records.

Procedures for Making a Consultation

☐ Use the most time-efficient method to conduct a consultation. For example, a telephone call or email may be all that is required.

☐ Provide information concerning any litigation deadlines. Give the agency/component adequate time to meet any deadlines as there may be layers of review for the receiving component.

☐ For consultations requiring more extensive review by the other agency/component, provide:

➢ Copies of the documents at issue (both a clean copy and a copy with recommendations);
➢ A copy of the request letter;
➢ Agency/component point of contact; AND
➢ Any other information that may assist the other agency/component in its analysis.

☐ Conduct consultations simultaneously, rather than sequentially, to ensure greater efficiency.

☐ Advise receiving agencies/components of the other agencies/components also reviewing the documents.

☐ When providing updates to requesters on the status of their requests, include information concerning ongoing consultations.

  ➢ With the <u>exception</u> noted above in the section on <u>coordinating responses,</u> the identity of the entity which is being consulted can be provided to the requester.

Procedures Upon Receipt of a Consultation

☐ Assign the consultation a tracking number to facilitate its handling and inclusion in your Annual FOIA Report.

☐ Promptly provide your agency's/component's views on the disclosability of the contents of the records to the agency/component seeking the consultation. Use the most time-efficient method to do so.

☐ Continuously assess the need and frequency of the consultations you receive so you can identify ways to streamline or eliminate the need for certain consultations.

FOIA SEARCH CHECKLIST
(LAST UPDATED 11/30/20)

DISCLAIMER: This checklist is not exhaustive and is not intended to be a comprehensive list of all possible FOIA issues.

SEARCH

<u>Standard for an Adequate Search</u>: Agency must conduct a search that is "reasonably calculated to uncover all relevant documents."

- ☐ Address any fee issues, if applicable. These may include fee estimates for search time. (*Within 20 business days*)
- ☐ Is the requester entitled to two free hours of search time? (<u>Y/N</u>)
  - ➢ If YES, did the requester receive two free hours? (<u>Y/N</u>)
- ☐ Estimated fee letter sent _____ (date)
- ☐ Due date for the requester to respond _____ (date)
- ☐ Requestor agreed to pay fee on _____ (date)

Electronic Search

- ☐ Document the search terms used.

*<u>Note</u>: Requesters may be able to provide relevant search terms for use in conducting the search.

- ☐ Does a search need to be conducted in any database? (<u>Y/N</u>)
  - ➢ If YES, document which databases were searched and what search terms were used in each database?

Office(s) Search

- ☐ Do you need to search specific program offices? (<u>Y/N</u>)
  - ➢ If YES:
    - ➢ Send <u>search memos</u>. Responses to search memos should provide information concerning records located, if any.

    - ➢ Document which program offices were searched and the separate results of each office.

- ☐ <u>Categories of Records</u> – Do you need to search:
  - ➢ Computer(s)? (<u>Y/N</u>)
  - ➢ Paper? (<u>Y/N</u>)
  - ➢ Emails? (<u>Y/N</u>)
    - ➢ If YES, contact Information Technology staff to obtain emails.

*<u>Note</u>: See "Certificate of Search" form attached at the end of this guidance.

Procedures After Running Search(es)

- ☐ Retrieve and copy all records, if any, located through electronic and/or program office search(es).

- ☐ Determine the responsiveness of located records.

- ☐ Determine if there are any <u>duplicates</u> or <u>non-responsive</u> records, and set them aside.

- ☐ Document your search.

DOCUMENTATION OF SEARCH
(LAST UPDATED 11/30/20)

Requester: _____

FOIA Control #: _____

Name of individual conducting search: _____

Number of hours spent in search: _____

Subject(s) searched under: _____
_____

Location of search: (e.g., computer system, file indexes, office files, Federal Records Center, etc.): _____
_____

How was the search conducted (e.g., key words (list the words), manually, search terms, etc.): _____
_____

I took other search measures, as follows: _____
_____

Date began search: _____

How far back did you search: _____

Date completed search: _____

Documentation of search completed on: _____

Phone Number: _____

Printed Name: _____

Signature: _____

The HQ FOIA Office logs in and assigns all requests sent to FHWA Headquarters, including the Turner-Fairbank Highway Research Center, received by the FHWA FOIA inbox (FOIA.Officer@dot.gov), or submitted through the National FOIA Portal (www.FOIA.gov), which routes to the FOIA inbox as of March 2018.

All other actions for Division and Federal Lands requests, including intermediate actions such as extensions for unusual circumstances, placing a request on hold, and request closeout, are performed by the assigned Primary FX User.

Headquarters Program Offices, including the Turner-Fairbank Highway Research Center, do not have FOIAXpress access and rely upon FOIA Office personnel for FX system actions, including intermediate actions such as extensions for unusual circumstances, placing a request on hold, and request closeout.

Logging in and Assigning:
1. HQ FOIA Intake Team creates new request in FX.
2. HQ FOIA Intake Team generates acknowledgment letter and sends to requester.
3. HQ FOIA Intake Team sends assignment email notification with PDFs of the incoming request and signed acknowledgment letter to Division FOIA POCs & Division Official Mailbox; and copies DFS North FOIA Inbox (FOIA.DFSNorth@dot.gov) & DFS North Distribution List (FOIA.DFS-North).
4. HQ FOIA Intake Team assigns to Licensed FX User as Primary User.
5. HQ FOIA Intake Team adds group *DFS North - FHWA* as Secondary User[1].

Important: Do not click Assign until all users and user groups have been added. Assigning a request should be the last step, as HQ FOIA Intake Team users will immediately lose access to the request unless included as a user.

Assignment Notifications:
1. System Generated – Primary User receives system generated email from FX upon assignment.
2. System Generated – DFS North FOIA Inbox (FOIA.DFSNorth@dot.gov) receives system generated email from FX upon assigned of Secondary User Group.
3. Manually via Outlook – Division FOIA POCs & Division Official Mailbox, with DFS North FOIA Inbox (FOIA.DFSNorth@dot.gov) & DFS North Distribution List (FOIA.DFS-North) copied, receive assignment notification email from HQ FOIA Intake Team.

---

[1] Requests assigned to a user group will show as a Secondary Assignment on each DFS-North user's dashboard. Secondary Users have the same level of access as the Primary User.

Request Received by HQ FOIA Office – Assigned to Division w/o FX Access
Connecticut, District of Columbia, Delaware, Maryland, New Jersey, Ohio, Rhode Island, Vermont

Logging in and Assigning:
1. HQ FOIA Intake Team creates request in FX.
2. HQ FOIA Intake Team generates acknowledgment letter and sends to requester.
3. HQ FOIA Intake Team sends assignment email notification with PDFs of the incoming request and signed acknowledgment letter to Division FOIA POCs & Division Official Mailbox; and copies DFS North FOIA Inbox (FOIA.DFSNorth@dot.gov) & DFS North Distribution List (FOIA.DFS-North).
4. HQ FOIA Intake Team assigns to Licensed FX User as Primary User.

FX User Assigned	Division
Jana Shaffer (Primary)*	New Jersey
Jennifer Brown (Backup)	Ohio
	Vermont

FX User Assigned	Division
Alex Kramer (Primary)*	Connecticut
Susie Tingler (Backup)	Delaware
	Rhode Island

FX User Assigned	Division
Doug Broughton (Primary)*	District of Columbia
Susie Tingler (Backup)	Maryland

*Only the assigned Primary DFSN FOIA Team member is listed as Primary User in FX. Backup will receive Outlook notification email with the incoming request. Every DFSN FOIA Team is assigned as Secondary User and has access to the request.

6. HQ FOIA Intake Team adds group DFS North - FHWA as Secondary User.

Important: Do not click Assign until all users and user groups have been added. Assigning a request should be the last step, as HQ FOIA Intake Team users will immediately lose access to the request unless included as a user.

Assignment Notifications:
1. System Generated – Primary User assigned receives system generated email from FX upon assignment.
2. System Generated – DFS North FOIA Inbox (FOIA.DFSNorth@dot.gov) receives system generated email from FX upon assigned of Secondary User Group.
3. Manually via Outlook – Division FOIA POCs & Division Official Mailbox, with DFS North FOIA Inbox (FOIA.DFSNorth@dot.gov) & DFS North Distribution List (FOIA.DFS-North) copied, receive assignment notification email from HQ FOIA Intake Team.

Initial FOIA Request Intake Procedures: (updated: 2/2/21)

1. **Read the FOIA Request Carefully**

   - Make sure it is a proper request. The FOIA provides for requesting records, not answering questions or conducting research. Improper requests should not be logged in. If there is any question as to whether the request is proper, please ask another FOIA team member before logging it in.

   - Determine which FHWA office would best handle the subject matter of the request. If you can't make a determination off-hand, check with another member of the HAD FOIA team or contact various offices to see if they would handle the subject matter or have the record on hand.

   - If the FOIA request is so broad that you cannot determine where to assign, even after some preliminary outreach within FHWA, check with another member of the HAD FOIA team on how best to seek clarification from the requester. Once a request has been logged in, it can only be placed on hold for clarification purposes one time by the office processing the request. Therefore, it's vital that HAD address any noticeable issues or concerns with the request at the intake stage. Keep all communications with the requester as part of the administrative record.

   - Make sure you have a physical address for the requester. If not, contact the requester and ask for their address. FHWA provides records electronically unless hard copies are requested, but FOIALog requires an address before the request can be saved and a control number generated.

   - Occasionally, assigning a request to more than one office may be necessary. FOIALog allows one primary and one secondary action office to be designated, but more offices may be involved. <u>The FOIA Office will assist with determining who should be the primary action office and providing guidance via email for requests with multiple program offices</u>.

   - The goal for assigning perfected requests is 1 business day.

   - For any FOIA received after 4:30 pm EST, the date received is the next business day.

2. **Enter the Request into the FOIA Log System**

   - In FOIALog, mouse over "**Initial**"**,** then click "**Add Initial Request**". Complete the required fields and save. When saved correctly with all required information, the user will see a "Successfully Saved" pop up message. The FOIA control number will now be visible at the top of the form.

3. **Create a Request Folder on the HAD Shared Drive**

   - With the new control number, create a folder on the HAD shared drive, \\fhwfile01.ad.dot.gov\Shared\FHAD\FOIA Program\FOIA Program - HAD Internal\PDF Requests. The folder naming convention is: NAME – FOIA 2020-0XXX, ex; Olsen – FOIA 2020-0275. Use the same convention for the documents, ex; Olsen – FOIA 2020-0275 Initial Request.pdf

4. **Generate & Save the Acknowledgement Letter**

   - The system will automatically generate an acknowledgment letter in the Uploaded Documents section. Open & save the acknowledgment letter to the HAD shared drive and complete any missing information that is not auto-generated. Ensure that a copy of the signed acknowledgment letter is saved as a PDF and uploaded into FOIALog.

5. **Generate & Save the Control Sheet**

   - In the FOIA Log System – in the top right corner menu bar, click "**Reports**" and **click** "**Control Sheet**". Click on the FOIA control number assigned to this new FOIA (the Control Number generated in Step 2), then "**Generate Control Sheet for Selected Request(s)**". Saved the control sheet to the request folder. Ensure that a copy of the control sheet is uploaded into FOIALog.

6. **Save any Remaining Items to the Request Folder on the Shared Drive**

   - The scanned shared drive folder should include the following, at a minimum:

     a. Control Sheet
     b. Signed Acknowledgement letter
     c. FOIA Request (hard copy, pdfs, emails, etc.)

   - Example:

     📄 Atz - FOIA 2021-0104 Acknowledgement Letter.pdf
     📄 Atz - FOIA 2021-0104 Control Sheet.pdf
     📄 Atz - FOIA 2021-0104 Initial Request.pdf
     📄 Atz - FOIA 2021-0104 Acknowledgement Letter.docx

   - Shared drive location: \\fhwfile01.ad.dot.gov\Shared\FHAD\FOIA Program\FOIA Program - HAD Internal\PDF Requests

7. **Email the Acknowledgment Letter to the Requester**

   - Should be sent from the FOIA Officer inbox, if possible.

- Sample Email Language:

  "Dear Ms. X,

  Attached, please find the Federal Highway Administration's (FHWA) acknowledgement of you recent Freedom of Information Act (FOIA) request. Please let me know if you have any questions."

8. **Email the Scanned FOIA Request Package to the Assigned FOIA Coordinators**

- See the FOIA coordinator list in the HAD shared drive to determine the appropriate FOIA Coordinators, \\fhwfile01.ad.dot.gov\Shared\FHAD\FOIA Program\FOIA Program - HAD Internal\FOIA Points of Contact.

- Sample language:

  "Brendon (whoever is FOIA coordinator),

  FOIA 2020-0275 has been assigned to HCFA for processing. The request, control sheet, and acknowledgment letter are attached. Please let me know if you have any questions."

  - If multiple program offices are involved in processing the request, The FOIA Office will provide modified instructions to ensure all offices are tracking their roles and responsibilities.

  - Current FOIALog users *should* get a system notification when a request is assigned to their office. These offices can then go into the system and download the request, acknowledgment letter, and control sheet; we provide via email as a backup for these offices.

  - FHWA offices in the HQ building (except for the D.C. Division) DO NOT have FOIALog access, and rely entirely on HAD to provide the request, acknowledgment letter, and control sheet. HAD also assigns FOIA request to the Division offices or Federal Lands offices when the request comes into the FOIA Officer mailbox or through the FOIA National portal.