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Procedure (SOP) 2019

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FOIA Request
FOIA Officer
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Room 2055-S, Stop 0201
Washington, DC 20250-0201
Email: AMS.FOIA@usda.gov

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1400 Independence Avenue, SW
Room 1671-S, STOP 0203
Washington, D.C. 20250-0203

July 1, 2022

Delivered via Electronic Mail

Re: Final Response to FOIA Request 2022-AMS-00133-F

This is the final response to your Freedom of Information Act (FOIA) request, received by the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) on May 23, 2022. Your request sought access to the following:

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

The AMS FOIA staff works with subject matter experts across the Agency to locate responsive documents. For this request, a search was conducted within the Legislative and Regulatory Review FOIA office. The FOIA office is responsible for providing access to federal agency records that are not exempt from release. AMS' search began on June 14, 2022. Our search provided responsive records in AMS' control on that date.

We have processed 43 pages that are responsive to your request. After a thorough review, we have determined that these pages may be released in their entirety. Accordingly, your request is granted in full.

If you have any questions about the way this request was handled, please contact Heather Higgs, Government Information Specialist, heather.higgs@usda.gov or (202) 641-8684. If you have general questions or concerns regarding AMS' FOIA procedures or regulations, please contact our FOIA Public Liaison, Bill Allen, at (202) 631-6412 or via email at ams.foia@usda.gov.

Thank you for your interest in AMS programs and policies.

Sincerely,

Mark R. Brook

Mark R. Brook
FOIA Officer
Agricultural Marketing Service

Enclosure

AMS FOIA

Standard Operating Procedures

September 30, 2019

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PART 1 – INTRODUCTION

1.1 Authority:

Authority for administering the Freedom of Information Act (FOIA) is reflected in the chart below.

Reference	Description
Freedom of Information Act (FOIA) 5 U.S.C. § 552	The FOIA provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.
https://www.govinfo.gov/content/pkg/USCODE-2011-title5/pdf/USCODE-2011-title5-partI-chap5-subchapII-sec552.pdf	
USDA's FOIA Regulations 7 C.F.R. Part 1, Subpart A	The rules that detail USDA's procedures for implementing the FOIA.
https://www.ecfr.gov/cgi-bin/text-idx?SID=e7af4f118941ce505ebc079ed84b1121&mc=true&node=sp7.1.1.a&rgn=div6	
U.S. Department of Justice Guide to the Freedom of Information Act	The <i>United States Department of Justice (DOJ) Guide to the Freedom of Information Act</i> is a comprehensive legal treatise on the FOIA. The <i>Guide</i> includes detailed discussions of the FOIA's procedural requirements, nine exemptions, and litigation considerations. Each section contains a detailed analysis of the key judicial opinions issued on the FOIA.
https://www.justice.gov/oip/doj-guide-freedom-information-act-0	
FOIA Improvement Act of 2016	The Act addresses a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout the FOIA process. The Act also codifies the Department of Justice's "foreseeable harm" standard, amends Exemption 5, creates a new "FOIA Council," and adds two new elements to agency Annual FOIA Reports.
https://www.congress.gov/114/bills/s337/BILLS-114s337enr.xml	

1.2 Purpose:

The Agricultural Marketing Service (AMS) FOIA Handbook provides general guidance for AMS employees, contractors, consultants, and any other individuals or entities directed to administer and implement the FOIA within AMS.

1.3 Responsibilities as an Agency:

Agencies within the Executive Branch of the Federal Government, independent regulatory agencies, and some components within the Executive Office of the President, are subject to the FOIA. Each federal agency is responsible for meeting its FOIA responsibilities for its own records.

1.4 Agency Records:

Agency records are defined as any documents that are either created or obtained by an agency, and under agency control at the time of the FOIA request. Refer to the DOJ Guide to the FOIA for a detailed explanation of “Agency Records” currently located at:

<https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/procedural-requirements.pdf#p9>

1.5 What is the FOIA:

The FOIA was passed by Congress in 1966 to provide the public with a right of access to federal government records. The FOIA provides access to all federal agency records, or portions of those records, except for those records that are protected from disclosure by nine exemptions and three exclusions (reasons for which an agency may withhold records from a requester).

1.6 FOIA Exemptions:

Federal agencies are required to disclose agency records requested under the FOIA unless it falls under one of nine exemptions which protect interests such as personal privacy, national security, and law enforcement. Exemptions (b)3, (b)4, (b)5, (b)6, (b)7(A) and (b)7(C) are more commonly used by AMS.

1.6.1 EXEMPTION (b) 1

Exemption (b)1 protects from disclosure information that has been deemed classified "under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and is "in fact properly classified pursuant to such Executive order."

1.6.2 EXEMPTION (b) 2

Exemption (b)2 exempts from mandatory disclosure records that are "related solely to the internal personnel rules and practices of an agency."

1.6.3 EXEMPTION (b) 3

Exemption (b)3 incorporates into the FOIA certain nondisclosure provisions that are contained in other federal statutes. Exemption 3 allows the withholding of information prohibited from disclosure by another federal statute provided that one of two disjunctive requirements are met: the statute either "(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph."

Exemption (b)3 statutes commonly used by AMS¹ include:

Statute	Type of Information Withheld
5 U.S.C. § 574(j)	Dispute resolution communication between a neutral and a party.
https://www.govinfo.gov/content/pkg/USCODE-2011-title5/pdf/USCODE-2011-title5-partI-chap5-subchapIV-sec574.pdf	
7 U.S.C. § 608(d)(2)	Information for marketing order programs that are categorized as trade secrets and commercial or financial information.
https://www.govinfo.gov/content/pkg/USCODE-2015-title7/pdf/USCODE-2015-title7-chap26-subchapIII-sec608d.pdf	
7 U.S.C. § 1502 (c)	Personal information in connection with policy holders and/or yield data.
https://www.govinfo.gov/content/pkg/USCODE-2011-title7/pdf/USCODE-2011-title7-chap36-subchapI-sec1502.pdf	
7 U.S.C. § 2276(a)(2) (Food Security Act of 1985)	"Information furnished under a provision of law referred to in subsection (d) of this section . . . unless such information has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information"
https://www.govinfo.gov/content/pkg/USCODE-2015-title7/pdf/USCODE-2015-title7-chap55-sec2276.pdf	

1.6.4 EXEMPTION (b) 4

Exemption (b)4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." This exemption is intended to protect the interests of both the government and submitters of information. See Executive Order 12600 (Submitter

¹ Statutes were obtained from the FY2014 – FY 2016 USDA FOIA Annual Reports.

Notices) for additional information, located at:

<https://www.archives.gov/federal-register/codification/executive-order/12600.html>.

1.6.5 EXEMPTION (b) 5

Exemption (b)5 protects "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested."

1.6.6 EXEMPTION (b) 6

Exemption (b)6 protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."

1.6.7 EXEMPTION (b) 7

Exemption (b)7 protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

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

1.6.8 EXEMPTION (b) 8

Exemption (b)8 protects matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

1.6.9 EXEMPTION (b) 9

Exemption (b)9 protects from disclosure "geological and geophysical information and data, including maps, concerning wells."

1.7 FOIA Exclusions:

Congress has provided special protection in the FOIA for three narrow categories of law enforcement and national security records. The provisions protecting those records are known as "exclusions." Records falling within an exclusion are not subject to the requirements of the FOIA.

1.7.1 THE (c) (1) EXCLUSION

The first exclusion 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.

1.7.1 THE (c) (2) EXCLUSION

The second exclusion is limited to criminal law enforcement agencies and protects the existence of informant records when the informant's status has not been officially confirmed.

1.7.1 THE (c) (3) EXCLUSION

The third exclusion is limited to the Federal Bureau of Investigation and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified.

Please contact the AMS FOIA Officer for questions or additional information regarding the FOIA exemptions and exclusions or refer to the DOJ Guide to the FOIA for a complete explanation of each exemption currently located at: <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

PART 2 – RECEIPT OF REQUEST

2.1 Request Submission

AMS FOIA requests must be received in writing and can either be mailed to: AMS FOIA Office, 1400 Independence Avenue, SW, South Building, Rm. 3943 Stop 0202, Washington, DC 20250-0273; emailed to: AMS.FOIA@USDA.GOV; or sent electronically through a Public Access Link (PAL) in FOIAXpress: <https://efoia-pal.usda.gov/>.

2.2 Intake of Request

When the FOIA Office receives a request, an analyst in the office must review the request to ensure that the request contains all relevant information necessary for the office to proceed, such as a reasonable description of the records sought. The analyst or FOIA Officer will contact the requester to gather additional information about or clarification of the request so that the request can be perfected for processing. Note that the FOIA Officer can administratively close a request if two documented attempts were made to contact the requester and no response was received by

a date designated for response which was at least 10 working days from the request for clarification.

Once the analyst has confirmed that the request is perfected, the analyst will create a new request entry in FOIAXpress within 3 working days. FOIAXpress will automatically assign a tracking number to the request which the analyst will then change to match the AMS FOIA Office internal numbering system. The numbering system follows the format of “Fiscal Year-AMS-Five Digit Request Number-F” (ex. 2019-AMS-00115-F). The numbering system assigns ascending numbers to requests in the order that they are received and restarts at 00001 at the beginning of each fiscal year. Once the request is logged into FOIAXpress, the analyst must create a new folder for the request in the current fiscal year folder on the FOIA Shared Drive. The folder will be created using the existing FOIA request folder template. A copy of the request will be saved in the Request subfolder.

Transmittal:

During this time, the analyst will also prepare a transmittal memo that will be sent to the program or programs that will need to conduct a search to respond to the request. This transmittal memo is sent to the FOIA Officer for review and approval. Once approved, the analyst sends to transmittal memo to the appropriate program contact(s), along with a copy of the request, a FOIA search form and a Fee Estimate Calculator.

The request will also be added to the AMS FOIA Weekly excel spreadsheet on the F: Drive. The analyst will enter updates for the request into this spreadsheet which contains information about all current requests. Note that the FOIA Officer sends this spreadsheet to the AMS Deputy Administrator on Fridays [for distribution to all affected programs??]

2.2.1 Acknowledgment:

2.2.2 Extensions

There are instances in which a 10-working day extension for processing of the request may be granted to the FOIA Office, including the need to examine a voluminous amount of records required by the request, the need to collect records from separate offices, and the need to consult with another agency or agency component. If an extension is required, the analyst will prepare an extension letter with an explanation for the extension. The FOIA Officer will review and approve the extension letter before it is sent to the requester.

2.2.3 Narrowing the Request

In some cases, the program that is responsible for conducting the search for the request will inform the FOIA Office that the request is too broad, based on the program’s knowledge about the number of documents the search will produce. At that point, the analyst or FOIA Officer will contact the requester to discuss what information the requester is most interested in with the intention of narrowing the request. If the requester agrees to narrow the request, that agreement must be confirmed by email communication and that email must be placed in the “Request” subfolder.

PART 3 – FEES AND EXPEDITED PROCESSING

3.1 Fees in General

A FOIA requester may be charged fees for the processing of their request. The FOIA designates four types of fee categories: Commercial Use, Educational and Non-commercial Scientific Institutions, Representatives of the News Media and All Other Requesters. Commercial requesters are charged for search time, document review and duplication. Educational and scientific requesters, as well as news media requesters are charged for duplication only, after the first 100 pages. All other requesters are charged for search time, after two hours, and for duplication, after 100 pages. The program conducting the search is responsible for providing an estimated fee for the request response. When a requester has included a fee limit in the request, the FOIA office needs to contact that requester if the program has determined that the processing fees for that request will exceed that limit. Note that there will be no charge if the fees total less than \$25.

3.2 Fee Waiver Request

Often, a requester will seek a full waiver of any fees incurred during the processing of their request. There are six factors that need to be met in order for the requester to qualify for a fee waiver:

Disclosure of the Information "is in the Public Interest because it is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government."

- **The subject of the request:** Whether the subject of the requested records concerns "the operations or activities of the government";
- **The informative value of the information to be disclosed:** Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- **The contribution to an understanding of the subject by the general public likely to result from disclosure:** Whether disclosure of the requested information will contribute to "public understanding"; and
- **The significance of the contribution to public understanding:** Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

Disclosure of the Information "is Not Primarily in the Commercial Interest of the Requester."

- **The existence and magnitude of a commercial interest:** Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so
- **The primary interest in disclosure:** Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

The AMS FOIA Officer will notify the requester if additional information is needed to make a determination regarding a fee waiver. In instances where a fee waiver is denied, the AMS FOIA Officer will provide a fee estimate to the requester. If the requester does not agree to pay the estimated fees, the request should be administratively closed. However, the requester has the right to appeal the decision.

If the decision to deny the fee waiver is appealed, the AMS FOIA Officer will review the basis for the denial and respond accordingly. If the appeal is denied, AMS must seek legal sufficiency review and concurrence of the Office of the General Counsel General Law and Research Division (OGC-GLRD) before the appeal determination is signed by the AMS Administrator.

3.3 Request for Expedited Processing

The requester who seeks expedited processing of their FOIA request is asking that the agency process the request ahead of every other FOIA request in the agency's processing queue. The following criteria must be met before expedited processing can be granted:

- If a requester can establish that the failure to obtain the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
- If a requester is an individual primarily engaged in disseminating information, he or she can demonstrate that there is an urgency to inform the public concerning actual or alleged government activity.

An expedited processing response letter is due **10 calendar** days after receiving the request. If the expedited request is denied, the response letter should include the following:

- Explain the criteria for granting expedited processing
- Explain why the request did not meet the criteria
- Provide the requester with appeal rights

PART 4 – PROCESSING OF REQUESTS

4.1 Searches

All programs must conduct their own searches for records responsive to their FOIA requests. A program is responsible for conducting a reasonable search and providing a complete response. A reasonable search includes a determination about which custodians would have responsive documents and about where those documents would be located. Often, custodians must conduct a search of their emails, personal computer drives and a designated Subject Matter Expert (SME) must conduct a search of any relevant shared drives for the program. The search must exhaust all reasonable sources of responsive documents. Each custodian that conducts a search must provide the FOIA Office with a search memo that includes information such as a description of the search performed, details about where the custodian searched and the time it took to complete the search. A custodian may fill in the FOIA Search Form template designed by the FOIA Office or may provide their own search memo with the applicable information.

4.1.1 eComply Searches

In some instances, programs will determine that additional responsive records may be obtained only through an eComply search. An eComply search is an electronic search of AMS's email database performed by the Office of the Chief Information Officer (OCIO) eComply team. The FOIA Office should work with the Program FOIA Coordinator to determine the timeframe for the search, the email accounts to be searched (including any accounts for individuals who are no longer USDA employees) and the key terms and phrases to be used. The AMS FOIA Officer submits that information to OCIO requesting the search to be conducted. When the search is completed, OCIO sends a PST file with the emails which the FOIA Office will review for responsiveness.

4.2 Review and Redaction of Records

After a program has completed its search for responsive records, the program will review the records and make all proposed redactions. Note that the records should be converted into Adobe pdf documents, if needed, and placed in date order. Any email attachment should be included after the email it is attached to and any duplicate documents should be removed from the set, taking care to ensure that a document is a true duplicate. If there is a large amount of responsive records, the program may separate those records into interim sets that can be produced to the requester on a rolling basis until the final response is sent by the FOIA Office. After the program sends the redacted documents to the FOIA Office, an analyst in the office will QC the redactions and make any revisions that are required. If requested by the program, the analyst will return the revised redactions to the program for final review. Once all of the redactions are complete, the AMS FOIA Officer will review the document set a final time and make any additional changes.

4.2.1 NOP Review and Redaction of Records

Unlike other programs, NOP relies on the FOIA Office to review its records and make any necessary redactions. NOP still reviews its search results for responsiveness prior to placing the search memo and the documents onto the shared P Drive for FOIA Office review. An analyst in the FOIA Office will then convert any records into Adobe pdf documents as necessary, put the documents in date order and remove any duplicates. After the analyst makes proposed redactions to a document set, a second analyst in the FOIA Office will QC the set and make any necessary revisions. As above, once all of the redactions to a document set are complete, the AMS FOIA Officer will review a final time and make any additional changes. For certain requests, NOP will ask to review a response before it is produced to the requester. In those instances, the FOIA Office sends the final response to NOP after all other review is complete.

4.3 Response Letters

The AMS FOIA Office prepares response letters for all programs. Response letters include the date the request was received, the request description, a paragraph about which program(s) conducted the request and the date that the search began. Additionally, a response letter includes the number of pages being produced, the number of pages that include redactions, the number of pages that are being released in full and any exemptions that were applied, including a general

description of the exemption and a specific description of the information redacted under each exemption. All letters will include contact information for the FOIA analyst that is responsible for the request, as well as contact information for the FOIA Public Liaison. Final response letters will also include information about how to make an appeal to the request response and about mediation services offered by the Office of Government Information Services (OGIS.)

4.4 Consults

Certain document sets will contain equities that belong to USDA programs that are not within AMS or to government agencies other than USDA. The analyst processing the documents will have to send those equities for consultation to the relevant offices. The analyst will assemble all consult documents for the request and will prepare the documents for review, either by marking the equities with a redaction box with text that identifies those equities (i.e. “OBPA Equities”) or by highlighting the “From” line in an email from that office. Once the documents for review are marked, the analyst will prepare a consult memo addressed to the program or agency FOIA Officer. The memo will include the name and, if applicable, organization of the requester, along with the date the request was received. The memo will also include the number of pages being sent for review along with a requested response date, usually a week or two from the memo date, depending on the size of the record set for review. The analyst will email a copy of the request, the document set and the consultation memo to the appropriate contact.

4.5 OGC Consults and Review

Analysts can treat documents sets with OGC equities in the same manner as described above. Please note that OGC prefers to be “the last to review” and consults containing OGC equities should be sent to OGC after an analyst has received proposed redactions back from any other consults.

OGC also identifies some AMS requests as requests OGC wants to perform a general review of all responses for, such as when the request involves a sensitive topic or when there is litigation concerning the topic of the request. Sometimes, the document sets for requests marked for general OGC review will also contain OGC equities. When that is the case, the analyst should include a consult memo for OGC when emailing the document set and that memo should identify which pages of the set contain OGC equities. If a document set does not contain any OGC equities, there is no need to include a consult memo.

Note that the FOIA Officer should review an OGC consult or review package before the analyst sends that package to OGC.

4.6 Transfers

There will be times when the program responsible for a document search will determine that a different program or agency would be more likely to have documents responsive to part or all of a request. In that situation, the FOIA Office will transfer the request to the relevant program or agency. The response letter to the requester will include notification about the transfer and will provide the requester with contact information for the program or agency that received the transfer. Note that this information can also be communicated in an email to the requester if the transfer occurs before a response letter is ready to send. In conjunction with sending the

response letter, the analyst will send a transfer notice by email to the appropriate program or agency. The email will include a transfer memo signed by the FOIA Officer and a copy of the request.

4.7 Submitter Review

Certain document sets will contain information that has been submitted to AMS by business entities from the private sector. If the FOIA Office cannot readily determine whether the information obtained by a business is privileged or confidential information, the Office is to obtain and consider the views of the submitter about that information and provide the submitter the opportunity to object to the disclosure of the information. Executive Order 12600 (EO 12600) established a notification procedure to inform such business submitters that information they have submitted has become the subject of a FOIA request. When a document set contains business submitter equities, the analyst will pull out the email chains that include those equities to send to the business submitter. If there are internal emails within the chains, the analyst should redact those emails with a black box before sending the documents to the submitter. The analyst will also write a letter to the submitter to explain the situation and to provide instructions for review and redaction of the documents. This letter and the document set must be reviewed by the FOIA Officer who will sign the letter after review. The letter will include a deadline for submitter review that is at least 10 working days from the date the letter is signed. The analyst will send the letter and documents to the submitter, along with a copy of EO 12600 and a copy of the request. Note that the analyst will need to redact any Personally Identifiable Information (PII) from the request before sending it to the business submitter.

4.8 Communications Relating to the Request

An analyst should cc the AMS.FOIA@usda.gov email address on all email communications with the requester so that a copy is saved to the general FOIA inbox. Those email communications also should be saved to the “Request” subfolder within the request folder. Additionally, an analyst should save email communications with the program about a request to the “SME” subfolder within the request folder. A “Case Notes” Word template is included in each request folder that an analyst can use for notes about any telephone conversations or to add helpful information about the request that isn’t contained in the rest of the folder.

4.9 Request Closure

When the analyst has processed all responsive documents and has sent a Final Response to the requester, the analyst will close the request in FOIAXpress. Additionally, the analyst will rename the request folder on the F Drive to include “closed” and will update the request entry in the AMS FOIA Weekly chart with the date the final response was sent and the text “CLOSED.”

PART 5 – FOIA APPEALS

Requesters have the right to appeal a FOIA response. Typically, requesters appeal a FOIA response contesting the search for responsive records or the exemptions that were used for redactions. However, requesters can also appeal fees, the denial of a fee waiver, and the denial of an expedited request.

The requester has **90** days from the date of the final response letter to file an appeal. The AMS FOIA Officer should provide a response to the requester within **20** working days of receiving an appeal.

Appeals are received, logged and acknowledged the same way as FOIA requests and within the same timeframes.

5.1 Intake of Appeal

When the appeal is received, the intake coordinator will follow the same procedures that are in place for receiving a FOIA request. The intake coordinator will log the appeal into FOIAXpress and assign it an appeal number. The structure for FOIA appeal tracking numbers is “Fiscal Year-AMS-0000X-A” (ex. 2019-AMS-00010-A). The intake coordinator will then create a subfolder with the tracking number within the “Appeal Folders” folder on the F: Drive. The intake coordinator will send the requester an acknowledgement email with the tracking number.

5.2 Appeal Processing

An analyst will be assigned to review the appeal to determine whether there is any basis for revisions to the original FOIA Office response. The analyst must save several documents to the appeal folder: the original request, the original response or responses, the appeal letter and the acknowledgment of the appeal.

The AMS FOIA Office sends all appeals to OGC-GLRD for review and approval. The analyst will create documents to be included as part of the OGC-GLRD review file: (1) a cover letter for the file with general information about the appeal and a table of contents for the file; and (2) an appeal memo that provides the background of the appeal, along with an analysis of the appeal and the reasoning that supports the analyst’s decision about granting or denying the appeal.

If the appeal contests the search for responsive records, the analyst assigned to the appeal will review the search conducted by the responsible program office to determine whether that search was reasonable. If the analyst determines that the search was not reasonable, the analyst will work with the program office to retrieve additional documents for processing.

If the appeal contests specific exemption redactions, the analysts will review those redactions and determine if information was properly withheld or if additional information could be released. If the analyst determines that the redactions were justified, the analyst will detail in the appeal response why the exemptions were used. If the analyst finds that the original response includes additional information that can be released, the analyst will produce a revised version of the documents with those redactions removed in the appeal response.

If an appeal is denied in full, the analyst will send the requester a response letter only. If an appeal is granted in part/denied in part or granted in full, the requester will receive a revised set of documents as well. Note that an appeal response that is granted in full does not need to be reviewed by OGC-GLRD.

As noted above, all appeal files will be sent to OGC-GLRD for review and approval. The FOIA Officer will review the file electronically before the analyst sends the file to OGC-GLRD. Once

the FOIA Officer approves the file, the analyst will print it out and place it into a hard copy folder for OGC-GLRD's review. After OGC-GLRD reviews and approves an appeal response, the FOIA Officer sends the file to the AMS Administrator for final review and approval before the response is sent to the requester.

PART 8 – REPORTS

8.1 Weekly Report

The AMS FOIA Office maintains an AMS FOIA Weekly spreadsheet on the F: Drive. The report tracks all open FOIA requests and should be used by analysts to record updates for the requests. When an analyst adds an update to the chart, the analyst will use bold text for the update and will highlight in yellow the cell that contains the update.

Every Friday, the FOIA Officer sends the report to the MAP Deputy Administrator, who then provides the report to all other AMS Deputy Administrators. After a request is closed and the Deputy Administrator has received a copy of the weekly report with the closed status, the request is removed from the weekly report. On Mondays, a copy of the previous week's report is saved to the Old Tracking Charts folder on the F: Drive. The title of the weekly report is then renamed with Friday's date for that week and the bold text is removed from the previous week's updates, along with the yellow highlighting.

8.2 Opened and Closed Report

Every Friday, the FOIA Office runs a report of the requests that were opened and closed in the previous week. This report is pulled from FOIAXpress and is run from Friday's date of the previous week to Thursday's date of the current week. This report is also sent to the MAP Deputy Administrator and subsequently provided to all other AMS Deputy Administrators.

USDA - AMS
FOIA Office
Standard Operating Procedures
Updated March 2021

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PURPOSE

DEFINITIONS

QC = Quality Control

Transmittal = Routing email sent to applicable Program office for responsive documents to a new FOIA request

Submitter = Notice and responsive documents sent to private businesses for feedback and approval of b4 redactions

Acknowledgment = Response sent to requester acknowledging receipt of request

PHONE LISTING

Mark Brook, FOIA Officer, at (202) 302-0650 or mark.brook@usda.gov

Natalie Anderson, Government Information Specialist, at (202) 572-5441 or Natalie.anderson@usda.gov

Brooke Geller, Government Information Specialist, at (202) 302-6958 or brooke.geller@usda.gov

Heather Higgs, Government Information Specialist, at (202) 641-8684 or heather.higgs@usda.gov

Kyla Niedermaier-Betts, Government Information Specialist, at (202) 961-5298 or kyla.niedermaier-betts1@usda.gov

REPORTS

Daily FOIA Report:

The GIS assigned to incoming requests will perform these duties, unless otherwise designated.

- An email is to be penned daily TO: Ashley Garrigus CCs: to AMS FOIA inbox, Carl Purvis, and Mark Brook. Send by 2:00 p.m. Eastern.
- Incoming FOIA “-F” type of requests are added to the table. (Note: Add in the -F requests that may be been received on the previous day after the report had been sent into Public Affairs.)
- Exclude any -F request from the table that could, or will be, transferred, and no other request type is added to the table. Also, exclude all WCMD requests.
- The email reads one of two ways:
 - Requests Received:

Dear Ashley,

Please see the listing below of FOIA requests received on DATE.

Insert Table (as follows):

FOIA Requests

Requester	Organization	Request Description
[REQUESTER NAME]	[REQUESTER'S ORGANIZATION, IF APPLICABLE]	[COPY OF THE REQUEST'S TEXT MODIFIED TO SUSCINT DESCRIPTION]

Thank you,

XX

- No Requests Received:

Dear Ashley,

We have not received any FOIA requests for DATE.

Thank you,

XX

Weekly FOIA Report:

The GIS assigned to incoming requests will perform the maintenance of the report; however, all Analysts will update the status of a request or appeal, as applicable.

- The Weekly FOIA Report is named, "AMS_FOIA_Weekly_for_[DATE]." It is an Excel spreadsheet housed on the F: drive.
- Request types of -F, -PA, and -C are located within the "Requests" tab.
- Request type -A is located within the "Appeals" tab.
- New, incoming request types of -F, -PA, and -C:
 - Log in the "Requests" tab.
 - Complete information for each column.
 - Copy the row and paste it into the "Weekly Summary" tab within the "Requests Opened [DATE] to[DATE]" section.
- New, incoming request type of -A:
 - Log in the "Appeals" tab.
 - Complete information for each column.
- Closing request types of -F, -PA, and -C:
 - In the "Requests" tab, find the request that has closed.
 - Update the Status cell to read "CLOSED [DATE]", bold the text, and highlight the entire cell in yellow.

- Copy the row and paste it into the “Weekly Summary” tab within the “Requests Closed [DATE] to [DATE]” section.
- Update the Closed Date cell to the date the request closed.
- Closing request type of -A:
 - In the “Appeals” tab, find the appeal that has closed.
 - Update the Status cell to read “CLOSED [DATE]”, bold the text, and highlight in yellow the entire cell.
- The report is emailed to FOIA Officer (Mark Brook) by 2:00 p.m. Eastern Friday of each week.
- Several hours after the report has been emailed to Mark:
 - Make a copy of the file and rename the file to next Friday’s date “AMS_FOIA_Weekly_for_[DATE].”
 - In the “Requests” and “Appeals” tabs:
 - Remove all rows of Closed requests.
 - Remove only the yellow highlight of those requests/appeals that remain open.
 - In the “OpenClosed” tab:
 - Clear all text from the Open and Closed sections.
 - Update each section’s dates to reflect the current Friday’s date to next Friday’s date.

INCOMING REQUEST TYPES

USDA Public Access Link (PAL):

All requests sent via PAL (efoia-pal.usda.gov) are automatically emailed to all AMS GIS’. They are also automatically assigned an AMS request number and logged into FX. The request number will need to be changed according to the request type (See “Incoming FOIA/Privacy Act” for naming convention). Correspondence and records will be sent via email, not PAL.

National FOIA Portal (NFP):

FOIA.gov is the government’s central website for FOIA and the submission of FOIA requests to any federal agency. Requests may be submitted via the National FOIA Portal which sometimes interface with PAL. The request number will need to be changed according to the request type (See “Incoming FOIA/Privacy Act” for naming convention).

Incoming Consultations:

1. Records and communication received for a -C request are placed within the F: drive > Consults folder.
2. Copy and paste the “202X-AMS- - Copy” folder set and rename it the next sequential number for the fiscal year. Example “2021-AMS-00004-C (Doe)”
3. Place records and communications in the Request’s “6-Consults” subfolder.
4. Open FX and follow the directions for [Logging a Request](#).
 - The Requester is the person who submitted the original FOIA request and not the program office requesting consultation.
 - The Request Type is “Consultation.”

- The Request Description is the original request's description and not the request description from the program office.
- Add the consultation request to weekly spreadsheet in the Requests and Open/Closed tabs.

Incoming Referrals:

1. Follow the directions for [Logging a Request](#).

Incoming FOIA/Privacy Act:

1. Records and communication received for a -FP and -PA requests are placed within the F: drive > Privacy Act folder.
2. Copy and paste the "202X-AMS- - Copy" folder set and rename it the next sequential number for the fiscal year. Example "2021-AMS-00004-FP (Doe)"
3. Follow the directions for [Logging a Request](#).

Incoming Appeals:

1. Follow the directions for [Appeal](#).

OUTGOING REQUEST TYPES

Outgoing Referrals:

1. Log the request.
2. After communicating with program offices and determining that AMS does not have responsive records, place the communication with the other program offices (used to determine that AMS does not have records) into the Request's "1-Request" folder.
3. Draft referral correspondence to the Requester and the agency's FOIA office to which you are referring the request. Find templates within the F: drive > AMS Letter Templates folder.
4. Once the correspondence has been sent out, drag a copy into the request's "2-Responses" folder. Move the correspondence into the request's Outlook subfolder.

Outgoing Consultations:

1. Log the request.
2. Records and communication sent for consultation are placed within the request's "6-Consults" subfolder.
3. Construct email or memo using template within the F: drive > AMS Letter Templates folder. Email template for USDA component; memo template for non-USDA component.
4. For OGC consultations, send email correspondence and records to usdafoia@usda.gov. Follow steps for [Consults](#)

LOGGING A REQUEST

The GIS assigned to incoming requests will perform these duties, unless otherwise designated.

1. Open Outlook.
2. Navigate to the AMS FOIA Inbox.

3. Review inbox for any new requests.
4. Assign the “In Process” flag to a new FOIA request.
5. Open Windows Explorer.
6. Navigate to the F: drive (!FOIA records dropbox)
7. Open one of the following folders depending on request type:
 - 202X (for a -F request type)
 - Appeal Folders (for an -A request type)
 - Consults (for a -C request type)
 - Privacy Act (for a -FP or -PA request type)
8. Select the folder titled “202X-AMS- - Copy.” Copy the folder and rename it to the next sequential number for the folder group and fiscal year with the requester’s last name in parentheses. Example: FOIA 202X-AMS-00001-F (Mouse)
9. Go back to the original email request within the AMS FOIA Inbox.
10. Convert email request to .pdf. by clicking on the Adobe dropdown menu and then “Covert to Adobe PDF.”
11. Save the .pdf within the Request’s folder set just created and then within the “1-Request” subfolder. Note: If it’s a -C request, save the .pdf request in the “6-Consults” subfolder.
12. Rename the .pdf “FOIA 202X-AMS-XXXXX-(-F, -FP, -PA,-C, -A) Request.” Example: “FOIA 202X-AMS-00112-A Request”
13. Go back to the original email within the AMS FOIA inbox.
14. Add the email or any other documentation/correspondence/clarification/attachment(s) received from the requester to the “1-Request” folder. Note: If it’s a -C request, save the documentation in the “6-Consults” folder.
15. In the shared Outlook inbox, create a new folder within the inbox and name it the request’s number. Example “202X-AMS-00112-A”
16. Remove the “In Process” flag from the original request email. Drag the email into the newly created folder.
17. Open up FOIAXpress (efoia.usda.gov/FOIAXpress)
18. Search for the Requester within “Requesters.” (Note: It’s helpful to search by email address since FOIAXpress identifies Requester’s uniquely by email address, not name.)
 - If the Requester is found, confirm that the email used to send in the Request is the same as the email address associated with the Requester within FOIAXpress. If the Requester and email address are both correct, select “Edit” and then confirm all other information is complete within the Requester’s profile. Update the profile as necessary and then click “Save.” Afterwards, click on “Create Request.”
 - If neither the Requester, nor email address is found within FOIAXpress, click on “Create Requester” and fill out as much information as possible in the Requester’s profile based on the Requester’s information from the Request. When finished, click on “Save.” Afterwards, click on “Create Request.”
19. Fill out all the required fields within the “Request Information” tab.

20. Address any expedited processing or fee waiver requests based on USDA FOIA Regulations. (Note: You will need to address these special requests within the Acknowledgement email.)
21. Within the Comments section, type in the program/division of the request as follows (if known):

Administrative Management Services
AgLearn
Civil Rights
Commodity Procurement Program (CP)
Cotton and Tobacco Program (C&T)
Dairy Program (DP)
Department FOIA Office/OCIO (DFO)
DP - Fluid Milk Processors Promotion Board
DP - National Dairy Promotion and Research Board
Fair Trade Practices Program (FTP)
Federal Grain Inspection Service (FGIS)
FTP - Food Disclosure and Labeling Division
FTP - Packers and Stockyards Division
FTP - Perishable Agricultural Commodities Act Division
FTP - Warehouse and Commodity Management Division
Information Technology (IT)
Legislative and Regulatory Review
Livestock and Poultry Program (LP)
LP - American Egg Board
LP - American Lamb Board
LP - Cattleman's Beef Board
LP - National Pork Board
Management & Analysis Program (MAP)
Marketing Regulatory Programs Business Services (MRPBS)
National Organic Program (NOP)
Not Specified
Other Federal Agency
Outreach Office
Public Affairs
Research and Promotion Boards
Science and Technology Program (S&T)
SCP - Hass Avocado Board
SCP - Hemp
SCP - Raisin Administrative Committee
Specialty Crops Program (SCP)
Transportation and Marketing Program (T&M)

22. Click on "Save."

23. Click on the “More Actions.”
24. Click on Change Request Number and update the number to the appropriate sequential number based on the request type.
25. Click “Save” and then “Yes.”
26. Click on “Assign Users.”
27. Update the assignment (both Request Owner and Primary User) to the correct FOIA Analyst. The assignments are found on the AMS FOIA Office and Program Coordinators Word document.
28. After the assignments are made, select the “Send Email Notification” checkbox to alert the FOIA Analyst of this assignment.
29. Click on “Save.”
30. Open Windows Explorer.
31. Click on the F: drive.
32. Click on the Weekly FOIA Report Excel spreadsheet which is named, “AMS_FOIA_Weekly_for_[DATE].”
33. New, incoming request types of -F, -PA, -FP and -C:
 - Log in the “Requests” tab.
 - Complete information for each column.
 - Copy the row and paste it into the “OpenClosed” tab within the “Requests Opened [DATE] to[DATE]” section.
34. New, incoming request type of -A:
 - Log in the “Appeals” tab.
 - Complete information for each column.
 - Follow the directions within the [Appeal](#) section.
35. Click “Save.”

SENDING A TRANSMITTAL

The GIS assigned to incoming requests will perform these duties, unless otherwise designated.

1. Open Windows Explorer.
2. Navigate to the F: drive.
3. Click on AMS Letter Templates.
4. Click on the Transmittal memo template for the appropriate program/division. Copy and paste the Transmittal into the Request’s the “1-Request” subfolder.
 - Addressee can be found in the AMS FOIA Office and Program Coordinators Word document (F:\Employee References\Guides, SOPs, and Training)
 - Address fees, fee waiver, and/or expedited processing in the memo, if necessary. (You have 10 calendar days to make a fee waiver or expedited processing determination.)
 - The date to receive a fee estimate, if necessary, is one week after the received date.

- The date to receive the records is one week prior to the Target Date (as issued in FX > Request Information > Request Details > Target Date).

Editable portions highlighted in this example:



1400 Independence Avenue, SW
Room 2095-S, STOP 0203
Washington, D.C. 20250-0203

DATE: September 16, 2020
TO: Michael Durando, Deputy Administrator
Fair Trade Practices Program
FROM: Mark Brook, FOIA Officer
Management and Analysis Program
SUBJECT: FOIA Request: 2020-AMS-00282-F (PSD)

The attached Freedom of Information Act (FOIA) request was received by the AMS FOIA Office on September 16, 2020. The requester seeks the following:

I request that a copy of records of the investigation via GIPSA/Packers and Stockyards for Randle Pace of Laurel, Mississippi involving Wayne Farms, a poultry integrator. The investigation was closed in 2020.

The requester is classified as "news media" and has been granted a fee waiver; therefore, a fee estimate will not be necessary for this request.

Please include the FOIA request tracking number 2020-AMS-00282-F in all communications regarding this request.

5. Email the hyperlink to the "1-Request" subfolder (not the Transmittal document) to Mark Brook for review. (He reviews all materials in this subfolder.)
6. Once Mark has approved the Transmittal, navigate to the AMS FOIA Inbox.
7. Create a new email:
 - TO: field is the program division Director/Administrator and Primary/Alternate Coordinator
 - CC: field is to the AMS FOIA email, Mark, and the FOIA Analyst.
 - Subject is "FOIA 202X-AMS-XXXX-X Request Transmittal."
 - Attachments may include the following:
 - i. Search form (from the AMS Letter Templates folder)
 - ii. Fee estimate (from the AMS Letter Templates folder), if necessary
 - iii. Transmittal (from the Request's "1-Request" subfolder)
 - iv. FOIA request (from the Request's "1-Request" subfolder)
8. The email will be constructed as follows (example below):

Dear [PRIMARY CONTACT] and [ALTERNATE COORDINATOR],

Please find attached...

Thank you,

XX

FOIA 2020-AMS-00282-F Transmittal



Higgs, Heather - AMS

To: Durando, Michael - AMS; Wood, Sandra - AMS; Becker, Kenneth - AMS
Cc: AMS FOIA (AMS); Brook, Mark - AMS; Geller, Brooke - AMS

Reply Reply All Forward

Wed 9/16/2020 12:23 PM



Transmittal 2020-AMS-00282-F.docx
.docx File

Hello,

Please find attached a transmittal for your information. Our office is in possession of the requested records.

Thank you,

Heather Higgs
Government Information Specialist
U.S. Department of Agriculture
Agricultural Marketing Service
FOIA Office
Bozeman, MT
Cell: (202) 641-8684

9. Click Send.
10. Once the AMS FOIA Inbox has received its copy of the Transmittal email, drag a copy to the request's "1-Request" subfolder and then drag and move the email into the request's Outlook folder.
11. Proceed to [Sending an Acknowledgement](#).

SENDING AN ACKNOWLEDGEMENT

The GIS assigned to incoming requests will perform these duties, unless otherwise designated.

1. In Outlook, navigate to the AMS FOIA Inbox.
2. Open a new email and place the Requester's email address in the TO: field.
3. In the CC: field, insert the AMS FOIA email address, the assigned FOIA Analyst's email address, and Mark Brook's email address.
4. In the SUBJECT: field type "FOIA 202X-AMS-XXXXX-X Acknowledgement (and Waiver Determination[s] and/or Request for Refined Scope".
5. Attach a copy of the request (with the new file name and in .pdf format).
6. Copy and paste the Acknowledgement template from the Correspondence Templates section and fill in the appropriate blanks.
7. Expedited processing:
 - Address the expedited processing in the Acknowledgement using the Expedited Processing template from the Correspondence Templates section.
 - In FX within the Request Information tab, update the Expedite Requested section with the determination.
8. Fee waiver:
 - Address the fee waiver in the Acknowledgement using the Fee Waiver template from the Correspondence Templates section.
 - In FX within the Request Information tab, update the Fee Waiver Requested section with the determination.
9. Fee estimate:

16. If all issues such a fee waiver, expedited processing or refining scope are satisfied, proceed to [Processing Records](#).

eComply Search

All FOIA Analysts/Specialists will perform this task.

1. This task is used when a records search leads AMS to search Employee Emails, chats, etc.
2. Open an internet browser and go to the eDiscovery Portal SharePoint at <https://usdagcc.sharepoint.com/sites/eDiscovery/Lists/Request/AllView.aspx>

(Before completing your first search, you will need to go to the above link and request access to the Sharepoint site and it must be approved by your supervisor)

3. Click on “New Request.”
4. Fill out the appropriate boxes according to the request’s unique needs. Example below:

eDiscovery Coordinator Information

Requestor First Name :	<input type="text" value="Kyla"/>
Requestor Last Name :	<input type="text" value="Niedermaier-Betts"/>
Agency :	<input type="text" value="Agricultural Marketing Service (AMS)"/>
Requestor Email : *	<input type="text" value="Kyla.Niedermaier-Betts1@usda.gov"/>

eDiscovery Requestor Details

eDiscovery Request Title/Case #: *	<input type="text" value="2021-AMS-00212-F Email Search"/>
Due Date (if any) :	<input type="text"/> 
Category :	<input type="text" value="FOIA"/>
Type of Request :	<input type="text" value="Request for Search"/>

Special Instructions/Comments :

January 1, 2009-July, 12, 2021

UserName(s)/SMTP Address(s) of users in this request

- This is highly recommended as it will reduce the amount of data returned in the eDiscovery request and target only the user(s) involved for this request.

- Example: John Doe, John.Doe@usda.gov

Christopher Young-Morales (OGC)
Patrice Harps (OGC)
Josephine Jenkins (AMS)

Search Criteria/ Key Words :

Alphas

Export Exchange content as :

One PST file containing all messages in a single folder ▼

Expedite Request:

☐

Show to All Agency Coordinators :

☐

Share with Other Coordinator :

—Select Coordinator— ▼

Limit by Date/Time :

Start Date :

01/01/2009



End Date :

07/12/2021



Submit

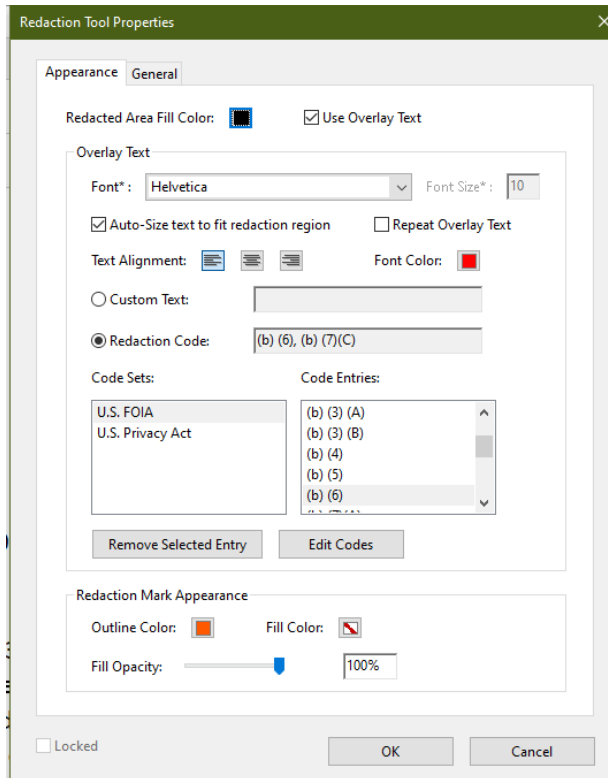
Cancel

5. Once finished, click on “Submit.”
6. Once the request is submitted, use the “Snipping Tool” to copy an image of the eComply request into a blank Word document. Multiple “snips” may be necessary to copy the entire search request.
7. Once the Word document is completed, convert the document to a .pdf.
8. Save the .pdf into the Request’s 1-Request folder and label it “[FOIA tracking number] eComply Search Request [Date].pdf”.
9. The eComply team will email the submitter an expected results return date.
10. Open FOIAXpress and set a Task Reminder with the expected results return date.

PROCESSING RECORDS

All FOIA Analysts/Specialists will perform either the initial or second-level review of responsive records.

1. Records from program offices are received either by email or placed by the program office in the F: drive program office-specific folder:
 - a. C&T for Cotton and Tobacco Program
 - b. CP for Commodity Procurement Program
 - c. Dairy for Dairy
 - d. FGIS for Federal Grain Inspection Service
 - e. FTP for Fair Trade Program
 - f. ITS for Information Technology Services
 - g. L&P for Livestock and Poultry Program
 - h. NOP for National Organic Program
 - i. OA for Office of the Administrator
 - j. S&T for Science and Technology
 - k. SCP for Specialty Crops Program
 - l. T&M for Transportation and Marketing Program
2. If records are placed by the program office in their program office-specific folder (named above), make a copy of the records and then place them into the F: drive > Request-specific folder within the “4-SME” subfolder, including emails. Be sure to leave the records within the program office-specific folder!
3. Determine the following:
 - a. Interim Response
 - b. Final Response
4. Make an additional copy of the record set you will be processing and place this copy either in the “3-QC” subfolder or the “5-Processing” subfolder. (An additional record set is made to preserve the integrity of the original records in case the team needs to refer to them in the future.)
5. If you have more than one set of records:
 - a. Place the records in the “5-Processing” subfolder, ensure they are .pdf, and create subfolders to the FOIA request number: “FOIA 202X-AMS-XXXXX-X Records [Set #]_[INITIALS]”.
6. In Adobe, open a record set and arrange the records in chronological order and remove duplicates.
7. Prior to redacting, choose, choose a personal color in Adobe (that is different from other team members’) prior to redacting. This is done by Tools > Redact > Properties:



8. When using a (b)(5) privilege, add the following language to the redaction code using “custom text” instead of “redaction code” in Adobe redaction tool:
 - a. Deliberative Process Privilege = (b)(5) DPP
 - b. Attorney-Client Privilege = (b)(5) ACP
 - c. Attorney Work Product = (b)(5) AWP
9. Transparent redactions should be made as appropriate and additional comments should be added to documents regarding information found online or other pertinent information related to suggested redactions.
10. Redact all records accordingly.
11. See (b)(3) section for agency-specific exemptions (See “Exemptions”).
12. If a Submitter Notice is necessary, proceed to [Submitter Notice](#) section.
13. After redacting is completed, maintain the redactions as see-through and do not Apply Redactions until records have been reviewed and are ready for released.
14. Proceed to [Interim Response](#) or [Final Response](#).

EXEMPTIONS

All FOIA Analysts/Specialists will perform these duties.

Standardized exemption language is found within the F: drive > AMS Letter Templates > Exemption Sample Language document.

(b)(3) Exemptions:

- Exemption (b)(3) of the FOIA allows agencies to withhold information protected by a nondisclosure provision in a federal statute other than FOIA.
 - 5 U.S.C. Chapter 5, Administrative Procedure Act § 574
 - 7 U.S.C. § 12 Public Disclosure
 - 7 U.S.C. § 8791 (Section 1619 of the 2008 Farm Bill)
 - 41 U.S.C. § 4702(b)-(c) Prohibition on Release of Contractor Proposals
 - 7 U.S.C. 4908 (c), National Watermelon Promotion Board
 - Federal Advisory Committee Act (FACA)
 - Hass Avocado Board Records

(b)(4) Exemption:

- Exemption (b)(4) of the FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). Information is protected as confidential under this exemption if it is not ordinarily released by the submitter and is provided to the government with an understanding that the information will be kept confidential.

(b)(5) Exemption:

- **Attorney Client Privilege** Exemption (b)(5) of the FOIA protects Attorney Client Privilege (ACP) which applies to confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and encompasses opinions given by an attorney to his client based upon those facts.
- **Attorney Work Product Privilege** Exemption (b)(5) of the FOIA protects Attorney Work Product (AWP). The AWP shields from discovery materials that have been prepared or obtained by an attorney because of the prospect of litigation. The withheld information in this record set consists of portions of an investigative report that includes analysis performed by an attorney.
- **Deliberative Process Privilege** Exemption (b)(5) of the FOIA protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than in litigation with the agency.” The agency records that are subject to protection in full or in part under Exemption 5 are pre-decisional and deliberative and therefore privileged under the “deliberative process” privilege.
 - proposals received by the agency in response to the solicitation
 - how to conduct the assessments of the proposals.
 - criteria used to rank the submissions received in response to the solicitation in its Request for Proposal (RFP) and RFP Amendment.
 - internal deliberations surrounding the selection process for the award of contracts.

(b)(6) Exemption:

- Exemption (b)(6) of the FOIA permits the government to withhold information regarding individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.”

Exemption 6 requires agencies to balance the privacy interest of the individual and the public interest in disclosure.

- the letters before the @commercialbusiness.com email address
- the conference phone PIN, but not the conference phone number
- government cell phone numbers

(b)(7) Exemption:

- Exemption 7 protects important government and individual interests that arise in law enforcement records. Exemption 7 is most often used by law enforcement agencies but may also be used by non-law enforcement agencies that locate law enforcement information in their records.
 - **Exemption 7(A)** - Withholding of “records or information compiled for law enforcement purposes” (remember your threshold) where disclosure “could reasonably be expected to interfere with enforcement proceedings”
 - Agency must be able to articulate harm caused to ongoing investigative interest. The following questions may be helpful in determining whether (7)(A) is applicable:
 1. Is there a pending investigation related to this subject? If so, please articulate the harm which would be caused if material was released for this FOIA and at what point this investigation is still pending (ie, investigation is ongoing, awaiting evidence destruction, pending appeals, etc).
 2. Is there any public source material that could be segregated and released regarding this subject which would not harm the ongoing investigation?
 3. Has the subject been interviewed/is the subject aware of the investigation? – We include this to decide whether we needed to exclude or Glomar the FOIA or whether we could safely respond with b7A
 - **Exemption 7(C)** Could reasonably be expected to constitute an unwarranted invasion of personal privacy – used similarly to (b)(6) in law enforcement records
 - **Exemption 7(D)** Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

Further resources on the FOIA exemptions can be found in [DOJ_OIP Trainings](#)

OUTGOING CONSULTS

All FOIA Analysts/Specialists will perform these duties.

1. If when processing the document, equities belonging to another AMS entity or agency are found, a consult is needed for these equities.
2. Records and communication sent for consultation are placed within the request's "6-Consults" subfolder.
3. Compile all necessary pages from the record set and identify which equities require review by outlining the equities of the office. To make the outlines, use the Comment function on the tool bar to the right side of the pdf. Once that is open, go to the Toolbar



at the top and select drawing tools which is this symbol: From there, select the rectangle and then use the arrow to draw a redaction around the entire equity.

4. Construct email or memo using template within the [F: drive > AMS Letter Templates](#) folder. Email template for USDA component; memo template for non-USDA component. Due dates for a response will depend on the volume of documents to be reviewed, but a standard is 2-3 weeks.
5. Attach the request and the records and send it all to the appropriate office and cc the AMS box. Points of contact can be found at [F: Drive > Employee References > AMS FOIA Program Offices](#)

Example Email:

FW: 2020-AMS-00081 Request for Consult

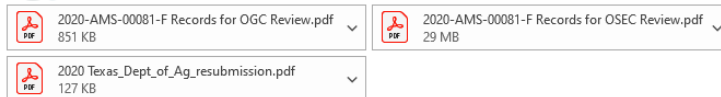


AMS FOIA (AMS)

To: Niedermaier-Betts, Kyla - MRP-AMS, Washington, DC

[Reply](#)
[Reply All](#)
[Forward](#)
[...](#)

Thu 8/26/2021 1:05 PM



subject: 2020-AMS-00081 Request for Consult

Good morning,

Please refer to the attached FOIA request submitted to the U.S. Department of Agriculture's (USDA), Agricultural Marketing Service (AMS) by Jason Cole with The Cornucopia Institute .

After a review of the request and responsive records, AMS has determined that twelve pages (12) of responsive records contain equities that originated with the **Office of General Counsel (OGC)** and two hundred seventy-one (271) pages of responsive records contain equities that originated with the **Office of the Secretary (OSEC)**.

Please find attached the responsive pages for your review of the OGC and OSEC equities, which are enclosed in a purple text boxes. Please make any proposed redactions to those equities and return the pages to AMS. Natalie Anderson and I am available to answer any questions.

AMS requests a response regarding release approval by **COB Wednesday, September 8, 2021**.

Thanks very much,
Kyla

Sincerely,

BUSINESS SUBMITTER NOTICE

All FOIA Analysts/Specialists will perform these duties.

1. When processing records, if material requiring b4 redactions are found for a Company/Organization/Business working with USDA-AMS, a business submitter will be needed.
2. Identify which documents in the record set will need to be reviewed by the business and prepare a copy of those documents with any proposed (see-through) b4 redactions to be sent with the submitter letter. Any b6 redactions not applicable to the business should be applied and not be see-through.
3. Create a Submitter's Notice from a template located on the F: drive, AMS Letter Templates > Business Submitter Notice Letter. Due dates for a response will depend on the volume of documents to be reviewed, but a standard is 2-3 weeks. Place the letter and records (with applicable see-through redactions) that need the submitter's review into the Request's "7-Submitter's" subfolder. If needed, create a separate subfolder for each Submitter's Notice recipient. Name the subfolder according to the recipient's name.
4. Once the letter is ready for review, email the hyperlink to the "7-Submitter's" subfolder for QC.
5. Mark will review the letter and records after QC.
6. Once you have received approval from Mark, email the Submitter's Notice with the subject line "Business Submitter's Notice" along with the following attachments:
 - Responsive records pertinent to Submitter's Notice
 - Business submitter letter

Email example:

USDA AMS Freedom of Information Act Request 2020-AMS-00183-F



Geller, Brooke - AMS

To: jeremy.kilburn@waynefarms.com
Cc: [AMS FOIA \(AMS\)](#)

[Reply](#) [Reply All](#) [Forward](#) [...](#)

Mon 11/9/2020 11:49 AM



2020-AMS-00183-F Letter to Wayne Farms.pdf
.pdf File



2020-AMS-00183-F Wayne Farms submitter notice records.pdf
.pdf File

Dear Mr. Kilburn,

The U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) has received a Freedom of Information Act (FOIA) request seeking records that originated with your business or organization. Please refer to the enclosed Business Submitter letter and records for more information. Due to time constraints imposed by the FOIA, AMS must receive a response as denoted in the attached letter by Friday, November 20, 2020.

Thank you,
Brooke Geller
Government Information Specialist
USDA Agricultural Marketing Service
(202) 302-6958
brooke.geller@usda.gov

7. In FX, set a Task Reminder for the due date of the response to the Submitter's Notice.
8. If a response is not received by due date:

- Contact business submitter for a status update. In most circumstances, we will give the business submitter more time to complete review of the documents.
 - We would only proceed without business submitter input if we were unable make any contact with them over a significant period of time.
9. If a response is received by due date:
- AMS will promptly review the redactions proposed by the business submitter and the justifications for those redactions.
 - If AMS disagrees with the proposed redactions, we will make changes and send back to the business submitter with reasons for the changes. That email will include an estimated date for producing the documents to the requester (usually about 7-10 days from the date of the email) and notice that AMS will go forward with its response unless the submitter has objections.
 - If AMS agrees with the proposed redactions, we will confirm with the business that we agree to their proposed redactions and will implement them prior to release.
10. Continue [Processing Records](#), step #7.

INTERIM RESPONSE

All FOIA Analysts/Specialists will perform these duties.

An interim response will be sent when a program office has sent a batch of records to the FOIA Office and has indicated that additional records will be provided separately. Follow the steps contained within [Processing Records](#) before proceeding in this section. Only the FOIA Officer may sign letters for interim or final response releases.

1. Open Windows Explorer.
2. Navigate to the F: drive.
3. Open the Request's folder
4. Select the "2-Responses" subfolder.
5. Create a new sub-subfolder titled "1st Interim Response." (This new folder will house the correspondence and records sent to the Requester. AMS will send as many interim responses as are necessary to get all of the documents processed while still producing information to the Requester. Subsequent interim responses will be numbered sequentially.)
6. Navigate back to the F: drive.
7. Click on the AMS Letter Templates folder.
8. Copy and paste the Interim Response letter into the Request's "2-Response" subfolder and then into the "XX Interim Response" sub-subfolder.
9. The interim response must contain the following elements:
 - a. A paragraph informing the Requester that AMS is continuing to process records and asking that the requester reserve their right to appeal.
 - b. A paragraph that specifies AMS will provide appeal rights in the final response.
 - c. Include contact information for the Analyst working on the request
 - d. Include contact information for the FOIA Public Liaison.
10. Proceed to the [Sending Records for Quality Control and Interim/Final Approval](#) section.

FINAL RESPONSE LETTER

All FOIA Analysts/Specialists will perform these duties.

A final response will be sent when the program office has provided all responsive records to the FOIA Office and all of those records have been processed by the FOIA Office. If there is any question about whether a batch of records is the final set, reach out to the program office contact for confirmation. The final response can be sent only after any consults and business submitter documents have been returned and, if applicable, after OGC review and release approval. Only the FOIA Officer may sign letters for interim or final response releases.

1. Open Windows Explorer.
2. Navigate to the F: drive.
3. Open the AMS Letter Templates folder.
4. Select the Final Response letter template and response language:
 - Denied in Full
 - Granted/Denied in Part
 - Granted in Full
 - Other Reasons
5. Copy and paste the letter template into the Request's "2-Responses" folder with the appropriate file name. Example: "2021-AMS-00001-F Final Response [INITIALS]"
6. Fill in the appropriate blanks within the template.
7. Proceed to [Sending Records for Quality Control and Interim/Final Approval](#) section.

SENDING RECORDS FOR QUALITY CONTROL AND INTERIM/FINAL APPROVAL

All FOIA Analysts/Specialists will perform these duties.

1. After writing an interim/final response letter using the available AMS letter templates (found at F: AMS Letter Templates), name the letter "FOIA 202X-AMS-XXXXX-X Final (or Interim) Response Letter (Initials of Preparer)." The letter should be placed in the "2-Responses" subfolder.
2. Send email to the designated FOIA Analyst with hyperlink to the Request's main folder letting them know to QC the letter and/or records. Provide any related pertinent information, as applicable, within the email.
3. FOIA Analyst performs QC by reviewing the letter and all responsive records in order to ensure accuracy and consistency in responses and releases.
4. If changes are necessary, the FOIA Analyst will create a copy of the letter or responsive records in the QC folder and place their initials at the end of the file name. Redactions are still transparent at this point.
5. Once QC is completed, the FOIA Analyst will email FOIA Officer that the items are ready for final review and signature, including the hyperlink to the Request's main folder
6. Response Options:
 - a. For Final Responses: The FOIA Officer reviews the letter and records. If the letter is satisfactory, the Officer's electronic signature is applied to the letter and

converted to a .pdf and saved within the “2-Responses” folder. If the records are satisfactory, the FOIA Officer creates another copy of the records, applies redactions, and changes to file name to read “Redacted” (when redactions are present within the records) or “Release” (when no redactions are present within the records).

- b. For Interim Responses: If it is an interim response, make a subfolder in the “2-Responses” folder and name it “# Interim Response.” Please the letter and records for that particular interim response in the subfolder. Make additional numerical interim subfolders, as necessary, for additional interim responses
7. The FOIA Officer may have another person apply the redactions for the final/interim release. If so, follow these steps within Adobe:
- a. Click on Tools > Redact.
 - b. Click on Apply Redactions and ensure the slide “Sanitize and Remove Hidden Information” is applied.
 - c. Click on Okay.
 - d. Save the record set in “2-Response” folder. If this is an interim response, save it in the Interim Response’s subfolder. Rename the file, as appropriate:
 - Interim response with redactions: 202X-AMS-XXXX-F_# Interim Response_Redacted
 - 202X-AMS-XXXX-F # Interim Response_Release
 - 202X-AMS-XXXXX-F Final Response Records_Redacted
 - 202X-AMS-XXXXX-F Final Response Records_Release.
 - e. Once the record set is saved, click on the Stamp Tool > Bates Numbering > Add.
 - f. Select the file you wish to Bates Number. Click OK.

NOTE: This step allows you to Bates Number a single file or multiple files at one time in the order you choose. You may need to reorder the files before selecting OK to ensure correct sequential numbering.

- g. Ensure that you are using Arial Font, size 8, black text color.
- h. Change the Margin Bottom to 0.2 and the Right to 0.2.
- i. Click on “Insert Bates Number.”
- j. Select the Number of Digits as 4 (which will be 0001) unless you anticipate a very large record set requiring 6 digits.
- k. Leave the Start Number as 1 if your production is a first and final release or a first interim release. If your production is the second, third, etc. in a series of releases, then you will change the start number to pick up where the previous numbering left off. For example, if the previous release ended on page 0058, then change the Start Number to 0059.
- l. Add FOIA request number into Prefix box and add a “-“ at the end, e.g. 2021-AMS-00001-F-“
- m. Click on OK.
- n. Double-click in the “Left Header Text”, cut the text, and paste it into the “Right Footer Text.”

- o. Click OK.

CLOSING A REQUEST

1. In Outlook, start a new email. The subject will read, “FOIA 202X-AMS-XXXXX-F (Final/Interim) Response.” CC the AMS shared inbox and the FOIA analyst assigned to the request.
2. Add the letter and records, if any, as attachments.
3. The email body should read: “Dear Mr./Ms. XX, Please find attached...”
4. After the records are sent, drag and copy the email received into the AMS Inbox into the request’s “2-Responses” subfolder. Then, move the email into the request’s shared inbox folder.
5. Move the entire request shared inbox folder into the appropriate “FY## Closed Requests” folder.
6. Open FX. Within the Request Information tab, complete any remaining fee waiver or expedited processing with the date in which the determination was made. Check the request’s “1-Request” folder for any determination communication.
7. Complete applicable “Extensions” or “Requests for Documents” in the corresponding tabs.
8. Click on “Final Actions” and answer questions based on the final response letter.
9. Click on “Close Request” and answer questions based on the final response letter.
10. . Within Windows Explorer, navigate to the “AMS Weekly” file. request and add the notes “CLOSED xx/xx/xx.” Put these items into bold and highlight the cell in yellow.
11. the shared folder, change the name of the folder’s ending to “-closed.”
12. Update the Weekly spreadsheet for the
13. Copy the row and place it in the Open/Closed tab under the Closed section. Update the Closed Date cell to the date of closure.

APPEAL

1. Follow the [Logging a Request](#) section and follow the directions for an appeal.
2. The appeal will be assigned to an Analyst per Mark.
3. Once the records are reviewed and processed, create a folder within the “3-QC” folder and label it “[FOIA Request #] (For OGC)” to house all of the items prepared for review by OGC. Records are to be placed into “Exhibit #” folder(s).
4. Prepare an “Appeal Memo for OGC” using the “Appeal Memo for OGC” template. The memo contains the Procedural History, Discussion, Summary, and Concurrence sections.
5. Draft an “Agency Response Letter” for the Administrator’s signature using the “Agency Response Letter” template.
6. A “Cover Sheet for Hard Copy Folder” is to be created itemizing each appeal-related item to be reviewed by OGC using the “Cover Sheet for Hard Copy Folder” template.
7. Print off all of the items for review by OGC and place them into a folder. Walk/Courier the folder to the OGC FOIA office.

8. When the appeal is ready to be sent out, in the TO: field to the appellant. In the CC: field, place the AMS FOIA inbox and Mark Brook. Do not include any other staff email address.

LETTER OR MEMO TEMPLATES STANDARD FORMS

The following templates are available on the F: drive > AMS Letter Templates folder:

- 10-Day Extension Notice
- Acknowledgement and Waiver Determinations Letter
- Administrative Closure
- Business Submitter Notice Letter
- Consultation Request to Another USDA Component Template
- Exemption Same Language (to pick and choose exemption language to insert into interim or final response letters)
- Fee Estimate Template
- Final Response Template
- Interim Response Template
- Memorializing a Phone Conversation with a Requester
- NARA Personnel Records Center and OPM Template
- Overdue Fee Payment Template
- PAL Instructions Template
- Request for Consultation Memo
- Request Referral Template

The following forms are available on the F: drive > Employee References > Standard Forms and Letter Attachments folder:

- DOJ 361 Certification of Identity
- Fee Estimate Calculator
- FOIA Search Form
- OGIS Flyer
- USDA FOIA Fee Schedule

Executive Communication Management:

I confirmed with Camille that Harald Fuller-Bennet is the new POC for OSEC ECMM searches and we can simply send an email to Harald describing the search.

I don't know if this process will be available moving forward for AMS searches that do not involve OSEC, but I think for now we can work with Harald on the rare request that we have like this.

Privacy Act:

Here's a link to the Overview. Hopefully I have not shared this too many times before now but I do find it helpful to consult a particular chart:

<https://www.justice.gov/opcl/individuals-right-access> If you scroll down about 1/3 of the way, you'll see this chart: FOIA/PRIVACY ACT INTERFACE EXAMPLE: ACCESS

*Sensitive Data means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by USDA or the Federal Government and our partners.

Congressional correspondence gets logged into ECM.

DO I HAVE TO ENCRYPT ALL EMAIL?

- No, the Department is recommending that you only need to encrypt email that includes sensitive data. For example, emails that include personally identifiable information such as a social security number or birth date. PLEASE NOTE: As a general rule, we highly encourage employees to never send that type of information via email if possible.

HOW DO I SEND AN ENCRYPTED EMAIL?

- With Office 365 Message Encryption (OME), USDA employees can send encrypted email from Outlook and Outlook on the web. Recipients of encrypted messages can read those messages seamlessly in Outlook. A message that is encrypted by Office 365 Message Encryption is delivered to a recipient's inbox just like any other email message. Below are quick instructions on how to send messages with Office 365 Message Encryption.

To Send An Encrypted Message Using Outlook

1. To send an encrypted message from Outlook 2013 or 2016, or Outlook 2016 for Mac, open a new email window > select Options from the top toolbar > select Permissions > then select the "Encrypt-Only" protection option. (Do not select any other option.)



To Reply To An Encrypted Message

1. Choose Reply or Reply All.
2. On the page that appears, type a reply and choose Send. An encrypted copy of your reply message is sent to you.

To Encrypt Email to External Recipients

- Microsoft recently released the encrypt-only policy in Outlook for PC versions 2019 and Microsoft 365. That means messages that have the new encrypt-only policy applied can be read directly in Outlook on the web, in Outlook for iOS and Android, and now Outlook for PC versions 2019 and Microsoft 365. A message that is encrypted by Microsoft 365 Message Encryption is delivered to a recipient's inbox just like any other email message. If the recipient has Outlook 2013 or 2016 and a Microsoft 365 email account, they'll see an alert about the item's restricted permissions in the Reading pane. After opening the message, the recipient can view the message just like any other.
- If the recipient is using another email client or email account, such as Gmail or Yahoo, they'll see a link that lets them either sign in to read the email message or request a one-time passcode to view the message in a web browser.

Bulk Redaction Changes

I wanted to change the properties (outline color, overlay text) of a number of redactions that I had already marked on a record set. I came across some helpful instructions online: <https://blogs.adobe.com/acrolaw/2013/03/changing-multiple-redaction-marks-and-undocking-the-comments-panel/>

Here are the steps I used, based on that link.:

- 1) Open the Comments tab
- 2) Optional: Use the Filter to select only the “Redact” comments.
- 3) Select the Redactions that you want to change. I held down the Control button and selected the particular redactions I wanted to change.
- 4) Once you have the right ones selected, Right Click and choose Properties.
- 5) Make your changes and hit OK.

DRAFT