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UNITED STATES OFFICE OF
GOVERNMENT ETHICS



June 8, 2022

VIA ELECTRONIC MAIL ONLY

Tracking No.: OGE FOIA FY 22/084

Dear Requester:

The U.S. Office of Government Ethics (OGE) is granting in part and denying in part your Freedom of Information Act (FOIA) request, which was received by the OGE FOIA Office on May 23, 2022. In your request, you asked for a copy of “each (internal) FOIA Standard Operating Procedure (SOP) at the OGE FOIA Office.” You clarified on June 6, 2022 that you are seeking only “the current internal FOIA SOP.” In response, we are enclosing 21 pages of responsive records, subject to deletions made in accordance with FOIA Exemption 5, 5 U.S.C. § 552(b)(5), as inter- and intra-agency predecisional deliberative process material, and FOIA Exemption 6, 5 U.S.C. § 552(b)(6), as information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. I have determined that the disclosure of the (b)(5) and (b)(6) exempted information would cause foreseeable harm. The deletions are each marked with a reference (b)(5) and/or (b)(6) in the enclosed copies.

If you have any questions or wish to discuss any aspect of your request, you may contact me by telephone at 202-482-9216. As OGE’s FOIA Public Liaison, I am available for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. 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.

The OGE official responsible for this FOIA determination is the undersigned. In accordance with the FOIA, as codified at 5 U.S.C. § 552(a)(6)(A), and OGE’s updated FOIA regulations, at 5 C.F.R. § 2604.304, you may administratively appeal this determination to the Program Counsel, U.S. Office of Government Ethics, 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005-3917. Any such appeal must be in writing and must be sent



within 90 days of the date you receive this response letter. If you do appeal, you should include copies of your request and this response, together with a statement of why you believe this initial determination is in error. Also, if you appeal, you should clearly indicate on the envelope and in the letter that it is a "Freedom of Information Act Appeal."

Sincerely,

JENNIFER
MATIS

Digitally signed by
JENNIFER MATIS
Date: 2022.06.08
11:41:21 -04'00'

Jennifer Matis
OGE FOIA Officer

Enclosure

OGE FOIA STEPS CHART

√	STAGE	ACTIVITY	COMMENT
	Initial Processing: FOIA Officer	Upon receipt of a new FOIA request, log the FOIA request into the FOIA Tracking and Reporting application. Save the request email in ERCME.	FOIA Tracker If a requester is seeking records about himself or herself, assign a Privacy Act control number.
	Initial Review: FOIA Professional	Upon assignment of a FOIA request from the FOIA Officer, the FOIA Professional will begin processing the request: <ul style="list-style-type: none"> <input type="checkbox"/> Identify the scope of the FOIA request. <input type="checkbox"/> Enter estimated date of completion <input type="checkbox"/> Determine if the request will require one of the following interim actions: <ul style="list-style-type: none"> • Acknowledgement Letter • Extension of Time • Adjudication of expedited processing request • Fee Notification 	
	Interim Procedure: Acknowledge Receipt	Email requester acknowledging receipt of the FOIA request and provide an estimated date of completion within 10 working days from when OGE received the request. Bcc the FOIA Officer on acknowledgement emails. If requester does not provide an email address, draft a letter acknowledging receipt of the FOIA requests, electronically sign it, print signed letter and submit to Program Support for mailing. Upload email to the FOIA Tracking and Reporting app.	CONDITIONAL EVENT Only necessary if you cannot respond within 10 working days. Save email in ERCME.
	Interim Procedures: Extension of Time	Draft an extension of time, explain the reason (Volume, Consultation, or Archives), and include a new deadline date. Submit to FOIA Officer electronically for signature. Email signed interim letter <u>or</u> print the signed letter and submit the letter to Program Support to mail. Select "10-day extension deadline" in the "Key Dates" section of the FOIA Tracking and Reporting application.	CONDITIONAL EVENT Only necessary if FOIA Attorney needs an extension to search/examine a voluminous amount of records, consult with another agency, or collect records from OGE archives. Save email in ERCME.

<p>Interim Procedures:</p> <p>Fee Notification</p>	<p>Prepare fee notification of anticipated amount of fees.</p> <p>Submit to FOIA Officer electronically for signature. Email signed interim letter <u>or</u> print the signed letter and submit the letter to Program Support to mail.</p>	<p>CONDITIONAL EVENT</p> <p>Fee Notification necessary ONLY in cases where (1) OGE determines that actual or estimated fees may amount to more than \$25.00; (2) no fee waivers will be granted; and (3) the requester has not yet agreed to pay the anticipated total fee.</p> <p>Response time is tolled until fee issues are resolved.</p> <p>Save email in ERCME.</p>
<p>Interim Procedures:</p> <p>Expedited Processing</p>	<p>If a request for expedited processing is received, you must both determine whether to grant expedited processing and inform the requester of that determination within 10 calendar days from when OGE received the request.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Determine if the requester is someone who is primarily engaged in the dissemination of information and if there is an urgent need to inform the public about an actual or alleged government activity. <input type="checkbox"/> Determine if a failure to release the documents in an expedited manner is reasonably expected to pose an imminent threat to the life or physical safety of an individual. <p>If either condition is met, draft a letter granting the request for expedited processing and process the request as soon as practicable. If neither condition is met, draft a letter denying the request explaining why the need is not compelling.</p> <p>Submit to FOIA Officer electronically for signature. Email signed interim letter <u>or</u> print the signed letter and submit the letter to Program Support to mail.</p> <p>Select “Expedited Processing” in the “Key Dates” section of the FOIA Tracking and Reporting application. Select outcome of expedited processing request in the “Other Trackable Elements” section of the FOIA Tracking and Reporting application.</p>	<p>CONDITIONAL EVENT</p> <p>Only necessary if the initial request contains a request for expedited processing <u>and</u> if the request will not otherwise be filled within 10 calendar days (<i>i.e.</i>, granted with no expedited processing adjudication).</p> <p>Save email in ERCME.</p>
<p>Interim Procedures:</p> <p>Combined FOIA/ Privacy Act</p>	<p>If the requester seeks records about himself or herself, determine whether verification of identity is required. See Procedures for Processing Privacy Act Requests</p> <p>When processing these records, use the Combined FOIA / Privacy Act letter template that contains Privacy Act appeal information.</p> <p>Unless no records are found, provide response to the Privacy Officer for interim review before submitting to the FOIA Officer for review and signature.</p>	<p>CONDITIONAL EVENT</p> <p>Only necessary if processing a combined FOIA/Privacy Act request.</p>

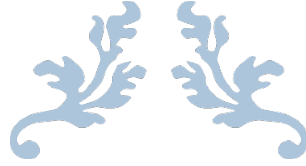
<p>Conduct Search</p>	<p>Search method depends on the subject of the FOIA request, but may include:</p> <ul style="list-style-type: none"> • eFile Room • Director's Read File • Agency Information Management System (AIMS) • Network Drives • Individual employee record searches <p>Review search terms and search parameters for each request with FOIA Office or Alternate FOIA Officer.</p> <p>Keep a record of the search in the FOIA Tracking and Reporting application. Make sure this information is in the application before sending the final response to the FOIA Officer for review.</p>	<p>Network Drives: FOIA Professionals do not have access to all network drives. Depending on the scope of the request, FOIA Professionals may need to ask for assistance from drive POC or the Network Services Branch to conduct a search of all network drives.</p> <p>Search record should include the drives, applications, and individual employee records searched; and the date range of the search.</p>
<p>File Notes</p>	<p>Enter all file notes in the FOIA Tracking and Reporting application.</p>	<p>File notes can also be kept in a word document and uploaded to the FOIA Tracking and Reporting application.</p>
<p>Prepare Response: Review Records for release</p>	<p>Determine whether any responsive records must be withheld in part or in full under FOIA exemption(s)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Exemption (b)(2) <input type="checkbox"/> Exemption (b)(3) <input type="checkbox"/> Exemption (b)(4) <input type="checkbox"/> Exemption (b)(5) <input type="checkbox"/> Exemption (b)(6) <input type="checkbox"/> Exemption (b)(7) <input type="checkbox"/> Other _____ <p>Determine whether any of the responsive records require consultation or referral</p>	
<p>Prepare Response: Identify Discretionary Disclosures</p>	<p>Determine whether to make a discretionary release of the withheld record or portion of the withheld record by applying the "Foreseeable Harm" standard.</p> <p>If making a discretionary release, select "Discretionary Release" in the "Other Trackable Elements" section of the FOIA Tracking and Reporting application.</p>	<p>Discretionary disclosures are possible for records covered by a number of FOIA exemptions, including Exemptions 2, 5, 7, 8, and 9.</p> <p>Before withholding a record, OGE must reasonably foresee that disclosure would harm an interest protected by one of the exemptions.</p>
<p>Prepare Response: Identify Proactive Disclosures</p>	<p>Identify Records for Proactive Disclosure:</p> <ul style="list-style-type: none"> • Determine whether the record has been subject to previous FOIA requests, and select "Possible frequent request" in the "Other Trackable Elements" section of the FOIA Tracking and Reporting application. 	<p>Once a document is requested for the third time, or if OGE expects future interest in the document, or if OGE determines that a record is of interest to the public and should be disclosed under FOIA, then OGE will proactively disclose the record on its website in the most useful form available to OGE.</p>

		<ul style="list-style-type: none"> Determine whether the record is likely to be the subject of multiple requests in the future Determine whether the record is of interest to the public, even if it is not responsive to a specific FOIA request 	
Interim Procedures: Consultation	<p>Consult with other agencies via phone, email, or letter.</p> <p>Submit a letter memorializing the consultation to FOIA Officer for electronic signature. Email signed interim letter <u>or</u> print the signed letter and submit the letter to Program Support to mail.</p> <p>Upload a copy of the letter to the FOIA Tracking and Reporting application.</p>	<p>CONDITIONAL EVENT</p> <p>Only necessary if OGE created a responsive record with another agency's input.</p> <p>Save any emails in ERCME.</p>	
Interim Procedures: Referral	<p>Refer request and responsive records to the originating agency.</p> <p>Draft a letter notifying the requester of the referral. Submit to FOIA Officer for electronic signature. Email signed interim letter <u>or</u> print the signed letter and submit the letter to Program Support to mail.</p> <p>Draft a separate letter to the agency where documents originated directing the agency to respond directly to the requester; attach the original request and any responsive records. Submit to FOIA Officer electronically for signature. Email signed interim letter <u>or</u> print the signed letter and submit the letter to Program Support to mail.</p> <p>Upload a copy of the letters to the FOIA Tracking and Reporting application. Select "Partial Grant: Some Records Referred" <u>or</u> "Full Denial: Records Referred" in the "Status" section of the FOIA Tracking and Reporting application.</p>	<p>CONDITIONAL EVENT</p> <p>Only necessary if there are responsive records that originated at another agency.</p> <p>Letter notifying the requester of the referral may be combined with the final response letter.</p> <p>If referral is to the SEC, copy (b)(6) Shira Minton's email address on the referral email</p> <p>Save email in ERCME.</p>	
Prepare Response: Review Records	<p>Prepare responsive records</p> <ul style="list-style-type: none"> <input type="checkbox"/> Redact protected information <input type="checkbox"/> Write the exemption in brackets next to the redacted information <input type="checkbox"/> Withhold entirely protected documents 	<p>Example: "[Exemption (b)(6)]"</p> <p>Include an estimate of the volume of entirely withheld material in response letter.</p>	
Prepare Response: Draft Letter	<p>Prepare appropriate response letter to requester:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Full Grant <input type="checkbox"/> Partial Grant (Exemptions) <input type="checkbox"/> Partial Grant (No records) <input type="checkbox"/> Glomar Response <input type="checkbox"/> Full Denial (Exemptions) <input type="checkbox"/> Full Denial (No Records) 	<p>See OGE FOIA Response Letter Templates</p> <p>Call attention to the public resolution assistance available from Public Liaisons.</p> <p>Include a summary of the appeal rights and requirements in all response letters.</p>	

Fees: Determine Requester's Fee Category	Fee Category of Requester:	Search	Review	Duplication
	<input type="checkbox"/> Commercial use	All	All	All
	<input type="checkbox"/> Educational, noncommercial scientific institutions, and News Media	None	None	All except first 100 pages
	<input type="checkbox"/> Other	All except cost of first 2 hours	None	All except first 100 pages
	Select fee category in the "Fees" section of the FOIA Tracking and Reporting application.			
Fees: Assess fee amount	<input type="checkbox"/> Manual Search Time: Hours x Rate = <input type="checkbox"/> Computer Search Time Actual Direct Cost = <input type="checkbox"/> Review Time: Hours x Rate = <input type="checkbox"/> Duplication Costs: Pages x \$.15 = (Paper) <input type="checkbox"/> Duplication Costs: Actual Direct Cost = (Non-Paper)	CONDITIONAL EVENT Charge salary rate of employee conducting search (basic pay plus 16%). Where a uniform class of personnel is used exclusively, charge \$16.00 per hour for clerical time and \$28.00 per hour for professional time. Bill in 15 minute increments. Charge salary rate of employee conducting review (basic pay plus 16%).		
Fees: Determine Whether to Charge Fees	<p>If FOIA costs are less than \$10.00, do not charge fees.</p> <p>If FOIA costs exceed \$10.00, consider whether:</p> <input type="checkbox"/> Fee Waiver was requested and approved <input type="checkbox"/> Fee Waiver was requested and denied <input type="checkbox"/> No Fee Waiver was requested	<p>If approved, no fees. If denied, continue analysis. If no fee waiver request, continue analysis.</p>		
Fees: Collection	<p>Collect fees when response is ready to be mailed to requester. Provide a breakdown of how FOIA fees were calculated and assessed (i.e., explain the amount of fees attributable to search, review, and duplication).</p> <p>Check "Collected" box in the "Fees" section of the FOIA Tracking and Reporting application.</p>	CONDITIONAL EVENT		
Finalize Response: FOIA Officer - Review and Sign Response	Submit to FOIA Officer electronically for signature.	The FOIA Officer may ask you to print out certain responsive records if electronic viewing is burdensome.		
Finalize Response:	FOIA Officer signs letter electronically and returns letter to FOIA Professional.	FOIA Officer may have questions or edits before signing. Please		

Signature		ensure that notes are included in the FOIA Tracking and Reporting application before submission.
Finalize Response: Email response	Attach signed letter and responsive records to email. Send requester the response via USOGE@oge.gov . Save sent email and upload a copy to the FOIA Tracking and Reporting application.	<i>If requester does not provide an email address or requests a mail response, submit letter and responsive records to Program Support for mailing.</i> Save email in ERCME.
File Response: FOIA Tracking and Reporting application	<p>Upload a copy of the final response letter to the FOIA Tracking and Reporting application:</p> <ul style="list-style-type: none"> • Select “Add Support Doc” • Select document category (“Final response letter”) • Select date • Choose file • Save <p>Upload a copy of the responsive records to the FOIA Tracking and Reporting application</p> <ul style="list-style-type: none"> • Select “Add Support Doc” • Select document category (e.g., “Pre-redacted records (not released),” “Records withheld in full”) • Select date • Choose file • Save 	<p><i>See next step, “Website Posting” for instructions on uploading any final, released records that need to be posted</i></p> <p>Final Response - Uploading Checklist:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Final response <input type="checkbox"/> Transmittal email <input type="checkbox"/> Redacted records (released) <i>[if applicable]</i> <input type="checkbox"/> Pre-redacted records (with proposed redactions; not released) <i>[if applicable]</i> <input type="checkbox"/> Records withheld in full (not released) <i>[if applicable]</i>
Website Posting	<p>FOIA requests processed after January 1, 2017 [subject to change], with applicable exemptions, will be posted to OGE’s website, subject to certain exceptions to posting.</p> <p>Upload the FINAL responsive records with all redactions through the FOIA Tracking and Reporting application:</p> <ul style="list-style-type: none"> • Save file as “OGE FOIA FY 1X-XXX (Final Response Records)_POST” • Select “Add Support Doc” • Select document category: FINAL – Post to website • Select date • Choose file • Save <p>If you have multiple PDFs, please save them separately.</p>	<p><i>Exceptions: OGE will not post first-party and analogous requests (i.e., when individuals seek access to their own records) because those types of records typically would not be provided to any other member of the public due to the individual’s privacy interest in his or her records. In addition, OGE may process under the FOIA particular records or types of records that are either not feasible to post or are not appropriate to post. If OGE determines on a case-by-case basis to exempt particular documents from posting, OGE will include a notice describing the basis for any exception taken. Please confer with FOIA Officer to determine if an exception applies.</i></p>
Finalize Response: Close out request	<p>Close out request in FOIA Tracking and Reporting application:</p> <ul style="list-style-type: none"> • Enter Date Completed (FY/Date) • Select Status 	

		<ul style="list-style-type: none">• Select Other Trackable Elements, if applicable• Select Quarter Processed (FY/Quarter)	
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OGC FOIA GUIDELINES FY2021

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Part 1: Introduction

These guidelines supplement, but do not replace, OGE’s FOIA checklist available [here](#). Please familiarize yourself with the FOIA checklist as well as these guidelines.

There are several goals underlying these guidelines. The first is to be as transparent and helpful as possible with requesters. The second is to be prepared to justify our responses in litigation, if necessary. The third is to be as efficient as possible in processing requests, without sacrificing the quality of our work.

Part 2: Guidelines for initial processing and search

A. Initial Review (ASAP)

i. Requests for Information Regarding Pre-Nomination Filers

If we receive a request for financial disclosure or related records regarding a named person who is or may be under consideration for (but not nominated to) a presidential appointment requiring Senate confirmation, it is our policy to give a Glomar response. (This does not apply to requests concerning a candidate for or elected President or Vice President, or if the White House has publicly announced an intent to nominate the individual.) There is template language to be inserted into the response letter in the “Letter Templates” file in the [FOIAPA](#) shared drive.

ii. Review Request for Unusual Circumstances and/or Fee Issues

Upon receiving an assignment take note of whether unusual circumstances may exist or whether OGE may need to charge fees. Raise any such issues with the FOIA Officer as soon as possible.

iii. No Records Responses

If your initial review indicates that the request is likely to have a no records response and can be completed quickly, it should ordinarily be closed within one week. If you believe that a request will have a no records response but are unable to prepare a response within one week, speak to the FOIA Officer.

B. Clarification (Week 1)

Within one week of receiving an assignment, review the request and ensure that you understand what the requester is seeking. If it is unclear, you should seek clarification from the requester within one week of receiving the assignment.

If, after seeking clarification, you do not receive a response from the requester within 5 days, contact Sara or Jen. After we attempt to contact the requester by two different methods (email and telephone), we will send a “still interested” letter. Sara or Jen will walk you through this process.

If the scope of the search has changed after clarification, make sure to update the “Description of Records Sought” field in the FOIA tracking system.

C. Requests for Expedited Processing (Week 1)

Upon receiving an assignment, take note of whether the requester has asked for expedited processing of their request. We must respond to a request for expedited processing within 10 calendar days (not business days), and the response should generally be sent with the acknowledgement. Consult with the FOIA Officer whether to grant or deny the request. A denial creates a right of appeal and requires a signed letter from the FOIA Officer.

D. Acknowledgements (Week 1)

Acknowledgements must be sent within 10 business days of receipt of the request (not the date assigned). If for some reason you cannot send an acknowledgement within this time frame, alert Sara ASAP.

Use the template in the “Letter Templates” file in the [FOIAPA](#) shared drive for acknowledgements and search requests.

If you send the acknowledgement from usoge@oge.gov, provide the requester with your name and contact information.

E. Searches (Weeks 1-5)

Once you understand the request, plan your search and document the planned search in the file notes. Ask Sara or Jen if you have questions on the search. Don’t forget to consider whether responsive records may be found in systems other than Outlook, such as ERCME, AIMS, or FDTs.

When searching for responsive records, remember that all records are either responsive or not responsive. If a record is responsive, it must be released unless we cite an applicable FOIA exemption. It is not appropriate to exclude records because “the requester won’t be interested in the information” or because “they don’t need to know that”.

- If you have a significant volume of responsive material that you believe is not of interest to the requester, you may wish to contact the requester and ask them to narrow the scope of the request. Make sure any agreements to narrow the scope of the request are documented in the file notes, with dates.

If you need to seek records from OGE custodians, send the search request email within two weeks of receiving the assignment, unless you are awaiting clarification from the requester. Make sure to use the search email template. It is important that we receive information about the custodians’ searches (keywords and locations searched) and “no records” responses back from the custodians.

- When seeking Emory's emails, also send a request to Donna and Veda to search for Emory's emails as well. Donna can search Emory's emails for him and Veda can search the Director of OGE mailbox.
- Note that we now have a special search procedure for supervisors and managers. Use the search template language in the [FOIAPA](#) shared drive.

When sending a search request to OGE custodians, set a deadline of between one and two weeks from the date of your email, depending on circumstances (e.g. the complexity of search, whether expedited processing has been granted). Set yourself a calendar reminder of the deadline. Immediately after the deadline passes, contact anyone who has not provided a response. If you do not receive a response to your follow-up within two business days, contact Diana.

Keep the search notes in the tracking system updated as the search proceeds. The notes should include what systems were searched, the search date, the keywords used, and who performed the search.

- Search information from custodians may be retained in emails in the shared drive; you do not have copy it into the file notes. However, the names of the custodians should be listed in the notes.

F. Review the Responsive Records

Immediately after the search is complete, familiarize yourself with the responsive records. Ideally, we should address any issues at this point in the process. Some of the issues to look for include:

- Will you need to consult with another agency? If so, try to send consultation requests as early as possible.
- Are there records we expected to find but did not? If so, we may need to expand our search or contact one of the custodians for more information.
- If there are voluminous responsive records, you may want to contact the requester to discuss narrowing the scope of the request. For instance, often requesters will agree to exclude newsclippings.
- Do you anticipate releasing unredacted records of high public interest or unusual sensitivity? If so, notify the FOIA officer so that we can make the notifications addressed in Part 7 as soon as possible.

Part 3: Guidelines for setting up the shared drive folder

A. General

The purpose of the guidelines for setting up the shared drive folder is to ensure uniformity between folders and facilitate the review process. It will also help ensure that we have everything organized in the event that we end up in litigation. For an example of how a shared drive folder might look, see [\(b\)\(5\) – internal agency network location](#).

When organizing responsive records in the shared drive, avoid changing document names as much as possible. Instead, you may use sticky notes or subfolders to indicate what the documents are, if you

wish. If you have an issue with multiple files having the same name, you may add (1), (2), etc. at the end of the filename.

B. Search Emails

Keep a copy of your search request and all correspondence with search custodians in a subfolder labeled "Search emails". You may use subfolders within this folder to help you organize the correspondence, if you wish.

C. Search Results

Have the search custodians place their records in a subfolder labeled "Search results". They should be advised that it is permissible to create subfolders within the "Search results" folder, if they wish.

- Once the response is complete, anything that is in a custodian search folder should have a duplicate that is either (1) in the responsive records, (2) in the nonresponsive folder, (3) in the withheld in full folder, or (4) in a consultation or referral folder. (Infrequently, there may also be a folder for records found to not be agency records.)
- Leave the records placed in the search results folder by search custodians exactly as they are. Don't add to them, take anything out (use copies), or change the document names. This way we always know exactly what was found during the search if that becomes an issue in litigation later on.

D. Nonresponsive

Anything found in a search that is later determined to be nonresponsive, place in a subfolder labeled "Nonresponsive".

E. Withheld In Full

Anything withheld in full place in a subfolder labeled "Withheld in full".

- Use a subfolder for "Attachments withheld in full". As discussed below, for each attachment withheld in full there should be a notation in the responsive records indicating the number of pages in the attachment and the file name of the attachment (if it isn't apparent in the text of the responsive email). There should be the same number of documents in the "Attachments withheld in full" subfolder as there are notations in the responsive records and the page totals should match.
- If the records withheld in full are *not* attachments, using sticky notes or subfolders indicate where the records came from. For example, you might place a sticky on the records stating "Hardcopy notes provided by D. Apol" or label a subfolder "Records from FDTs".

F. Consultation/Referral

If a consultation or referral is necessary, place those records in a subfolder labeled “Consultation with [agency]” or “Referral to [agency]” as appropriate. Correspondence regarding the referral or consultation should also go in this subfolder.

Part 4: Guidelines for exemptions and redactions

A. General

It is essential that redactions be consistent and complete. We may redact a person’s name in 99 places, but it won’t matter if we forget to redact it in the 100th place. Do not rely on the reviewer to catch omissions. It is important to be thorough when processing the records in the first instance. Check your work.

- Consider using the search feature to ensure that you have found and redacted every instance of a particular piece of information. For example, you can search for a private phone number to check whether it has been redacted in every location in which it appears.

Do not redact information merely because it is embarrassing to OGE or an agency. Redactions must be made pursuant to one of the statutory exemptions. If you propose that something be redacted, be prepared to explain to the reviewer why you believe that the cited exemption is applicable. If you have a question about whether certain information is exempt, consult with Jen.

Don’t be shy about discussing responsive records with the search custodian to determine whether material should be withheld. They are the ones with the most knowledge about the records. Do not assume that something is nonresponsive, deliberative, and/or will result in foreseeable harm. If anything is unclear, discuss the record with the search custodian to get more information. All OGE officials and staff understand the importance of properly processing FOIA responses and are available to assist you. If you encounter problems, contact Diana or Jen. Document such discussions in the file notes.

Don’t be shy about discussing redactions with the reviewer early in your process. Do not wait until you submit the response for review before addressing questions.

- It is often useful to take some time before you begin to process the responsive documents to review the material and think about what your approach to the records will be. What exemptions are applicable to the different types of information in these records? What test will you use to determine whether a record is responsive or nonresponsive? For example, if the requester has excluded “newsclippings” from the request and the search found Legislative Updates, will you consider them to be “newsclippings”? Make file notes to document your decisions, and refer to these notes frequently while processing the records. That way you are approaching the responsive records with a plan and not making ad hoc decisions on a page-by-page basis.

Be careful about obscuring releaseable info when making redactions. This can often be remedied by including information in the notation.

B. Citing Multiple Exemptions for the Same Material

Sometimes there are multiple exemptions applicable to the same material. It may be both deliberative and a clearly unwarranted invasion of personal privacy. Cite all applicable exemptions when marking a redaction.

Do not cite multiple exemptions to redact large blocks of information, unless ALL of the information redacted is subject to each of the exemptions cited. For example if a draft letter contains one line of information from a financial disclosure report, do not redact the entire letter with the notation “(b)(5) and (b)(3)”. This practice has been criticized on appeal. If it is too time consuming to mark the redactions line by line, you may use a notation such as the following: “(b)(5) deliberative and some information also (b)(3)”.

C. Using (b)(5)

The use of (b)(5) to withhold deliberative information is being contested by requesters more frequently and is likely to be the subject of litigation. Remember, to withhold any information pursuant to (b)(5) there must be *foreseeable harm*.

All (b)(5) redactions should be as conservative as possible.

- Do not use block redactions when there is any information at all that can be disclosed.
- Do not redact introductory language such as: “Here are my comments on the attached draft. I recommend changing the following...” This type of language should be disclosed as much as possible to indicate the deliberative nature of the discussion.
- If there is deliberative information that is routine in nature (i.e. Diana directing Jen to fix the spacing on a letter) consider leaving it unredacted. If it is routine, there may be no foreseeable harm.
- If you know that you are withholding a draft of something that was eventually made public, try to provide a link to the final document to the requester.

D. Marking Redactions

If it is not obvious to the requester or reviewer why information is being withheld or redacted, indicate the reason in the notation. If it is a draft, the notation will typically indicate that. Alternatively, this may be done in the draft response letter if more appropriate. For example, “Please find enclosed 67 pages of responsive records subject to deletions made in accordance with FOIA Exemption 5, 5 U.S.C. § 552(b)(5), as intra-agency pre-decisional deliberative process material. Specifically, the 67 pages consist of multiple drafts of the same legal advisory, the final version of which can be found on OGE’s website here: [link].”

In general, use the notations both to justify the application of the exemption applied and to provide further transparency into the material withheld.

- If there is a deliberative discussion of a matter unrelated to the subject of the request, note that in the marking (i.e. “(b)(5) discussion of unrelated filer”). Do the same when using (b)(6) for sensitive personal information unrelated to the subject of the request. If the requester knows

that the withheld information is unrelated to the subject of the request, they may be less likely to challenge the withholding.

E. Nonresponsive Material

Do not redact a word, sentence, or paragraph as nonresponsive. There is case law stating that such redactions are not appropriate. Material may only be withheld if the entire “record” is nonresponsive.

- When processing email threads, generally the smallest unit that can be withheld as a nonresponsive record is an entire email.

When marking nonresponsive records make sure that you refer to the material as a “record.” Generally, all nonresponsive material will be marked “Nonresponsive record”(as opposed to simply “Nonresponsive”).

If you have questions about nonresponsive information intermingled within responsive records, consult with Jen. Do not wait until providing the records for review.

F. Preclearance Discussions Regarding Nominee Filers

Generally, we will redact any dates prior to the White House announcing an intent to nominate (whether formal or informal) from emails regarding preclearance. The filers have a privacy interest in the fact that they were under consideration for nomination for a specific period of time before a nomination was formally announced. In unusual situations, however, there may be a FOIA public interest that outweighs the privacy interest. Before beginning to process nominee records, always do an internet search to find the date on which an intent to nominate was first made public. If an intent to nominate has not been made public, see section G. above.

G. Attachments

Every email with an attachment should have some kind of notation with regard to the attachment, unless the attachment is provided immediately following the email. Either note that the attachment was withheld in full, note that the attachment is a nonresponsive record, or indicate the page number where the attachment is provided.

If the attachment is withheld, the notation should indicate the number of pages in the attachment and the file name of the attachment (if it isn’t apparent from the text of the responsive email). As discussed above, the file names and number of pages should match what is in the “Attachments withheld in full” subfolder.

H. Standard Redactions

Personal Information: Redact any discussion of an agency employee’s personal plans or leave with a notation so indicating. For example, redact the sentence “Jen will be on vacation next week” and make a notation such as: “(b)(6) Jen Matis personal information”. In other words, we want to indicate *whose* personal information it is, if it isn’t obvious from the context.

Internal Links and Access Numbers: Redact internal agency links and access numbers and codes with (b)(5) or (b)(6) as appropriate, and indicate the nature of the redacted information (e.g. internal link, access code). Links to internal network drives (e.g. (b)(5) – internal agency network location) should generally be redacted with the notation “(b)(5) internal agency network address”. Webex links and access numbers should generally be redacted with the notation “(b)(5) webconference access information”.

OGE Contact Info and External Links: Do not redact OGE office phone numbers (e.g. 202-482-xxxx) or oge.gov email addresses. Do not redact any links to OGE.gov, including links to the online 201 system. Program review has asked that we redact the email address (b)(6) internal OGE email address. Mark the redaction “(b)(6) internal OGE email address”.

Third Party Contact Info: We generally redact third party contact info (including other agencies’ info) unless we know that it has been made public. Remember not to obscure releasable information when making these redactions. If you redact johndoe@lawfirm.com and you have obscured that John Doe is a recipient of that email, the notation on the redaction should read something like: “(b)(6) John Doe email”.

Part 5: Referrals and consultations

A. Nominee Reports

When processing email threads regarding nominee reports, generally all emails with the employing agency will be referred to that agency. All emails with representatives or the nominee will be processed for potential release by OGE. However, if an email was solely between the agency and the nominee/representative (no OGE person on them, usually down the chain), we would generally refer that to the agency as well.

B. White House Consultations

We cannot refer records to the White House. We should consult with the White House on records originating from the Office of the President or Office of the Vice President. Consult with OMB on records originating from OMB. If you have White House records for consultation, speak to Sara.

C. Agency and OIG Consultations

Sometimes it is preferable to consult with an agency rather than refer records. This may be the case when it is unclear whether certain redactions on OGE records are justified. We may need more information from the agency before we can process the OGE records. If you encounter records from an Office of Inspector General, you will most likely need to consult with them before processing those records. The records may involve an open investigation and may be more sensitive than, for example, records regarding nominee reports or desk officer interactions.

D. Incoming Consultations

Incoming consultations should be routed immediately to Sara and reviewed by Jen before we respond.

Part 6: Guidelines for sending a response for review

A. File Notes

Please remember that file notes could be invaluable during litigation. Assume that your input may not be available at the time the agency needs to submit an affidavit regarding the processing of the request, and make sure that any and all relevant information is in the file notes. This includes (but is not limited to) information about the search, discussions with the requester, attempts to contact the requester, discussions with search custodians, and any decisions you made while processing the records.

B. Ensure the File Is Complete

Ensure that everything is complete before sending records for review, including: all proposed redactions, file notes, folders organized as described above, a draft response letter, a draft referral letter and draft records for referral (if applicable), consultation request and response (if applicable). If you have a question about anything while processing (e.g. if you are not sure whether a consultation or referral is necessary) please consult Jen at any time.

C. Draft Letters

Draft letters should utilize the appropriate templates and a standard format.

- Every redaction cited in the responsive records should be addressed in the letter using the language from the template.
- Letters should be on OGE letterhead and have a second page header indicating the recipient's name and "Page 2."
- The recipient's address information should have at least the recipient's name, email address, and organization and title (if applicable). You may leave off their street address if the letter is marked "VIA ELECTRONIC MAIL ONLY".
- Note if there are any enclosures at the bottom left side of the letter.
- Leave at least three lines for the reviewer's electronic signature.

Do not be afraid to add additional information about the responsive records if appropriate. For example, a response letter may describe the material withheld in more detail than the minimum provided by the template or provide a link to final documents published on www.OGE.gov.

- We have special language we use for "reviewer's notes." Ask Jen or Sara if you believe such language may be appropriate for your draft letter.

Draft letters submitted for review should not have any placeholders in them. Include page number totals for pages being disclosed, withheld, and/or referred.

Part 7: Guidelines for closing a request

A. Processor responsibilities

Expect that you may receive comments and/or questions back on review when planning your work priorities.

Upon receiving notice from the reviewer that the response is ready, the processor will finalize the response as indicated in OGE's FOIA checklist.

B. Reviewer responsibilities

When review is complete, the reviewer should sign the response letter (and referral letter if applicable) and indicate to the person who processed the request that the response is ready to go out.

Before turning the response back over to the processor, the reviewer should update the file notes, if necessary, and ensure that the final version of the responsive records is clearly indicated. Prior versions may go in a subfolder marked "Old drafts".

On the rare occasion that the responsive records should not be posted to the website, the reviewer will alert the processor. The file notes should indicate why the records were not posted to the website.

The reviewer will take note if the records being released may be of high public interest or unusual sensitivity. If so, the reviewer will provide notice of the release to the Program Counsel for a determination of whether interested parties should be notified. The reviewer should wait up to three days before releasing the records for this determination to be made.

Part 8: Guidelines for responding to status requests

If a requester mentions litigation, contact Diana or Jen immediately.

Respond to status requests within two business days, unless you have an out of office message posted referring requesters to an alternate contact. Document your responses in the file notes. (You don't have to copy the substance of email correspondence with the requester into the file notes if the email is in the shared drive, but you should note that you responded to a status request on a certain date.)

Always provide a tracking number and an estimated date of completion in response to a status request. Calculate the estimated date of completion using the average processing time for the prior fiscal year. Currently the average processing times are 74 days for simple (regular) requests and 79 days for expedited requests. Using the calculated date, provide the following update, including the bracketed information if we have a backlog:

Your request has been assigned tracking number OGE FOIA FY __/__. Based solely on our fiscal year ____ average request processing times, the estimated date of completion for your request is __/__/__. This is a preliminary estimate and subject to change. If your request is more complex and/or more voluminous than the average request, the actual processing time of your request will be longer than the average. [Note that OGE currently has a significant backlog to be

processed by its small FOIA Team. Please be assured that the OGE FOIA Team is working to process all pending requests as quickly as possible.]

Summary of Timelines

Action	Timeline
Initial Review	ASAP, but no later than 3 days after assignment
Likely no records	Close within one week of assignment
Seek clarification	Within 1 week of assignment
Finalize clarification	Within 5 days of seeking clarification
Respond to request for expedited processing (if applicable)	Within 10 calendar days after receipt of request
Acknowledgement sent	Within 10 business days after receipt of request
Send search request email	Within 2 weeks of assignment
Set search deadline for custodians	1-2 weeks after date of search request email (send follow up immediately if necessary)
Final deadline for custodians	2 business days after follow up