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Description of document: Financial Crimes Enforcement Network (FinCEN)
Freedom of Information Act (FOIA) Standard Operating
Procedure (SOP) 2022(?)

Requested date: 22-May-2022

Release date: 22-February-2023

Posted date: 08-May-2023

Source of document: FOIA Request
FinCEN Disclosure Office
P.O. Box 39
Vienna, VA 22183
Email: FinCENFOIA@fincen.gov
FOIA.gov

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Financial Crimes Enforcement Network
U.S. Department of the Treasury

Washington, D.C. 20220

February 22, 2023

Case Numbers: FinCEN 22-118-F
FOIAXpress CASE NO: 2022-FINF-00092

This letter responds to your May 22, 2022, Freedom of Information Act request addressed to the Financial Crimes Enforcement Network (FinCEN) FOIA Office, seeking, “A copy of each (internal) FOIA Standard Operating Procedure (SOP) at the FINCEN FOIA Office. Please apply the foreseeable harm test, and discretionary release of what might otherwise be considered records exempt under b(5), and the presumption of openness.”

The processing of your request identified certain materials that will be released to you. Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Please refer to the Applicable Exemptions list at the end of this letter that identifies the authority for withholding the exempt material, which is indicated by a mark appearing in the block next to the exemption. An additional enclosure with this letter explains these exemptions in more detail

Fees

There are no fees associated with processing this request because the fees incurred do not exceed the minimum threshold necessary for charge.

Administrative Appeal

In the event that you wish to appeal this determination, an administrative appeal may be made in writing to FOIA FinCEN P.O. Box 39 Vienna, VA 22183. Please be sure to clearly mark “FOIA/PA Appeal” on both the letter and envelope. Your appeal **must be submitted within 90 days** from the date of this determination. It should contain your FOIA request number and, to the extent possible, the reasons why you believe the initial determination should be reversed.

In addition, the envelope in which the appeal is mailed should be prominently marked “FOIA Appeal.” Please note that the determination of the appeal will be administratively final.

Additionally, you have the right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal


agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974.

You may contact OGIS 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 202-741-5796.

If you have any questions pertaining to your request, please feel free to contact the FOIA Office at email FinCENFOIA@fincen.gov.

Sincerely,

**Terri L.
Robertson**

 Digitally signed by Terri L.
Robertson
Date: 2023.02.22 12:21:10
-05'00'

Terri Robertson
FOIA Officer
Disclosure Office

Summary:

Number of Pages Released in Part: 8

Number of Pages Released in Full: 75

APPLICABLE EXEMPTIONS
FREEDOM OF INFORMATION ACT AND/OR PRIVACY ACT

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

(b)(1) (b) (2) (b) (3) (b) (4) (b) (5) (b) (6)

(b)(7)(A) (b)(7)(B) (b)(7)(C) (b)(7)(D) (b)(7)(E) (b)(7)(F)

Enclosures

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

Financial Crimes Enforcement Network (FinCEN) FOIA Branch applies FOIA exemptions to protect:

Exemptions

Exemption (b) (1): Records that contain information that is classified for national security purposes.

Exemption (b) (2): Records that are related solely to the internal personnel rules and practices of an agency.

Exemption (b)(3): Records specifically exempted from disclosure by code 31 U.S.C. § 5319, (Bank Secrecy Act) which includes disclosure of reports pertaining to monetary instruments transactions filed under subchapter II of chapter 53 of title 31 and records of those reports.

Exemption (b) (4): Records that contain trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

Exemption (b) (5): Inter- or intra-agency records that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege:

- Deliberative process privilege – Under the deliberative process privilege, disclosure of these records would injure the quality of future agency decisions by discouraging the open and frank policy discussions between subordinates and superiors.
- Attorney work-product privilege – Records prepared by or at the direction of a FinCEN attorney.
- Attorney-client privilege – Records of communications between an attorney and his/her client relating to a matter for which the client has sought legal advice, as well as facts divulged by client to attorney and any opinions given by attorney based on these.

Exemption (b) (6): Records that contain identifying information that applies to a particular individual when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." This requires the balancing of the public's right to disclosure against the individual's right to privacy.

Exemption (b)(7)(A): Records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information... could reasonably be expected to interfere with law enforcement proceedings.

Exemption (b)(7)(C): Records containing law enforcement information when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy" based upon the traditional recognition of strong privacy interests ordinarily appropriated in law enforcement records.

Exemption (b)(7)(E): Records compiled for law enforcement purposes, the release of which would disclose techniques and/or 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.

Exemption (b)(7)(D): Records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

Exemption (b) (7) (F): Records containing law enforcement information about a person, in that disclosure of information about him or her could reasonably be expected to endanger his or her life or physical safety.



Financial Crimes Enforcement Network (FinCEN) Office of Disclosure

STANDARD OPERATING PROCEDURES FOR FOIA REQUEST and PRODUCTION (DRAFT)

Issued by the FOIA Officer for FinCEN

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1. PURPOSE

These standard operating procedures (SOP's) outline the process, roles, and responsibilities of the Financial Crimes Enforcement Network (FinCEN) Office of Disclosure in responding to requests filed under the Freedom of Information Act (FOIA) (Title 5 of the United States Code, § 552). These SOP's are intended to support the framework of internal controls and to provide guidance for responding to all FinCEN FOIA requests, including those instances where FinCEN is not assigned as either the primary or lead Treasury office for the request. They address statutory, regulatory, policy, procedural, and processing requirements to be followed by all offices within FinCEN and must comprise the core of any office specific FOIA response procedures that are developed and implemented in FinCEN.

2. SCOPE AND APPLICABILITY

These procedures apply to any FOIA request processed within FinCEN and further extend to all employees, contractors, interns, and other staff who support FOIA administration activities in FinCEN.

3. BACKGROUND

The Freedom of Information Act is a federal statute that gives any person including U.S. citizens, foreign nationals, organizations, associations, and universities, the right to obtain federal agency records except when such records or portions of such records are protected from public disclosure by a FOIA exemption or FOIA exclusion. The FOIA was codified at 5 U.S.C. § 552.

The FOIA applies only to the Federal Executive Branch. It does not apply to records held by Congress, the Federal courts, or by any state, local, or tribal government agency. It also does not apply to parts of the Executive Office of the President that function solely to advise and assist the President.

The FOIA has undergone several amendments since its passage, including the e-FOIA amendments of 1996 and the Open Government Act of 2007. The *e-FOIA amendments* clarified how electronic records should be handled under the FOIA and extended the statutory time to respond to a request from ten working days to twenty working days. The *Open Government Act of 2007* made changes to promote a more open and accountable government. It implemented the following provisions regarding the FOIA: 1) Established an agency Chief FOIA Officer and Public Liaison Officers to assist in reducing delays, increasing transparency, and resolving disputes; 2) Established that an agency is responsible for sending misrouted requests to the appropriate office within 10 business days; 3) Established guidelines for tolling, which state that an agency may stop the clock only once during processing for a non-fee related matter. The clock may be stopped as many times as necessary for fee issues; 4) Established a fee structure which states that an agency may not charge for search time if it does not meet the response time unless "unusual or exceptional circumstances" apply: For example, records exist in more than one office; records are voluminous; records require consultation with another agency; or the office is making a reasonable effort to reduce a backlog. The *2009 Executive Order by President Barack Obama* called for federal executive departments and agencies to administer the FOIA with "a clear presumption: [i]n the face of doubt, openness prevails." The President directed departments and agencies not to withhold information "merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears." He instructed agencies to respond to requests "promptly and in a spirit of cooperation."

The President further directed agencies to adopt a presumption in favor of disclosure with regard to all FOIA decisions. That presumption requires agencies to proactively release records, without waiting for specific requests, and use technology to inform citizens "about what is known and done by their government." The 2009 FOIA Guidelines by Attorney General Eric Holder

Any person (U.S. citizen, foreign national, organization, association, or university) can file a FOIA request. Attorneys or other representatives with proper authorization may file a request on behalf of "any person." A state or a state agency may also file a FOIA request.

The FOIA has two categories of individuals who may not file a request. Fugitives from justice who are requesting records relating to their fugitive status, and foreign governments or international government organizations, directly or through representatives, that are requesting information from a U.S. Intelligence agency, may not file FOIA requests.

4. EXEMPTIONS AND EXCLUSIONS

There are nine FOIA exemptions and three FOIA exclusions. The chart below sets out the nine exemptions and three exclusions and the records they are designed to protect.

Exemption 1	Is intended to protect from disclosure national security information including information concerning the national defense or foreign policy of the United States.
Exemption 2	Is intended to protect from disclosure records related solely to the internal personnel rules and practices of an agency.
Exemption 3	Is intended to protect from disclosure records that are exempt from disclosure by statute.
Exemption 4	Is intended to protect from disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential.
Exemption 5	Is intended to protect from disclosure the integrity of the deliberative or policy-making processes within an agency by exempting from mandatory disclosure opinions, conclusions, and recommendations, included within inter-agency or intra-agency memoranda or letters. Exemption 5 also protects from disclosure attorney client communications and attorney work-products.
Exemption 6	Is intended to protect from disclosure information that would constitute a clearly unwarranted invasion of personal privacy of the individuals involved.
Exemption 7	Is intended to protect from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected: A) to interfere with enforcement proceedings; B) would deprive a person of a right to a fair trial or an impartial adjudication; C) to constitute an unwarranted invasion of the personal privacy of a third party; D) to disclose the identity of confidential sources; E) would disclose techniques and procedures for law enforcement investigations or prosecutions; F) to endanger the life or physical safety of an individual.
Exemption 8	Is intended to protect from disclosure information that is 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.

Exemption 9	Is intended to protect from disclosure geological and geophysical information and data, including maps, concerning wells.
Exclusion 1	Protects the existence of an ongoing criminal law enforcement investigation when the subject of the investigation is unaware that it is pending and disclosure could reasonably be expected to interfere with enforcement proceedings.
Exclusion 2	Is limited to criminal law enforcement agencies and protects the existence of informant records when the informant's status has not been officially confirmed.
Exclusion 3	Is limited to the FBI and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified.

Records falling within an exclusion are not subject to the requirements of the FOIA. In this instance, when FINCEN responds to a request, it will limit its response to those records that are subject to the FOIA.

5. ROLES AND RESPONSIBILITIES

FinCEN's FOIA office operates as a centralized unit collaborating with other FinCEN office staff bureaus and agencies, sharing information as appropriate. The Team is comprised of the following staff persons:

FOIA Officer – Reviews search response records received from FinCEN program offices to determine the validity, reliability, relevance, and responsiveness of the search results plus related output and documents. Proposes redactions and redacts records as appropriate under the FOIA, where necessary. Maintains detailed case notes throughout the lifecycle of the record request. Ensures accuracy of administrative records (both hard copies and electronic formats). Consults with team lead, attorney, and designated points of contact, as appropriate. Examines all responses to ensure compliance with the FOIA, Treasury regulations, and FinCEN policy and guidelines. Produces interim response to External Requesters and maintains all related correspondence. Prepares final response letters to External Requester. Updates FOIAXpress database on a daily basis or whenever the record request status changes. Scans paper documents into electronic files as needed.

FOIA Case Manager – Receives record requests from External Requesters. Determines sufficiency of incoming record requests, evaluating the same for reasonableness, relevancy, and regulatory compliance. Maintains FOIAXpress database for reporting purposes. Updates FOIAXpress database on a daily basis or whenever the record request status changes. Prepares timely and accurate correspondence for all assigned record request cases. Refers record requests to other Departmental Offices or Treasury agencies for clarification, search requests, and follow up.

Designated Point of Contact – Serves as central point of contact for all record requests within a designated program office. Executes and completes search requests in each record request in response to a request from the FinCEN FOIA office. Provides and coordinates input from internal subject matter experts and program owners. Verifies and documents that a record search is accurate and complete for an assigned area.

FOIA Attorney – Where necessary, reviews case related legal issues and final response packages prior to release. Also oversees the FOIA appeals process and manages all FOIA litigation.

Designated Appellate Official – The designated senior official having the power to review the final release as issued by the FOIA Office. This senior official also has the power to change any final decisions as to the dissolvability of documents as issued by that office. In FinCEN’s FOIA process, the designated appellate official would not only have the power and authority to review appeals from final response letters, but also to review grants or denials of expedited processing requests, and grants or denials of fee waivers

Chief FOIA Officer – The designated senior official who has been delegated responsibility for efficient and appropriate compliance with the FOIA. At the Department of Treasury, the Assistant Secretary for Management is the Chief FOIA Officer. He or she is responsible for Agency-wide compliance with FOIA, approving periodic reports to the Administrator at the Department of Justice, and the Office of Management and Budget on the status of the Agency’s FOIA program and making recommendations for improving FOIA administration activities.

6. FOIA CASE PROCESSING PROCEDURES

6.1. FOIA CASE INTAKE: RECEIVE AND REVIEW INCOMING REQUESTS

The FOIA process begins when a request is received in the FOIA office. Treasury FOIA regulations direct the public to send FOIA requests in several ways:

- A. The Department of Treasury allows the public to submit FOIA and Privacy Act requests electronically. There are two methods available for requestors wanting to submit an electronic FOIA request to the Department of Treasury.

1. USE THE NATIONAL FOIA PORTAL

The National FOIA Portal can help you determine if filing a FOIA request is the best option for you and help you create your request when you’re ready. This site allows requestors to submit their requests electronically through the government-wide portal at foia.gov.

2. SUBMIT DIRECTLY TO THE BUREAU

If you wish to submit your electronic FOIA request directly to a specific bureau, then you may select the bureau and proceed with submitting your FOIA request. In this case the Bureau would be FinCEN

- B. A requester may send a request by US Mail to P.O. Box 39, Vienna, VA 22183
- C. A requester can mail a request by email to FinCENFOIA@fincen.gov.

Requesters are treated equally under the FOIA. In other words, the first FOIA received, should be the first FOIA processed. However, exceptions are made in order to determine fee category placement, requests for expedited processing, and fee waiver requests.

Case intake for FinCEN is done by FOIA Officer/Case Manager. The Case Manager receiving and logging in requests, shall read the request thoroughly and verify each of the following:

Step 1	That the request is in writing and signed by the requester;
Step 2	That the request states that it is made pursuant to the FOIA;
Step 3	That it provides a mailing address where correspondence and final determination letters can be sent;
Step 4	That the request reasonably describes the Agency records requested. A description is sufficient if it enables an Agency employee familiar with the subject area to locate the record with a reasonable amount of effort;
Step 5	That the request includes a firm agreement from the requester to pay fees for search, duplication, or review as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with a justification of how such a waiver request meets the criteria for waiver or reduction of fees found in the statute at 5 U.S.C § 552(a)(4)(A)(iii).

A proper FOIA request does not require FinCEN employees to create new records or seek access to future records in response to a request; re-create records which were properly disposed of; produce records that an agency retains no control over; or produce purely personal records. If the request meets all five of these steps it is considered to be a “perfected request.” If all 5 steps are not met the request is “imperfect”.

6.2. DETERMINE IF THE REQUEST IS IN THE CORRECT FOIA OFFICE

The FOIA office will determine where responsive records are most likely located in FinCEN. When a request is received in FinCEN and all responsive records are determined to be located in another Treasury bureau, The FOIA office will send the request to the appropriate program office for processing.

The FOIA allows agencies up to 10 working days to route a misdirected request before the 20-working day period to respond begins. For the purposes of this 10-day allowance, a request is “misdirected” if it is sent to a FOIA office that is not located with the program office that will have the responsive records. Requests sent by the public to an office other than a FOIA office are also misdirected and must be immediately sent to the FOIA office.

6.3. FOIA CASE LOG-IN, ASSIGNMENT OF CASE TRACKING NUMBER, AND ACKNOWLEDGEMENT LETTER

(b) (2)

(b) (2)

(b) (2)

(b) (2)

6.4. DETERMINE THE FEE CATEGORY

Upon receipt of a request, the FOIA Officer/ Case Manager will determine how requesters will be charged processing fees based on a requester's fee category. A fee category is determined based on the use of the records sought as identified in the original request. If there is reasonable cause to doubt the use to which a requester will use the records sought, or where the use is not clear from the request itself, the FOIA Officer/ Case Manager will seek additional clarification before designating the specific fee category. The request should indicate whether the requester is a commercial-use requester, an educational institution, non-commercial scientific institution, representative of the news media, or "all other" requester subject to the fee provisions described in Treasury's FOIA regulations (see Title 31, C.F.R. Part 1, Subpart A).

Fees may be determined in coordination with the Program Office.

The five categories of requesters are as follows:

Commercial use requesters - This category of requester refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

Educational institutions - This category of requester refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. This category also includes requesters wanting records for use in meeting individual academic research or study requirements.

Non-commercial scientific institutions - This category of requester refers to an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Representatives of the news media - This category of requester refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of

current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of “news”) who make their products available for purchase or subscription by “freelance” journalists. They may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication though not actually employed by one. A publication contract would be the clearest proof, but you may also look to the past publication record of a requester in making this determination.

Other requester - This category of requester refers to requesters who do not fit any of the above categories, thus belonging to a group called “other requesters.”

6.5. PROCESS FEE WAIVERS AND EXPEDITED PROCESSING REQUESTS

All requests for fee waivers and expedited processing must be submitted in writing with the initial FOIA request (see 31 CFR Part 1, Subpart A). Decisions on fee waivers and expedited processing will be based on the factors outlined in 31 CFR Part 1, Subpart A. Fee waivers are not automatically granted. Fees may be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to the public’s understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

The FOIA office must decide whether to grant an expedited processing request within 10 calendar days of receipt and it must be submitted to the External Requester within the stated timeframe. If the request is granted, it must be given priority by FOIA Team and be the next request in line for processing. However, the request itself is not required to be processed within the 10 calendar day time constraint.

Appeals of denials of requests for waiver or reduction of fees will be decided by the Appeal Authority. The requester may also file an appeal where there has been an adverse determination of the requester’s fee category. Appeals should be addressed to the responsible official in writing within 90 days of the denial of the initial request for waiver or reduction of fees, or an adverse determination on the requester’s category. The appeal must be decided promptly. Any official who processes an initial request for a fee waiver should not be involved in the appeals process other than to provide the initial decision file to the deciding appellate official.

6.6. ASSIGN THE REQUEST TO THE APPROPRIATE OFFICE OR OFFICES

The FOIA Officer/ Case Manager will assign the request in FOIAXpress to the primary FOIA Point of Contact in the respective program office or offices believed to most likely house the responsive records. If there are multiple offices within FinCEN, each office will be assigned the request. If there is more than one contributing division within an office, the Primary Point of Contact will assign the contributing offices the task of locating the responsive records. The Primary Point of Contact will coordinate the Agency’s response with the FOIA Office, including sending responsive records to upload to FOIAXpress.

6.7. DETERMINE SEARCH PARAMETERS

At this stage of the process, the FOIA Officer/ Case Manager has already determined the cut-off date for records subject to a search. Under the Treasury’s current regulations, the FOIA Point of Contact will initiate a search of only those records in an office’s possession as of the date the

request was received by the Program Office. If a different date is used, the FOIA Office will inform the requester of that date.

The request will be reviewed in order to determine the subject matter of the records the requester is seeking. If it is deemed necessary for the person processing the FOIA to obtain clarification or information from the requester, the time necessary to reformulate the request will be excluded from the statutory 20 working day period (or any authorized extension of time) that FinCEN has to respond to the request. The FOIA permits the Agency to toll or “stop the clock” one time during the first 20 days after receipt, to seek information and clarification from the requester. Although, the requester may be contacted as many times as is needed to clarify the scope of the request, the clock may only be stopped once. Once the clock is stopped, it should not be restarted until the information or clarification is provided. (b) (2)

[Redacted]

(b) (2)

A search may involve retrieving data from a database using existing programming. A search does not require one to write a new program in order to respond to a request. The searcher should apply the test of reasonableness. If extracting the requested information requires a modification of existing programming, and the effort spent in making the modification is minimal, it should be done. On the other hand, if retrieval of the information requested will require a great deal of reprogramming or new programming, the searcher should not perform the reprogramming or conduct the new programming.

Records that have been retired to the National Archives and Records Administration (NARA), Washington National Records Center must be retrieved if they are the subject of a FOIA request. (www.NARA.gov).

6.8. DETERMINE IF ADDITIONAL RESPONSIVE RECORDS ARE IN OTHER OFFICES OR AGENCIES

When additional responsive records are determined to be located in other offices or agencies, or the request is incorrectly assigned, the Designated Point of Contact should notify the FOIA Office within two working days of receiving the assignment.

If no records are found after an adequate search, the Primary Point of Contact should notify the FOIA Office and a ‘no records’ final response letter should be prepared. In this instance, the requester must be advised of the right to appeal. Appeal rights are provided because a no-records response is considered an adverse determination. Even if no responsive records are found, a requester may be charged applicable search fees, depending upon his or her designated user category.

To neither confirm nor deny the existence of records is called a “Glomar” response. This response can be used only when the confirmation or denial of the existence of responsive records would, in and of itself, reveal exempt information. It is most commonly used to protect the

existence or non-existence of Exemption 1 and (b)(3) material. Only through consistent application of the “Glomar” response, regardless of whether responsive records do actually exist, can the privacy of individuals who are mentioned in records be protected.

6.9. ESTIMATE PROCESSING FEES FOR FEE LETTER

Treasury FOIA regulations require an assurance of payment from the requester if fees are expected to exceed \$250.00 or the amount specified by the requester in his or her original request. Unless a waiver of fees has been granted by the Agency FOIA Office, FOIA Case Managers shall estimate the processing fee which will be charged as specified by 31 C.F.R. part 1, Subpart A. Search fees may apply even when no responsive records are identified, or no responsive records are disclosed to a requester.

Different fees apply to different categories of requesters. The chart below shows the services and specific “no charge” or “chargeable” categories. Fees may be calculated as follows:

Position Type	Charges for Other Than Electronic Records
Administrative Staff	GS - Salary rate (basic pay plus 16 percent)
Professional Staff	GS - Salary rate (basic pay plus 16 percent)
Managerial Staff	GS - Salary rate (basic pay plus 16 percent)

Fees charged under the FOIA vary, depending upon the fee category applied to a particular requester. Search, duplication, and review services for which fees are charged are calculated as follows:

Type of Requester	Fee Category		
	Search Charge	Review Charge	Duplication Charge
(See page 10 for definitions)			
Commercial	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
Educational Institution	<i>No Charge</i>	<i>No Charge</i>	<i>Yes (100 pages free)</i>
Non-commercial Scientific institution	<i>No Charge</i>	<i>No Charge</i>	<i>Yes (100 pages free)</i>
News Media	<i>No Charge</i>	<i>No Charge</i>	<i>Yes (100 pages free)</i>
All Others	<i>Yes (First 2 hours free)</i>	<i>No Charge</i>	<i>Yes (100 pages free)</i>

FOIA and Privacy Act requests from individuals for records about themselves may be processed under the fee provisions of the Privacy Act, which authorizes fees for duplication only, excluding charges for the first 100 pages.

Fees that May be Charged for Records

Duplication/Photocopies - To recover costs of copying records by photocopying, use a fixed rate per page (20 cents per page for up to size 8-1/2 X 14). Actual costs are charged for copying photographs, films, or other non-standard records.

Searches for Other Than Electronic Records or Commercial Records - Search charges are calculated by using the salary rate of the employee(s) making the search (basic pay plus 16 percent), or, bureaus may establish an average rate for the range of grades typically involved in a search. Transportation of personnel and records necessary to the search shall be charged at actual cost. (See 31 CFR 1.7(g) (2) (i)).

Searches for Electronic Records - To calculate searches for electronic records, use the actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer printouts will be the actual cost (See 31 CFR 1.7(g) (2) (ii)).

Review of Records - Commercial use requesters will be charged for review of records at the salary rate (basic pay plus 16 percent) of the employee(s) involved in the review. Bureaus may establish an average rate for the range of grades typically involved in the review of records.

Other services and materials - Other services and materials requested which are not covered by this part, or required by the FOIA, are chargeable at actual cost. This includes, but is not limited to certifying that records are true copies, and sending records by special methods such as express mail, etc.

Treasury will not charge fees for any documents that are submitted to an External Requester electronically. Only under unusual circumstances will Treasury charge a requester for these documents, including a voluminous number of hardcopies.

Limitations on Fees and Special Considerations

Fees should not be charged if the cost of collecting the fee would exceed the amount collected. This limitation applies to all requests, even those applied to commercial use requesters.

Fees for all services provided will be charged whenever a bureau must make copies available to the requester for inspection. No fee will be charged for monitoring a requester's inspection of records.

Search time may be charged even if no records are located, or if located records are denied.

Each bureau sets its own threshold for minimum charges.

Aggregating requests - When it is believed that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the bureau may aggregate these requests and charge accordingly.

Bureaus may request prepayment of fees, even if less than \$250, after a request has been processed and before documents are released.

Requesters have the option of deciding how much they are willing to pay for requested information, but it should not be less than \$25.

Advance payment for records may be requested if the records are anticipated to generate fees of \$250 or more, or if the requester has no history of payment. The estimate cost must be reliable

and based upon a realistic and factual appraisal of costs. The basis for estimating fees shall be documented in the case history and the breakdown of fees must be provided to the requester.

Form of payment shall be made by check or money order payable to the 'Treasury of the United States.' Cash or credit cards are not acceptable forms of payment.

6.10. SEARCH FOR RESPONSIVE RECORDS

(b) (2) [Redacted]

(b) (2) [Redacted]

6.11. REVIEWING RECORDS FOR DISCLOSURE (PROCESSING)

(b) (6) [Redacted]

In FOIA terminology, the word "redact" refers to removing from sight all information from a document because the information cannot be disclosed.

(b) (2)

(b) (2)

6.12. ADDITIONAL PROCESSING CONSIDERATIONS: CONSULTATIONS AND REFERRALS

If another federal agency created the record that is requested, but FinCEN is in possession and control of the document, refer the request for processing to the agency that created the document with a copy of the responsive record or records in your possession. You must also send the requester a letter informing him or her of the transfer. The agency that created the record (the receiving agency), needs to log in the request according to the date it was perfected at the referring agency.

When a record is referred and the receiving agency does not respond in a timely manner, the appropriate party to be sued is the original agency that received the original FOIA request.

6.13. ADDITIONAL PROCESSING CONSIDERATIONS: SUBMITTER NOTICES

Federal agencies have a responsibility to protect sensitive business information from disclosure pursuant to Exemption 4. The ‘submitter notice’ process is the result of Presidential Executive Order 12600 (June 23, 1987) and is further elaborated on in Treasury’s FOIA regulations.

If any of the responsive records located contain records that were submitted to FinCEN by a confidential business submitter or contain emails between FinCEN staff and a business submitter, these records must go through the submitter notice process.

Treasury is required to notify a business submitter with notice of its receipt of a request whenever the business submitter has designated the information as commercially or financially sensitive.

Treasury's regulations give business submitters an opportunity to object to disclosure and require agencies or bureaus to carefully consider each objection and specific ground for non-disclosure.

6.14. FINALIZE FEE PROCESSING¹

At this stage of the case, the FOIA Analyst should re-calculate fees based on the number of hours actually worked, and the grades of the staff persons involved in the actual search for documents and review of the same. (b) (2)

6.15. REVIEW AND CLEARANCE

(b) (2)

(b) (2)

(b) (2)

6.16. CASE CLOSEOUT: FINALIZE ACTIONS

Final processing requires that you review and duplicate all records so that the office has a complete record of the case from beginning to end.

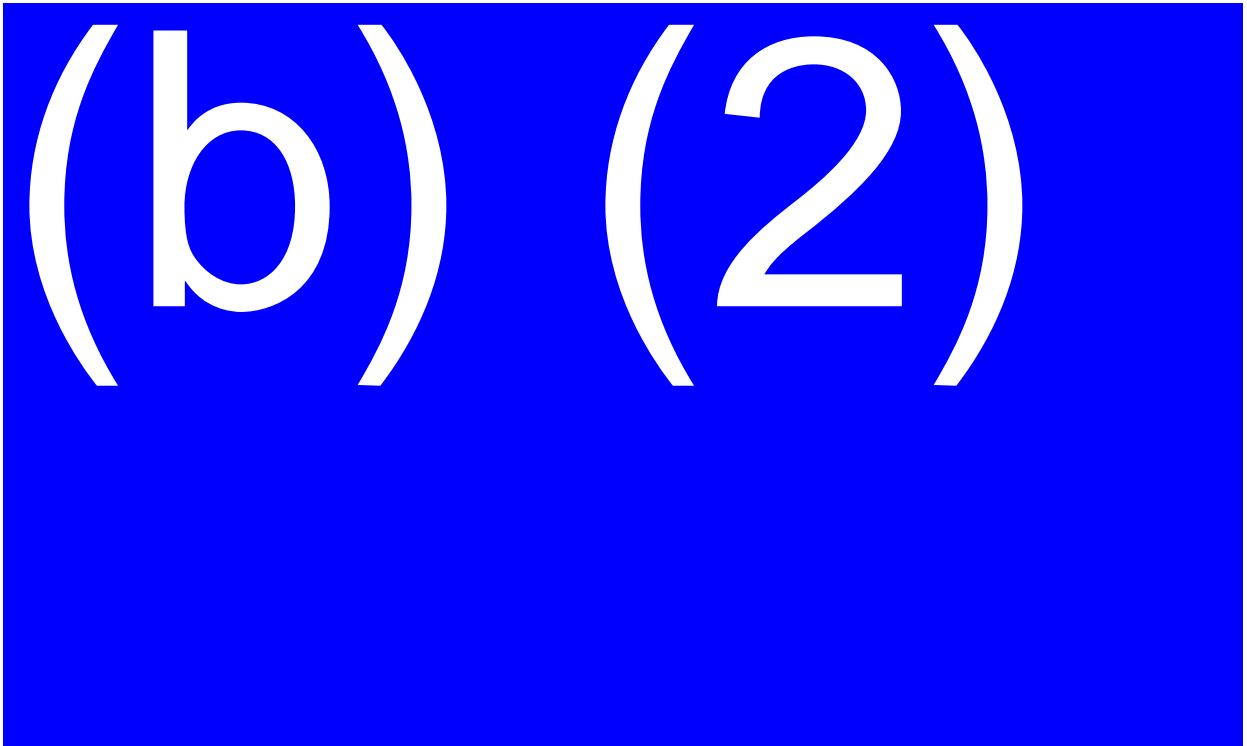
¹ At the current time FinCEN does not charge fees for the processing of FOIA Requests.

7. HANDLING DEPOSITS AND PAYMENTS / CHECK PROCESSING PROCEDURES

Non electronic Payments will be received in FinCEN. The FOIA office will be responsible for receiving, processing, and documenting each FOIA fee payment. Payments must be processed within 48 hours of receipt.

Payment for Freedom of Information Act fees must be made by check or money order and made payable to the Treasury of the United States. Cash or credit card payments are not acceptable forms of payment.

The steps for processing a payment are as follows:



Note: If a requester does not include a tracking number on the face of the check or money order or include documentation indicating what specific FOIA request the check is payment for, the Case Manager should submit the check to the Bureau of Fiscal Service. 'Processing' tab.

8. APPEALS AND LITIGATION

Processing Appeals

If the FinCEN FOIA officer makes an initial determination to deny a request for records, either in whole or in part, that decision may be appealed by the requester in writing to a designated appellate authority. FinCEN's designated FOIA appellate authority is located in the Office of the Chief Counsel

Each appeal must contain the basis for disagreement with the initial denial and be received within 90 days of the date of the denial.

These appeal procedures also apply to 1) the denial of a request for a waiver or reduction of fees when there has been an adverse determination of the requester's fee category; and 2) a finding of no responsive records located; or 3) the denial of a request for expedited processing.



Time Limits

If the requester chooses to appeal the initial determination, he must do so within 90 calendar days from the date of the final letter informing the requester that a determination to withhold has been made (or the date of the letter transmitting the last records released, whichever is later). However, an appeal of a denial for expedited processing must be made within 10 calendar days of the date of the initial determination to deny expedited processing.

Final determinations on appeals shall be made within 20 workdays after receipt; however, appeal determinations of denials of requests for expedited processing shall be made within 10 workdays from the date of receipt of the appeal.

Time Extension

If it's not possible to review the case file and respond to an appeal within 20 workdays, the requester should be contacted and invited to agree to a voluntary extension of time.

No extension of time provision exists regarding a decision whether to grant or deny a request for expedited processing.

If FinCEN fails to meet any of its statutory time limits, an external requester may bring a lawsuit in court.

Preparing an Administrative Appeal Letter

When the appeal official decides to release all or a portion of records previously withheld in the initial determination, a copy of these records should be forwarded promptly to the requester.

If the appeal official determines that the appeal is to be denied, either in whole or in part, the written response shall notify the requester of the denial, the reasons for the denial including the FOIA exemptions relied upon, and the name and title of the appeal official. The response must also include a statement that judicial review of the denial is available in the U.S. District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requester resides or has a principal place of business, the judicial

district in which the requested records are located, or the District of Columbia, in accordance with 5 U.S.C. 552(a) (4) (B).

9. THE OPEN GOVERNMENT ACT OF 2007

The Open Government Act of 2007 amended several procedural aspects of the FOIA, setting forth new agency requirements and statutorily mandating existing practices that assist requesters and facilitate the processing of FOIA requests. The Open Government implemented the following:

Routing - An agency is responsible for sending misrouted requests to the appropriate office within 10 business days.

Tracking numbers - Agencies assign request tracking numbers and provide to requesters an individualized tracking number for any request that will take longer than ten days to process.

Status Information - Agencies must establish a telephone line or an internet site where requesters, using the assigned tracking number where requesters can obtain information regarding the status of their request, including the date the Agency received the request and estimated date of completion.

Tolling - An agency may stop the clock only once during the process time of a request for non-fee related matters. The clock may be stopped as many times as necessary for fee issues.

Fees - An agency may not charge for search time if it does not meet the response time unless “unusual or exceptional circumstances” apply (for example, records exist in more than one office; records are voluminous; records require consultation with another agency; or the office is making a reasonable effort to reduce backlog).

Role of FOIA Public Liaisons - The Open Government Act codified the role of FOIA Public Liaisons who are responsible for assisting in reducing delays, increasing transparency, and understanding of the status of requests, and assisting in the resolution of disputes.

Role of the Chief FOIA Officer - The role of the Chief FOIA Officer is codified – and has agency-wide responsibility for efficient and appropriate compliance with the FOIA reports to top agency officials and to the Attorney General regarding the agency’s performance in implementing the FOIA.

Establishment of an Office within NARA - The Open Government Act established an office within NARA to offer mediation services to resolve disputes and directed GAO to audit agencies on their implementation of the FOIA.

New Requirements for AG and Special Counsel - The Open Government Act Sets forth extensive new requirements for the Attorney General and the Special Counsel concerning referrals to the Special Counsel.

New Rules - The Open Government Act amended the definition of agency records and established new rules concerning FOIA's time limits, routing of misdirected requests, assessment of fees, and document marking.

10. RECORDS MANAGEMENT

President Obama stated that proper records management is the backbone of Open Government. Sound records management helps agencies carry out their missions, promotes accountability by documenting agency activities, and fosters Open Government. The Archivist of the United States stated that good records management is essential for good FOIA programs. To address the challenges of managing electronic records and rapid changes in technology, the National Archives and Records Administration (NARA) issued guidance for Federal agencies on managing email accounts and protecting federal records from unauthorized removal. NARA Bulletin 2013-02 – Guidance on a New Approach to Managing Email Records presents “Capstone” a simplified and automated approach for electronically managing Federal email records. The Capstone approach supports the Presidential Memorandum on Managing Government Records and allows agencies to comply with the requirement to manage both permanent and temporary email records in an accessible electronic format by December 31, 2016.

Improving records management with an eye toward FOIA is an observed OGIS best practice. FOIA requires agencies to make certain categories of records available for public inspection and copying without waiting to receive a FOIA request.

Records above the DAS level are typically permanent and are kept forever. Other records are kept in accordance with general record retention schedules.

11. FOIA REPORTING

The Department of Treasury has two separate annual reporting requirements. These reports must be turned in to the Department of Justice (DOJ) and include the following report types: 1) an Annual FOIA Report; and 2) a Chief FOIA Officer's Report to the Attorney General. FinCEN sends information to the Treasury DO office of Privacy and Transparency for transmission to DOJ.

Chief FOIA Officer's Report

President Obama demonstrated his commitment to the ideals of transparency and openness by issuing a *Memorandum to the Heads of all Executive Branch Departments and Agencies* to renew their commitment to the principles embodied in FOIA. The Attorney General has highlighted the key role played by each agency's Chief FOIA Officer and emphasized that improving FOIA performance requires their active participation. The Attorney General directed agency Chief FOIA Officers to review all aspects of their agencies' FOIA administration and to report each year to the Department of Justice on the steps taken to improve FOIA operations and facilitate information disclosure. In accordance with the Attorney General's FOIA guidelines, the Office of Information Policy (OIP) is charged with the responsibility for providing guidance to agencies on the timing and content of agency reports.

Annual FOIA Report

The Open Government Act of 2007 amended subsection (e) of the FOIA, adding new reporting requirements to the annual report. The annual FOIA report is designed to

capture an Agency's FOIA activities. The report must provide information for principal components and for the agency overall.

12. **FOIA TRAINING**

The Department of Justice's Office of Information Policy (OIP) is the government's lead FOIA policy office. OIP offers specialized training on FOIA matters throughout the year. These training seminars focus on selected FOIA provisions, recent court decisions, and refresher courses on the FOIA's reporting requirements. Federal employees must register for the training on DOJ's website at <http://www.justice.gov/oip/training-materials.html>. The classes are free of charge and employees just have to register for the class.

The Department of Agriculture's Graduate School offers a comprehensive FOIA course several times a year. The current course is a two-day session and also covers the Privacy Act.

13. **DEFINITIONS**

Administrative Appeal – A request to a federal agency asking that it review at a higher level a FOIA determination made by the agency at the initial request level. A requester may appeal an initial determination in the following instances: 1) when access to records has been denied in whole or in part; or 2) where there has been an adverse determination of the requester's fee category as provided in §1.7(d)(4); or 3) a request for fee waiver or reduction has been denied; or 4) where it has been determined that no responsive records exist; or 6) where a request for expedited processing has been denied.

Agency FOIA Officer – The Agency FOIA Officer is the individual that has been delegated authority to carry out the day-to-day FOIA administration.

Backlog – The number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for response.

Bureau – An entity of the Department of the Treasury that is authorized to act independently in disclosure matters.

Business Information – Trade secrets or other commercial or financial information.

Business Submitter – Any entity which provides business information to the Department of the Treasury or its bureaus and which has a proprietary interest in the information.

Case – All records pertaining to a FOIA request.

Chief FOIA Officer – The designated senior official who has been delegated responsibility for efficient and appropriate compliance with the FOIA. At the Department of Treasury, the Assistant Secretary for Management is the Chief FOIA Officer. He or she is responsible for Agency-wide compliance with FOIA, providing periodic reports to the Administrator at the

Department of Justice, and the Office of Management and Budget on the status of the Agency's FOIA program and making recommendations for improving FOIA administration activities.

Classified Records – A uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism.

Commercial Use Requester – A request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of a requester or the person on whose behalf the request is made.

Computer Software – Tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. However, when data are embedded within the software and cannot be extracted without the software, the software may have to be treated as an agency record. Proprietary (or copyrighted) software is not an agency record.

Confidential Business or Commercial Information - Records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

Consultation - The procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.

Designated Appellate Official – The designated senior official having the power to review the judgment of another office. This senior official also has the power to change the final decision of that office. In our FOIA process, the designated appellate official would have the power and authority to review appeals from final response letters, grants or denials of expedited processing requests, and grants or denials of fee waivers.

Designated Points of Contact (DPOC) – Is the responsible official having primary interest in the request or likely to have the most responsive records. All FinCEN offices assigned to the request will be advised of the Point of Contact. The Point of Contact may change based on new information received about the quantity of records. DPOC's identify where responsive records may be found within their respective program areas and initiate searches in response to a request from a FINCEN Case Manager.

Direct costs – In the case of commercial use requesters those expenses the agency have actually incurred to search for, duplicate, and review records in response to a FOIA request. Direct costs include, but are not limited to, the salary of the employee performing the work and costs associated with duplication.

Duplication- The process of making a photocopy of a document in order to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine-readable documentation.

Educational Institution – A preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an

institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. This category does not include requesters wanting records for use in meeting individual academic research or study requirements.

Electronic records – Those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

Exemption 3 Statute – A federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.²

Existing Records – Agency records that exist as of the date a FOIA request is received by Treasury.

Expedited Processing – The processing of a FOIA request out of the order in which it was received and prioritized over other pending FOIA requests. The standards for expedited processing are set out in the FOIA and in the regulations of each federal agency. Requests for expedited processing will be considered according to Treasury’s disclosure regulations at 31 CFR 1.5 (e) and the bureau’s implementing procedures. Records will be processed as soon as practicable when a requester asks for expedited processing in writing and is granted such expedited treatment by the Department. Denials of expedited processing may be appealed.

External Requester – Any person who makes a request for access to records.

Fee Categories – Fees charged under the FOIA will vary, depending upon the fee category applied to the request. The search, duplication, and review services for which fees are charged are defined as follows:

Search – All time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by computer using existing programming. Reasonable efforts have to be made to search for records in electronic form or format. However, no search is required if such efforts would significantly interfere with the operation of an automated information system.

Duplication – The process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

Review – For fee purposes, review is the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. Please note that the costs of mandatory pre-disclosure notification to businesses and your evaluation of their responses for the purpose of determining applicability of exemptions can also be included in review fees charged to the requester.

² The following are used with (b)(3) at FinCEN: 31 U.S.C 5319 and section 6109 of the National Defense Authorization Act (NDAA), codified at 31 U.S.C. 310(i).

Review time does not include time spent resolving general legal or policy issues regarding the applicability of particular exemptions or reviewing on appeal exemptions that already are applied.

Fee Waiver – The waiver or reduction of processing fees if a requester can demonstrate that OMB guidance and standards contained in the FOIA statute (5U.S.C. 552) are satisfied, including that the information is in the public interest and not for a commercial interest. Requests must be done in writing. Fee waivers are not automatically granted. Fees may be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to the public’s understanding of the operations or activities of the Government and is not primarily in the commercial interest of a requester.

FOIA Public Liaison – The individual designated to assist FOIA requesters in obtaining agency records, including assistance in resolving disputes.

FOIA Request – A FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIAs also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in the report. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency.

Freedom of Information Act (FOIA) (5 U.S.C. 552) – The Freedom of Information Act, 5 U.S.C. 552, as amended. The FOIA applies to third-party requests for records concerning the general activities of the government and our agency in particular. The FOIA provides for access to information and records developed or maintained by Federal Agencies.

Full Denial/Full Denial of Records – An agency’s decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.

Full Grant/Full Release of Records – An agency’s decision to disclose all records in full response to a FOIA request. When a search for records is conducted and records are located and full access to the records is submitted to the requester.

Glomar Response – An agency’s express refusal to neither confirm nor deny the existence of records is called a “Glomar” response. The response can be used only when the confirmation or denial of the existence of responsive records would, in and of itself, reveal exempt information. It is most commonly used to protect the existence or non-existence of Exemption 1 and Exemption 7(c) material. Only through consistent application of the “Glomar” response,

regardless of whether responsive records do actually exist, can the privacy of individuals who are in fact mentioned in law enforcement records be protected.

FOIAXpress - The system used by all Treasury bureaus to process and store FOIA requests.

Initial Request - A request submitted by an individual to a federal agency for access to agency records on any topic. A FOIA request can generally be made by any person, to any federal agency, and requires that requesters reasonably describe the records they are seeking. The records must be made pursuant to 5 U.S.C. 552(a)(3).

Multi-Track Processing – A system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.

Expedited Processing

An agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.

Simple Request

A FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.

Complex Request

A FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

Non-Commercial Scientific Institution - An organization operated for the purpose of conducting scientific research, the results of which are not intended to promote any product or industry and is not operated on a commercial basis. This includes all Internal Revenue Service designated 501(c)(3) organizations.

No Records Response - When a search of records was conducted, and no responsive records were found.

Partial Grant/Partial Denial - In response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

Pending Request or Pending Administrative Appeal – A request or administrative appeal for which an agency has not taken final action in all respects.

Perfect Request - A request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.

Person – An individual, partnership, corporation, association, or public or private organization other than an agency.

Processed Request or Processed Administrative Appeal – A request or administrative appeal for which an agency has taken final action in all respects.

Range in Number of Days – The lowest and highest number of days to process requests or administrative appeals.

Record – Information in the agency’s possession and control in any format including electronic format. Any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, machine readable database file, or other documentary material, regardless of medium, by which information is preserved, including electronic records.

Redacting the Records – Used in the FOIA business to refer to removing information from a document because the information cannot be disclosed.

Referral– When an agency locates a record that originated with, or is of otherwise primary interest to another agency, it will forward that record to the other agency to process the record and to provide the final determination directly to the requester.

Representative of the News Media - Any person or entity that actively gathers information of potential public 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. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, as well as news organizations that operate solely on the internet. Alternate media will be considered to be news-media entities.

These examples are not intended to be all-inclusive. In the case of “freelance” journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication though not actually employed by one. A publication contract would be the clearest proof, but you may also look to the past publication record of a requester in making this determination.

Request – Any request for records made pursuant to 5 U.S.C 552(a)(3).

Requester – Any person who makes a request for access to records.

Requesters (Others) – Requesters not fitting into any of the above categories will belong to the group called “other” requesters.

Requester category – One of the three categories in which requesters will be placed for the purpose of determining whether they will be charged fees for search, review, or duplication. The ‘requester’ categories are as follows: 1) Commercial requesters; 2) Educational institutions; 3) Non-commercial scientific institutions; 4) Representatives of the news media requesters; and 5) ‘Other’ requesters.

Responsible official – A disclosure officer or the head of the organizational unit having immediate custody of the records requested, or an official designated by the head of the organizational unit.

Responsive Record – All records located by a Designated Point of Contact and uploaded to FOIAXpress.

Review – For fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; e.g.; doing all that is necessary to excise them and otherwise prepare them for disclosure or release. The cost of mandatory pre-disclosure notification to businesses and the evaluation of their responses for the purpose of determining applicability of exemptions can also be included in the review fees charged to the requester. Review time does not include time spent resolving general legal or policy issues regarding the applicability of particular exemptions or reviewing an appeal exemption that has already been applied.

Search- All time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. Reasonable efforts have to be made to search for records in electronic form or format. However, no search is required if such efforts would significantly interfere with the operation of an automated information system.

Submitter – Any person or entity from whom Treasury obtains confidential business information, directly or indirectly.

Time limits – The time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).

Unusual Circumstances – In unusual circumstances, the time limitations may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for the extension and the date on which the determination is expected. When there is a need to search and collect documents from organizations separate from the organization processing the request; 2) a need to search and collect a large volume of records; or 3) a need to consult with another agency (or separate subdivision of the same agency) having a substantial subject-matter interest in the request.

Vaughn Index – An itemized list correlating each withheld document or portion of a document with a corresponding FOIA exemption and the relevant part of the agency non-disclosure justification. There is no statutory requirement that a Vaughn index or similar detailed list be prepared for the requester while the agency is administratively processing a FOIA request. Vaughn indexes are seen in the context of litigation for the purpose of making a trial court’s job more manageable when reviewing documents that are the subject of litigation.

14. APPENDIX: AUTHORITIES AND REFERENCE MATERIALS

14.1	Freedom of Information Act, 5 U.S.C. § 552
14.2	Treasury’s FOIA Regulations, Title 31, C.F.R. Part 1, Subpart A
14.3	Open Government Act of 2007
14.4	Treasury Directive 25-04, Implementation of the Privacy Act of 1974, as amended
14.5	Treasury Directive 25-05, The Freedom of Information Act
14.6	Treasury Directive 80-05, Records and Information Management Program
14.7	Guide to the Freedom of Information Act – 2009 Edition
14.8	The Privacy Act, 5 U.S.C. § 552(a)

APPENDIX

FREEDOM OF INFORMATION ACT (FOIA)

The Freedom of Information Act (FOIA) gives any person the right to request access to records of the Executive Branch of the United States Government. The records requested must be disclosed unless they are protected by one or more of the exempt categories of information found in the FOIA. Records that, generally, may be protected from disclosure are: Properly classified material; limited kinds of purely internal matters; matters exempt from disclosure by other statutes; trade secrets or commercial or financial information obtained from a person and privileged or confidential; internal agency communications that represent the deliberative, pre-decisional process, attorney work product, or attorney-client records; information that would be a clearly unwarranted invasion of personal privacy; law enforcement records to the extent that one of six specific harms could result from disclosure; bank examination records; and oil well and similar information.

Notwithstanding the above protections, the FOIA requires Federal agencies to provide the fullest possible disclosure of information to the public. Administrative and judicial remedies are available to those persons denied access to records.

Use this link to access the FOIA: <https://www.foia.gov/foia-statute.html>

DEPARTMENT OF THE TREASURY**31 CFR Part 1**

RIN 1505-AC35

Freedom of Information Act Regulations**AGENCY:** Department of the Treasury.**ACTION:** Final rule.

SUMMARY: This rule adopts revisions to the Department's regulations under the Freedom of Information Act (FOIA). The regulations are being revised to update and streamline procedures and incorporate certain changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007 and the FOIA Improvement Act of 2016. Additionally, the regulations are being updated to reflect developments in the case law and to include current cost figures to be used in calculating and charging fees. This final rule follows publication of a proposed rule on October 26, 2018; it adopts the proposal without substantive change, although certain sections have been renumbered and reorganized.

DATES: The final rule is effective March 29, 2019.

FOR FURTHER INFORMATION CONTACT:

Ryan Law, Deputy Assistant Secretary for Privacy, Transparency and Records, 202-622-0930, extension 2 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:**Discussion of the Final Rule**

This rule adopts revisions to the Department's regulations under the FOIA to update and streamline the language of several procedural provisions and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110-175, 121 Stat. 2524 and the FOIA Improvement Act of 2016, Public Law 114-185, 130 Stat. 538. Additionally, the regulations are being updated to reflect developments in case law and to include current cost figures to be used in calculating and charging fees.

The revisions of the FOIA regulations in 31 CFR subpart A of part 1 incorporate changes to the language and structure of the regulations. Revised provisions include § 1.0 (General Provisions), § 1.1 (Proactive disclosure of Department records), § 1.2 (Requirements for making requests), § 1.3 (Responsibility for responding to requests), § 1.45 (Responses to requests), § 1.5 (Confidential commercial information), § 1.6 (Administrative appeals), and § 1.7 (Fees).

Sections 1.1, 1.2, 1.4, and 1.7 all address the role of the FOIA Public Liaison in assisting requesters with resolving disputes related to their FOIA requests, as required by the OPEN Government Act of 2007.

The 2007 Act also required agencies to assign tracking numbers to requests that will take longer than 10 days to process. This requirement is implemented through § 1.4.

The FOIA Improvement Act of 2016 provides that agencies must allow a minimum of 90 days for requesters to file an administrative appeal. The Act also requires that agencies notify requesters of the availability of dispute resolution services at various times throughout the FOIA process. This final rule updates the Department's regulations to reflect those statutory changes (§§ 1.4 and 1.6).

A number of changes have been made to the section on fees (§ 1.7). The definition of representative of the news media has been updated to reflect amendments to the FOIA under the OPEN Government Act of 2007. Further, § 1.7 has been updated to reflect amendments to the FOIA in 2007 and 2016 that limit the agency's ability to assess fees when certain timelines or conditions are not met. The current regulation also revises § 1.7 to conform to a recent decision of the U.S. Court of Appeals for the District of Columbia Circuit addressing the "educational institution" fee category. *See Sack v. Dept. of Defense*, 823 F.3d687 (D.C. Cir. 2016). Specifically, the definition of "educational institution" is revised to reflect the holding in *Sack* that students who make FOIA requests in furtherance of their coursework or other school-sponsored activities may qualify under this requester category. Therefore, the requirement that such a requester show that the request is made under the auspices of the educational institution is replaced with a requirement that the requester show that the request is made in connection with the requester's role at the educational institution. Section 1.7 also revises the Department's fee schedule. The duplication charge for photocopying will decrease to \$.15 per page, while document search and review charges have been established at \$21.00, \$16.50, and \$13.00 per quarter hour for executive, professional, and administrative time, respectively. Treasury components will be given flexibility to publish their own fee schedules that deviate from the Department's fee schedule as circumstances may warrant. Treasury components differ in the grades of employees that process FOIA requests, whether executive, professional, or

administrative, and in the nature of records regularly produced for requesters. Therefore, Treasury has determined that as long as a component follows the OMB fee guidelines, it should have the discretion to establish its own fee structure.

Further, the Appendices to the current regulation have been revised to reflect changes in organizational structure. Appendices pertaining to the United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Federal Law Enforcement Training Center, and the Office of Thrift Supervision have been deleted as these components are no longer part of the Department of the Treasury. The Bureau of the Public Debt and the Financial Management Service were merged in 2012 to form the Bureau of the Fiscal Service (Appendix D in these revised regulations). Appendices for two new components have been added: the Alcohol and Tobacco Tax and Trade Bureau (Appendix H) and the Treasury Inspector General for Tax Administration (Appendix I).

This final rule contains no substantive changes to the proposed rule that Treasury published for comments on October 26, 2018. However, the rule was renumbered and slightly reorganized so that the section numbers would not conflict with provisions in Subpart B of Part 1. Specifically, the rule was renumbered to begin with § 1.0, § 1.6 was redesignated as subsections (f) through (k) of § 1.4, and §§ 1.9 and 1.11 were redesignated as subsections (e) and (f) of § 1.0.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. A small entity is defined as either a small business, a small organization, or a small governmental jurisdiction; an individual is not a small entity. Section 605(b) of the RFA allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Department are nominal. Further, the "small entities" that make FOIA requests, as compared

with individual requesters and other requesters, are relatively few in number.

Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action” under Executive Order 12866.

List of Subjects in 31 CFR Part 1

Disclosure of records, Freedom of Information Act, Other disclosure provisions, Privacy Act.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 1 as follows:

PART 1—DISCLOSURE OF RECORDS

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 301, 321; 31 U.S.C. 3717.

■ 2. Subpart A is revised to read as follows:

Subpart A—Freedom of Information Act Sec.

- 1.0 General provisions.
- 1.1 Proactive disclosures of Department records.
- 1.2 Requirements for making requests.
- 1.3 Responsibility for responding to requests.
- 1.4 Responses to requests.
- 1.5 Confidential commercial information.
- 1.6 Administrative appeals.
- 1.7 Fees.
- Appendix A to Subpart A of Part 1—Departmental Offices
- Appendix B to Subpart A of Part 1—Internal Revenue Service
- Appendix C to Subpart A of Part 1—Bureau of Engraving and Printing
- Appendix D to Subpart A of Part 1—Bureau of the Fiscal Service
- Appendix E to Subpart A of Part 1—United States Mint
- Appendix F to Subpart A of Part 1—Office of the Comptroller of the Currency
- Appendix G to Subpart A of Part 1—Financial Crimes Enforcement Network
- Appendix H to Subpart A of Part 1—Alcohol and Tobacco Tax and Trade Bureau
- Appendix I to Subpart A of Part 1—Treasury Inspector General for Tax Administration

Subpart A—Freedom of Information Act

§ 1.0 General provisions.

(a) This subpart contains the rules that the Department of the Treasury follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. These regulations apply to all components of the Department of the Treasury. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart C of part 1 as well as under this subpart.

(b) The components of the Department of the Treasury for the purposes of this subpart are the following offices and bureaus:

(1) The Departmental Offices, which include the offices of:

(i) The Secretary of the Treasury, including immediate staff;

(ii) The Deputy Secretary of the Treasury, including immediate staff;

(iii) The Chief of Staff, including immediate staff;

(iv) The Executive Secretary of the Treasury and all offices reporting to such official, including immediate staff;

(v) The Under Secretary (International Affairs) and all offices reporting to such official, including immediate staff;

(vi) The Under Secretary (Domestic Finance) and all offices reporting to such official, including immediate staff;

(vii) The Director of the Community Development Financial Institution Fund and all offices reporting to such official, including immediate staff;

(viii) The Director of the Office of Financial Research and all offices reporting to such official, including immediate staff;

(ix) The Under Secretary (Terrorism and Financial Intelligence) and all offices reporting to such official, including immediate staff;

(x) The Director of the Office of Foreign Assets Control and all offices reporting to such official, including immediate staff;

(xi) The General Counsel and all offices reporting to such official, including immediate staff, but not including legal counsel to the components listed in paragraphs (b)(2) through (10) of this section;

(xii) The Treasurer of the United States, including immediate staff;

(xiii) The Assistant Secretary (Legislative Affairs) and all offices reporting to such official, including immediate staff;

(xiv) The Assistant Secretary (Public Affairs) and all offices reporting to such official, including immediate staff;

(xv) The Assistant Secretary (Economic Policy) and all offices

reporting to such official, including immediate staff;

(xvi) The Assistant Secretary (Tax Policy) and all offices reporting to such official, including immediate staff;

(xvii) The Assistant Secretary (Management) and all offices reporting to such official, including immediate staff; and

(xix) The Inspector General and all offices reporting to such official, including immediate staff;

(2) The Alcohol and Tobacco Tax and Trade Bureau;

(3) The Bureau of Engraving and Printing;

(4) The Bureau of the Fiscal Service;

(5) The Financial Crimes Enforcement Network;

(6) The Internal Revenue Service;

(7) The Office of the Comptroller of the Currency;

(8) The United States Mint;

(9) The Treasury Inspector General for Tax Administration;

(10) The Special Inspector General for the Troubled Asset Relief Program.

(c) Any Treasury office which is now in existence or may hereafter be established, which is not specifically listed above and is not a subsidiary unit of a component of those listed above, shall be deemed a part of the Departmental Offices for the purpose of these regulations.

(d) The head of each component is hereby authorized to substitute the official designated and change the address specified in the appendix to this subpart applicable to that component. Components may issue supplementary regulations applicable only to the component in question, which (except with respect to fee schedules) shall be consistent with these regulations. Persons interested in the records of a particular component should, therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that component (see Appendices to this subpart for cross references). In the event of any actual or apparent inconsistency, these Departmental regulations shall govern.

(e) Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending

request, administrative appeal, or lawsuit under the FOIA.

(f) Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

§ 1.1 Proactive disclosure of Department records.

(a) Records that are required by the FOIA to be made available for public inspection in an electronic format may be accessed through the Department's website, <http://www.treasury.gov>, and/or on the website of the component that maintains such records. The FOIA office of each component is responsible for determining which of the component's records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting such records. Each component has a FOIA Public Liaison who can assist individuals in locating records particular to that component. A list of the Department's FOIA Public Liaisons is available at: <https://home.treasury.gov/footer/freedom-of-information-act>.

(b) When a component receives three or more requests for the same records, it shall make available for public inspection in an electronic format, any records released in response to those requests.

§ 1.2 Requirements for making requests.

(a) *General information.* (1) Requests should be addressed to the FOIA office of the component that maintains the requested records. The appendices to this subpart list the addresses of each FOIA office and the methods for submitting requests to each component. Requesters are encouraged to submit requests online (through [FOIA.gov](https://www.foia.gov), component web pages or by completing the "Submit an Online Request" form located at <https://home.treasury.gov/footer/freedom-of-information-act>).

(2) When a requester is unable to determine the appropriate Departmental component to which to direct a request, the requester may send the request to Freedom of Information Act Request, Department of the Treasury, Departmental Offices (DO), Director, FOIA and Transparency, 1500 Pennsylvania Avenue NW, Washington, DC 20220. The FOIA and Transparency team will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought.

(3) A requester who is making a request for records about himself or herself must comply with the

verification of identity provision set forth in section 1.26 of subpart C of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746, authorizing disclosure of the records to the requester, or submitting proof that the individual is deceased (e.g., a copy of a death certificate). As an exercise of its administrative discretion, each component can require a requester to supply additional information, if necessary, in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Requesters should refer to the Appendices of this subpart for additional component-specific requirements. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. If the requester fails to reasonably describe the records sought, the component shall inform the requester what additional information is needed or why the request is deficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA contact or the FOIA Public Liaison. When a requester fails to provide sufficient detail after having been asked to clarify a request, the component shall notify the requester that the request has not been properly made and that the request will be administratively closed.

§ 1.3 Responsibility for responding to requests.

(a) *In general.* The component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component shall inform the

requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request.

(b) *Authority to grant or deny requests.* The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.

(c) *Re-routing of misdirected requests.* When a component's FOIA office determines that a request was misdirected within the agency, the receiving component's FOIA office must route the request to the FOIA office of the proper component(s) within the agency.

(d) *Consultation, referral, and coordination.* When reviewing records located by a component in response to a request, the component will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the agency must proceed in one of the following ways:

(1) *Consultation.* When records originated with the component processing the request, but contain within them information of interest to another agency or other Federal Government office, the agency processing the request should typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the component processing the request believes that a different agency is best able to determine whether to disclose the record, the component typically should refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if the component processing the request is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever a component refers any part of the responsibility for responding to a request to another agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal

privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the agency that received the request should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the agency that originally received the request.

(4) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date that the FOIA request was initially received by the component or other agency of the Federal government.

(5) *Agreements regarding consultations and referrals.* Components may establish agreements with other Treasury components or agencies of the Federal government to eliminate the need for consultations or referrals with respect to particular types of records.

(e) *Classified information.* On receipt of any request involving classified information, the component shall take appropriate action to ensure compliance with part 2 of this title and with all other laws and regulations relating to proper handling of classified information. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or that should consider the information for classification. Whenever a component's record contains information that has been derivatively classified, *i.e.*, it contains information

classified by another component or agency of the Federal government, the component shall refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.

§ 1.4 Responses to requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. The Appendices to this subpart contain the list of the Departmental components that are designated to accept requests. In instances involving misdirected requests, *i.e.*, where a request is sent to one of the components designated in the Appendices but is actually seeking records maintained by another component, the response time will commence on the date that the request is received by the appropriate component, but in any event not later than ten working days after the request is first received.

(b) *Multitrack processing.* All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. A component can consider factors such as the number of pages involved in processing the request or the need for consultations or referrals. Components shall advise requesters of the track into which their request falls and, when appropriate, shall offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component extends the time limits on that basis, the component shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds ten working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or agree to an alternative time period for processing. The component shall make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The component must also alert requesters to the availability of the

Office of Government Information Services to provide dispute resolution services.

(d) *Aggregating requests.* For the purposes of identifying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals will be processed on an expedited basis only upon request and when it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information. The standard of "urgency to inform" requires that the records requested pertain to a matter of current exigency to the public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public; or

(iii) The loss of substantial due process rights.

(2) A request for expedited processing may be made at any time. Requests must be submitted to the component that maintains the records requested. The time period for making the determination on the request for expedited processing under this section shall commence on the date that the component receives the request.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. As a matter of administrative discretion, a component may waive the formal certification requirement.

(4) A requester seeking expedited processing under paragraph (e)(1)(ii) of this section, who is not a full-time member of the news media must establish that he or she is a person whose primary professional activity or occupation is information dissemination. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to

know about government activity generally.

(5) A component shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a component denies expedited processing, any appeal of that decision that complies with the procedures set forth in § 1.6 of this subpart shall be acted on expeditiously.

(f) *Acknowledgments of requests.* Upon receipt of a request that will take longer than ten business days to process, a component shall send the requester an acknowledgment letter that assigns the request an individualized tracking number. The component shall also include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(g) *Grants of requests.* Once a component makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requester of any fees charged under § 1.7 of this subpart and shall disclose the requested records to the requester promptly upon payment of any applicable fees. The component must also inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(h) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters, and denials of requests for expedited processing.

(i) *Content of denial letter.* The denial letter shall be signed by the head of the component, or FOIA designee, and shall include, when applicable:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA

exemption applied by the component in denying the request; and

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if the estimate would cause a harm protected by one of the exemptions.

(4) A statement that the denial may be appealed under § 1.6(a) of this subpart, and a description of the requirements set forth therein.

(5) A statement notifying the requester of the assistance available from the component's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

(j) *Markings on released documents.* Records disclosed in part must be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if technically feasible.

(k) *Use of record exclusions.* (1) In the event a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the component shall consult with the Department of Justice, Office of Information Policy (OIP), before applying the exclusion.

(2) A component invoking an exclusion must maintain an administrative record of the process of invocation and of the consultation with OIP.

§ 1.5 Confidential commercial information.

(a) *Definitions*—(1) *Confidential commercial information* means trade secrets and commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom the Department obtains confidential commercial information, directly or indirectly.

(3) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the

submission unless the submitter requests and provides justification for a longer designation period.

(b) *When notice to submitters is required.* (1) A component shall promptly provide written notice to a submitter whenever:

(i) The requested confidential commercial information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested confidential commercial information may be protected from disclosure under Exemption 4 of the FOIA.

(2) The notice shall either describe the confidential commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(c) *Exceptions to submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) The component determines that the confidential commercial information is exempt from disclosure under the FOIA;

(2) The confidential commercial information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the confidential commercial information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987;

(d) *Opportunity to object to disclosure.* (1) A component will specify a reasonable time period as determined within its administrative discretion within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular confidential commercial information under any exemption of the FOIA. In order to rely on Exemption 4 as a basis for nondisclosure, the submitter must explain why the information constitutes a trade secret, or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. An objection to disclosure

received by the component after the time period specified in the notice will not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA and/or protected from disclosure by applicable exemptions or by a statute other than the FOIA.

(e) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested confidential commercial information.

(f) *Notice of intent to disclose.* Whenever a component decides to disclose confidential commercial information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) Copies of the records that the component intends to disclose or, in the alternative, a description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(g) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter.

(h) *Requester notification.* The component shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested confidential commercial information; and whenever a submitter files a lawsuit to prevent the disclosure of the confidential commercial information.

§ 1.6 Administrative appeals.

(a) *Requirements for making an appeal.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal. A requester may appeal any adverse determinations denying his or her request to the official specified in the appropriate Appendix to this subpart. Examples of adverse determinations are provided in § 1.4(h) of this subpart. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the component's final response. The appeal letter should clearly identify the

component's determination that is being appealed and the assigned request number. The requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.* (1) The FOIA appeal official or designee specified in the appropriate Appendix will act on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the FOIA appeal official or designee must take appropriate action to ensure compliance with applicable classification rules.

(c) *Decision on appeals.* A decision on an appeal must be made in writing by the component within 20 business days after receipt of the appeal. A decision that upholds a component's determination must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a component's decision is remanded or modified on appeal the requester will be notified of that determination in writing. The component will then further process the request in accordance with that appeal determination and respond directly to the requester. Appeals that have not been postmarked or transmitted within the specified time frame will be considered untimely and will be administratively closed with written notice to the requester.

(d) *Engaging in dispute resolution services provided by Office of Government Information Services (OGIS).* Mediation is a voluntary process. If a component agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

§ 1.7 Fees.

(a) *In general.* Components may charge for processing requests under the FOIA in accordance with the provisions of this section or may issue their own fee schedules as long as they are consistent with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional

information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by other means specified at <https://home.treasury.gov/footer/freedom-of-information-act>.

(b) *Definitions.* For purposes of this section:

(1) *Commercial-use request* is a request for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.

(2) *Direct costs* are those expenses that a component expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility. Components shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner.

(3) *Duplication* is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this category must show that the request is made in connection with the requester's role at the educational institution. Components may seek assurance from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(6) *Representative of the news media* is any person or entity that actively 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. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting news to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester’s past publication record in making this determination.

(7) *Other requester* refers to a requester who does not fall within any of the previously described categories.

(8) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes time spent processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 1.5 of this subpart, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are properly charged even if a record ultimately is not disclosed.

(9) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes time devoted to page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* Unless a component has issued a separate fee schedule, or a waiver or reduction of fees has been granted under paragraph (k) of this section, components shall charge the following fees. Because the fee amounts

provided below already account for the direct costs associated with a given fee type, components should not add any additional costs to those charges.

(1) *Search.* (i) Search fees shall be charged for all requests, subject to the restrictions of paragraph (d) of this section. Components will charge search fees for all other requesters, subject to the restrictions of paragraph (d) of this section. Components may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees shall be as follows: executive—\$21; professional—\$16.50; and administrative—\$13.00.

(iii) In addition, requesters will be charged the direct costs associated with the creation of any new computer program required to locate the requested records.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (d) of this section. A component shall honor a requester’s preference for receiving a record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component will provide one copy per request at a cost of \$0.15 per page. For copies of records produced on tapes, disks, other forms of duplication, or other electronic media, components will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester’s preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials, including operator’s time. For other forms of duplication, components will charge the direct costs.

(3) *Review.* Review fees will only be charged to requesters who make commercial-use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.*, the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with a component’s re-review of the records in order to

consider the use of other exemptions may be assessed as review fees. Review costs are properly charged even if a record ultimately is not disclosed. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media (unless the records are sought for commercial use).

(2) If a component fails to comply with the FOIA’s time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(2)(i) through (iii) of this section.

(i) If a component has determined that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional ten days.

(ii) If a component has determined that unusual circumstances as defined by the FOIA apply, and more than 5,000 pages are necessary to respond to the request, the component may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees if the following steps are taken. The component must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the component must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the component may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist as defined in the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is \$25.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of \$25.00.* When a component determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. In cases in which a requester has been notified that the actual or estimated fees are in excess of \$25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee. Such a commitment must be made by the requester in writing, must indicate a given dollar amount the requester is willing to pay, and must be received by the component within 30 calendar days from the date of notification of the fee estimate. If a commitment is not received within this period, the requester shall be notified, in writing, that the request shall be closed.

Components will inform the requester of their right to seek assistance from the appropriate component FOIA Public Liaison or other FOIA professional to assist the requester in reformulating request in an effort to reduce fees. Components are not required to accept payments in installments. If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Component will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative

discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (i)(3) of this section, a component shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior

request and the component may require that the requester make an advance payment of the full amount of any anticipated fee before the component begins to process a new request or continues to process a pending request, or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component's fee determination letter, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component will inform the requester of the contact information for that source.

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested 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.

(2) A component must furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that disclosure of the requested 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. In deciding whether this standard is satisfied the component must consider the factors described in paragraphs (k)(2)(i) through (iii) of this section:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that is already in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. Components will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following criteria:

(A) Components must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the component must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this section are satisfied and any commercial

interest is not the primary interest furthered by the request. Components ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

(5) The requester shall be notified in writing of the decision to grant or deny the fee waiver.

**Appendix A to Subpart A of Part 1—
Departmental Offices**

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR 1.1(b)(1).

2. *Public Reading Room.* The public reading room for the Departmental Offices is the Treasury Library. The library is located in the Freedman's Bank Building (Treasury Annex), Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202-622-0990. Treasury also maintains an electronic reading room, which may be accessed at <https://home.treasury.gov/footer/freedom-of-information-act>.

3. *Requests for records.*

(a) Initial determinations as to whether to grant requests for records of the Departmental

Offices will be made by the Director for FOIA and Transparency, or the designee of such official, with the exception of initial determinations by the Office of the Inspector General and the Special Inspector General for the Troubled Asset Relief Program, which will be made by the designee of the respective Inspector General.

(b) Requests for records should be sent to: Freedom of Information Request, Departmental Offices, Director, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Requests may also be submitted via email at FOIA@treasury.gov.

4. *Administrative appeal of initial determination to deny records.*

(a) Appellate determinations with respect to records of the Departmental Offices or requests for expedited processing will be made by the Deputy Assistant Secretary for Privacy, Transparency, and Records, or the designee of such official, with the exception of appellate determinations by the Office of the Inspector General and the Special Inspector General for the Troubled Asset Relief Program, which will be made by the respective Inspector General or his or her designee.

(b) Appeals should be addressed to: Freedom of Information Appeal, Departmental Offices, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Appeals may also be submitted via email at FOIA@treasury.gov.

**Appendix B to Subpart A of Part 1—
Internal Revenue Service**

1. *In general.* This appendix applies to the Internal Revenue Service (IRS). See also 26 CFR 601.702.

2. *Public reading room.* The IRS no longer maintains physical reading rooms. Documents for the public are found on various websites at irs.gov including the electronic FOIA Reading Room located at <https://www.irs.gov/uac/electronic-reading-room>.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of the IRS, grant expedited processing, grant a fee waiver, or determine requester category will be made by those officials specified in 26 CFR 601.702.

Requests for records should be submitted to the IRS using the information below:

IRS accepts FOIA requests by fax or by mail

If your request is for IRS Headquarters Office records concerning matters of nationwide applicability, such as published guidance (regulations and revenue rulings), program management, operations, or policies, including National or Headquarters Offices of Chief Counsel records that are not available at the Electronic FOIA Reading Room site..

If your request is for your own records or other records controlled at IRS field locations including Division Counsel offices that are not available at the Electronic FOIA Reading Room site..

Fax: 877-807-9215, Mail: IRS FOIA Request, Stop 211, PO Box 621506, Atlanta, GA 30362-3006.

Fax: 877-891-6035, Mail: IRS FOIA Request, Stop 93A, Post Office Box 621506, Atlanta GA 30362-3006.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the Internal Revenue Service will be made by the Commissioner of Internal Revenue or the delegate of such officer. Appeals must be in writing and addressed to: IRS Appeals Attention: FOIA Appeals, M/Stop 55202, 5045 E Butler Ave., Fresno, CA 93727-5136.

Appendix C to Subpart A of Part 1—Bureau of Engraving and Printing

1. *In general.* This appendix applies to the Bureau of Engraving and Printing (BEP).

2. *Public reading room.* BEP's public reading room is located at 14th and C Streets SW, Washington, DC 20228. Individuals wishing to visit the public reading room must request an appointment by telephoning (202) 874-2500. The reading room is open on official business days from 10:00 a.m. to 4:00 p.m. eastern standard time. Visitors shall comply with 31 CFR part 605, governing the conduct of persons within the buildings and grounds of the BEP. In addition, BEP also maintains an electronic reading room, which may be accessed at <http://www.bep.gov/bepfoialibrary.html>.

3. *Requests for records.* Initial determinations as to whether to grant or deny requests for records of the BEP or applicable fees will be made by the BEP Director delegate, *i.e.*, Disclosure Officer. Requests may be mailed or faxed to: FOIA/PA Request, Disclosure Officer, Bureau of Engraving and Printing, Office of the Chief Counsel—FOIA and Transparency Services, Washington, DC 20228-0001, Fax Number: (202) 874-2951.

4. *Administrative Appeal of initial determination to deny records.* Appellate determinations with respect to records of the BEP will be made by the Director of the BEP or the delegate of the Director for purposes of this section. Appeals may be mailed or delivered in person to: FOIA/PA APPEAL, Director, Bureau of Engraving and Printing, Office of the Director, 14th and C Streets SW, Washington, DC 20228-0001.

Appendix D to Subpart A of Part 1—Bureau of the Fiscal Service

1. *In general.* This appendix applies to the Bureau of the Fiscal Service.

2. *Public reading room.* The public reading room for the Bureau of the Fiscal Service is the Treasury Library. The library is located in the Freedman's Bank Building (Treasury Annex), Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220. For building security reasons, visitors are required to make an appointment by calling 202-622-0990. Fiscal Service also maintains an electronic reading room, which may be accessed at https://www.fiscal.treasury.gov/foia/foia_readingroom.htm.

3. *Requests for records.* Initial determinations whether to grant requests for records will be made by the Disclosure Officer, Bureau of the Fiscal Service. Requests may be mailed or delivered in person to:

Freedom of Information Request, Disclosure Officer, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC 20227.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations will be made by the Commissioner, Bureau of the Fiscal Service, or that official's delegate. Appeals may be mailed to: Freedom of Information Appeal (FOIA), Commissioner, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC 20227.

Appeals may be delivered personally to the Office of the Commissioner, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC.

Appendix E to Subpart A of Part 1—United States Mint

1. *In general.* This appendix applies to the United States Mint.

2. *Public reading room.* The U.S. Mint will provide a room on an ad hoc basis when necessary. Contact the Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of the United States Mint will be made by the Freedom of Information/Privacy Act Officer, United States Mint. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the United States Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the United States Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

Appendix F to Subpart A of Part 1—Office of the Comptroller of the Currency

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency.

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available through its Public Information Room at 250 E Street SW, Washington, DC 20219.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Disclosure Officer or the official so designated. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Disclosure Officer, Communications Division, 3rd Floor, Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the Comptroller of the Currency will be made by the Chief Counsel or delegates of such official. Appeals made by mail shall be addressed to: Communications Division, Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

Appeals may be delivered personally to the Communications Division, Comptroller of the Currency, 250 E Street SW, Washington, DC.

Appendix G to Subpart A of Part 1—Financial Crimes Enforcement Network

1. *In general.* This appendix applies to the Financial Crimes Enforcement Network (FinCEN).

2. *Public reading room.* FinCEN will provide records on the online reading room located on the FinCEN FOIA page or in the Code of Federal Regulations.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of FinCEN will be made by the Freedom of Information Act/Privacy Act Officer, FinCEN. Requests for records may be mailed to: Freedom of Information Act/Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to the records of FinCEN will be made by the Director of FinCEN or the delegate of the Director. Appeals should be mailed to: Freedom of Information Act Appeal, Post Office Box 39, Vienna, VA 22183, or emailed to: FinCENFOIA@fincen.gov.

Appendix H to Subpart A of Part 1—Alcohol and Tobacco Tax and Trade Bureau

1. *In general.* This appendix applies to the Alcohol and Tobacco Tax and Trade Bureau (TTB).

2. *Public reading room.* The public reading room for TTB is maintained at 1310 G Street NW, Washington, DC 20005. For building security purposes, visitors are required to make an appointment by calling 202-882-9904.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of TTB will be made by the Director, Regulations and Rulings Division. Requests for records may be mailed to: TTB FOIA Requester Service Center, 1310 G Street NW, Box 12, Washington, DC 20005. Requests may also be faxed to: 202-453-2331.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to the records of TTB will be made by the Assistant Administrator (Headquarters Operations), Alcohol and Tobacco Tax and Trade Bureau or the delegate of such official. Appeals may be mailed or delivered in person to: FOIA Appeal, Assistant Administrator (Headquarters Operations), Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Appendix I to Subpart A of Part 1—Treasury Inspector General for Tax Administration

1. *In general.* This appendix applies to the Treasury Inspector General for Tax Administration (TIGTA).

2. *Public reading room.* TIGTA will provide a room upon request when necessary. Contact the Disclosure Branch,

Office of Chief Counsel, TIGTA, at 202-622-4068.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of TIGTA will be made by the Disclosure Officer, TIGTA. Requests for records may be mailed to: Freedom of Information Act/Privacy Act Request, Treasury Inspector General for Tax Administration, Office of Chief Counsel, Disclosure Branch, 1401 H Street NW, Room 469, Washington, DC 20005. You may also view the How to Make a FOIA Request for TIGTA Records at https://www.treasury.gov/tigta/important_foia_mafr.shtml. TIGTA's FOIA email address is FOIA.Reading.Room@tigta.treas.gov.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to the records of TIGTA will be made by the Chief Counsel, TIGTA, or the delegate of the Chief Counsel. Appeals should be mailed to: Freedom of Information Act/Privacy Act Appeal, Treasury Inspector General for Tax Administration, Office of Chief Counsel, 1401 H Street NW, Room 469, Washington, DC 20005.

David F. Eisner,

Assistant Secretary for Management.

[FR Doc. 2019-03320 Filed 2-26-19; 8:45 am]

BILLING CODE 4810-25-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0850; FRL-9989-09-Region 6]

Air Plan Approval; New Mexico; Approval of Revised Statutes; Error Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to New Mexico's State Implementation Plan (SIP) that incorporate updates to the New Mexico statutes. EPA is also correcting its previous approval of some statute provisions as approval of these provisions into the SIP was in error.

DATES: This rule is effective on May 28, 2019 without further notice, unless the EPA receives relevant adverse comment by March 29, 2019. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0850, at [https://](https://www.regulations.gov)

www.regulations.gov or via email to Riley.Jeffrey@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Jeff Riley, (214) 665-8542, Riley.Jeffrey@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Jeff Riley, (214) 665-8542, Riley.Jeffrey@epa.gov. To inspect the hard copy materials, please schedule an appointment with Jeff Riley or Mr. Bill Deese at (214) 665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

A. CAA and SIPs

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards. These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA

approved SIP regulations and control strategies are federally enforceable.

B. New Mexico's Submittals

On August 6, 2015, the New Mexico Environment Department (NMED) provided a demonstration of how the existing New Mexico SIP met the applicable section 110(a)(2) requirements for the revised primary annual fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) promulgated on December 14, 2012 (78 FR 3085, January 15, 2013). Additionally, NMED provided updates to statutes originally approved into the SIP on November 2, 1984 (49 FR 44099). Sections 110(a)(2)(E)(ii) and 128 of the CAA require SIPs to contain statutory or regulatory provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. EPA approved updates to statutes under New Mexico Statutes Annotated 1978 (NMSA) Chapter 10, Article 16 and NMSA 1978 Chapter 74, Articles 1 & 2 to satisfy the CAA sections 110(a)(2)(E)(ii) and 128 requirements. However, the August 6, 2015 State submittal included other updated statutes under NMSA 1978 Chapter 9, Article 7A and NMSA 1978 Chapter 74, Articles 1 & 2 that EPA did not act upon. See EPA's proposal (82 FR 60933, December 26, 2017) and final approval (83 FR 12493, March 22, 2018) for further detail.

C. Error Corrections Under CAA Section 110(k)(6)

Section 110(k)(6) of the CAA provides EPA with the authority to make corrections to prior SIP actions that are subsequently found to be in error in the same manner as the prior action, and to do so without requiring any further submission from the State. On March 6, 2013, the Eleventh Circuit Court of Appeals issued a 2-1 decision relevant to EPA authority under Section 110(k)(6). See *Alabama Environmental Council v. EPA*, 711 F.3d 1277 (11th Cir. 2013). The majority opinion found that CAA section 110(k)(6) permits EPA to revise a SIP provision approved “in error” without any further submission from the State, so long as EPA provides the State and the public with its error determination and the basis thereof. This affirms EPA's authority to use

PUBLIC LAW 104-231—OCT. 2, 1996

ELECTRONIC FREEDOM OF INFORMATION
ACT AMENDMENTS OF 1996

Public Law 104–231
104th Congress

An Act

Oct. 2, 1996
[H.R. 3802]

To amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide for public access to information in an electronic format, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Electronic
Freedom of
Information Act
Amendments of
1996.
Records.
5 USC 552 note.
5 USC 552 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Electronic Freedom of Information Act Amendments of 1996”.

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—The Congress finds that—

(1) the purpose of section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose;

(2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;

(3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;

(4) the Freedom of Information Act has led to the identification of unsafe consumer products, harmful drugs, and serious health hazards;

(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

(6) Government agencies should use new technology to enhance public access to agency records and information.

(b) **PURPOSES.**—The purposes of this Act are to—

(1) foster democracy by ensuring public access to agency records and information;

(2) improve public access to agency records and information;

(3) ensure agency compliance with statutory time limits; and

(4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.

SEC. 3. APPLICATION OF REQUIREMENTS TO ELECTRONIC FORMAT INFORMATION.

Section 552(f) of title 5, United States Code, is amended to read as follows:

“(f) For purposes of this section, the term—

“(1) ‘agency’ as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

“(2) ‘record’ and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.”.

SEC. 4. INFORMATION MADE AVAILABLE IN ELECTRONIC FORMAT AND INDEXATION OF RECORDS.

Section 552(a)(2) of title 5, United States Code, is amended—

(1) in the second sentence, by striking “or staff manual or instruction” and inserting “staff manual, instruction, or copies of records referred to in subparagraph (D)”;

(2) by inserting before the period at the end of the third sentence the following: “, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made”;

(3) by inserting after the third sentence the following: “If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.”;

(4) in subparagraph (B), by striking “and” after the semicolon;

(5) by inserting after subparagraph (C) the following:

“(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

“(E) a general index of the records referred to under subparagraph (D)”;

(6) by inserting after the fifth sentence the following: “Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999.”; and

Availability date.

(7) by inserting after the first sentence the following: “For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means.”.

Availability date.

SEC. 5. HONORING FORM OR FORMAT REQUESTS.

Section 552(a)(3) of title 5, United States Code, is amended—

- (1) by inserting “(A)” after “(3)”;
- (2) by striking “(A)” the second place it appears and inserting “(i)”;
- (3) by striking “(B)” and inserting “(ii)”;
- (4) by adding at the end the following new subparagraphs:

“(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

“(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency’s automated information system.

“(D) For purposes of this paragraph, the term ‘search’ means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.”.

SEC. 6. STANDARD FOR JUDICIAL REVIEW.

Section 552(a)(4)(B) of title 5, United States Code, is amended by adding at the end the following new sentence: “In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency’s determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).”.

SEC. 7. ENSURING TIMELY RESPONSE TO REQUESTS.

(a) **MULTITRACK PROCESSING.**—Section 552(a)(6) of title 5, United States Code, is amended by adding at the end the following new subparagraph:

“(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

“(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

“(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.”.

(b) **UNUSUAL CIRCUMSTANCES.**—Section 552(a)(6)(B) of title 5, United States Code, is amended to read as follows:

“(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

“(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

Notification.

“(iii) As used in this subparagraph, ‘unusual circumstances’ means, but only to the extent reasonably necessary to the proper processing of the particular requests—

“(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

“(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

“(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

“(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.”.

(c) EXCEPTIONAL CIRCUMSTANCES.—Section 552(a)(6)(C) of title 5, United States Code, is amended by inserting “(i)” after “(C)”, and by adding at the end the following new clauses:

“(ii) For purposes of this subparagraph, the term ‘exceptional circumstances’ does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

“(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.”.

SEC. 8. TIME PERIOD FOR AGENCY CONSIDERATION OF REQUESTS.

(a) EXPEDITED PROCESSING.—Section 552(a)(6) of title 5, United States Code (as amended by section 7(a) of this Act), is further amended by adding at the end the following new subparagraph:

“(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

Regulations.

- “(I) in cases in which the person requesting the records demonstrates a compelling need; and
 “(II) in other cases determined by the agency.
 “(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure—
- Notification. “(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and
 “(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.
 “(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.
- Courts. “(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.
 “(v) For purposes of this subparagraph, the term ‘compelling need’ means—
 “(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
 “(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.
- Certification. “(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person’s knowledge and belief.”
- (b) EXTENSION OF GENERAL PERIOD FOR DETERMINING WHETHER TO COMPLY WITH A REQUEST.—Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by striking “ten days” and inserting “20 days”.
- (c) ESTIMATION OF MATTER DENIED.—Section 552(a)(6) of title 5, United States Code (as amended by section 7 of this Act and subsection (a) of this section), is further amended by adding at the end the following new subparagraph:
 “(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.”.

SEC. 9. COMPUTER REDACTION.

Section 552(b) of title 5, United States Code, is amended in the matter following paragraph (9) by inserting after the period

the following: “The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.”.

SEC. 10. REPORT TO THE CONGRESS.

Section 552(e) of title 5, United States Code, is amended to read as follows:

“(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include—

“(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

“(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

“(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

Lists.

“(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

“(D) the number of requests for records received by the agency and the number of requests which the agency processed;

“(E) the median number of days taken by the agency to process different types of requests;

“(F) the total amount of fees collected by the agency for processing requests; and

“(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

“(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

“(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

Notification.

“(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall

Guidelines.

develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

Lists.

“(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.”.

SEC. 11. REFERENCE MATERIALS AND GUIDES.

Section 552 of title 5, United States Code, is amended by adding after subsection (f) the following new subsection:

“(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

“(1) an index of all major information systems of the agency;

“(2) a description of major information and record locator systems maintained by the agency; and

“(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.”.

5 USC 552 note.

SEC. 12. EFFECTIVE DATE.

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act shall take effect 180 days after the date of the enactment of this Act.

(b) **PROVISIONS EFFECTIVE ON ENACTMENT.**—Sections 7 and 8 shall take effect one year after the date of the enactment of this Act.

Approved October 2, 1996.

LEGISLATIVE HISTORY—H.R. 3802 (S. 1090):

HOUSE REPORTS: No. 104–795 (Comm. on Government Reform and Oversight).
SENATE REPORTS: No. 104–272 accompanying S. 1090 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 142 (1996):

Sept. 17, considered and passed House.

Sept. 18, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):
Oct. 2, Presidential statement.



110TH CONGRESS
1ST SESSION

S. 2488

I

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2007

Referred to the Committee on Oversight and Government Reform

AN ACT

To promote accessibility, accountability, and openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Openness Promotes
3 Effectiveness in our National Government Act of 2007”
4 or the “OPEN Government Act of 2007”.

5 **SEC. 2. FINDINGS.**

6 Congress finds that—

7 (1) the Freedom of Information Act was signed
8 into law on July 4, 1966, because the American peo-
9 ple believe that—

10 (A) our constitutional democracy, our sys-
11 tem of self-government, and our commitment to
12 popular sovereignty depends upon the consent
13 of the governed;

14 (B) such consent is not meaningful unless
15 it is informed consent; and

16 (C) as Justice Black noted in his concur-
17 ring opinion in *Barr v. Matteo* (360 U.S. 564
18 (1959)), “The effective functioning of a free
19 government like ours depends largely on the
20 force of an informed public opinion. This calls
21 for the widest possible understanding of the
22 quality of government service rendered by all
23 elective or appointed public officials or employ-
24 ees.”;

1 (2) the American people firmly believe that our
2 system of government must itself be governed by a
3 presumption of openness;

4 (3) the Freedom of Information Act establishes
5 a "strong presumption in favor of disclosure" as
6 noted by the United States Supreme Court in
7 United States Department of State v. Ray (502 U.S.
8 164 (1991)), a presumption that applies to all agen-
9 cies governed by that Act;

10 (4) "disclosure, not secrecy, is the dominant ob-
11 jective of the Act," as noted by the United States
12 Supreme Court in Department of Air Force v. Rose
13 (425 U.S. 352 (1976));

14 (5) in practice, the Freedom of Information Act
15 has not always lived up to the ideals of that Act; and

16 (6) Congress should regularly review section
17 552 of title 5, United States Code (commonly re-
18 ferred to as the Freedom of Information Act), in
19 order to determine whether further changes and im-
20 provements are necessary to ensure that the Govern-
21 ment remains open and accessible to the American
22 people and is always based not upon the "need to
23 know" but upon the fundamental "right to know".

1 **SEC. 3. PROTECTION OF FEE STATUS FOR NEWS MEDIA.**

2 Section 552(a)(4)(A)(ii) of title 5, United States
3 Code, is amended by adding at the end the following:

4 "In this clause, the term 'a representative of the news
5 media' means any person or entity that gathers informa-
6 tion of potential interest to a segment of the public, uses
7 its editorial skills to turn the raw materials into a distinct
8 work, and distributes that work to an audience. In this
9 clause, the term 'news' means information that is about
10 current events or that would be of current interest to the
11 public. Examples of news-media entities are television or
12 radio stations broadcasting to the public at large and pub-
13 lishers of periodicals (but only if such entities qualify as
14 disseminators of 'news') who make their products available
15 for purchase by or subscription by or free distribution to
16 the general public. These examples are not all-inclusive.
17 Moreover, as methods of news delivery evolve (for example,
18 the adoption of the electronic dissemination of newspapers
19 through telecommunications services), such alternative
20 media shall be considered to be news-media entities. A
21 freelance journalist shall be regarded as working for a
22 news-media entity if the journalist can demonstrate a solid
23 basis for expecting publication through that entity, wheth-
24 er or not the journalist is actually employed by the entity.
25 A publication contract would present a solid basis for such
26 an expectation; the Government may also consider the

1 past publication record of the requester in making such
2 a determination.”.

3 **SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION**
4 **COSTS.**

5 (a) **IN GENERAL.**—Section 552(a)(4)(E) of title 5,
6 United States Code, is amended—

7 (1) by inserting “(i)” after “(E)”; and

8 (2) by adding at the end the following:

9 “(ii) For purposes of this subpara-
10 graph, a complainant has substantially
11 prevailed if the complainant has obtained
12 relief through either—

13 “(I) a judicial order, or an enforceable
14 written agreement or consent decree; or

15 “(II) a voluntary or unilateral change in
16 position by the agency, if the complainant’s
17 claim is not insubstantial.”.

18 (b) **LIMITATION.**—Notwithstanding section 1304 of
19 title 31, United States Code, no amounts may be obligated
20 or expended from the Claims and Judgment Fund of the
21 United States Treasury to pay the costs resulting from
22 fees assessed under section 552(a)(4)(E) of title 5, United
23 States Code. Any such amounts shall be paid only from
24 funds annually appropriated for any authorized purpose

1 for the Federal agency against which a claim or judgment
2 has been rendered.

3 **SEC. 5. DISCIPLINARY ACTIONS FOR ARBITRARY AND CA-**
4 **PRICIOUS REJECTIONS OF REQUESTS.**

5 Section 552(a)(4)(F) of title 5, United States Code,
6 is amended—

7 (1) by inserting “(i)” after “(F)”; and

8 (2) by adding at the end the following:

9 “(ii) The Attorney General shall—

10 “(I) notify the Special Counsel of each civil ac-
11 tion described under the first sentence of clause (i);
12 and

13 “(II) annually submit a report to Congress on
14 the number of such civil actions in the preceding
15 year.

16 “(iii) The Special Counsel shall annually submit a re-
17 port to Congress on the actions taken by the Special Coun-
18 sel under clause (i).”.

19 **SEC. 6. TIME LIMITS FOR AGENCIES TO ACT ON REQUESTS.**

20 (a) **TIME LIMITS.—**

21 (1) **IN GENERAL.—**Section 552(a)(6)(A) of title
22 5, United States Code, is amended by inserting after
23 clause (ii) the following:

24 “The 20-day period under clause (i) shall com-
25 mence on the date on which the request is first re-

1 ceived by the appropriate component of the agency,
2 but in any event not later than ten days after the
3 request is first received by any component of the
4 agency that is designated in the agency's regulations
5 under this section to receive requests under this sec-
6 tion. The 20-day period shall not be tolled by the
7 agency except—

8 “(I) that the agency may make one
9 request to the requester for information
10 and toll the 20-day period while it is await-
11 ing such information that it has reasonably
12 requested from the requester under this
13 section; or

14 “(II) if necessary to clarify with the
15 requester issues regarding fee assessment.
16 In either case, the agency's receipt of the
17 requester's response to the agency's re-
18 quest for information or clarification ends
19 the tolling period.”.

20 (2) EFFECTIVE DATE.—The amendment made
21 by this subsection shall take effect 1 year after the
22 date of enactment of this Act.

23 (b) COMPLIANCE WITH TIME LIMITS.—

24 (1) IN GENERAL.—

1 (A) SEARCH FEES.—Section 552(a)(4)(A)
2 of title 5, United States Code, is amended by
3 adding at the end the following:

4 “(viii) An agency shall not assess
5 search fees (or in the case of a requester
6 described under clause (ii)(II), duplication
7 fees) under this subparagraph if the agen-
8 cy fails to comply with any time limit
9 under paragraph (6), if no unusual or ex-
10 ceptional circumstances (as those terms
11 are defined for purposes of paragraphs
12 (6)(B) and (C), respectively) apply to the
13 processing of the request.”.

14 (B) PUBLIC LIAISON.—Section
15 552(a)(6)(B)(ii) of title 5, United States Code,
16 is amended by inserting after the first sentence
17 the following: “To aid the requester, each agen-
18 cy shall make available its FOIA Public Liai-
19 son, who shall assist in the resolution of any
20 disputes between the requester and the agen-
21 cy.”.

22 (2) EFFECTIVE DATE AND APPLICATION.—The
23 amendment made by this subsection shall take effect
24 1 year after the date of enactment of this Act and
25 apply to requests for information under section 552

1 of title 5, United States Code, filed on or after that
2 effective date.

3 **SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR RE-**
4 **QUESTS AND STATUS INFORMATION.**

5 (a) **IN GENERAL.**—Section 552(a) of title 5, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

8 “(7) Each agency shall—

9 “(A) establish a system to assign an individual-
10 ized tracking number for each request received that
11 will take longer than ten days to process and provide
12 to each person making a request the tracking num-
13 ber assigned to the request; and

14 “(B) establish a telephone line or Internet serv-
15 ice that provides information about the status of a
16 request to the person making the request using the
17 assigned tracking number, including—

18 “(i) the date on which the agency origi-
19 nally received the request; and

20 “(ii) an estimated date on which the agen-
21 cy will complete action on the request.”.

22 (b) **EFFECTIVE DATE AND APPLICATION.**—The
23 amendment made by this section shall take effect 1 year
24 after the date of enactment of this Act and apply to re-

1 requests for information under section 552 of title 5, United
2 States Code, filed on or after that effective date.

3 **SEC. 8. REPORTING REQUIREMENTS.**

4 (a) IN GENERAL.—Section 552(e)(1) of title 5,
5 United States Code, is amended—

6 (1) in subparagraph (B)(ii), by inserting after
7 the first comma “the number of occasions on which
8 each statute was relied upon,”;

9 (2) in subparagraph (C), by inserting “and av-
10 erage” after “median”;

11 (3) in subparagraph (E), by inserting before the
12 semicolon “, based on the date on which the requests
13 were received by the agency”;

14 (4) by redesignating subparagraphs (F) and
15 (G) as subparagraphs (N) and (O), respectively; and

16 (5) by inserting after subparagraph (E) the fol-
17 lowing:

18 “(F) the average number of days for the
19 agency to respond to a request beginning on the
20 date on which the request was received by the
21 agency, the median number of days for the
22 agency to respond to such requests, and the
23 range in number of days for the agency to re-
24 spond to such requests;

1 “(G) based on the number of business days
2 that have elapsed since each request was origi-
3 nally received by the agency—

4 “(i) the number of requests for
5 records to which the agency has responded
6 with a determination within a period up to
7 and including 20 days, and in 20-day in-
8 crements up to and including 200 days;

9 “(ii) the number of requests for
10 records to which the agency has responded
11 with a determination within a period great-
12 er than 200 days and less than 301 days;

13 “(iii) the number of requests for
14 records to which the agency has responded
15 with a determination within a period great-
16 er than 300 days and less than 401 days;
17 and

18 “(iv) the number of requests for
19 records to which the agency has responded
20 with a determination within a period great-
21 er than 400 days;

22 “(H) the average number of days for the
23 agency to provide the granted information be-
24 ginning on the date on which the request was
25 originally filed, the median number of days for

1 the agency to provide the granted information,
2 and the range in number of days for the agency
3 to provide the granted information;

4 “(I) the median and average number of
5 days for the agency to respond to administra-
6 tive appeals based on the date on which the ap-
7 peals originally were received by the agency, the
8 highest number of business days taken by the
9 agency to respond to an administrative appeal,
10 and the lowest number of business days taken
11 by the agency to respond to an administrative
12 appeal;

13 “(J) data on the 10 active requests with
14 the earliest filing dates pending at each agency,
15 including the amount of time that has elapsed
16 since each request was originally received by the
17 agency;

18 “(K) data on the 10 active administrative
19 appeals with the earliest filing dates pending
20 before the agency as of September 30 of the
21 preceding year, including the number of busi-
22 ness days that have elapsed since the requests
23 were originally received by the agency;

24 “(L) the number of expedited review re-
25 quests that are granted and denied, the average

1 and median number of days for adjudicating ex-
2 pedited review requests, and the number adju-
3 dicated within the required 10 days;

4 “(M) the number of fee waiver requests
5 that are granted and denied, and the average
6 and median number of days for adjudicating fee
7 waiver determinations;”.

8 (b) APPLICABILITY TO AGENCY AND EACH PRIN-
9 CIPAL COMPONENT OF THE AGENCY.—Section 552(e) of
10 title 5, United States Code, is amended—

11 (1) by redesignating paragraphs (2) through
12 (5) as paragraphs (3) through (6), respectively; and
13 (2) by inserting after paragraph (1) the fol-
14 lowing:

15 “(2) Information in each report submitted
16 under paragraph (1) shall be expressed in terms of
17 each principal component of the agency and for the
18 agency overall.”.

19 (c) PUBLIC AVAILABILITY OF DATA.—Section
20 552(e)(3) of title 5, United States Code, (as redesignated
21 by subsection (b) of this section) is amended by adding
22 at the end “In addition, each agency shall make the raw
23 statistical data used in its reports available electronically
24 to the public upon request.”.

1 **SEC. 9. OPENNESS OF AGENCY RECORDS MAINTAINED BY A**
2 **PRIVATE ENTITY.**

3 Section 552(f) of title 5, United States Code, is
4 amended by striking paragraph (2) and inserting the fol-
5 lowing:

6 “(2) ‘record’ and any other term used in this
7 section in reference to information includes—

8 “(A) any information that would be an
9 agency record subject to the requirements of
10 this section when maintained by an agency in
11 any format, including an electronic format; and

12 “(B) any information described under sub-
13 paragraph (A) that is maintained for an agency
14 by an entity under Government contract, for
15 the purposes of records management.”.

16 **SEC. 10. OFFICE OF GOVERNMENT INFORMATION SERV-**
17 **ICES.**

18 (a) **IN GENERAL.**—Section 552 of title 5, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 “(h)(1) There is established the Office of Government
22 Information Services within the National Archives and
23 Records Administration.

24 “(2) The Office of Government Information Services
25 shall—

1 “(A) review policies and procedures of adminis-
2 trative agencies under this section;

3 “(B) review compliance with this section by ad-
4 ministrative agencies; and

5 “(C) recommend policy changes to Congress
6 and the President to improve the administration of
7 this section.

8 “(3) The Office of Government Information Services
9 shall offer mediation services to resolve disputes between
10 persons making requests under this section and adminis-
11 trative agencies as a non-exclusive alternative to litigation
12 and, at the discretion of the Office, may issue advisory
13 opinions if mediation has not resolved the dispute.

14 “(i) The Government Accountability Office shall con-
15 duct audits of administrative agencies on the implementa-
16 tion of this section and issue reports detailing the results
17 of such audits.

18 “(j) Each agency shall designate a Chief FOIA Offi-
19 cer who shall be a senior official of such agency (at the
20 Assistant Secretary or equivalent level).

21 “(k) The Chief FOIA Officer of each agency shall,
22 subject to the authority of the head of the agency—

23 “(1) have agency-wide responsibility for effi-
24 cient and appropriate compliance with this section;

1 “(2) monitor implementation of this section
2 throughout the agency and keep the head of the
3 agency, the chief legal officer of the agency, and the
4 Attorney General appropriately informed of the
5 agency’s performance in implementing this section;

6 “(3) recommend to the head of the agency such
7 adjustments to agency practices, policies, personnel,
8 and funding as may be necessary to improve its im-
9 plementation of this section;

10 “(4) review and report to the Attorney General,
11 through the head of the agency, at such times and
12 in such formats as the Attorney General may direct,
13 on the agency’s performance in implementing this
14 section;

15 “(5) facilitate public understanding of the pur-
16 poses of the statutory exemptions of this section by
17 including concise descriptions of the exemptions in
18 both the agency’s handbook issued under subsection
19 (g), and the agency’s annual report on this section,
20 and by providing an overview, where appropriate, of
21 certain general categories of agency records to which
22 those exemptions apply; and

23 “(6) designate one or more FOIA Public Liai-
24 sons.

1 “(l) FOIA Public Liaisons shall report to the agency
2 Chief FOIA Officer and shall serve as supervisory officials
3 to whom a requester under this section can raise concerns
4 about the service the requester has received from the
5 FOIA Requester Center, following an initial response from
6 the FOIA Requester Center Staff. FOIA Public Liaisons
7 shall be responsible for assisting in reducing delays, in-
8 creasing transparency and understanding of the status of
9 requests, and assisting in the resolution of disputes.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect on the date of enactment of
12 this Act.

13 **SEC. 11. REPORT ON PERSONNEL POLICIES RELATED TO**
14 **FOIA.**

15 Not later than 1 year after the date of enactment
16 of this Act, the Office of Personnel Management shall sub-
17 mit to Congress a report that examines—

18 (1) whether changes to executive branch per-
19 sonnel policies could be made that would—

20 (A) provide greater encouragement to all
21 Federal employees to fulfill their duties under
22 section 552 of title 5, United States Code; and

23 (B) enhance the stature of officials admin-
24 istering that section within the executive
25 branch;

1 (2) whether performance of compliance with
2 section 552 of title 5, United States Code, should be
3 included as a factor in personnel performance eval-
4 uations for any or all categories of Federal employ-
5 ees and officers;

6 (3) whether an employment classification series
7 specific to compliance with sections 552 and 552a of
8 title 5, United States Code, should be established;

9 (4) whether the highest level officials in par-
10 ticular agencies administering such sections should
11 be paid at a rate of pay equal to or greater than a
12 particular minimum rate; and

13 (5) whether other changes to personnel policies
14 can be made to ensure that there is a clear career
15 advancement track for individuals interested in de-
16 voting themselves to a career in compliance with
17 such sections; and

18 (6) whether the executive branch should require
19 any or all categories of Federal employees to under-
20 take awareness training of such sections.

21 **SEC. 12. REQUIREMENT TO DESCRIBE EXEMPTIONS AU-**
22 **THORIZING DELETIONS OF MATERIAL PRO-**
23 **VIDED UNDER FOIA.**

24 Section 552(b) of title 5, United States Code, is
25 amended in the matter after paragraph (9)—

1 (1) in the second sentence, by inserting after
2 “amount of information deleted” the following: “,
3 and the exemption under which the deletion is
4 made,”; and

5 (2) in the third sentence, by inserting after
6 “amount of the information deleted” the following:
7 “, and the exemption under which the deletion is
8 made,”.

Passed the Senate December 14, 2007.

Attest:

NANCY ERICKSON,

Secretary.



Office of the Attorney General

Washington, D.C. 20530

March 19, 2009

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:  THE ATTORNEY GENERAL

SUBJECT: The Freedom of Information Act (FOIA)

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, reflects our nation's fundamental commitment to open government. This memorandum is meant to underscore that commitment and to ensure that it is realized in practice.

A Presumption of Openness

As President Obama instructed in his January 21 FOIA Memorandum, "The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." This presumption has two important implications.

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure. Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure.

At the same time, the disclosure obligation under the FOIA is not absolute. The Act provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests. But as the President stated in his memorandum, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Pursuant to the President's directive that I issue new FOIA guidelines, I hereby rescind the Attorney General's FOIA Memorandum of October 12, 2001, which stated that the Department of Justice would defend decisions to withhold records "unless they lack a sound

legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.”

Instead, the Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law. With regard to litigation pending on the date of the issuance of this memorandum, this guidance should be taken into account and applied if practicable when, in the judgment of the Department of Justice lawyers handling the matter and the relevant agency defendants, there is a substantial likelihood that application of the guidance would result in a material disclosure of additional information.

FOIA Is Everyone’s Responsibility

Application of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure but also an effective system for responding to FOIA requests. Each agency must be fully accountable for its administration of the FOIA.

I would like to emphasize that responsibility for effective FOIA administration belongs to all of us—it is not merely a task assigned to an agency’s FOIA staff. We all must do our part to ensure open government. In recent reports to the Attorney General, agencies have noted that competing agency priorities and insufficient technological support have hindered their ability to implement fully the FOIA Improvement Plans that they prepared pursuant to Executive Order 13392 of December 14, 2005. To improve FOIA performance, agencies must address the key roles played by a broad spectrum of agency personnel who work with agency FOIA professionals in responding to requests.

Improving FOIA performance requires the active participation of agency Chief FOIA Officers. Each agency is required by law to designate a senior official at the Assistant Secretary level or its equivalent who has direct responsibility for ensuring that the agency efficiently and appropriately complies with the FOIA. That official must recommend adjustments to agency practices, personnel, and funding as may be necessary.

Equally important, of course, are the FOIA professionals in the agency who directly interact with FOIA requesters and are responsible for the day-to-day implementation of the Act. I ask that you transmit this memorandum to all such personnel. Those professionals deserve the full support of the agency’s Chief FOIA Officer to ensure that they have the tools they need to respond promptly and efficiently to FOIA requests. FOIA professionals should be mindful of their obligation to work “in a spirit of cooperation” with FOIA requesters, as President Obama has directed. Unnecessary bureaucratic hurdles have no place in the “new era of open Government” that the President has proclaimed.

Working Proactively and Promptly

Open government requires agencies to work proactively and respond to requests promptly. The President's memorandum instructs agencies to "use modern technology to inform citizens what is known and done by their Government." Accordingly, agencies should readily and systematically post information online in advance of any public request. Providing more information online reduces the need for individualized requests and may help reduce existing backlogs. When information not previously disclosed is requested, agencies should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency. Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.

In that regard, I would like to remind you of a new requirement that went into effect on December 31, 2008, pursuant to Section 7 of the OPEN Government Act of 2007, Pub. L. No. 110-175. For all requests filed on or after that date, agencies must assign an individualized tracking number to requests that will take longer than ten days to process, and provide that tracking number to the requester. In addition, agencies must establish a telephone line or Internet service that requesters can use to inquire about the status of their requests using the request's assigned tracking number, including the date on which the agency received the request and an estimated date on which the agency will complete action on the request. Further information on these requirements is available on the Department of Justice's website at www.usdoj.gov/oip/foiapost/2008foiapost30.htm.

Agency Chief FOIA Officers should review all aspects of their agencies' FOIA administration, with particular focus on the concerns highlighted in this memorandum, and report to the Department of Justice each year on the steps that have been taken to improve FOIA operations and facilitate information disclosure at their agencies. The Department of Justice's Office of Information Policy (OIP) will offer specific guidance on the content and timing of such reports.

I encourage agencies to take advantage of Department of Justice FOIA resources. OIP will provide training and additional guidance on implementing these guidelines. In addition, agencies should feel free to consult with OIP when making difficult FOIA decisions. With regard to specific FOIA litigation, agencies should consult with the relevant Civil Division, Tax Division, or U.S. Attorney's Office lawyer assigned to the case.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees, agents, or any other person.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 21, 2009

January 21, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Freedom of Information Act

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the *Federal Register*. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the *Federal Register*.

more

(OVER)

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

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TREASURY DIRECTIVE 25-04

DATE: August 27, 2021

SUBJECT: The Privacy Act of 1974, As Amended

1. **PURPOSE**. This Directive establishes policy assigns responsibilities for carrying out the requirements of the Privacy Act of 1974, as amended (the "Privacy Act" or the "Act"). It also authorizes the release of Treasury Directive Publication (TD P) 25-04, "Privacy Act Handbook."
2. **SCOPE**. This Directive applies to all bureaus, offices, and organizations in the Department of the Treasury ("Treasury" or the "Department"), including the Offices of Inspector General. The provisions of this Directive shall not be construed to interfere with or impede the authorities or independence of the Offices of Inspectors General.
3. **POLICY**. It is the policy of the Department of the Treasury that all employees and contractors shall be made aware of and comply with the Privacy Act, and that information about individuals shall be collected, maintained, used, and disseminated in accordance with the Act and Treasury regulations set forth in 31 Code of Federal Regulations (CFR) Part 1, Subpart C.
4. **BACKGROUND**. The Privacy Act provides safeguards against an invasion of privacy through the misuse of records by Federal agencies. Employees are expected to safeguard information about other individuals to which they are exposed to during their employment with the Department. Records about an individual may not be disclosed unless the disclosure is permitted by the Act or made pursuant to an applicable published routine use. The Act requires that information maintained in an agency's systems of records be accurate, complete, timely, and relevant. The Act requires that information maintained in an agency's systems of records be accurate, complete, timely, and relevant. The Act permits individuals to receive notification if a system of records contains a record pertaining to them. Subject to certain exemptions, the Act also requires the Department to provide the following: access to any record it maintains about the individual in a system of records; an accounting of any disclosures to the individual upon request; the amendment of a record, if needed; and the ability to appeal any initial determination not to amend a record.
5. **RESPONSIBILITIES**. System managers, program managers, personnel employees, procurement employees, attorneys/advisors, and disclosure personnel shall be knowledgeable about the provisions and requirements of the Act. All other Department personnel and contractors shall be aware of their responsibilities to protect Privacy Act records.
 - a. The **Assistant Secretary for Management (ASM)** is the Treasury's Senior Agency Official for Privacy (SAOP) and is responsible for activities relating to the Privacy Act, including rules of conduct, training, and redress that stem from adverse agency determinations for amendment of records under the act.

- b. The **Deputy Assistant Secretary for Privacy, Transparency, & Records (DASPTR)** reports to the SAOP and is responsible for leadership, planning, policy, and general oversight of the Department's privacy and civil liberties program.
- c. The **Director of Privacy and Civil Liberties** within the Office of Privacy, Transparency, & Records is responsible for managing and coordinating the Department's privacy and civil liberties program, serving as the Department's liaison to the Office of Management and Budget (OMB) and the National Archives and Records Administration, and providing leadership and guidance to bureau privacy officers.
- d. The **Departmental Privacy Act Officer** is responsible for ensuring that privacy compliance requirements are fully incorporated into the privacy and civil liberties compliance framework.
- e. The **Heads of Bureaus**, as it relates to their respective bureaus, shall:
 - 1. 1) establish internal procedures to ensure the effectiveness of Treasury's Privacy Act program and to safeguard individual privacy in the collection, maintenance, use, and dissemination of Federal records;
 - 2. 2) Submit the following to the Office of Privacy, Transparency & Records for the review and approval of the DASPTR:
 - 1. a) a notice and report for each new or altered system of records;
 - 2. b) a proposed and final rule for any determination to exempt a system of records from certain provisions of the Privacy Act;
 - 3. c) a notice and report of the establishment or alteration of a matching program; and
 - 4. d) any proposed or final rules applicable to existing Privacy Act system of records for review and concurrence prior to the review and concurrence procedures.
 - 3. 3) establish procedures allowing an individual to appeal an initial adverse agency determination regarding a request for amendment of records; and
 - 4. 4) submit to the DASPTR a copy of the bureau's initial determination and response to an appeal regarding a request to amend records.
- f. **System Managers** shall:
 - 1. 1) establish, maintain, revise, or delete systems of records in accordance with applicable laws and regulations relating to privacy and Federal records;
 - 2. 2) establish administrative and physical controls to ensure the protection of records systems from unauthorized access or disclosure, and from physical damage or destruction;
 - 3. 3) provide an appropriate means for the accounting of disclosures of records;
 - 4. 4) retain records in accordance with an approved record retention schedule and dispose of such records in a manner that will not compromise personally identifiable information (PII); and

5. 5) prepare reports or provide data to the Office of Privacy, Transparency, & Records as required by statute, Executive Order, OMB, Government Accountability Office (GAO), or the SAOP.
 - g. **Responsible Officials** shall ensure that Privacy Act requests for notification, access to and amendment of records are processed in accordance with Treasury's disclosure implementing regulations, at 31 CFR Part 1, and that a determination is issued.
 - h. The **Assistant General Counsel** (General Law, Ethics, and Regulation) shall provide assistance as the DASPTR requires in clearing reports, notices of systems of records, proposed rules, and other related matters to be submitted by Treasury to Congress, OMB, and other parties.
 - i. The **Chief Information Officer (CIO)** shall:
 1. 1) provide assistance as needed to the DASPTR regarding any proposed or anticipated change to computer installations, communications networks, or other electronic data collecting mechanisms that may be potentially subject to the Privacy Act;
 2. 2) assist the bureaus in the implementation of uniform and consistent policies and standards governing the acquisition, maintenance and use of computers or other electronic or telecommunications equipment in the collection, maintenance, use, or dissemination of Privacy Act records; and
 3. 3) provide the DASPTR with proposed data collection screens, or other electronic data collecting mechanisms used to collect information about individuals, for Privacy Act compliance review prior to their use on the Intranet or Internet.
6. **AUTHORITIES.**
- a. Privacy Act of 1974, as amended, 5 USC 552a.
 - b. Treasury Order 102-25, "Delegation of Authority Concerning Privacy and Civil Liberties."
 - c. Department of the Treasury Regulations, 31 CFR Part 1, Subpart C.
7. **REFERENCES.**
- a. E-Government Act of 2002.
 - b. Department of the Treasury Employee Rules of Conduct, 31 CFR Part 0 (February 19, 2016).
 - c. OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act" (December 23, 2016).
 - d. OMB Circular A-130, "Managing Information as a Strategic Resource (July 28, 2016).
 - e. M-03-22, "OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002" (September 30, 2003).
 - f. Office of Personnel Management, Privacy Procedures for Personnel Records, 5 CFR 297.
 - g. TD 25-06, "The Treasury Data Integrity Board."
 - h. TD 25-07, "Privacy and Civil Liberties Impact Assessment (PCLIA)."

- i. TD 25-08, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information."
- j. TD P 25-04, "Privacy Act Handbook."
- k. TD P 85-01, "Department of the Treasury Information Technology (IT) Security Program."
- 8. **CANCELLATION**. TD 25-04, "The Privacy Act of 1974, As Amended," Dated January 27, 2014, is superseded.
- 9. **OFFICE OF PRIMARY INTEREST**. Office of the Deputy Assistant Secretary for Privacy, Transparency & Records and the Office of the Assistant Secretary for Management.

/S/

Trevor Norris

Acting Assistant Secretary for Management

TREASURY DIRECTIVE 25-05

DATE: March 1, 2000

SUBJECT: The Freedom of Information Act

1. **PURPOSE.** This Directive provides policy and assigns responsibilities for carrying out the requirements of the Freedom of Information Act (FOIA), as amended. This Directive also authorizes the issuance of Treasury Department Publication (TD P) 25-05, "Freedom of Information Act Handbook".
2. **SCOPE.** This Directive applies to all bureaus, offices and organizations in the Department of the Treasury, including the Office of the Inspector General and the Treasury Inspector General for Tax Administration.
3. **POLICY.** It is the policy of the Department of the Treasury to implement the FOIA uniformly and consistently and to provide maximum allowable disclosure of agency records upon request by any individual. Records shall be disclosed unless they are appropriate for withholding and are protected by one or more of the FOIA exemptions or exclusions. Requests shall be processed within the time limits defined by the FOIA. Individuals requesting information will be informed of the right and procedure to seek administrative appeal and to seek judicial review of:
 - a. any partial or total denial of access to records;
 - b. a fee waiver denial;
 - c. a determination of requester's category for fee purposes;
 - d. a no-records determination; or,
 - e. a denial of a request for expedited processing.

The FOIA requires that, except in "unusual circumstances" as specified in the Act, agency initial decisions on whether to grant or deny access to records must be made within 20 working days of receiving the request and the requester so notified. A requester may administratively appeal an agency's adverse initial determination and may seek judicial review if not satisfied with the agency's final decision. If a court determines that agency personnel have acted arbitrarily or capriciously in withholding records, disciplinary action against the employee primarily responsible may be warranted. Department of the Treasury disclosure regulations are published at 31 Code of Federal Regulations (CFR) Part 1.

4. **RESPONSIBILITIES.**
 - a. Assistant Secretaries, Equivalent Level Officials in Departmental Offices (DO), and Heads of Bureaus shall:
 1. (1) establish internal procedures to ensure the effectiveness of the Department's FOIA program. The procedures shall be consistent with this directive and:
 1. (a) the FOIA, as amended:

2. (b) Treasury disclosure regulations (31 CFR Part 1);
 3. (c) Treasury's "FOIA Handbook";
 4. (d) Executive Order (E.O.) 12600;
 5. (e) E.O. 12958; and,
 6. (f) applicable Department of Justice, Office of Management and Budget, and National Archives and Records Administration guidelines.
2. (2) ensure that employees who are responsible in any part for FOIA processing are knowledgeable about the provisions and requirements of the FOIA and ensure that these employees attend FOIA training at least once a year;
 3. (3) ensure that accurate and complete data is submitted in a timely manner to the Departmental Disclosure Officer for the Department of the Treasury's Annual FOIA Report to the Attorney General, and for other reporting purposes, as required;
 4. (4) ensure that records that are subject to section (a)(2) of the FOIA which have been created on or after November 1, 1996, are posted to the bureau web site;
 5. (5) submit proposed bureau disclosure regulations or proposed changes to regulations to the Departmental Disclosure Officer for review and concurrence prior to the review and concurrence required by Treasury Directive (TD) 28-01;
 6. (6) select a FOIA Contact and advise the Departmental Disclosure Officer of the selection and of any subsequent changes in designation of selection;
 7. (7) ensure that bureau FOIA Contacts and web masters collaborate with bureau records management officers prior to disposing of records posted on the FOIA web sites and to schedule electronic records on the sites; and,
 8. (8) ensure that reasonable efforts are made to maintain records in forms or formats that are reproducible for purposes of the FOIA.
- b. The Deputy Assistant Secretary (Information Systems) and Chief Information Officer shall:
1. (1) provide technical management support for the Department's FOIA web site on the Treasury Internet and technical assistance to the Departmental Disclosure Officer to ensure compliance with the requirements of the FOIA;
 2. (2) provide technical assistance to bureaus in placing records in the electronic reading room which includes establishing specific procedures for maintaining and posting bureau records;
 3. (3) establish and maintain an index of all major information systems and a description of major information and record locator systems in the Department via Treasury's Government Information Locator Service (GILS) and provide a link to the electronic reading room;
 4. (4) ensure that Treasury-wide, cost-effective, state-of-the-art technical solutions for electronic redaction are implemented to achieve economies of scale and integrate with the information technology infrastructure; and,

5. (5) provide information technology guidance to bureau FOIA Contacts, web masters, and records management officers regarding information posted on the Treasury FOIA web sites.
- c. The Departmental Disclosure Officer shall:
1. (1) act as the Department of the Treasury's principal point of contact and agency representative on FOIA-related matters;
 2. (2) coordinate the Department's FOIA implementation and management in collaboration with Treasury bureaus;
 3. (3) provide regulatory and policy guidance, and technical advice and assistance to the Department on FOIA-related matters;
 4. (4) review proposed changes to bureau disclosure regulations;
 5. (5) collect, review, consolidate, and submit the data for the Annual FOIA Report to the Attorney General on behalf of the Department;
 6. (6) post Departmental Offices (DO) records to the Treasury web site that are subject to section (a)(2) of the FOIA which have been created on or after November 1, 1996;
 7. (7) grant or deny requests for expedited processing of requests for DO records;
 8. (8) supervise the implementation of the FOIA within the DO;
 9. (9) notify a requester when information needed to process a request for DO records is lacking;
 10. (10) assign FOIA requests to the appropriate FOIA Contact for action;
 11. (11) assign FOIA appeals to the appropriate appeal authority within DO;
 12. (12) follow up with the assigned office to ensure completion of a request or appeal, when necessary;
 13. (13) when a request seeks records in the custody of two or more functions within DO for which separate FOIA Contacts have been designated, assign to one of the FOIA Contacts the responsibility of coordinating one response;
 14. (14) assist the general public in making FOIA requests to the Department; and,
 15. (15) conduct FOIA training on a regular basis and oversee the FOIA training conducted at Treasury bureaus.
- d. Responsible Officials shall:
1. (1) determine:
 1. (a) whether to grant or deny requests for access to records;
 2. (b) whether to grant or deny requests for fee waivers; and,
 3. (c) a requester's category for fee purposes;
 2. (2) notify the requester of determination(s) made pursuant to paragraph 4.d.(1);
 3. (3) determine costs incurred by the Department to process the request and whether or not fees will be charged to the requester;

4. (4) ensure that requests are processed in accordance with the Department's disclosure regulations at 31 CFR Part 1;
 5. (5) compile and provide data for the Annual FOIA Report; and,
 6. (6) retrieve records retired to the Federal Records Center if they are needed in processing a request.
- e. Appeal Authorities shall, upon receipt of an administrative appeal, either affirm or reverse those initial determinations that:
1. (1) deny access to a record or portion thereof;
 2. (2) deny a request for a fee waiver;
 3. (3) pertain to a requester's category;
 4. (4) advise of no records located; or,
 5. (5) deny a request for expedited processing.
- f. FOIA Contacts shall:
1. (1) designate a responsible official to respond to each FOIA request assigned pursuant to paragraph 4.c.(10);
 2. (2) ensure consistency and completeness of a Departmental response when assigned responsibility for coordination pursuant to paragraph 4.c.(13);
 3. (3) determine, with appropriate program officials, which records in response to FOIA requests have become or are likely to become the subject of repeated requests for the same records and ensure that these records are placed in the electronic reading room of the bureau's web site; and,
 4. (4) coordinate with the bureau web masters and records management officers regarding the disposing of records in the electronic reading room of the bureau's web site.
5. DEFINITIONS [see also 31 CFR Part 1].
- a. Bureaus. The entities of the Department of the Treasury that are authorized to act independently in disclosure matters.
 - b. Category. The classification assigned to a requester for fee purposes determined by the projected use of the records. The categories are: (a) commercial; (b) educational; (c) non-commercial scientific institutions; (d) representative of the news media; and (e) all other requesters.
 - c. Department. The Department of the Treasury, including DO and all of the Treasury bureaus.
 - d. FOIA Contact. For DO, FOIA Contact refers to an employee selected by an Under Secretary, an Assistant Secretary, the Executive Secretary, the General Counsel, the Inspector General, the Treasury Inspector General for Tax Administration or the Treasurer to receive FOIA requests assigned to their area by the Departmental Disclosure Officer and to provide assistance in administrative matters pertaining to FOIA request processing. For other bureaus, FOIA Contact refers to the head of each disclosure office.

- e. Responsible Official. The head of the organizational unit having immediate custody of the records requested or a designated official. The responsible official makes initial determinations to grant or deny requests for access to records and requests for fee waivers. The responsible official will also determine a requester's category for fee purposes.
6. AUTHORITIES.
 - a. The Freedom of Information Act, as amended (5 U.S.C. 552).
 - b. 31 CFR Part 1, Subpart A, Freedom of Information Act.
 - c. Paperwork Reduction Act of 1995, Pub. L. No. 104-13.
7. REFERENCES.
 - a. Department of Justice Fee Waiver Policy Guidance, dated April 2, 1987.
 - b. E.O. 12600, "Predisclosure Notification Procedures for Confidential Commercial Information", dated June 23, 1987.
 - c. E.O. 12958, "National Security Information."
 - d. Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines; 52 Federal Register 10012, dated March 27, 1987.
 - e. TD 28-01, "Preparation and Review of Regulations."
 - f. President's Memorandum For Heads of Departments and Agencies, dated October 4, 1993, subject: The Freedom of Information Act.
 - g. Attorney General's Memorandum for Heads of Departments and Agencies, dated October 4, 1993, subject: The Freedom of Information Act.
8. RATIFICATION. To the extent that any action heretofore taken consistent with this Directive may require ratification, it is hereby approved and ratified.
9. CANCELLATION. TD 25-05, "The Freedom of Information Act", dated January 18, 1996, is superseded.
10. OFFICE OF PRIMARY INTEREST. Disclosure Services, Information Services Division, Office of the Deputy Assistant Secretary (Administration), Office of the Assistant Secretary for Management and Chief Financial Officer.

/S/

Lisa Ross
Acting Assistant Secretary for Management
and Chief Financial Officer

TREASURY DIRECTIVE 80-05

DATE: January 31, 2018

SUBJECT: Department of the Treasury Records Management

1. **PURPOSE.** This Directive establishes policies and assigns responsibilities for managing and maintaining records management programs within the Department of the Treasury (Department).
2. **SCOPE.** This Directive applies to all bureaus, offices, and organizations in the Department, including the Offices of Inspectors General within the Department. The provisions of this Directive shall not be construed to interfere with or impede the authorities or independence of the Treasury Inspector General, the Treasury Inspector General for Tax Administration, or the Special Inspector General for the Troubled Asset Relief Program. This policy applies to all Treasury employees, officials, detailees, interns, and contractor employees.
3. **BACKGROUND.** The Federal Records Act (44 U.S.C. 3101 et. seq.) and related regulations (36 CFR Part 1222) require each federal agency to make and preserve records necessary to document the agency's policies, decisions, procedures, and essential transactions, as well as protect the legal and financial rights of the U.S. Government. Each federal agency must also maintain an active, continuing program to manage its records efficiently and provide effective controls over the creation, maintenance, and use of records in conducting current business.
4. **POLICY.** It is the policy of the Department that bureaus shall establish records management programs and ensure that such programs are effectively and efficiently managed in compliance with federal laws, regulations, and policies (including, but not limited to, Office of Management and Budget (OMB), National Archives and Records Administration (NARA), and Department records management requirements).
 1. This Directive also authorizes the release of Treasury Directive Publication (TD P) 80-05, *Records Management*, which provides additional guidance and direction to all bureaus, offices, and organizations for managing and maintaining their records management programs.
5. **RESPONSIBILITIES.**
 - a. The **Assistant Secretary for Management** is Treasury's Senior Agency Official (SAO) for Records Management and has overarching responsibility for the Department's records management program.
 - b. The **Deputy Assistant Secretary for Privacy, Transparency, and Records (DASPTR)** reports to the SAO and is responsible for leadership, planning, policy, and general oversight of the Department's records management program.

- c. The **Department's Agency Records Officer** within the Office of Privacy, Transparency, and Records is responsible for managing and coordinating the Department's records management program, serving as the Department's liaison to NARA, and providing leadership and guidance to bureau records management officers and records liaisons.
 - d. The **Department's Chief Information Officer** is responsible for ensuring that records management requirements are fully incorporated into the information technology policy management framework and included in information technology strategy and systems.
 - e. The **Heads of Bureaus and the Offices of Inspectors General** are responsible for implementing, managing, and maintaining a records management program for their respective organizations and ensuring their compliance with the policies described in this Directive.
6. **CANCELLATION**. Treasury Directive 80-05, *Records and Information Management Program*, dated June 26, 2002, is superseded.
7. **AUTHORITIES**.
- . Federal Records Act, 44 U.S.C. Chapter 31 (revised 2014)
 - a. 36 CFR Part 1222, *Creation and Maintenance of Federal Records*
8. **REFERENCES**.
- . Treasury Directive Publication 80-05, *Records Management*
 - a. NARA Records Management Guidance and Regulations, available at <https://www.archives.gov/records-mgmt/policy/guidance-regulations>
9. **OFFICE OF PRIMARY INTEREST**. Office of the Assistant Secretary for Management, Office of the Deputy Assistant Secretary for Privacy, Transparency, and Records.

/S/

Kody H. Kinsley
Assistant Secretary for
Management

PRIVACY ACT OF 1974

The [Privacy Act of 1974, as amended, 5 U.S.C. § 552a](#), establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifier assigned to the individual.

Use this link to access the Overview of the 2020 edition of the Privacy Act of 1974:

<https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition>