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Freedom of Information Act (FOIA) Process Memorandum
2022

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Assistant Legal Counsel
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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Legal Counsel

131 M St, N. E., Fifth Floor
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Free: (833) 827-2920
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Website: www.eeoc.gov

April 18, 2023

Re: FOIA No.: **820-2023-007026**

Your Freedom of Information Act (FOIA) request, received on 03/27/2023, is processed. Our search began on 03/27/2023. All agency records in creation as of 03/27/2023 are within the scope of EEOC's search for responsive records. The paragraph(s) checked below apply.

- Your request is granted, and the disclosed records are enclosed. See the comments section below for additional information.
- You may contact the EEOC FOIA Public Liaison Michael L. Heise for further assistance or to discuss any aspect of your request. In addition, you may contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer.

The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at (202) 741-5770; toll free 1-877-684-6448; or facsimile at (202) 741-5769.

The contact information for the FOIA Public Liaison is as follows: Michael L. Heise, EEOC FOIA Public Liaison, Office of Legal Counsel, FOIA Division, Equal Employment Opportunity Commission, 131 M. Street, N.E., Fifth Floor, Washington, D.C. 20507, email to FOIA@eeoc.gov, telephone at (202) 921-2542; or fax at (202) 827-7545.

- I trust that the furnished information fully satisfies your request; however, if you are not satisfied with the response to this request, you may administratively appeal in writing. Your appeal must be postmarked or electronically transmitted in 90 days from receipt of this letter to the Office of Legal Counsel, FOIA Division, Equal Employment Opportunity Commission, 131 M Street, NE, 5NW02E, Washington, D.C. 20507, email to FOIA@eeoc.gov; online at <https://eeoc.arkcase.com/foia/portal/login>, or fax at (202) 827-7545. Your appeal will be governed by 29 C.F.R. § 1610.11.

Sincerely,

A handwritten signature in cursive script that reads "Michael L. Heise, Esq.".

Michael L. Heise
Assistant Legal Counsel | FOIA Division
foia@eeoc.gov

Comments

Your request was:

A copy of all EEOC guidance for EEOC FOIA Staff on "Estimated Completion Dates". Please include memos, directives, guidances, instructions, legal direction, policies, etc. You may limit this to EEOC agency records. You may limit this to EEOC records not published on the agency's public website. You may limit this to records since January 1, 2018.

During our phone conversation on April 11, 2023, I let you know that while I am not aware (nor is my supervisor) of 2018-present EEOC FOIA guidance/memos/policies, etc. that specifically address "Estimated Completion Dates", my supervisor did issue processing guidance to our team back in October 2022. That guidance mentions team members sending monthly status updates, but it doesn't specifically address "Estimated Completion Dates". From our conversation, it seemed that you were interested in receiving this document and that it would satisfy your request. On April 12, 2023, you confirmed via email that that was correct.

Per our April 11, 2023, phone conversation, your request is granted, and one (1) PDF totaling six (6) pages is released to you in full. This document consists of an October 5, 2022, FOIA procedures memorandum from Assistant Legal Counsel Michael Heise to Office of Legal Counsel (OLC) FOIA Division staff. Information concerning status updates to requesters can be found on page four (4) of the memorandum.

This response was prepared by Katie Baker, Attorney Advisor, who may be reached at foia@eeoc.gov.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Washington, D.C. 20507

Office of
Legal Counsel

October 5, 2022

MEMORANDUM

To: FOIA Division Staff

From: Michael L. Heise
Assistant Legal Counsel | FOIA Division

Michael L Heise

Digitally signed by Michael L
Heise
Date: 2022.10.05 09:48:28 -04'00'

Subject: Freedom of Information Act Procedures for FOIA Division (*the "820"*)

1. Purpose

These Freedom of Information Act Procedures (Procedures) outline the process for implementing the Freedom of Information Act (FOIA or statute), 5 U.S.C. § 552, at the U.S. Equal Employment Opportunity Commission (EEOC's, Agency's, or Commission's) Headquarters (820). These Procedures are intended to ensure that the Agency responds to FOIA requests in accordance with statutory requirements, EEOC Regulations, 29 C.F.R. Part 1610, Subpart A (FOIA Regulations), the Policy, and applicable open government and transparency policies. This document is subject to change and revision by the Assistant Legal Counsel of the FOIA Division.

2. Scope and Applicability

These Procedures implement the Commission's FOIA Policy (Policy). These Procedures focus on promoting accountability, encouraging timeliness, and ensuring the quality of 820 FOIA responses by outlining the statutory and regulatory requirements, as well as the policy, procedural, and processing steps that all 820 staff should follow.

3. Audience

The audience for these procedures includes all staff working at EEOC's FOIA Division and reporting to the Assistant Legal Counsel for the FOIA Division.

4. Overview

a. EEOC FOIA Administration

These Procedures provide a general overview of how a FOIA request assigned to the 820 gets processed, how routine issues should be handled and when, and what is expected of each team member when processing a FOIA request.

b. *The Freedom of Information Act*

Congress enacted the FOIA in 1966. The statute gives any person the right to obtain access to federal agency records unless one or more of the nine exemptions contained in the statute protect such records, or portions of such records, from public disclosure. See 5 U.S.C. § 552(b). The FOIA applies only to administrative agencies within the federal Executive Branch.

c. *ArkCase*

ArkCase is an internet tool owned by ArMedia where requesters may submit FOIA requests. ArkCase is also EEOC's management and tracking system for FOIA responses.

These Procedures do not provide detailed instructions for using ArkCase. The Agency sponsors ArkCase training for managers, supervisors, and staff, and has developed user guides that are available by reaching out to Orlando Lindsay at EEOC's Office of Information Technology (OIT).

d. *Document Review Tools*

Relativity is 820's standard document review platform for all records collected by OIT centralized search. 820 staff can access Relativity through a web browser from their office or from a remote location.

e. *Redaction Tools*

EEOC uses Adobe Acrobat to conduct its redaction review.

These Procedures do not provide instructions for using Adobe Acrobat or Relativity for document review. 820 staff can access Relativity training and user guides through by reaching out to Marc Seabright (for Relativity), and Orlando Lindsay (for Adobe Acrobat).

5. *Authority*

Freedom of Information Act, 5 U.S.C. § 552.

EEOC FOIA Regulations, Title 29, C.F.R. Part 1610, Subpart A. Availability of Records.

6. *Procedures*

The steps below are expected to be performed by 820 staff.

a. *Intake Procedures*

1. *Step 1 – Submission and Receipt of Requests*

The public will submit FOIA requests to the EEOC via Arkcase, email, U.S. Mail, fax, or an electronic government submission website established pursuant to 5 U.S.C. § 552(m), such as foia.gov, consistent with the Agency's FOIA regulations. If the Commission receives a request via U.S. Mail, email, or fax, Dister Battle, or her designee, it will enter the request, including all attachments, into ArkCase in consultation with Michael Heise.

2. *Step 2 – Intake and Initial Review of Incoming Requests*

a. *Requests Received Via ArkCase*

When the 820 receives a request through ArkCase, that request is assigned a FOIA number and is housed in the Intake Queue. Michael Heise, or his designee, will review the 820 requests in the Intake Queue

and determine what FOIA Division staff member (Team Member or TM) should be assigned to the request. Michael will also determine what 820 requests should be assigned to the Field. After making these determinations, Michael will email Dister asking her to make the assignments.

b. Requests Received by Email, Mail, or Fax

When the 820 receives a request through Email, U.S. Mail, or Fax, Dister, or her designee, will email that request to Michael for evaluation. Michael will then advise Dister which TM should be assigned the request, or if the request should be assigned to the Field. Dister will assign accordingly.

b. Processing Procedures

1. Step 1 – Initial Case Evaluation and Acknowledgment Letter

When a TM receives a request, they may consider generally whether:

- The request does not comply with EEOC FOIA Regulations;
- The request does not seek Agency records;
- The request does not reasonably describe the records sought. See 29 C.F.R. § 1610.5(b).
- The TM believes the request may be fulfilled through publicly available or previously released records.

The TM may prepare a draft Final Determination Letter (FDL) recommending closing the request, as appropriate, upon initial review of the above factors, and close the request.

The TM may also review the request for the following circumstances that may be considered throughout the response process:

- Determine whether unusual circumstances apply to the request; and
- Whether the requester has paid all fees for any prior FOIA requests as required by EEOC regulations.

The TM must also determine if the request requires clarification from the request. If so, the TM should send a letter to the request asking for that clarification. Doing this allows the TM to stop the clock (hold) on the request until the request is clarified to TM's satisfaction. However, the clock may only be stopped once for clarification, so it is important that the TM ask all clarifying questions at the same time. See 29 C.F.R. § 1610.9(g).¹

The TM must send the Acknowledgment Letter to the requester within 10 days from receipt of the request. See 29 C.F.R. § 1610.9(c). This letter should advise requester that the request is either in the Simple or Complex track.²

2. Step 2 – Expedited Processing Requests

If the requester has asked for Expedited Processing, the TM must determine if processing the request on an expedited basis is appropriate by determining if the requester's statement supporting expedited processing satisfies the requirements of 29 C.F.R. § 1610.9(f).

If the TM determines that Expedited Processing is not appropriate, the TM must draft a letter denying expedited processing within 10 calendar days of the receipt of a request for expedited processing and submit that letter to Michael for review and signature. See 29 C.F.R. § 1610.9(f)(4).

¹ Nevertheless, a TM may contact a requester as many times as needed to clarify the scope of the request without stopping the clock.

² Virtually every 820 FOIA request is complex because almost all our requests involve coordination with other offices, are voluminous, or both. If you determine a request should be simple, please reach out directly to Michael to discuss.

If the TM determines that Expedited Processing is appropriate, the TM should immediately schedule a meeting with Michael to discuss.

3. Step 3 – Fee Category and Processing Fee Waivers

If the requester asks for a waiver of fees, the TM should immediately determine: (1) what fee category the requester is in; and (2) whether requester's fee waiver justification meets the requirements of 29 C.F.R. § 1610.14.

The TM is responsible for determining and assigning the fee category for the requester. The fee categories under the FOIA are:

- **Commercial Use Requester:**
 - According to Office of Management and Budget (OMB) Fee Guidelines, "commercial use" requesters are those who ask for records 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 being made." 52 C.F.R. §§ 10012, 10017-18 (Mar. 27, 1987).
- **Educational Institution or Non-Commercial Scientific Institution:**
 - Educational institutions include schools such as universities and vocational institutions whose purpose is scholarly research. See 5 U.S.C. § 552(a)(4)(A)(ii)(II).
 - Noncommercial scientific institutions are institutions whose purpose is scientific research. See 5 U.S.C. § 552(a)(4)(A)(ii)(II).
- **Representative of the News Media:**
 - The FOIA defines a "representative of the news media" as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." The FOIA also explains that this category includes news agencies as well as freelance journalists if they "can demonstrate a solid basis for expecting publication through [a news media] entity, whether or not the journalist is actually employed by the entity." See 5 U.S.C. § 552(a)(4)(A)(ii)(I11).
- **Other Requester:**
 - The "other" category is simply a catchall category for any requester that does not fall into the above categories.

If the TM determines a fee waiver request should be denied, or if should be granted, the TM must draft a Fee Waiver Letter and submit to Katie Baker for review and signature.

4. Step 4 – Substantive Review of the FOIA Request

The TM assigned to an 820 request is responsible for fully processing that request from "cradle to grave". This includes determining what track the request should be in, sending the Acknowledgement Letter, determining Expedited Processing and Fee Waiver issues, determining what fee category the requester should be in, determining what clarifications from the requester are necessary, drafting a fee assessment letter, negotiating with requesters, providing requesters monthly updates on the status of the request, coordinating with custodians to procure potentially responsive records, reviewing records for responsiveness, preparing the document sent for redaction review, redacting documents in Adobe, providing custodians with "concurrence memos", and drafting a FDL with their recommendation for closure and tasking that to Michael for review.

The TM is also responsible for ensuring that all material information such as communications to/from the requester, custodians, or internal stakeholders are stored in the ArkCase Working Folder. In addition, the TM must also have three versions of the responsive records in Arkcase: (1) the original documents received; (2) a single PDF of those documents with redactions (translucent); and (3) the redacted document set as a single PDF.

When appropriate, the TM should mark each responsive record as “Document 1, 2, 3, etc.” at the upper-right corner of the first page of the record AND provide a BATES-stamp at the lower-right corner of each page of the responsive document set. If you are not sure if your document set should include these marking, please reach out to Michael directly to discuss.

For a large, complex, and/or highly sensitive FOIA request, it is a recommended practice for the TM to convene meetings with Michael to clarify responsibilities, methods to be used for collection, and other issues

With respect to FOIA Fees, the TM is expected to coordinate with custodians and obtain from the custodians how many hours of work they estimate would be required to fulfill the request. The TM must also calculate the fees and prepare a fee assessment letter. Then, the TM provide the fee assessment letter to Katie for her review and concurrence. The table below provides information concerning fees.

Types of Fees that May be Charged by Fee Category			
Type of Requester	Search	Review	Duplication
Commercial	Yes*	Yes	Yes
Educational, Non-Commercial Scientific, or News Media	No	No	Yes (100 pages free)*
All Others	Yes (First 2 hours free)*	No	Yes (100 pages free)
* Fees shaded in grey above cannot be charged if the Agency fails to comply with the response time-period and the requirements of the FOIA Regulations, 29 C.F.R. § 1610.15.			

Type of Staff	Charges
Clerical	\$5.00 per quarter hour
Paralegals	\$9.00 per quarter hour
Professional	\$10.00 per quarter hour
Managerial	\$17.50 per quarter hour
SES	\$20.00 per quarter hour
Authority: 29 C.F.R. §1610.15(c)(1)(ii)	

The TM must provide the requester with written notice if the anticipated fees are estimated to be more than \$25.00 unless the requester agreed in the initial FOIA request (or subsequently) to pay a higher amount. 29 C.F.R. § 1610.15(e).

The TM is expected to ask the requester, in writing via the fee assessment letter, for advance payment of fees in two circumstances: (1) when the fees will exceed \$250 or (2) when the requester has previously failed to pay fees in a timely fashion. 29 C.F.R. § 1610.15(i).

The TM is expected to stop the clock as many times as needed for fee-related reasons, including when the requester is required to provide a written assurance of payment and has failed to do so.

If a FOIA request seeks electronic communications, the TM should prepare a search methodology to capture the words, phrases, or issues relevant to the request, and provide that to Michael for review and concurrence. Then, the TM must submit the search request to OIT as a ServiceNow ticket.

When developing search parameters for the electronic searches, the TM should rely on his/her understanding of the scope of the request. Depending on the scope of the request, search parameters may include any of the following:

- Date Range;
- Individual Custodians (“Targets”);
- Types of Records (emails, calendar entries, chats, etc); or
- Keywords or Subject Matter.