



governmentattic.org

"Rummaging in the government's attic"

Description of document: Securities and Exchange Commission (SEC) Freedom of Information Act (FOIA) Standard Operating Procedure (SOP) 2020

Requested date: 11-May-2022

Release date: 29-August-2023

Posted date: 09-October-2023

Source of document: FOIA Request
Securities and Exchange Commission
100 F Street NE
Mail Stop 2465
Washington D.C. 20549
Fax: 202-772-9337
[Request for Copies of Documents](#)

The governmentattic.org web site ("the site") is a First Amendment free speech web site and is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 29, 2023

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **22-02038-FOIA**

This is the final response to your May 22, 2022 request for "[a] copy of each (internal) FOIA Standard Operating Procedure (SOP) at the SEC FOIA Office."

Access is granted in part to the attached 53 page .pdf file. Information within these records is being withheld under 5 U.S.C. § 552(b)(5), (6) and (7)(E), for the following reasons:

- Certain withheld information was prepared in anticipation of litigation, forms an integral part of the pre-decisional process, and/or contains advice given to the SEC or senior staff by the SEC's attorneys. Therefore, it is protected from release by the attorney work-product, deliberative process and/or attorney-client privileges embodied in FOIA Exemption 5.
- Under Exemption 6 the release of certain withheld information would constitute a clearly unwarranted invasion of personal privacy.
- Certain withheld information is protected from disclosure under FOIA Exemption 7(E), since its release would reveal specific investigative techniques, guidelines, and criteria used in connection with law enforcement investigations or prosecutions which could reasonably be expected to risk circumvention of the federal securities laws.

August 29, 2023

Please be advised that I have considered the foreseeable harm standard in preparing this response.

I am the deciding official with regard to this adverse determination. You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address.

If you have any questions, you can contact me at sifordm@sec.gov or (202)551-7201. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you, please see the attached addendum.

Sincerely,



Mark P. Siford
Attorney Adviser
Office of FOIA Services

Attachments

August 29, 2023

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

**FREEDOM OF INFORMATION and
PRIVACY ACT REQUEST
PROCESSING GUIDANCE
FOR LIAISONS**

*Prepared by:
Office of FOIA Services
Room 2465
100 F Street, NE
Washington, DC 20549
202-551-7900
foiapa@sec.gov*

FREEDOM OF INFORMATION AND PRIVACY ACT (FOIA & PA) REQUEST PROCESSING GUIDANCE FOR LIAISONS

Table of Contents

- 1. Introduction**
- 2. Purpose**
- 3. Overview of the SEC FOIA Program**
 - A. FOIA Program
 - B. Office of FOIA Services
 - C. Centralized Processing
 - D. Appeals
 - E. Rule 83 Confidential Treatment Requests
- 4. SEC Staff FOIA Responsibilities**
 - A. FOIA Responsibility Commission-wide
 - B. FOIA Liaisons in Divisions and Offices
 - (1) Designated FOIA Liaisons
 - (2) FOIA Liaison Duties
 - C. FOIA Staff and Liaison Listing and e-mail accounts
- 5. Overview of Basic Request Process**
 - A. Agency Receipt of Requests
 - (1) Receipt by FOIA Office
 - (2) Receipt of Requests by Other Offices
 - (3) Assignment and Tracking
 - B. Initial Review and Research (Agency records defined)
 - C. Referral to Office or Division FOIA Liaison
 - (1) Referral
 - (2) Liaison Response
 - D. Final Commission Response
- 6. General FOIA Processing Information**
 - A. Records Retention Schedule
 - B. Rule 83 Confidential Treatment (CT) Requests
 - C. Privacy Act Requests
 - D. Fees
 - E. Timeframe for Responding to Requests
 - (1) Simple Track Processing
 - A. Unusual Circumstances
 - (2) Expedited Processing
 - (3) Complex Track Processing

- (4) Clarification or Narrowed Scope Needed
- (5) Fee negotiations
- F. Whistleblower/TCR Records

7. FOIA Office Responsibilities

- A. Receipt of Requests
 - (1) Numbering and Tracking
 - (2) Assignment of Requests
 - (3) Appeals and Remands
 - (4) Privacy Act and Privacy Act Requests for Amendment of Records (PAAM)
- B. Initial Review and Research
 - (1) Reasonable Search
 - (2) Databases Searched
- C. Referral to Liaison(s)
- D. Preparing Responsive Records
 - (1) Reviewing and Redacting Records
 - (2) Requests for Confidential Treatment (CT) Under Rule 83
 - (3) Publicly Available Records
- E. Prepare Agency Responses
 - (1) Interim, Partial and Final Responses
 - (2) Review of Final or Partial Response
 - (3) Calculate Fees and Invoice

8. FOIA Liaison Responsibilities

- A. Review Request
 - (1) Clarification of request
 - (2) Timeframe for response
- B. Search or Coordinate Search for Records
 - (1) Records Retention and Disposition
 - (2) Email Records
 - (3) Records Generated or Held by Contractors
 - (4) Voluminous Record Collections
- C. Determine Search Results
 - (1) Provide Located Records
 - (2) Withhold Located Records
 - (3) Located Records Should be Public
 - (4) Duplicate Records
 - (5) Records Not Located
 - (6) Other
- D. Recommendation Memo
- E. Provide Releasable Records
 - (1) Delivery
 - (2) Providing Records for Redaction
 - (3) Transmit Response to FOIA Office
- F. Cost of FOIA Program
 - (1) Cost of SEC FOIA Program

9. FOIA Reports and Records

- A. FOIA Annual Report
- B. Aging Reports
- C. FOIA Records
- D. Custom Reports

10. FOIA Exemptions

11. FOIA and PA Training

- A. Training on the Statutes
- B. Training on SEC Liaison Guidance

12. FOIAXpress Guidance

- A. FOIA Tracking System
- B. Liaison Access to FX
- C. User Groups
- D. Changes or Additions to FOIA Liaison Designation
- E. FX User Guide
- F. FX Training

ATTACHMENTS:

- 1) FOIA and PA Reference Materials
- 2) Acknowledgement of FOIA and PA Processing Guidance for Liaisons
- 3) Guidance Revision Chronology

FOIA and PRIVACY ACT REQUEST PROCESSING GUIDANCE FOR LIAISONS

1. Introduction.

The Freedom of Information Act (FOIA) was passed by Congress in 1966 to provide the public with a right of access to federal government records. The FOIA gives the public the right to request access to records of the Executive Branch of government and agencies in turn are required to provide copies of those records to the requester except to the extent that any records, or portions of records, contain information that is exempt from mandatory disclosure.

The FOIA requires that when an agency receives a proper FOIA request, it has 20 working days in which to make a determination on the request. An agency is not necessarily required to release the records within that statutory time limit, but it must make its determination within that time and access to releasable records should, at a minimum, be granted promptly thereafter. The statutory 20 working day period commences on the date on which the request is first received by the FOIA Office, but in any event not later than ten days after the request is first received by any component of the agency. See 5 USC § 552(a)(6)(A)(ii). (Also see Paragraph 6.E. of this guidance.)

Initiated under President Obama, and continuing under President Trump, a “presumption of openness” is the guiding principle by which agencies are directed to manage their FOIA programs. The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. Agencies are encouraged to make discretionary releases of records. Further, agencies should not withhold records simply because a FOIA exemption may technically apply. Whenever full disclosure of a record is not possible, agencies are directed to consider whether a partial disclosure can be made.

On March 16, 2018, National Freedom of Information Day, Chairman Clayton emphasized the SEC’s commitment to open government when he stated:

Transparency and openness in government are at the heart of our democracy and the freedoms we hold dear. The author of our Constitution, James Madison, once explained, “The only guardian of true liberty is the advancement and diffusion of knowledge.”

2. Purpose.

The purpose of this guidance is to describe the basic processes and procedures for FOIA liaisons and staff of SEC divisions and program offices to assist the FOIA Office staff in processing requests under the Freedom of Information Act (5 U.S.C. 552) and Privacy Act (5 U.S.C. 552a). The Commission’s FOIA and Privacy Act regulations, 17 CFR § 200.80 and 17 CFR § 200.301, may be accessed via the FOIA page on the SEC’s public website. For your convenience, links to these materials and others can be found in the attachments to this guidance.

NOTE: This guidance document is not an all-inclusive guide to FOIA processing. Rather, it provides the most basic information and guidance needed by all FOIA Liaisons to be able to perform the role within the division or program office. Always contact the FOIA Research Specialist assigned to a request for more information regarding the processing of the request referral.

3. Overview of the SEC FOIA Program.

- A. **FOIA Program.** The purpose of the FOIA Program is to facilitate the Commission’s response to FOIA and Privacy Act requests and to manage the processing of requests, the tracking system, and reporting functions as mandated by law. All FOIA and PA requests received by the Commission are processed in the FOIA Office.
- B. **Office of FOIA Services.** The Office of FOIA Services, referred to hereinafter as the “FOIA Office,” is located in the Office of Support Operations (OSO). The FOIA Office is headed by the Commission’s FOIA Officer and the Director of OSO acts as the Chief FOIA Officer of the Commission. The [OSO Office organizational chart](#) is located on *The Exchange* Directory and a [FOIA staff listing](#) is on *The Exchange* FOIA page. The staff of the FOIA Office primarily consists of FOIA Research Specialists who are knowledgeable in the FOIA and PA statutes and searching Commission records and databases.
- C. **Centralized Processing.** The Commission has a *centralized* process for receiving and responding to FOIA and Privacy Act requests. Requests are considered “received” by the Commission when received in the FOIA Office. All requests are received, tracked and responded to by the FOIA Office. No other entity in the Commission responds to FOIA or PA requests. The FOIA Office staff receives and assigns tracking numbers for all incoming requests. FOIA Research Specialists perform a review of the request to be sure it meets the criteria of a FOIA request and then perform initial research on requests to determine which office(s) may hold records responsive to the request. The request may then be referred to a FOIA liaison(s) for the appropriate office(s). Once all research is completed and records responsive to the request have been received, the FOIA Office is responsible for preparing a final response to the requester and maintaining the Commission’s FOIA records.
- D. **Appeals.** The FOIA Office receives all incoming appeals of denials under the FOIA or PA, and assigns a tracking number to those appeal requests. Appeals are forwarded to the Office of the General Counsel (OGC) for processing. All appeals not received in the FOIA Office should be immediately forwarded to the FOIA Office for tracking.
- E. **Rule 83 Confidential Treatment (CT) Requests.** All submissions to the Commission including a request for confidential treatment (CT) under FOIA Rule 83 (17 CFR § 200.83) must include a copy of the CT request for the FOIA Office.

4. SEC Staff FOIA Responsibilities.

- A. **FOIA Responsibility Commission-wide.** All SEC employees may be called upon to locate or review documents that are responsive to a FOIA request. It is the responsibility of all employees to do so in a timely manner so that a prompt response can be provided to the requester. See the Chairman Clayton's 2020 National Freedom of Information Day announcement at: [\(b\)\(7\)\(E\)](https://(b)(7)(E))

(b)(7)(E)

B. **FOIA Liaisons in Divisions and Offices.**

- (1) **Designated FOIA Liaison.** Each division and program office director designates one or more FOIA liaison(s) as contact points for the FOIA Office and to receive and coordinate responses to FOIA requests which are referred to the division or program office. Each division and program office must have at least one staff member designated as the primary FOIA liaison. It is recommended that each primary liaison have at least one alternate. A FOIA liaison should be a staff member of sufficient grade or experience to be knowledgeable about the work and the records of the office. This staff member should be a sufficient subject matter expert and have the time and ability to accurately search for records, and/or direct or coordinate other staff members to conduct searches, and to perform document-by-document reviews, if necessary.
- (2) **FOIA Liaison Duties.** The FOIA liaison should be able to coordinate with the FOIA Office in order to provide a timely and accurate written response, which addresses the content and volume of the requested records and to provide a disclosure recommendation as prepared by the liaison or another staff member. FOIA liaisons should have knowledge of the law (FOIA and PA) which is commensurate with the volume and complexity of referrals to the program office. See paragraph 11. FOIA and PA Training. Each designated liaison will be asked to review this guidance annually and to sign and forward the acknowledgement set forth in paragraph 10.B. and ATTACHMENT 2.

- C. **FOIA Staff and Liaison Listing and e-mail accounts.** Listings of the [FOIA Office Staff](#) and the [FOIA liaisons](#) are maintained by the FOIA Office and posted on *The Exchange* web page. The FOIA Office also maintains e-mail distribution groups for liaisons, listed [\(b\)\(7\)\(E\)](#) by searching [\(b\)\(7\)\(E\)](#). Certain offices maintain their own FOIA mailboxes. These mailboxes are used to forward FOIA referrals to the liaison offices. FOIA liaison responses can be returned to the FOIA Office at [\(b\)\(7\)\(E\)](#) or sent directly to the FOIA Research Specialist who is processing the request. Liaisons may also send a copy of the response to the FOIA Manager. The FOIA Officer must be apprised of any changes to the FOIA liaison email designation.

5. Overview of Basic Request Process.

The basic process for responding to FOIA requests is as follows:

- A. Agency Receipt of Requests
- B. Initial Review and Research
- C. Referral to Office or Division FOIA Liaison
- D. Final Commission Response

A. Agency Receipt of Requests.

- (1) Receipt by FOIA Office. The FOIA Office receives all FOIA and Privacy Act requests and subsequent appeals, and Public Info requests by submission through the SEC's website at https://www.sec.gov/forms/request_public_docs#no-back, via e-mail account (foiapa@sec.gov), fax or postal mail. All types of requests are received in the FOIA Office 24 hours a day, 7 days a week. Although some requests are dated days or months in advance of receipt, the 20 workday statutory time frame for response does not begin until the request is received in the FOIA Office. FOIA requests must be in writing and can be submitted to any of the following:

SEC Office of FOIA Services

100 F Street NE

Mail Stop 2465

Washington, DC 20549

Via https://www.sec.gov/forms/request_public_docs#no-back

Via e-mail to: foiapa@sec.gov

Via Fax to: 202-772-9337

- (2) Receipt of Requests by Other Offices. Should any other office or employee receive a FOIA request or any request for non-public records from a member of the public, which is outside the normal course of business (or authority to release) for the receiving office or entity, the request should immediately be forwarded to the FOIA Office for tracking and coordination of response. Requests may be forwarded to foiapa@sec.gov, or the submitter may be advised to submit the request directly to the FOIA Office using the options listed above. The options are also listed on www.sec.gov/foia.
- (3) Assignment and Tracking. All requests and responses are tracked in the e-FOIA tracking system, FOIAXpress (FX), to ensure accuracy, completeness and consistency of responses within the Commission.

- B. Initial Review and Research. Each FOIA request is assigned to a FOIA Research Specialist within the FOIA Office whose role is to facilitate processing of the request within the appropriate time frame, as discussed in greater detail below. Once the request has been reviewed, the FOIA Office may contact the requester for further information or clarification, and/or may need to coordinate for additional processing time and for fees.

Agency Records Defined. Under the FOIA, “agency records” are records that are (1) created or obtained by an agency, and (2) under agency control at the time of the FOIA request. The term includes electronic media. The FOIA does not obligate an agency to create records that don’t already exist.

C. Referral to Office or Division FOIA Liaison.

- (1) Referral. After initial review and research is completed, the FOIA Research Specialist may forward the request to one or more program office or division FOIA liaison(s) for review of the request and to search for and provide responsive records or information back to the FOIA Office. The FOIA Office will issue a referral memo to the liaison(s) and attach a complete copy of the incoming request as well as describe any needed information. The full request is provided to the liaison to preclude any confusion regarding interpretation of the substance of the request.
- (2) Liaison Response. In response to the referral from the FOIA Office, the liaison will provide a recommendation describing the search conducted, the time taken to conduct the search, the volume of responsive records and the releasability in full or in part of those records; and if any records or portions thereof are to be denied, the FOIA exemption that should be cited. Depending on volume, all responsive records should be provided to the FOIA Office in unredacted form.

- D. **Final Commission Response.** Once a liaison response is received in the FOIA Office, the FOIA Research Specialist considers the recommendation of the liaison office and prepares a response to the request based upon the availability of responsive records and the applicability of FOIA exemptions. Final preparation of releasable records will be accomplished by the FOIA Office using FOIA-specific redaction tools in FOIAXpress.

6. General FOIA Processing Information.

- A. **Records Retention Schedule.** Certain defined agency records are maintained in accordance with the Commission’s Records Retention Schedule, as set forth by the Archivist of the Commission in the Office of Records Management Services/OSO. Records NOT destroyed pursuant to the retention schedule, even if they were supposed to have been destroyed, *are subject* to the FOIA. If requested records have been destroyed based on the schedule, the requester will be so notified. The SEC Records Retention Schedule is linked in ATTACHMENT 1.
- B. **Rule 83 Confidential Treatment (CT) Requests (17 CFR § 200.83).** Certain records submitted to the Commission, normally in conjunction with an Enforcement matter, may also have a submission requesting confidential treatment (CT) in the event that a FOIA request is received for the submitted materials. These requests for CT will be addressed by the FOIA Office. FOIA Liaisons should apprise the FOIA Office of any request for CT that relates to records responsive to a FOIA request.

- C. **Privacy Act Requests.** The FOIA Office processes all requests made under the Privacy Act. Privacy Act requests are those requests made by an individual concerning records relating to him or herself and retrieved by a personal identifier. Documents are subject to a request for access under the Privacy Act only where they are part of a Privacy Act system of records. If there is no applicable system of records, processing of an access request will occur under the FOIA. The Commission's Privacy Act system of records notices (SORN's) are published in the Federal Register and posted to the SEC's website at <https://www.sec.gov/oit/system-records-notice>.
- D. **Fees.** Fees for services provided in connection with requests made pursuant to the FOIA are charged by the Commission. A link to fee regulations can be located on the FOIA page of the Commission's external website at <https://www.sec.gov/foia/feesche.htm> (17 CFR § 200.80(g)).
- E. **Timeframe for Responding to Requests.** The FOIA Office uses a multitrack system for processing requests. Although the SEC's FOIA regulations allow for implementing additional tracks, the FOIA Office currently uses just three tracks: Simple, Complex and Expedited. The FOIA Office responds to requests according to their order of receipt within each track of the multitrack processing system.
- (1) **Simple Track Processing.** A determination whether to comply with a FOIA request shall be made within 20 working days from the date the FOIA Office receives it. In instances where a FOIA requester has misdirected a request to another division or office, the response time shall commence on the date that the request is first received by the FOIA Office, but in any event not later than 10 working days after the request is first received by any division or office of the Commission.
- A. **Unusual Circumstances.** For requests processed in the Simple Track, the FOIA Office may extend the 20 day time period for up to an additional 10 working days. To extend the time, the FOIA Office must notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request is expected to be completed. Unusual Circumstances include (a) the need to search for and collect records from separate offices; (b) the need to search for, collect, and examine a voluminous amount of records "demanded in a single request"; and (c) the need to consult with another agency or two or more agency components.
- (2) **Expedited Processing.** If a requester asks for and is granted "expedited treatment" the request will be responded to "as soon as practicable." The determination to grant or deny expedited processing will be made by the FOIA Office within 10 calendar days of receipt of the request. This determination is based upon demonstration by the requester of a compelling need as defined at 5 USC § 552 (a)(6)(E)(v), 17 CFR § 200.80(d)(7). Where a request has been granted expedited treatment, the FOIA liaison will be notified immediately so that processing may be prioritized accordingly.

- (3) Complex Track Processing. A request will be placed in the Complex Track if the estimated amount of work and/or time needed to process the request is such that it cannot be processed in the Simple Track. After consulting with the appropriate liaison(s), the FOIA Office will determine whether a request should be placed in the Complex Track.
- (4) Clarification or Narrowed Scope Needed. The FOIA allows agencies to toll the 20 day response period (i.e., Stop the clock) to obtain clarification from the requester one time during the processing of the request. However, the FOIA Office may contact the requester as many times as necessary in order to process the request.
- (5) Fee negotiations. The FOIA allows agencies to toll the 20-day response period (i.e., Stop the clock) as often as necessary to clarify fee-related issues.

F. Whistleblower/TCR Records. In searching for and reviewing records that are responsive to FOIA requests, (b)(7)(E) (b)(7)(E) whistleblowers (WB). A WB is a person who voluntarily provides the SEC with original information about possible violations of the federal securities laws.

The SEC's Office of the Whistleblower typically receives information from WBs through the SEC's on-line Tips, Complaints and Referrals (TCR) portal. Staff should be mindful that WBs may submit a TCR anonymously through an attorney representative. The SEC treats all tips, complaints and referrals as confidential and nonpublic.

As a general rule, the SEC will not disclose to external parties information that could reasonably be expected to directly or indirectly reveal the identity of a WB. **When it is determined that a FOIA request involves WB records or information, the following actions should be taken:**

1. FOIA Liaisons –

(b)(7)(E)

2. FOIA Research Specialists –

(b)(7)(E)

(b)(7)(E)

7. FOIA Office Responsibilities.

The basic FOIA Office processing responsibilities are as follows:

- A. Receipt of Requests
- B. Initial Review and Research
- C. Referral to Program Office Liaison(s)
- D. Preparing Responsive Records
- E. Preparing Agency Responses

A. Receipt of Requests.

- (1) Numbering and Tracking Requests. Upon receipt in the FOIA Office, all forms of requests and appeals are date-stamped, scanned into the FOIAXpress (FX) tracking system, and assigned a request tracking number. The requester is immediately issued a letter with notification of receipt of the request and given the request tracking number for future correspondence and to request a status. The request tracking number follows the format as shown in the example below:

19-01234-FOIA

The first 2 digits = fiscal year request received;

The next 5 digits = chronological number of request as received for the FY;

The suffix denotes the type of request. The following is a comprehensive list of the suffixes used for processing:

- APPS – Appeal
- C – FOIA Consultation from another agency
- CFOI – Request for Congressional records
- CHAI – Request directed to Chairman’s Office
- CONG – Request from Congressional
- E – Request for Exhibit to Public Filing
- FIFO – Complex
- FOIA – Freedom of Information Act request
- FOPA – FOIA and Privacy Act request
- FOIA/PE or FOPE – First-party privacy requests received from non-U.S. citizens/permanent resident aliens.
- GOVT – Government Agency request or referral to SEC
- OIG – Request for OIG records
- OIGP – First-Party request for OIG records
- REMD – Remanded on appeal
- T – Triage request

- (2) Assignment of Requests. Once a request is assigned a tracking number, the FOIA Officer or designee will review and assign the request to the appropriate FOIA Research Specialist for processing. The FOIA Research Specialist will make

determinations with regard to request scope, validity, expedition, fees/fee waivers, time frame for search, etc.

- (3) Appeals and Remands. The FOIA Office receives all incoming FOIA appeals, which are processed by the Office of the General Counsel (OGC). A FOIA requester may appeal any adverse determination. Adverse determinations include, but are not limited to, decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the requested record does not exist (or is not subject to the FOIA), cannot be located, or has previously been destroyed; or the requested record is not readily producible in the form or format sought by the requester. Adverse determinations also include designations of requesters' fee category, placement in the complex track, denials of fee waiver requests, or denials of requests for expedited processing. If submitted by U.S. mail or delivery service, the appeal must be sent to the Office of FOIA Services at 100 F Street NE, Washington, DC 20549. Appeals may also be made by facsimile at 202-772-9337, email (foiapa@sec.gov), or online at the Commission's website (<http://www.sec.gov>). A legible return address must be included with the FOIA appeal. Upon receipt, the FOIA Office inputs the appeal into FOIAXpress and assigns it a tracking number with the suffix "APPS." A copy of the appeal and the original request are forwarded to the OGC for direct response to the requester. The OGC staff may contact liaisons and other staff members directly, when making a determination on appeal. In the event of a remand, the FOIA Office will follow the direction of the Office of the General Counsel. Liaisons may receive referrals with a tracking number reflecting that the original response and recommendation has been "remanded" for re-processing. These requests will have the suffix "REMD."
- (4) Privacy Act and Privacy Act Requests for Amendment of Records (PAAM). The FOIA Office processes all requests made under the Privacy Act as well as Privacy Act Amendment of Records requests. Privacy Act requests are those requests made by an individual for records relating to him or herself and retrieved by a personal identifier. Documents are subject to the Privacy Act only where they are maintained in a system of records. The Commission's system of records notices (SORN's) are published in the Federal Register and posted to the SEC's website. All Privacy Act requests are also processed under the FOIA and are designated with the suffix "FOPA." Privacy Act request processes are found at 17 CFR §§ 200.301-313.

B. Initial Review and Research.

- (1) Reasonable Search. The FOIA staff assigned to a request will research the subject matter and determine the appropriate program offices and/or divisions where responsive records might be located. This initial search, as well as any additional search conducted by a FOIA Liaison and/or program office staff, is measured by a reasonableness standard. As a general rule, an agency must undertake a search that is reasonably calculated to uncover all relevant, responsive documents.

(2) Databases Searched. The FOIA Office will review the content of the request and search appropriate Commission databases (b)(7)(E) including internal and external websites, to determine the existence of responsive records, and how best to locate and obtain those records for review and processing under the FOIA. The FOIA Office will also determine the public availability of responsive records prior to referral to any FOIA liaison. Generalized internet searches, as well as searches of LexisNexis and PACER, will be conducted when deemed necessary. FOIA liaisons are obligated to search those systems to which FOIA staff do not have access (b)(7)(E)

C. Referral to Liaison(s). The FOIA Research Specialist assigned to process the request will forward an e-mail containing a FOIA Referral Memo to the appropriate liaison(s) including a copy of the FOIA request. All additional information in the case file can be viewed in FOIAXpress (See Paragraph 12. FOIAXpress Guidance). In addition, the liaison is asked to respond to the request within a specified period of time in order to comply with the statutory response time, including expedited treatment, as well as when an extension beyond the statutory timeframe has been secured. The referral memo may also include information the requestor has provided to assist with the search and/or information located by the FOIA Research Specialist linking the request to the specific program office or division.

D. Preparing Responsive Records.

- (1) Reviewing and Redacting Records. Once the FOIA Office obtains records and/or the liaison(s) have provided responsive records and recommendations, the FOIA Office has the responsibility to conduct a review of records deemed responsive and to officially redact and prepare those documents for release. The FOIA Office will input all responsive records into the FOIAXpress document management component, and will electronically apply a redaction layer to the records. Electronically redacted records can be reviewed by others prior to release. Records received by liaison offices should be free of redactions or other notations.
- (2) Requests for Confidential Treatment (CT) under Rule 83 (17 CFR § 200.83). Title 17 CFR § 200.83(a)(3) directs submitters of information to provide a copy of a written request for CT to the FOIA Office and to the Commission program office or division receiving the production. Program offices and divisions should maintain their copy of the CT request letter with the records for which protection is sought. When the FOIA Office is made aware of a request for CT (whether by correspondence provided directly to the FOIA Office from the submitter, by notice from the program office or division maintaining the records, or by notation on the records themselves), a FOIA Research Specialist will contact the submitter of the information to request a substantiation of the request for CT. The FOIA Office may seek the advice of the FOIA Liaison to review and comment/make determination on an incoming CT substantiation. Any adverse determination is appealable to OGC by both the FOIA requester and/or the CT submitter.

- (3) Publicly Available Records. In certain instances records that are responsive to a FOIA request might also be available elsewhere in the public domain (such as court records). Despite the public availability of the records, if the documents are deemed “agency records” within the meaning the FOIA, then the Commission is obligated to process them, albeit subject to exemption or exclusion. Certain records are made publicly available by posting to the Commission’s website. On occasion, public filings and other records are not posted although they should be publicly available. In these instances, a referral memo will be issued by the FOIA Office to obtain the records and/or request posting.

E. Preparing Agency Responses.

- (1) Interim, Partial and Final Responses. The FOIA Office is responsible for all communication with the requester including interim/status letters, and partial or full responses. The FOIA Office will input all responsive records into the electronic case file in FOIAXpress. All full and partial responses to a request are located in the FOIAXpress case file, which liaisons can view at any time.
- (2) Review of Final or Partial Response. Prior to release, final or partial FOIA responses may be provided as notification to the program office or division, the Office of Public Affairs, the Office of the General Counsel, the Office of Legislative Affairs and the Office of the Chairman. If a division or program office specifically wants to be notified of any response before it is released, the recommendation memo should include a request for program review of any release.
- (3) Calculate Fees and Invoice. Fees for services provided in connection with requests made pursuant to the FOIA are charged by the Commission. A link to fee regulations can be located on the FOIA page of the Commission’s external website at <https://www.sec.gov/foia/feesche.htm> (17 CFR § 200.80(g)). Certain types of requestors are eligible for fee reduction or waiver. The criteria for determining applicability of a fee waiver can be located at 17 CFR § 200.80(g)(12). The FOIA Research Specialist will make the decision regarding fee waivers or reductions and will prepare and issue an invoice to the requestor attached to an interim or final response.

8. FOIA Liaison Responsibilities.

The basic FOIA Liaison processing responsibilities are as follows:

- A. Review Request**
- B. Search or Coordinate Search for Records**
- C. Determine Search Results**
- D. Prepare Recommendation Memo**
- E. Provide Records**
- F. Monitor Cost**

- A. **Review Request.** Upon receipt of a FOIA referral memo, the liaison should *read the request carefully* to determine if paper or electronic records exist within the division or program office which may be responsive to the request. *Please note that liaisons are only required to conduct a reasonable search, not an exhaustive one.* The liaison should timely refer or notify others in the program office or division of the receipt of a FOIA request and refer that request (using internal office procedures) to persons within the office or division who have knowledge of the requested records. In the event the request is overly broad or complex, the FOIA Liaison should contact the FOIA Research Specialist to assist in processing.
- (1) **Clarification of request:** If the liaison needs clarification of the request, or feels it is too broad or complex and needs more information or a narrowing of the scope of the request in order to proceed, the liaison should contact the FOIA Research Specialist as soon as possible in order to continue processing of the request within the response time frame. The options to obtain clarification of the request are as follows:
- (a) In exceptional circumstances, the liaison may ask the FOIA Research Specialist to arrange a conference call or meeting with the requester to clarify the request, or
 - (b) The liaison may relay questions/concerns to the FOIA Research Specialist who will contact the requester. The requester may subsequently amend the request and the FOIA Research Specialist will inform the Liaison and note phone calls and contacts in the FX case file.
- (2) **Timeframe for response.** All FOIA Referral Memos require a response from the Liaison within the time frame specified in the Referral Memo. Regardless of when the request was received in the Commission, the liaison will generally be given ten (10) business days to provide a response to the FOIA Office. Depending on the nature of the request, more time may be allocated. If additional time is needed, the liaison should contact the FOIA Research Specialist as soon as possible to relay the need for additional time to the requester. Should the liaison not respond within the time frame provided, the FOIA Research Specialist will follow-up with an additional referral memo – and track the time frame for the liaison response. Non-response to a FOIA Referral Memo will result in contact by a FOIA Manager. (See Paragraphs 5.C. and 7.C. of this guidance).
- B. **Search or Coordinate Search for Records.** The liaison should determine if paper or electronic records exist within the division or program office which may be responsive to the request and use their knowledge of the office records as well as databases available within the office to search for records. The liaison may be the FOIA point of contact for the office but may not be responsible for search and review of records. The liaison should therefore refer or notify others in the program office or division of the receipt of a FOIA request and refer that request (using internal office procedures) to persons within the office or division who have knowledge of the requested records. The liaison should be familiar with the following procedures, and make those within the program office or division aware of the following, which may affect the response to the FOIA referral:

- (1) Records Retention and Disposition. (See Paragraph 6.A. of this guidance)
 - (a) Retired Records. Based on the Records Retention Schedule, if records have been retired to the Federal Records Center through Records Management, notify the FOIA Research Specialist who will obtain the records from Records Management.
 - (b) Destroyed Records. Based on the Records Retention Schedule, if records were considered “temporary” and have been destroyed please indicate to the FOIA Office that records have been destroyed and indicate the retention schedule.
 - (c) Retention Schedule Not Followed. If records should have been retired or destroyed, but were NOT as of the time the FOIA request was received, the records should be provided to the FOIA Office in response to the request.
- (2) Email Records. Please note that email records within the division or program office are often responsive to FOIA requests. For email that has not yet been archived, it is the responsibility of the FOIA liaison to have individual staff members or the office OIT specialist conduct a search that will produce the responsive email records. If the email records have been archived, please advise the FOIA Office and provide appropriate search terms so the OIT FOIA liaison can be contacted and a search can be conducted. Contact the FOIA Research Specialist with any questions regarding e-mail searches.
- (3) Records Generated or Held by Contractors. FOIA liaisons should be aware that records held by contractors are potentially responsive to FOIA requests. The FOIA liaison should contact the COTR for the specific contract to assist them in retrieving responsive records from the contractor. If the contractor and/or the FOIA liaison are concerned that the records may be proprietary in nature, or may not be “agency records” subject to potential disclosure, then the FOIA Research Specialist should be contacted so that a determination can be made. Proprietary information may be subject to a confidential treatment (CT) analysis as discussed in paragraphs 6.B. and 7.D. 2 of this guidance.
- (4) Voluminous Record Collections. If the volume of responsive records is such that the request cannot be processed within the statutory time frame associated with the Simple Track, the request may be deemed voluminous and placed within the Complex Track. The records must be retained so that when the FOIA request reaches the top of the Complex queue, they are available for processing.

C. Determine Search Results.

- (1) Provide Located Records. If the request is placed within the Simple or Expedited Track, the liaison program office should review each document and provide a release recommendation, along with copies of the responsive records. If records appear to be voluminous or complex, please see paragraph 6.E.3.

- (2) Withhold Located Records. If the FOIA liaison and/or record subject matter experts determine that an entire group of responsive records will be withheld pursuant to either FOIA exemption 7A or 8, a recommendation denying the records in their entirety must be provided to the FOIA Office; however, no records will be provided to the FOIA Office, unless the FOIA Office determines that a review is appropriate. In other limited circumstances, the FOIA liaison may recommend that responsive records should not be provided to the FOIA Office. In these instances, the FOIA Office will determine whether a review is necessary. A review of particularly sensitive records may be accomplished by the FOIA Research Specialist at the office or division that maintains such records.
- (3) Located Records Should be Public. If responsive records are located which are meant to be publicly available via SEC website (e.g. comment/response letters, paper filings...), but which are not posted to the Commission's website, the FOIA liaison should obtain the records and have them properly posted and notify the FOIA Office. If responsive records are publicly available elsewhere, the liaison should notify the FOIA Office where to locate them.
- (4) Duplicate Records. If responsive records exist in the program office, but may be duplicative and should be obtained from the office responsible for the official file or overarching collection of records, that program office or division should be identified and the FOIA Office should be notified to contact that office.
- (5) Records Not Located. If no responsive records are located within the liaison's program office, notify the FOIA Research Specialist of the search conducted and that no responsive records could be located. Provide information and/or what program entity may be able to provide responsive records, if known.
- (6) Other. Other search results may include:
- The records are lost or destroyed (if the RCS is known – please cite);
 - The records do not belong to the Commission (i.e., they originated with another Federal, State or local government agency, or non-government entity such as an exchange or FINRA);
 - The records are sealed or otherwise restricted by court order;
 - The Commission will neither confirm nor deny the existence of the requested records; or
 - Any other finding (including exclusions)

D. **Recommendation Memo**: All FOIA Referral Memos require a response from the liaison office via the FOIA liaison within the time frame specified in the Referral Memo. The response is provided to the FOIA Office in the form of a Recommendation Memo. The Recommendation Memo may be in *any format* but must include the items specified below as it will become part of the FOIA administrative record and will be stored in the FOIAXpress case file. Information within Recommendation Memos may form the basis for declarations used in support of FOIA litigation. A complete and accurate Recommendation Memo is critical in establishing a sound administrative record. Liaison

responses may be used in processing appeals and litigation in terms of content of response and in terms of adequacy of search and may be used to prepare declarations of fact for the court.

Therefore, all liaison responses must be accurate and reflect the items indicated in items 1-7 below, or they may be returned to the program office liaison:

FOIA RESPONSE RECOMMENDATION MEMO

1. Brief Description of Records: Description of requested records, or portion thereof, for which the program office has been asked to provide responsive records;
2. Description of Search: Description and method used to conduct search for responsive records, to include the volume of records searched if appropriate, and the system(s) searched, (e.g., CATS, NRSI, ACTS, IRIS, other database, paper, or other form of search tool). The systems searched might only direct the liaison to the specific program office staff that handled the responsive records. Greater detail about the responsiveness and volume of the records is often obtained from these individuals. The Description of Search should include a brief narrative describing the liaison's interaction with any other staff that assisted in locating records.
3. Records Located and Recommendation: (Select one or more of the following)
 - a) Records located and granted in full. If responsive records are located and provided to the FOIA Office with a recommendation of "Grant in Full."
 - b) Records located and released with redactions. If responsive records are located and provided to the FOIA Office with recommendations for redactions, a description of the basis for withholding should be provided. The FOIA exemptions are listed in Section 9. Records should be provided to the FOIA Office with either highlighted portions for redaction, or penciled brackets surrounding material recommended to be redacted.
 - c) Records located but voluminous. Provide the results of the search for responsive records – describe the responsive records located – provide the estimated volume of all responsive records – include whether an index is available for the responsive records. The FOIA Research Specialist will determine whether the request will be placed into the Complex queue.
 - d) Duplicate records. A finding that responsive records exist in the program office, but may be duplicative and should be obtained from the official file which is located in another program office or division and identify that office;
 - e) Records publicly available or made publicly available. If the responsive records are publicly available, or based on the FOIA request are made

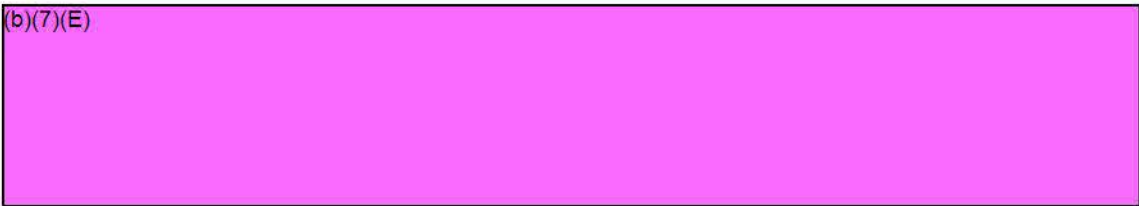
publicly available, state where these records can be located. If it is determined that the records are meant to be publicly posted, the FOIA liaison should coordinate the posting, and the Recommendation Memo should reflect the date of such posting and location.

f) Other findings:

- *There are no responsive records located in the program office;*
- *The records are lost or destroyed (if the RCS is known – please cite);*
- *The records do not belong to the Commission (i.e., they originated with another Federal, State or local government agency, or non-government entity such as an exchange or self-regulatory organization);*
- *The records are sealed or otherwise restricted by court order;*
- *The Commission will neither confirm nor deny the existence of the requested records; or*
- *Any other finding (including exclusions).*

4. Staffing resources used: *The name(s) of persons primarily involved in the records search, and an estimate of the time each person spent searching for records. This information will be used in the Annual FOIA Report and contribute to calculations on the cost of FOIA processing for the fiscal year. No salary or SK level is requested or needed.*
5. Sign and date: *The response should be signed or initialed and dated by the FOIA liaison. An e-mail signature is sufficient.*
6. Review of final or partial response. *If a division or program office specifically wants to be notified of the final response before it is released, or would like to view a copy of the response and responsive records, the Recommendation Memo should advise the FOIA Research Specialist accordingly.*

7. (b)(7)(E)



E. **Provide Releasable Records:**

- (1) Delivery. The FOIA liaison should forward to the FOIA Office unmarked copies of all responsive records via e-mail (b)(7)(E) whenever possible. Otherwise, deliver paper or electronic media to the FOIA Office via hand carry. Please contact the FOIA Research Specialist to arrange delivery. Please do not put responsive records in inter-office mail.

- (2) **Providing Records for Redaction:** Liaisons should also provide copies of the responsive records marked to show portions to be deleted under a FOIA exemption. *Do not provide originals and do not mark redactions on originals.* Liaison offices should not provide the FOIA Office with copies of redacted documents; rather, the liaison should indicate the records or portions thereof which are recommended for redaction by annotating a copy of the records with bracketing lines or paragraphs with a pale pencil or yellow highlighter. As an alternative to providing marked copies, a Liaison may instead include in the Recommendation Memo a line by line or page by page description of exempted materials. For information that the program office seeks to withhold, the liaison should provide the rationale for nondisclosure, either citing a specific FOIA exemption or providing a generalized reason (e.g. attorney work-product, exam report, interference with ongoing investigation). The FOIA Staff has the responsibility to redact the documents provided by the program office liaison(s) for public release. The FOIA Staff will prepare all correspondence to the FOIA requester, and process any records for release, applying exemptions where appropriate. The records, as redacted, should derive from a collaborative effort with the liaison. Information will be withheld only where such nondisclosure is supported by reference to 5 USC § 552, controlling case law and USDOJ Guidance. In circumstances where the program office or division and the FOIA Office cannot agree as to the disclosure or nondisclosure of records, the Office of the General Counsel may be consulted. Contact with the Office of the General Counsel should occur only after the program office or division and the FOIA Office have initially collaborated. The FOIA Office will input responsive documents into the FOIAXpress document management component and will electronically apply a redaction layer to the records. Electronically redacted records can be reviewed by others prior to release.
- (3) **Transmit Response to the FOIA Office:** Liaison responses (Recommendation Memos and records) should be e-mailed to (b)(7)(E) with a copy of the e-mail to the FOIA Research Specialist who sent the referral. If necessary, the responsive records may be hand carried to Room 2465, or the specialist can be contacted for pick-up. Responsive records should not be placed in inter-office mail.

F. Cost of FOIA Program.

- (1) **Cost of SEC FOIA Program.** All Federal agencies must report, on a fiscal year basis, the cost of their FOIA Program via the Annual FOIA Report (See Paragraph 8.A. FOIA Annual Report.) The FOIA Office will ask Liaisons to report their cost information when it prepares the Annual FOIA Report in October of each year, unless the Liaison provided the information during the fiscal year.

9. FOIA Reports and Records.

- A. **FOIA Annual Report.** The FOIA requires that agencies produce a report of all FOIA activities on a fiscal year basis to the Department of Justice (DOJ). The Commission's Annual FOIA Reports are posted on the FOIA page at www.sec.gov. The Annual FOIA

Report is prepared during October through December of each year. Liaisons may be contacted to provide or clarify information regarding the processing of referrals sent to their office during the fiscal year. The contact would primarily be to provide input in determining the cost of the FOIA processing to the Commission for the fiscal year.

- B. **Aging Reports.** The FOIA Officer routinely runs reports via FOIAXpress to determine what requests remain open and aging and determine why certain requests remain unresolved. There are many reasons why a request remains open for a long period of time, including the complexity or volume of the request; the need to consult with other agencies; the confidential treatment substantiation process; and litigation. The lack of response from a liaison office is another common reason why requests remain open. When a liaison office does not reply to a FOIA referral, this information may be reported via the Chief Operating Officer's (COO) Dashboard report as overdue FOIA requests. The FOIA liaison will be notified prior to escalating the issue and the program office or division will be given every opportunity to resolve the request prior to escalation to the Chairman's level via the COO report.
- C. **FOIA Records.** The FOIAXpress system contains the official electronic case file for all FOIA and PA requests. Liaisons are not required to do any official recordkeeping regarding FOIA requests. FOIA, Privacy Act and appeal files are considered temporary administrative records and are maintained government-wide in accordance with the National Archives General Records Schedule (GRS) Number 4.2: Information Access and Protection Records. The FOIA Liaison may provide any information pertinent to the request to the FOIA Office for placement in the electronic case file. The FOIA Staff will scan or import any record provided by the liaison into the case file.
- D. **Custom Reports.** The FOIAXpress system can generate a wide variety of reports including workload reports by program or division office. The Liaison has access to FX in order to generate reports and may request that the FOIA Office assist in setting up reports frequently used by the program or division office. The Liaison may also request of the FOIA Office, at any time, a workload report pertaining to any particular program or division, or based on any type of request statistics pertaining to the FOIA program. To request a custom report, please contact the FOIA Officer or send an e-mail to foiapa@sec.gov.

10. FOIA Exemptions.

Below are the nine exemptions to releasing information enumerated at 5 USC § 552(b)(1) – (9):

| | |
|---|--|
| 1 | Classified national defense and foreign relations information. |
| 2 | Internal agency personnel rules and practices. |
| 3 | Information that is prohibited from disclosure by another federal law. |
| 4 | Trade secrets and commercial or financial information obtained from a person that is privileged or confidential. |

| | |
|---|---|
| 5 | Inter-agency or intra-agency memoranda or letters that are protected by legal privileges. |
| 6 | Personnel, medical, financial, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. |
| 7 | Certain types of information compiled for law enforcement purposes. |
| 8 | Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions. |
| 9 | Geological and geophysical information and data, including maps, concerning wells. |

11. FOIA and PA Training.

- A) **Training on the Statutes.** Liaisons may obtain training on the FOIA and Privacy Acts through the following sources via [links](#) on the FOIA/PA *Exchange* page:
- SEC University contracts for FOIA/PA training annually or bi-annually;
 - Department of Justice (DOJ);
 - ASAP (American Society of Access Professionals);
 - Graduate School (formerly USDA Graduate School).
- B) **Training on SEC Liaison Guidance.** Liaisons will utilize this guidance for instruction in FOIA and Privacy Act processing within the Commission. All liaisons are asked to read the guidance document and provide the FOIA Office with verification that the guidance has been reviewed and understood. The FOIA Office will offer training on this guidance to all liaisons as well as staff of program offices and divisions upon request. All liaisons needing additional training or additional guidance may contact the FOIA Officer to arrange such training. Liaisons may complete and send the attached ***Acknowledgement of FOIA and Privacy Act Processing Guidance for Liaisons (Attachment 2)*** or may send an e-mail acknowledging their review and understanding of the guidance. The e-mail may be sent to the FOIA Officer via foiapa@sec.gov.

12. FOIAXpress Guidance.

- A. **FOIA Tracking System.** FOIAXpress (FX) is an electronic document management system. The system is a tool whereby the FOIA staff can track, coordinate, and respond to FOIA/PA requests as well as appeals, subsequent remands, and all public info and other types of requests processed in the FOIA Office. All requests received in the FOIA Office are entered into the FX system and an electronic case file is created. All process-related documents are electronically generated or scanned in and managed electronically. The system tracks and monitors progress on the complete casework associated with a

request. The system does not track the substantive workload that goes on at the liaison office level.

- B. **Liaison Access to FX.** All FOIA liaisons have read-only access to FOIAXpress. The FOIA staff does all data entry in the FX System. Existing users may access the system via *The Exchange* under (b)(7)(E) by clicking on e-FOIA. New users may request access to FOIAXpress by contacting the FOIA Office on 202-551-7900.
- C. **User Groups.** All liaisons are placed in a user group for their division or program office in FOIAXpress, and in an e-mail account for the user group. Referrals are forwarded to FOIA liaisons via the e-mail account which is embedded in FOIAXpress.
- D. **Changes or Additions to FOIA Liaison Designation.** Any changes or additions to the FOIA liaison(s) for an office should be promptly e-mailed to the FOIA Officer at foiapa@sec.gov. All changes to the liaison list, the FOIAXpress user group and the #FOIA Outlook e-mail accounts are managed by the FOIA Officer.
- E. **FX User Guide.** The [Records and FOIA](#) webpage on *The Exchange* contains detailed information on the use of FOIAXpress (FX) for liaisons.
- F. **FX Training.** All liaisons and other SEC staff with access to FOIAXpress may request on-site training at any time by contacting the FOIA Officer at foiapa@sec.gov.

ATTACHMENT 1

FOIA and PA Reference Materials

- A. **External website.** The public FOIA website located at <http://www.sec.gov/foia.shtml>, provides access to information regarding the Commission's FOIA program, How to File FOIA, Privacy Act and Confidential Treatment (Rule 83) Requests, as well as requests for public records.
- B. **Internal website:** The Records and FOIA *Exchange* page located at: [\(b\)\(7\)\(E\)](https://(b)(7)(E)) provides internal guidance and information for FOIA liaisons and all Commission staff. Where possible we have included links to these reference materials:
- Chairman Clayton's Memo: [\(b\)\(7\)\(E\)](https://(b)(7)(E))
 - From the President: Memorandum for the Heads of Executive Department and Agencies on the FOIA (From DOJ's website): (<https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/presidential-foia.pdf>), and
 - From the Attorney General: Memorandum for the Heads of Executive Departments and Agencies on the FOIA (From DOJ's website): (<https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>).
- C. **SEC Regulations, Notices and Privacy Act Systems of Records Notices (SORNs):**
- [SEC FOIA Regulations](#) (17 CFR § 200.80);
 - [SEC Privacy Act Regulations](#) (17 CFR § 200.301);
 - SEC Privacy Act System of Records Notices (SORN's) (<http://www.sec.gov/about/privacy/secprivacyoffice.htm>);
 - SEC Confidential Treatment Rule 83 ([SEC FOIA Regulations](#)) (17 CFR § 200.83);
 - SEC Annual FOIA Reports (<https://www.sec.gov/oso/foia-reports.html>);
 - SEC Records Retention Schedule: [\(b\)\(7\)\(E\)](https://(b)(7)(E)) and [\(b\)\(7\)\(E\)](https://(b)(7)(E))
 - FOIA/PA Training availability ([\(b\)\(7\)\(E\)](https://(b)(7)(E))).
- D. **Statutes and DOJ Guidance:**
- [The Freedom of Information Act \(5 USC 552\);](#)
- [The Privacy Act \(5 USC 552a\);](#)
-

- Department of Justice Guide to the FOIA (<https://www.justice.gov/oip/doj-guide-freedom-information-act-0>);
- Department of Justice FOIA Post (includes on-going litigation updates, Attorney General Announcements and information for the FOIA community) (<http://www.justice.gov/oip/foiapost/mainpage.htm>);
- National FOIA Portal (<https://www.foia.gov/>);

E. Additional FOIA Reference sites. There are a variety of websites and blogs relating to the FOIA and processing. The most comprehensive listing would be available by searching the internet by FOIA keywords.

ATTACHMENT 2

**Acknowledgement of FOIA and Privacy Act
Processing Guidance for Liaisons**

I have reviewed the FOIA and Privacy Act Processing Guidance for Liaisons and understand that it sets forth the policy of the Office of FOIA Services with respect to the responsibilities of all FOIA Liaisons within each Commission component.

FOIA Liaison Signature

FOIA Liaison Printed Name

Date

ATTACHMENT 3**- REVISION CHRONOLOGY -**

| | |
|-------------------------|---|
| <i>June 30, 2010</i> | <i>Initial Version of Liaison Guidance, as released on July 1, 2010;</i> |
| <i>August 27, 2010</i> | <i>Revision released to update paragraphs 3.B.; 7.B.; and 8.B. to further define responsibilities for conducting document search and review.</i> |
| <i>August 29, 2011</i> | <i>Complete revision to initial version issue.</i> |
| <i>July 29, 2015</i> | <i>Revision released to incorporate an Introduction paragraph on Page 5, updated FIFO criteria in paragraph 6.E.(3), incorporating FOIA suffix "T" for Triage in paragraph 7.A.(1), deleting references to "PUBS", and replacing Chair Schapiro's Memo Website link with Chair Mary Jo White's Memo in Attachment 1 of FOIA and PA Reference Materials.</i> |
| <i>November 6, 2018</i> | <i>Revision to incorporate changes from the FOIA Improvement Act of 2016.</i> |
| <i>June 4, 2019</i> | <i>Revision to add, remove, and update hyperlinks due to the launch of the new SEC intranet, The Exchange, which replaced the Insider.</i> |
| <i>May 21, 2020</i> | <i>Revision to incorporate guidance for processing Whistleblower/TCR Records.</i> |

**SEC FOIA/PA OFFICE
POLICY AND PROCEDURES
MEMORANDUM (PPM) # 20-01**

TO: ALL FOIA/PA STAFF
FROM: RAY MCINERNEY, FOIA OFFICER
SUBJECT: PROTECTING WHISTLEBLOWER INFORMATION
DATE: FEBRUARY 22, 2021

1. **PURPOSE:** The purpose of this PPM is to provide FOIA staff with guidance in processing FOIA requests in which whistleblower records may be included.
2. **POLICY:**
 - a. 15 U.S.C. § 78u-6: “[T]he Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower...”
 - b. In complying with the Whistleblower statute referenced in 2.a. above, extreme care must always be used when processing a FOIA request that potentially contains whistleblower (WB) records. We are all responsible for taking steps to protect WB information. If we have any reason to believe that records responsive to a FOIA request may contain WB material, we must take steps to ensure that the WB information in the file is handled correctly to safeguard a whistleblower’s identity from disclosure.
3. **STEPS FOR ENSURING WHISTLEBLOWER CONFIDENTIALITY:**
 - a. Always review the records, even if the recommendation received was that the records are releasable in full.
 - 1) Look through the records even if they have previously been released before we release them again.
 - There may have been an inadvertent release, or OFS guidance may have changed since the records were originally reviewed.
 - b. Look for signs of whistleblower activity as you review the records.
 - 1) Does anyone mention a whistleblower in any of the records?

This policy memo is for internal FOIA/PA Office use only.

- 2) Does anyone mention a TCR filing?
- 3) Does anyone mention information they submitted to the SEC?
- c. If we suspect or know that there is something related to a whistleblower in the responsive records, stop and investigate further.
 - 1) Notify your Branch Chief.
 - 2) Your Branch Chief will request that the Enforcement Liaison Branch Chief determine whether the records relate to a whistleblower.
 - 3) (b)(7)(E)
 - 4) Your Branch Chief will cc: the FOIA Officer on the inquiries.

d. (b)(7)(E)

4. (b)(7)(E)

a. (b)(7)(E)

b.

c.

d. (b)(7)(E)

e.

f.

g.

5. FOIA PROCESSING AID:

a. (b)(7)(E)

6. QUESTIONS: Please contact your Branch Chief with any questions about this PPM.

Page 4 of 4

Withheld pursuant to exemption

(b)(7)(E)

of the Freedom of Information and Privacy Act

From: McInerney, Raymond
Sent: Thu, 31 Mar 2022 14:45:55 +0000
To: Burrows, Indria N.;Churchman, Tina;Fulton, Charlotte;Hall, Ronnye L.;Hansen, Joel;Jackson, Warren;Luetkenhaus, Jason;Mandic, Frank;Morrow, Alysia;Neilson, Curtis A;Osborne, Sonja;Rollins, Carl;Smith, LaKisha R.;Taylor, Felecia;Walker, Gloria H (Contractor);McEachin, Benjamin (Contractor);Lelma, Joan (Contractor);Emmer-scott, Valerie (Contractor);Hagans, Evelyn (Contractor);Bona, Linda (Contractor);Moschak, Jill (Contractor);Harrod, LaWanna (Contractor)
Cc: Katilius, Lizzette;Taylor, Aaron;Mallon, Carmen;Hyde-Michaels, Carrie;Santos, Adrienne;Siford, Mark P.
Subject: Foreseeable Harm Standard - New Policy Effective Immediately
Importance: High

Good morning everyone,

At our last all-hands meeting, I mentioned that Attorney General Merrick Garland issued comprehensive [new FOIA guidelines](#) on March 15, 2022. The AG's memo includes the following guidance:

4. To help ensure proper application of the foreseeable harm standard, agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

Basically what this is referring to is that before withholding a record, or portion of a record, we must reasonably foresee that disclosure would harm an interest protected by one of the FOIA's exemptions. We expect OIP to issue guidance in the near future addressing the new guidelines and how agencies should be integrating them into their operations to improve FOIA administration. In the meantime, we have added the following language – highlighted in yellow – to the appropriate template letters in FX (this is from a (b)(6) denial letter):

The enclosed ## pages are released with the exception of **third-party names and telephone numbers**. This information is withheld under 5 U.S.C. § 552(b)(6), because the release of these records would constitute a clearly unwarranted invasion of personal privacy. **Please be advised that we have considered the foreseeable harm standard in preparing this response.**

I am the deciding official with regard to this adverse determination. You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

However, if you have a separate folder of letters that you regularly use to generate response letters (instead of using the FX templates), please make sure that this language is included in all responses where the foreseeable harm standard was considered.

If you have any questions, please ask your Branch Chief.

Thanks,
Ray

From: McInerney, Raymond
Sent: Fri, 17 Jul 2020 15:57:26 +0000
To: #OSO\OFS
Subject: New Process for Contracts Requested Under FOIA
Importance: High

Hi everyone,

Over the past several weeks, we have been working with OA and other offices to build on our existing process for handling contract documents requested under FOIA. The new process outlined below includes a few new steps aimed at identifying the business office(s) that a particular contract belongs to so that we can coordinate with them at different points throughout the processing of the request. I've highlighted the new steps in yellow. OA has agreed to the new process, so we'll start using it effective immediately. Any communications we have with the business offices regarding their contract records will be channeled through our regular FOIA liaisons for each division/office. If you have any questions please ask me or your Branch Chief. Thanks.

1. OFS receives a FOIA request seeking contract records.
2. OFS sends a referral memo to OA requesting the contract records.
3. OA searches for and locates the responsive records and identifies the lead business office and any other offices associated with the contract.
4. OA produces the responsive records and business office information to OFS.
5. OFS notifies the business office(s) that a FOIA request has been received asking for a contract that falls under its/their purview.
6. OFS initiates the submitter notice process pursuant to Executive Order 12,600, whereby the contractor is notified that their contract with the SEC has been requested under the FOIA and they are afforded the opportunity to state their objections to the release of any of the information contained in the contract. If the contractor fails to respond or request an extension within the allotted time frame (10 business days), OFS assumes that the contractor does not have any objections to disclosure of the information.
7. Upon receiving a response from the contractor, or after 10 business days have elapsed without a response, OFS sends the contractor's response, or an email indicating there was no response from the contractor, to OA for the CO's awareness.
8. Once the CO acknowledges receipt of the contractor's response/non-response, OFS reviews the records and asserts any applicable exemptions to the information contained therein.
9. OFS consults with the relevant business office(s) regarding the proposed release.

10. If OFS proposes to release any information over the contractor's objections, OFS must provide the contractor with notice of the release 10 business days prior to actually making the release to allow the contractor to file suit in Federal Court to prevent the SEC from releasing the information.
11. Upon resolving any issues with the contractor and/or business office(s), OFS sends the records to the requester and closes the request.

OFS = Office of FOIA Services

OA = Office of Acquisitions

CO = Contracting Officer

From: McInerney, Raymond
Sent: Tue, 15 Dec 2020 17:11:59 +0000
To: Anderson, Clarissa;Burrows, Indria N.;Churchman, Tina;Fulton, Charlotte;Gbenou, Amy;Green-Hill, Chauntice;Hall, Ronnye L.;Hansen, Joel;Jackson, Warren;Johnson, Everene E.;Luetkenhaus, Jason;Madison, Wilton;Mandic, Frank;Moody, Denise R.;Morrow, Alysia;Neilson, Curtis A;Osborne, Sonja;Reid, Kay;Rollins, Carl;Smith, LaKisha R.;Taylor, Felecia;Walker, Gloria H (Contractor);McEachin, Benjamin (Contractor);Lelma, Joan (Contractor);Emmer-scott, Valerie (Contractor);Johnson, Michael (Contractor);Hagans, Evelyn (Contractor);Magere, Laura (Contractor);Graves, JoAnn (Contractor)
Cc: Katilius, Lizzette;Taylor, Aaron;Mallon, Carmen;Hyde-Michaels, Carrie;Santos, Adrienne;Siford, Mark P.
Subject: Requests seeking Form PF data
Attachments: FOIA appeal decision - Appeal No. 21-00020-APPS
Importance: High

Hi everyone,

There is a new template letter in FX called "Form PF data" that we will use to respond to any new requests asking for Form PF data. Previously, we denied access to Form PF data pursuant to Exemption 3 (Investment Advisers Act). However, after further consultation with OGC regarding the attached appeal decision, we have decided to treat any new requests asking for Form PF data as improper FOIA requests since Form PF data is exempt from the provisions of the FOIA. Additionally, we will not send acknowledgement letters for any new requests asking for Form PF data. OFS received fewer than 10 requests asking for Form PF data in FY2020.

If you have any questions about this please ask me or your Branch Chief.

Thanks,
Ray

From: Tallarico, Mark
Sent: Tue, 24 Nov 2020 12:03:07 -0500
To: McInerney, Raymond;Katilius, Lizzette;Mallon, Carmen;Hyde-Michaels, Carrie;Santos, Adrienne;Taylor, Aaron;FOIA Appeal Decisions;Siford, Mark P.
Subject: FOIA appeal decision - Appeal No. 21-00020-APPS
Attachments: 21-00020 Malakar decision.pdf

Attached is our appeal decision for FOIA Appeal No. 21-00020-APPS (Request No. 21-00352-FOIA). The FOIA Office asserted FOIA Exemption 3 to withhold Form PD data. In reviewing this matter and the underlying statute governing the SEC's use and maintenance of PF data, we determined that Form PF data is excluding from the FOIA requirements (search, review and disclosure) similar to the way Congress excluded CIA operational files. Please see the attached decision for a more in-depth discussion. (b)(5)

(b)(5)

Please let me know if you have any questions concerning this decision. Thank you.

Mark Tallarico
Senior Counsel
Office of the General Counsel
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
202.551.5132

(b)(6) [@sec.gov](mailto:(b)(6)@sec.gov)



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

Stop 9613

November 24, 2020

Via electronic mail

(b)(6)

Mr. Baridhi Malakar

(b)(6)

Re: Appeal, Freedom of Information Act Request No. 21-00352-FOIA, designated on appeal as No. 21-00020-APPS

Dear Mr. Malakar:

This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Officer's denial of your November 9, 2020 FOIA request for Form PF data for the period of 2012 to 2020. By letter dated November 9, 2020, the FOIA Officer denied your request pursuant to 5 U.S.C. § 552(b)(3), and specifically, Section 204(b) of the Investment Advisors Act of 1940 (15 U.S.C. § 80b-4(b)).

On November 10, 2020, you filed this appeal. Initially, you seek to narrow the scope of your request from all Form PF data to only data from Section 1 (with the names/identities of investment advisors recoded/redacted) and Section 3, Item E (Portfolio Information), of Forms PF. You ask that the SEC "release a redacted subset as an exercise of its discretionary powers." I have considered your appeal, and it is denied.

In several instances, Congress has excluded certain records or agencies from the public disclosure requirements of the FOIA. For example, 50 U.S.C. § 3141 authorizes the Central Intelligence Agency to exempt certain operational files from the search, review, and disclosure requirements of the FOIA.¹ Congress also exempted the First Responder Network Authority (FirstNet)² from the FOIA and more broadly the Administrative Procedure Act.³

¹ 50 U.S.C. § 3141(a) ("The Director of the Central Intelligence Agency, with the coordination of the Director of National Intelligence, may exempt operational files of the Central Intelligence Agency from the provisions of section 552 of title 5 (Freedom of Information Act) which require publication or disclosure, or search or review in connection therewith.").

² FirstNet is an independent entity within the Department of Commerce's National Telecommunications and Information Administration.


³ See *Whitaker v. Dep't of Commerce*, 970 F.3d 200, 204-06 (2nd Cir. 2020) (concluding that "FirstNet is exempt from FOIA" based on a provision of FirstNet's enabling statute, 47 U.S.C. § 1426(d)(2), which provides that "[a]ny action

The Form PF data you seek is similarly excluded from the search, review, and disclosure requirements of the FOIA. Section 204(b)(10)(A) of the Investment Advisers Act (“Advisers Act”) states that the “Commission, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the Commission under this subsection, shall be exempt from the provisions of section 552 of title 5, United States Code, with respect to any such report, document, record, or information.”⁴ Because the Form PF data that the SEC obtains from investment advisers (and that you seek) falls within the types of information identified in section 204(b) of the Advisers Act (“Records and Reports of Private Funds”),⁵ it is not subject to the search, review, or disclosure requirements of the FOIA.⁶

The Form PF data cannot be discretionarily released as requested in your appeal. Section 204(b)(8) of the Advisers Act specifically provides that the “Commission may not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection,” except when such report or information is requested from Congress (upon an agreement of confidentiality), another Federal agency or self-regulatory organization, or pursuant to a court order.⁷ As none of those exceptions exist here, the SEC cannot discretionarily release any Form PF data to you.

You have the right to seek judicial review of my determination by filing a complaint in the United States District Court for the District of Columbia or in the district where you reside or have your principal place of business.⁸ Voluntary mediation services as a non-exclusive alternative to litigation are also available through the National Archives and Records Administration’s Office of Government Information Services (OGIS). For more information, please visit www.archives.gov/ogis or contact OGIS at ogis@nara.gov or 1-877-684-6448. If you have any questions concerning my determination, please contact Mark Tallarico, Senior Counsel, at 202-551-5132.

For the Commission
by delegated authority,



Melinda Hardy
Assistant General Counsel for
Litigation and Administrative Practice

taken or decisions made by [FirstNet] shall be exempt from the requirements of ... chapter 5 of title 5 (commonly referred to as the Administrative Procedure[] Act”).

⁴ 15 U.S.C. § 80b-4(b)(10)(A).

⁵ 15 U.S.C. § 80b-4(b).

⁶ The FOIA Office’s assertion of Exemption 3 is vacated because the information you seek is not subject to public disclosure under the FOIA.

⁷ 15 U.S.C. § 80b-4.

⁸ See 5 U.S.C. § 552(a)(4)(B).

From: McInerney, Raymond
Sent: Mon, 25 Jan 2021 21:51:02 +0000
To: Anderson, Clarissa;Burrows, Indria N.;Churchman, Tina;Fulton, Charlotte;Hall, Ronnye L.;Hansen, Joel;Jackson, Warren;Johnson, Everene E.;Luetkenhaus, Jason;Mandic, Frank;Moody, Denise R.;Morrow, Alysia;Neilson, Curtis A;Osborne, Sonja;Reid, Kay;Rollins, Carl;Smith, LaKisha R.;Taylor, Felecia;Walker, Gloria H (Contractor);McEachin, Benjamin (Contractor);Lelma, Joan (Contractor);Emmer-scott, Valerie (Contractor);Johnson, Michael (Contractor);Hagans, Evelyn (Contractor);Magere, Laura (Contractor)
Cc: Katilius, Lizzette;Taylor, Aaron;Mallon, Carmen;Hyde-Michaels, Carrie;Santos, Adrienne;Siford, Mark P.
Subject: Updated refer to web instructions and revised (b)(7)(E) language
Importance: High

Hi everyone,

I mentioned before that we were going to be making some changes to the language in our RTW and (b)(7)(E) response letters. The boilerplate language that we came up with is included below. While this language will probably work for most RTW (public Edgar) (b)(7)(E) responses, please remember that you may need to tailor the language in some instances depending on the specific subject/parameters of the request you're processing. Branch 3 will be updating the respective template letters in FX shortly. Please ask me or your Branch Chief if you have any questions regarding any of this.

Thanks,
Ray

Updated RTW instructions:

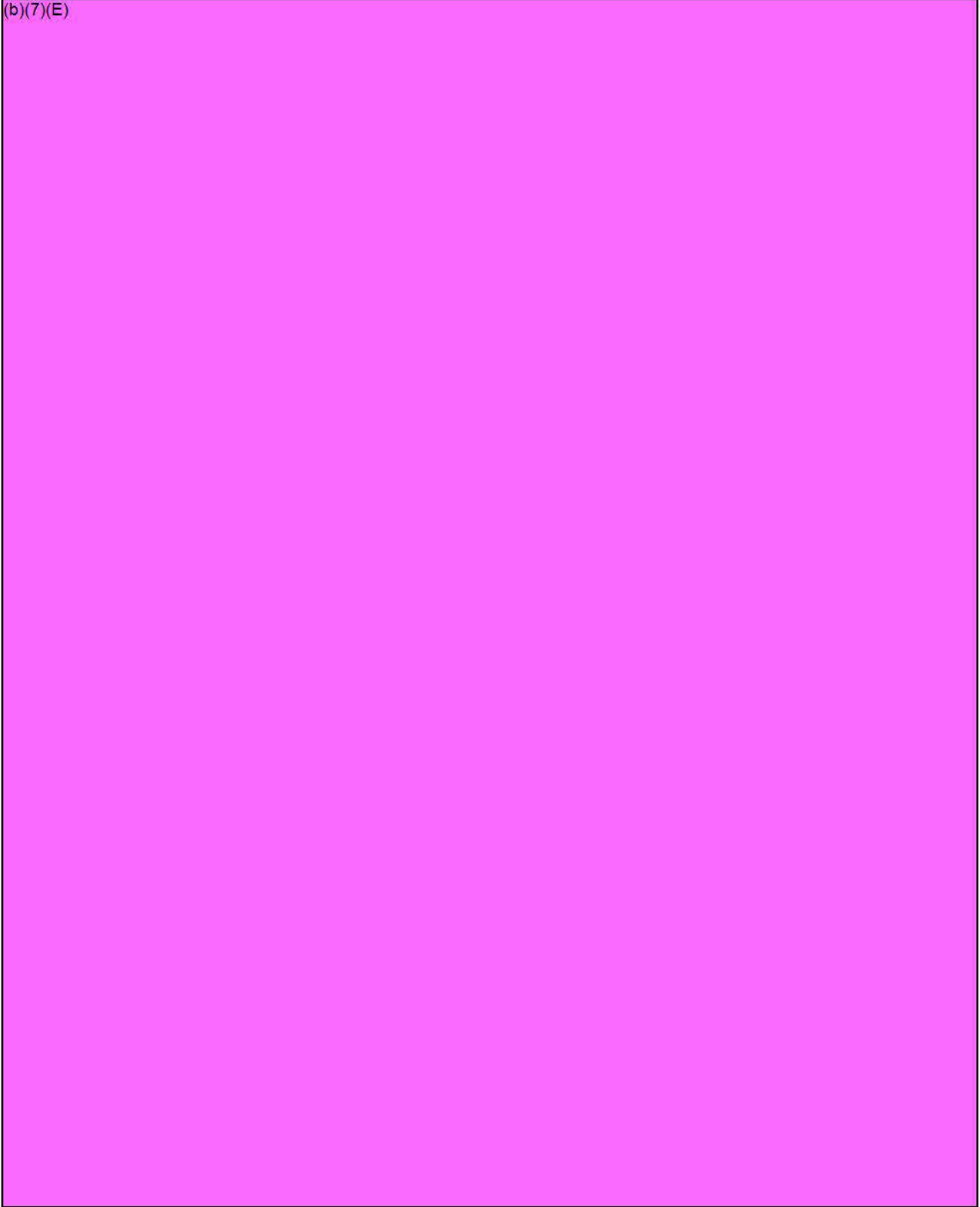
The records you requested are publicly available on our website at www.sec.gov. The instructions to access the records you are seeking are as follows:

- 1) Click "Company Filings" in the upper right-hand corner of the [SEC homepage](#);
- 2) Type in the company's name or CIK number under "Company and Person Lookup" and click "Search";
- 3) If more than one company name appears, click the CIK number of the company of interest to you;
- 4) For each filing of interest to you, select "Documents" under the "Format" column; and
- 5) Select the red hyperlink for each filing under the "Document" column to view that filing.

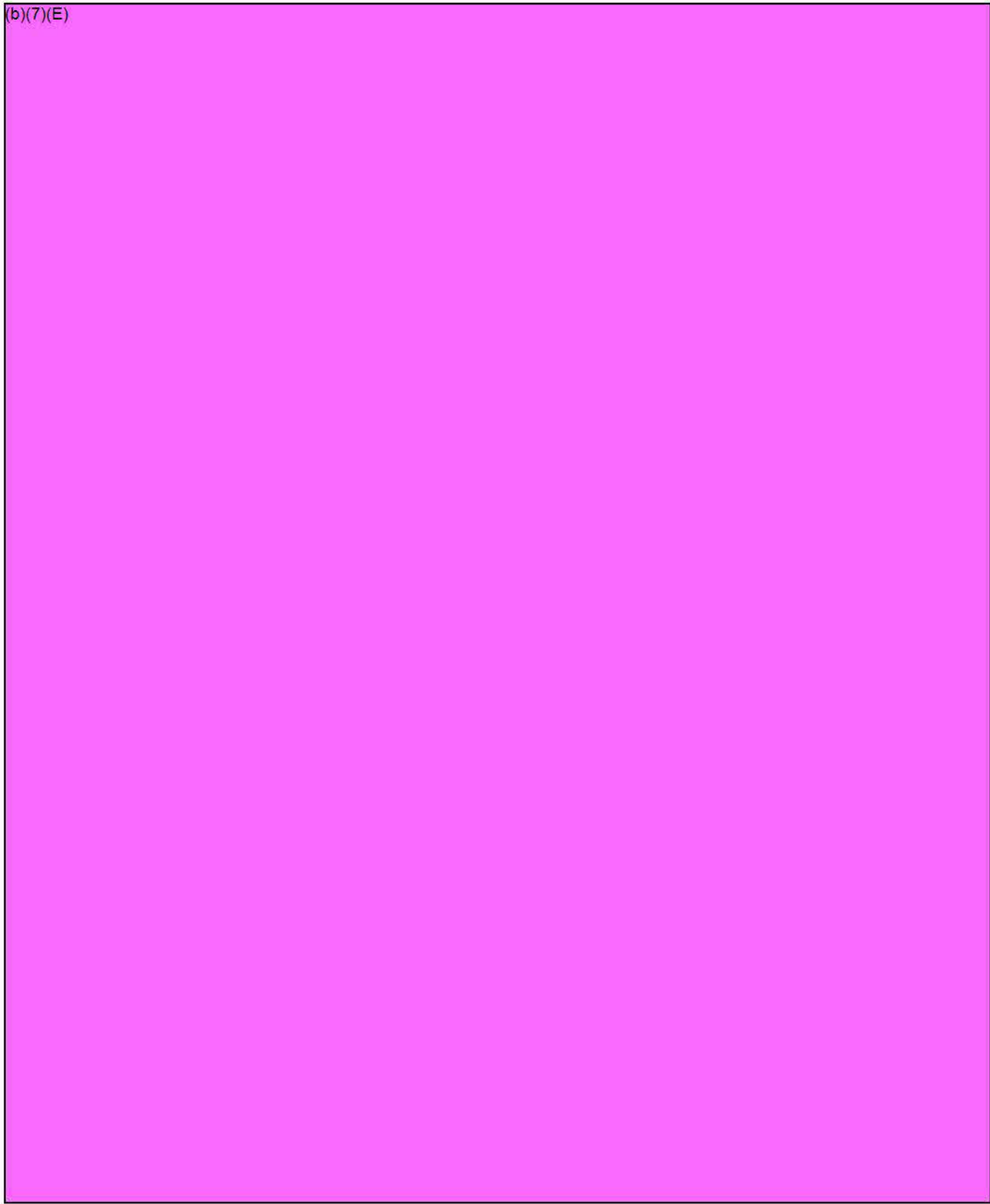
Please note that you can search for different types of filings (e.g., Form 10-K) by searching in the "Filing Type" box in the "Filter Results" area. You may also visit the [SEC's](#)

[public Edgar page](#) for additional information and instructions for searching the Edgar database.

(b)(7)(E)



(b)(7)(E)



From: McInerney, Raymond
Sent: Wed, 11 May 2022 20:51:15 +0000
To: Burrows, Indria N.;Churchman, Tina;Fulton, Charlotte;Hall, Ronnye L.;Hansen, Joel;Jackson, Warren;Luetkenhaus, Jason;Mandic, Frank;Morrow, Alysia;Neilson, Curtis A;Osborne, Sonja;Rollins, Carl;Smith, LaKisha R.;Taylor, Felecia;Walker, Gloria H (Contractor);McEachin, Benjamin (Contractor);Lelma, Joan (Contractor);Emmer-scott, Valerie (Contractor);Hagans, Evelyn (Contractor);Bona, Linda (Contractor);Moschak, Jill (Contractor);Harrod, LaWanna (Contractor)
Cc: Katilius, Lizzette;Taylor, Aaron;Mallon, Carmen;Hyde-Michaels, Carrie;Santos, Adrienne;Siford, Mark P.
Subject: (c)(1) Exclusion - Policy change effective immediately
Importance: High

Good afternoon everyone,

(b)(5)

Effective immediately, all recommendations indicating that the (c)(1) should be invoked must be vetted through OGC and, if appropriate, DOJ's Office of Information Policy. The Branch Chiefs will do all of the required vetting after you notify them that (c)(1) was recommended for a particular matter. Again, it does not matter what the final disposition of the request will ultimately end up being. Anytime we receive a recommendation indicating that (c)(1) should be invoked, we must go through the process of confirming whether the (c)(1) recommendation is appropriate.

(b)(5)

(b)(5)

If you have any questions, please ask me or your Branch Chief.

Thanks,
Ray

From: McInerney, Raymond
Sent: Wed, 19 May 2021 19:08:48 +0000
To: Anderson, Clarissa;Burrows, Indria N.;Churchman, Tina;Fulton, Charlotte;Hall, Ronnye L.;Hansen, Joel;Jackson, Warren;Johnson, Everene E.;Luetkenhaus, Jason;Mandic, Frank;Moody, Denise R.;Morrow, Alysia;Neilson, Curtis A;Osborne, Sonja;Reid, Kay;Rollins, Carl;Smith, LaKisha R.;Taylor, Felecia;Walker, Gloria H (Contractor);McEachin, Benjamin (Contractor);Lelma, Joan (Contractor);Emmer-scott, Valerie (Contractor);Johnson, Michael (Contractor);Hagans, Evelyn (Contractor);Siford, Mark P.
Cc: Katilius, Lizzette;Taylor, Aaron;Mallon, Carmen;Hyde-Michaels, Carrie;Santos, Adrienne
Subject: -COV requests
Attachments: COVID Requests - All Branches.xlsx
Importance: High

Hi everyone,

All of the requests you reported as having COVID-related delays have been assigned a corresponding –COV request number in FX. The requests will be placed in a –COV queue, similar to the way we handle Complex track requests, until we resume normal operations. The requests will no longer be assigned to a particular specialist while in the –COV queue and the requests will be processed on a First-In, First-Out basis when we are able to do so.

Please follow the next steps outlined below for each –COV request that was originally assigned to you:

1. In the original request, send the –COV letter to the requester (FX correspondence template “COV Queue Letter”). Please note that you will have to manually enter the –COV request number and the date by which the requester must respond if they want to withdraw/narrow/modify their request. You will have to refer to the COVID spreadsheet to obtain the correct –COV request number to insert into the subject line of the letter (the spreadsheet is attached and it can also be found on the (b)(7)(E) (b)(7)(E)
2. Once the –COV letter is sent to the requester, close the original request as a duplicate (DUP) of the –COV request and cancel any pending RFD(s) with the program office(s). We will send a new RFD when we are able to process the request.
3. If by the 10 day deadline –
 - a. The requester has not responded – no need to do anything. The request will remain in the –COV queue until we are able to process it.
 - b. The requester responds to narrow or modify the request – process the narrowed/modified request under the –COV number if you can (if the requester’s attempt to narrow/modify isn’t enough to allow us to process the request given our current mandatory telework posture, then the request will have to remain in the –COV queue until we are able to process it).
 - c. The requester withdraws their request – close the –COV number.

For any new requests that need a –COV request number, please consult with your Branch Chief as you identify these so we can keep the COVID queue up-to-date.

This is a priority item for OFS. Please complete this by Wednesday, May 26, 2021 and report back to your Branch Chief once complete.

If you have any questions please ask your Branch Chief.

Thanks,
Ray

From: McInerney, Raymond
Sent: Fri, 25 Oct 2019 15:22:47 +0000
To: Ahaghotu, Kelechi (Contractor);Anderson, Clarissa;Burrows, Indria N.;Churchman, Tina;Emmer-scott, Valerie (Contractor);Fulton, Charlotte;Gbenou, Amy;Graves, JoAnn (Contractor);Green-Hill, Chauntice;Hall, Ronnye L.;Hansen, Joel;Jackson, Warren;Johnson, Everene E.;Johnson, Michael (Contractor);Lelma, Joan (Contractor);Luetkenhaus, Jason;Madison, Wilton;Magere, Laura (Contractor);Mandic, Frank;McEachin, Benjamin (Contractor);Moody, Denise R.;Morrow, Alysia;Neilson, Curtis A;Osborne, Sonja;Reid, Kay;Rollins, Carl;Siford, Mark P.;Smith, LaKisha R.;Taylor, Aaron;Taylor, Felecia;Walker, Gloria H (Contractor)
Cc: Livornese, John J.;Katilius, Lizzette;Ovall, Jeffery L (b)(6) @SEC.GOV);Taylor, Aaron;Mallon, Carmen;Hyde-Michaels, Carrie;McInerney, Raymond
Subject: Fee Waiver and Expedited Processing Requests
Importance: High

Hi everyone,

We all know how important it is to the success of the FOIA program that we keep FX up-to-date in real time. If we don't, then the information we use to conduct briefings on FOIA issues may be flawed, or the data we have to supply for various data calls and metrics may not be reliable. There are other problems that can occur as well if we're not vigilant about keeping FX updated in real time, none of which reflect well on the FOIA Office.

One aspect of FOIA administration at the SEC that we're going to be closely monitoring is the time that it takes us to adjudicate fee waiver and expedited processing requests. (b)(5)

(b)(5)



(b)(5)

(b)(5)

If you have any questions please
see your Branch Chief.

Thanks,
Ray

From: McInerney, Raymond
Sent: Wed, 22 Jan 2020 11:22:18 -0500
To: #OSO\OFS
Subject: Updated Guidance on Processing FOIA Requests for Draft Registration Statements and Related Correspondence
Attachments: Guidance on FOIA requests for Draft Registration Statements.pdf
Importance: High

Hi everyone,

The attached guidance regarding draft registration statements (DRS) was issued in December 2017. The guidance directs OFS (b)(5) (b)(5) However, it became apparent during the processing of a couple of recent requests that the 2017 guidance needed to be updated. Accordingly, below is the new guidance to follow whenever you receive a request for a DRS and/or the related filing review correspondence (i.e., comment and response letters).

(b)(5)



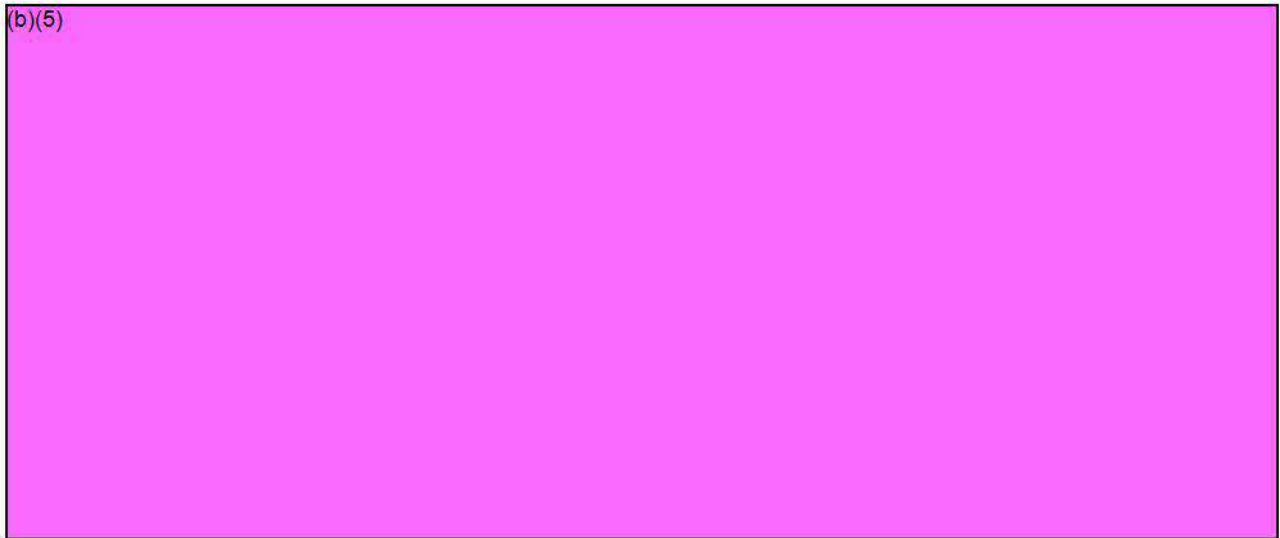
(b)(5)



(b)(5)



(b)(5)



If you have any questions about any of this, please come talk to me or see your Branch Chief. Thanks.

Subject: FW: Policy change effective immediately
Importance: High

From: Katilius, Lizzette

Sent: Tuesday, March 03, 2020 11:22 AM

To: Churchman, Tina (b)(6)@SEC.GOV>; Hansen, Joel (b)(6)@SEC.GOV>; Lelma, Joan (Contractor) (b)(6)@SEC.GOV>; Mandic, Frank (b)(6)@sec.gov>; McEachin, Benjamin (Contractor) (b)(6)@SEC.GOV>; Neilson, Curtis A (b)(6)@SEC.GOV>; Taylor, Felecia (b)(6)@sec.gov>

Subject: FW: Policy change effective immediately

Importance: High

(b)(5)

(b)(5)

Let me know if you have any questions. Thanks

From: McInerney, Raymond

Sent: Tuesday, March 03, 2020 10:57 AM

To: Katilius, Lizzette ; Ovall, Jeffery L. ; Taylor, Aaron ; Mallon, Carmen ; Hyde-Michaels, Carrie

Subject: Policy change effective immediately

Importance: High

(b)(5)

(b)(5) let me know if you have any questions. Thanks.

(b)(5)

