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Description of document: US Department of Justice (DOJ) Office of Information Policy (OIP) template paragraphs used for responses to FOIA requests and appeals and OIP Administrative Appeal Letter Database, 2011

Requested date: 10-October-2011

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Source of document: FOIA Request
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Department of Justice
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U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

DEC 22 2011

Re: OIP/12-00051 (F)
CLM:VRB:CMW

This responds to your Freedom of Information Act (FOIA) request dated October 10, 2011, and received in this Office on October 20, 2011, in which you requested copies of template paragraphs used for responses to FOIA initial requests and administrative appeals. This response is made on behalf of the Office of Information Policy (OIP).

I have enclosed a copy of the current template language used by this Office for FOIA initial request response letters. I have determined that these documents, totaling thirty-three pages, are appropriate for release without excision. Please note that these templates are used for reference only, and are adapted as appropriate by OIP's Initial Request Staff on a case-by-case basis. Accordingly, they should not be construed as "official" language.

Also enclosed is a copy of the current OIP Administrative Appeal Letter Database, totaling thirty-nine pages, which I have determined is appropriate for release without excision. Please note that in several instances, this appeal standardized language is pending. Furthermore, the appeal database does not contain fee or fee waiver language. I am including, however, as a courtesy to you, templates currently used for fee matters. All such language is under review for standardization and incorporation into this database.

Although portions of this material could be withheld pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), I have determined in this instance that such material may be disclosed as a matter of agency discretion.

Finally, by letter dated November 27, 2011, you expressed concern regarding our interpretation of your request. I understand that pursuant to a November 30, 2011 conversation with Douglas Hibbard of this Office, this concern has been resolved. If this is not correct, please feel free to contact us again. I apologize for any confusion caused by our prior response.

Inasmuch as this constitutes a full grant of your request, I am closing your file in this Office.

Sincerely,

Carmen L. Mallon
Chief of Staff

Enclosures

Standard Acknowledgment Letter Blitz

INTRODUCTION

(One of these options is required)

[] When OIP receives request directly from requester

This is to acknowledge receipt of your Freedom of Information Act [/Privacy Act] request dated [date], and received in this Office on [date], in which you requested [subject of request]. This response is made on behalf of the Office(s) of [list Office(s)].

[] When OIP received request from Mail Referral Unit but it was not addressed to them

We have received your Freedom of Information Act [/Privacy Act] request seeking [subject of request]. Because your request was not specifically addressed to this Office, your letter was initially sent to the FOIA/PA Mail Referral Unit, Justice Management Division, for appropriate routing and was not received by this Office until [date]. This response is made on behalf of the Office(s) of [list Office(s)].

[] When OIP received request from Mail Referral Unit because it was addressed to them

We have received your Freedom of Information Act [/Privacy Act] request seeking [subject of request]. Because you directed your request to the FOIA/PA Mail Referral Unit, Justice Management Division, for appropriate routing, it was not received by this Office until [date]. This response is made on behalf of the Office(s) of [list Office(s)].

[] When OIP receives request from another Department component or federal agency (other than the Mail Referral Unit)

This is to acknowledge receipt of your Freedom of Information Act [/Privacy Act] request dated [date], and received in this Office on [date], in which you requested [subject of request]. Your letter was originally directed to the [component/agency]. That [component/agency] forwarded your request to this Office, which is processing it on behalf of the Office(s) of [list Office(s)].

[] When OIP received request from another Department component or federal agency who themselves received it from yet a third component/agency

This is to acknowledge receipt of your Freedom of Information Act [/Privacy Act] request dated [date], and received in this Office on [date], in which you requested [subject of request]. Your request was originally directed to the [component/agency #1], which forwarded your request to the [component/agency #2]. Subsequently, the [component/agency #2] referred your request to this Office, which is processing it on behalf of the Office(s) of [list Office(s)].

FAILURE TO MEET 20-DAY REQUIREMENT

(One of these options is required)

- [] When we will not be able to comply with the requirement because of the need to conduct a search in at least one SMO office**

The records you seek require a search in another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. We have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in about a month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the [simple OR complex] track. In an effort to speed up our records search, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing, should records be located; or you may wish to await the completion of our records search to discuss either of these options.

- [] When we will not be able to comply with the requirement because, although the search is done, we need to review voluminous amounts of material**

We have conducted (a) search(es) in the Office(s) of [list Office(s)] and located a voluminous amount of records which may be responsive to your request. Due to the need to examine a voluminous amount of records, your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. The time needed to process your request will necessarily depend on the volume and complexity of the records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in about a month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the [simple OR complex] track. In an effort to respond more quickly to you, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing.

- [] When we will not be able to comply with the requirement because, although the search is done, we need to review material that requires consultation**

We have conducted (a) search(es) in the Office(s) of [list Office(s)] and located records which may be responsive to your request. Because the records you seek contain

information of interest to other [Department components/federal agencies], we can respond only after consulting with [name(s) of component(s)/agen(cy)(cies)] regarding [their/its] information. See 28 C.F.R. § 16.4(c)(1) (2011). Accordingly, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. The time needed to process your request will necessarily depend on the volume and complexity of the records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in about a month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the [simple OR complex] track. In an effort to respond more quickly to you, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing.

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FEES

(One of these options is required)

[] When requester does not indicate either their fee category or a willingness to pay a specific amount

In accordance with Department of Justice regulation 28 C.F.R. § 16.3(c) (2011), this letter also confirms your agreement to incur all applicable fees involved in the processing of your request, up to the amount of \$25.

[] When requester does not indicate their fee category but does indicate a willingness to pay a specific amount

In accordance with Department of Justice regulation 28 C.F.R. § 16.3(c) (2011), this letter also confirms your agreement to incur all applicable fees involved in the processing of your request, up to the amount of \$25. In your letter you agreed to pay fees up to \$[100].

[] When requester asks for a fee waiver

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

[] When a requester asks for a fee waiver and indicates a willingness to pay a specific amount should the waiver be denied

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. In your letter you agreed to pay fees up to \$[100] in the event that a fee waiver is not granted.

[] When requester asks for a fee waiver and is a media requester

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. As a “representative of the news media,” you will not be charged search fees.

[] When a requester asks for a fee waiver, is a media requester, and indicates a willingness to pay a specific amount should the waiver be denied

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. As a “representative of the news media,” you will not be charged search fees. In your letter you agreed to pay fees up to \$[100] in the event that a fee waiver is not granted.

MISCELLANEOUS ITEMS

(As applicable)

[] When we receive a request from the Mail Referral Unit and they also routed the request other Department components

I understand that your letter has also been forwarded by the FOIA/PA Mail Referral Unit, Justice Management Division, to [list component(s)] for processing and direct response to you.

[] When we route a request to another component for processing

We have also directed a copy of your request to the [*Department component*] for processing and direct response to you. You may contact the [*Department component*] at the following address:

[*Department component contact information*]

CLOSING
(Always required)

[] Standard closing

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact me by telephone at the above number or you may write to me at Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison at the telephone number listed above to discuss any aspect of your request.

Expedition Acknowledgment Letter Blitz

INTRODUCTION

(One of these options is required)

[] When OIP receives request directly from requester

This is to acknowledge receipt of your Freedom of Information Act [/Privacy Act] request dated [date], and received in this Office on [date], in which you requested [subject of request]. This response is made on behalf of the Office(s) of [list Office(s)].

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This is to acknowledge receipt of your Freedom of Information Act [/Privacy Act] request dated [date], and received in this Office on [date], in which you requested [subject of request]. Your request was originally directed to the [component/agency #1], which forwarded your letter to the [component/agency

#2]. Subsequently, the [component/agency #2] referred your request to this Office, which is processing it on behalf of the Office(s) of [list Office(s)].

REQUEST FOR EXPEDITION

(One of these options is required)

[] Request not properly made

In your letter you requested expedited processing of this request. For your request to be considered for expedited processing, your letter must indicate the basis on which you seek such treatment. Requests will be taken out of chronological order based on the date of receipt and given expedited treatment only when it is determined that they involved: (1) circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (2) an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; (3) the loss of substantial due process rights; or (4) a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. See 28 C.F.R. § 16.5(d)(1) (2011). This Office makes the determination regarding the first three categories and the Department's Director of Public Affairs makes the decision regarding the fourth category. See id. § 16.5(d)(2). Requesters seeking expedited processing are required to submit a statement explaining in detail the basis for their request for expedited processing. See id. § 16.5(d)(3). This statement must be certified to be true and correct. See id. You have not provided such a statement. As a result, this request for expedited processing is not properly made. Once the required certified explanation of the basis for seeking expedited processing is provided, we will make a decision under the appropriate standard. Nevertheless, please be advised that your request has been assigned to a FOIA Specialist in this Office and (a) records search(es) (has/have) been initiated in the Office(s) of [list Office(s)].

[] Standard (i)

You have requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests based on circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. See 28 C.F.R. § 16.5(d)(i) (2011).

[] Expedition denied under Standard (i)

Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. Your letter fails to explain how access to the requested records would alleviate a specific threat to the life or physical safety of an individual.

[] Standard (ii)

You have requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See C.F.R. § 16.5(d)(ii) (2011).

[] Expedition denied under Standard (ii) based on lack of urgency

Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. This Office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally. Please be advised that, although your request for expedited processing has been denied; it has been assigned to a FOIA Specialist in this Office and (a) records search(es) (*has/have*) been initiated in the Office(s) of [*list Office(s)*].

[] Expedition denied under Standard (ii) based on not being media

Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. The primary activity of your organization does not appear to be information dissemination, which is required for a requester to qualify for expedited processing under this standard.

[] Standard (iii)

You have requested expedited processing of your request pursuant to the Department's standard involving the "loss of substantial due process rights." See 28 C.F.R. § 16.5(d)(iii) (2011).

[] Expedition denied under Standard (iii) based on lack of substantial risk

Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. Courts are reluctant to grant expedited processing unless a requester can show (1) "that [he] is facing grave punishment [in a criminal proceeding], and (2) that there is reason

to believe information will be produced to aid the individual's defense.”
Freedman v. United States Department of Justice, No. 92-0557, slip op. at 4
(D.D.C. Oct. 2, 1992). Neither of these circumstances are present here. Please be
advised that, although your request for expedited processing has been denied; it
has been assigned to a FOIA Specialist in this Office and (a) records search(es)
(has/have) been initiated in the Office(s) of [list Office(s)].

[] Expedition granted under Standard (i), (ii), or (iii)

Based on the information you have provided, I have determined that your request
for expedited processing should be granted. Accordingly, your request has been
assigned to a FOIA Specialist in this Office and (a) records search(es) (has/have)
been initiated in the Office(s) of [list Office(s)].

[] Standard (iv)

You have requested expedited processing of your request pursuant to the
Department's standard involving “[a] matter of widespread and exceptional media
interest in which there exist possible questions about the government's integrity
which affect public confidence.” See 28 C.F.R. § 16.5(d)(iv) (2011). Pursuant to
Department policy, we directed your request to the Director of Public Affairs,
who makes the decision whether to grant or deny expedited processing under this
standard. See id. § 16.5(d)(2).

[] Expedition granted under Standard (iv)

The Director has determined that your request for expedited processing should be
granted. Accordingly, your request has been assigned to a FOIA Specialist in this
Office and (a) records search(es) (has/have) been initiated in the Office(s) of [list
Office(s)].

**[] Expedition denied under Standard (iv) based on lack of widespread or
exceptional interest**

The Director has determined that your request for expedited processing should be
denied. (He/She) does not believe that your request is the subject of widespread
and exceptional media interest. Please be advised that, although your request for
expedited processing has been denied; it has been assigned to a FOIA Specialist
in this Office and (a) records search(es) (has/have) been initiated in the Office(s)
of [list Office(s)].

**[] Expedition denied under Standard (iv) based on lack of questions about
government integrity**

The Director has determined that your request for expedited processing should be
denied. (He/She) does not believe that your request pertains to a matter “in which

there exist possible questions about the [federal] government's integrity which affect public confidence." Please be advised that, although your request for expedited processing has been denied; it has been assigned to a FOIA Specialist in this Office and (a) records search(es) (has/have) been initiated in the Office(s) of [list Office(s)].

[] PAO has yet to make determination under Standard (iv) but ten days are up

Please be advised that as of the date of this letter, that determination is still pending with the Office of Public Affairs. Once we have received notification of the Director's decision, we will promptly notify you. Nevertheless, please be advised that your request has been assigned to a FOIA Specialist in this Office and (a) records search(es) (has/have) been initiated in the Office(s) of [list Office(s)].

FAILURE TO MEET 20-DAY REQUIREMENT WHEN EXPEDITION IS DENIED

(One of these options is required)

[] **When we will not be able to comply with the requirement because of the need to conduct a search in at least one SMO office**

The records you seek require (a) search(es) in another Office [or other offices], and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. We have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in about a month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the [simple OR complex] track. In an effort to speed up our records search, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing, should records be located; or you may wish to await the completion of our records search to discuss either of these options.

[] **When we will not be able to comply with the requirement because, although the search is done, we need to review voluminous amounts of material**

We have conducted (a) search(es) in the Office(s) of [list Office(s)] and located a voluminous amount of records which may be responsive to your request. Due to the need to examine a voluminous amount of records, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. The time needed to process your request will necessarily depend on the volume and complexity of the records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in about a month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the [simple OR complex] track. In an effort to respond more quickly to you, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing.

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We have conducted (a) search(es) in the Office(s) of [list Office(s)] and located records which may be responsive to your request. Because the records you seek contain information of interest to other [Department components/federal agencies], we can respond only after consulting with [name(s) of component(s)/agency(cies)] regarding [their/its] information. See 28 C.F.R. § 16.4(c)(1) (2011). Accordingly, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. The time needed to process your request will necessarily depend on the volume and complexity of the records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in about a month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the [simple OR complex] track. In an effort to respond more quickly to you, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing.

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FAILURE TO MEET 20-DAY REQUIREMENT WHEN EXPEDITION IS GRANTED

(One of these options is required)

[] When we will not be able to comply with the requirement because of the need to conduct a search in at least one SMO office

Although your request has been granted expedited processing, we are required to advise you that the records you seek require (a) search(es) in another Office [or other offices], and so your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Your request has been assigned to the expedited track, and will be processed as soon as practicable.

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In accordance with Department of Justice regulation 28 C.F.R. § 16.3(c) (2011), this letter also confirms your agreement to incur all applicable fees involved in the processing of your request, up to the amount of \$25. In your letter you agreed to pay fees up to \$[100].

☐ **When requester asks for a fee waiver**

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

- ☐] **When a requester asks for a fee waiver and indicates a willingness to pay a specific amount should the waiver be denied**

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. In your letter you agreed to pay fees up to \$[100] in the event that a fee waiver is not granted.

- ☐] **When requester asks for a fee waiver and is a media requester**

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. As a “representative of the news media,” you will not be charged search fees.

- ☐] **When a requester asks for a fee waiver, is a media requester, and indicates a willingness to pay a specific amount should the waiver be denied**

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. As a “representative of the news media,” you will not be charged search fees. In your letter you agreed to pay fees up to \$[100] in the event that a fee waiver is not granted.

MISCELLANEOUS ITEMS

(Only when applicable)

- ☐] **When we receive a request from the Mail Referral Unit and they also routed the request other Department components**

I understand that your letter has also been forwarded by the FOIA/PA Mail Referral Unit, Justice Management Division, to [list component(s)] for processing and direct response to you.

- ☐] **When we route a request to another component for processing**

We have also directed a copy of your request to the [Department component] for processing the direct response to you. You may contact the [Department component] at the following address:

[Department component contact information]

CLOSING

(One of these options is required)

- ☐] **Expedition granted**

If you have any questions or wish to discuss the processing of your request, you may contact me by telephone at the above number or you may write to me at Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison at the above telephone number to have any concerns you may have addressed.

☐ **Expedition denied** (both paragraphs)

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact me by telephone at the above number or you may write to me at the above address. In addition, you may contact our FOIA Public Liaison at the telephone number listed above to discuss any aspect of your request.

If you are not satisfied with my denial of your request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Your appeal must be received within sixty days from the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Standard Interim Response Blitz

INTRODUCTION

(One of these options is required)

[] When OIP received request from requester

This is an interim response to your Freedom of Information Act [/Privacy Act] (FOIA) request dated [date], and received in this Office on [date], for records pertaining to [subject of request]. This response is being made on behalf of the Office(s) of [list Office(s)].

[] When OIP received request from requester's counsel

This is an interim response to the Freedom of Information Act [/Privacy Act] (FOIA) request of your client(s), dated [date], and received in this Office on [date], for records pertaining [subject of request]. This response is being made on behalf of the Office(s) of [list Office(s)].

[] When OIP was referred documents from another component/federal agency

While processing your Freedom of Information Act [/Privacy Act] (FOIA) request dated [date] for records pertaining to [subject of request], the [Department component or federal agency] referred [number] document(s), totaling [number] page(s), to this Office for processing and direct response to you on behalf of the Office(s) of [list Office(s)]. For your information, the documents were received by this Office on [date].

NO RECORDS

(As appropriate)

[] No records located in AG/DAG/ASG and Exec Sec

Please be advised that a search has been conducted in the Office(s) of [list Office(s)], as well as of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office(s) [list Office(s)], and no records responsive to your request have been located.

[] No records located in Exec Sec, AG/DAG/ASG not searched

Please be advised that a search has been conducted of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office(s) of [list Office(s)], and no records responsive to your request have been located.

[] No records located in OLA/PAO/OIPL/OLP/OIP

Please be advised that a search has been conducted in the Office(s) of *[list Office(s)]* and no records responsive to your request have been located.

[] No records located in Exec Sec, OLA not searched

Please be advised that a search has been conducted of the electronic database of the Departmental Executive Secretariat, which maintains certain Office of Legislative Affairs records, *[including records of Department correspondence]*, and no records responsive to your request have been located.

[] Indices searched in addition to Exec Sec

We also conducted a search of the records indices of the *[administration(s) of former Attorney General.../Office of...]*. The indices supplement the electronic database of the Departmental Executive Secretariat and list file folder titles, arranged according to subject, for the records of former Office of *[list Office(s)]* staff.

SEARCH COMPLETED WITH DOCUMENTS LOCATED

(As appropriate)

[] Search has been completed in AG/DAG/ASG and Exec Sec with records located

Please be advised that a search has been conducted in the Office(s) of *[list Office(s)]*, as well as of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office(s) *[list Office(s)]*, and *[number]* record(s), totaling *[number]* page(s), have been located that are responsive to your request.

[] Search has been completed in Exec Sec with records located, AG/DAG/ASG not searched

Please be advised that a search has been conducted of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office(s) of *[list Office(s)]*, and *[number]* record(s), totaling *[number]* page(s), have been located that are responsive to your request.

[] Search has been completed in OLA/PAO/OIPL/OLP/OIP

Please be advised that a search has been conducted in the Office(s) of *[list Office(s)]* and *[number]* record(s), totaling *[number]* page(s), have been located that are responsive to your request.

FINAL DETERMINATION ON RECORDS

(As appropriate)

[] Documents located by OIP referred elsewhere

Because [number] document(s), totaling [number] page(s), originated with the [name of Department component/federal agency], we have referred that material to the [name of Department component/agency] for processing and direct response to you. You may contact the [name of Department component/agency] at the following address: [FOIA contact address for Department component/agency]

[] Documents referred to OIP have been determined to be not responsive

Please be advised that, upon review by this Office, has determined that the material referred by the [name of Department component/agency] is not responsive to your request because [reason, if can be provided without revealing information about the material].

[] Release in full

I have determined that [number] document(s), totaling [number] page(s), (is/are) appropriate for release without excision and (a copy is/copies are) enclosed.

[] Release in part

(I have determined that/Also enclosed (is/are)) [number] document(s), totaling [number] page(s), (is/are) appropriate for release with (an) excision(s) [on behalf of (component/agency)] made pursuant to Exemption(s) [number(s)] of the FOIA, 5 U.S.C. § 552(b) [number(s)], which pertains to [see Exemptions below]

[] Withhold in full

(I have determined that/Additionally/Finally) [number] document(s), totaling [number] page(s), (is/are) being withheld in full [on behalf of (component/agency)] pursuant to Exemption(s) [number(s)] of the FOIA, 5 U.S.C. § 552(b) [number(s)], which pertains to [see Exemptions below]

[] Exemption 1

to information that is properly classified in the interest of national security pursuant to Executive Order 13526.

[] Exemption 2

to purely internal personnel practices.

☐ **Exemption 3**

information exempted from release by statute, in this instance [*specific statute*].

☐ **Exemption 5 – Deliberative Process Privilege**

to certain inter- and intra-agency communications protected by the deliberative process privilege.

☐ **Exemption 5 – Attorney Work-Product Privilege**

to certain inter- and intra-agency communications protected by the attorney work-product privilege.

☐ **Exemption 5 – Attorney-Client Privilege**

to certain inter- and intra-agency communications protected by the attorney-client privilege.

☐ **Exemption 6**

to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of (a) third (*party/parties*).

☐ **Exemption 7(A)**

to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings.

☐ **Exemption 7(C)**

to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of (a) third (*party/parties*).

☐ **Exemption 7(D)**

to records or information compiled for law enforcement purposes, the release of which would disclose the (*identity/identities*) of (a) confidential (*source/sources*).

☐ **Exemption 7(E)**

to records or information compiled for law enforcement purposes, the release of which would disclose (*a/certain*) technique(s) or procedure(s) for law enforcement investigations or prosecutions.

☐ **Exemption 7(F)**

to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to endanger the life or personal safety of an individual.

☐ **Description of withheld material**

For your information, the withheld material(s) consist(s) of [*include a brief explanation of the material being withheld--e.g. drafts, names and addresses of individuals, deliberative memoranda, etc.*].

DISCRETIONARY RELEASE

(One of these options is required if any excisions are taken)

☐ **Discretionary release is appropriate**

Although [*portions of*] this material could be withheld pursuant to Exemption(s) ____ of the FOIA, 5 U.S.C. § 552(b) [*number(s)*], I have determined in this instance that such material may be disclosed as a matter of agency discretion.

☐ **Discretionary release is not appropriate**

None of the information being withheld is appropriate for discretionary disclosure because [*basis for why discretionary release is not appropriate*].

GLOMAR

(As appropriate)

☐ **Standard GLOMAR**

With respect to the named individual(s), lacking their consent, an official acknowledgment of an investigation of (*him/her/them*), or an overriding public interest, even to acknowledge the existence of such records pertaining to (*these/this*) individual(s) could reasonably be expected to constitute an unwarranted invasion of (*their/his/her*) personal privacy. Accordingly, I have decided to refuse to confirm or deny the existence of responsive records pursuant to Exemption 7(C) of the FOIA, 5 U.S.C. § 552(b)(7)(C).

☐ **Bifurcated GLOMAR**

Please be advised that we did not locate any noninvestigatory records responsive to your request in the Office(s) of [*list Office(s)*]. Insofar as your request is seeking investigatory records, I have decided to neither confirm nor deny the existence of any such records. Lacking (*an/these*) individual(*s''s*) consent, an official acknowledgment of an investigation, or an overriding public interest, even to acknowledge the existence of investigatory records pertaining to (*an/these*) individual(*s*) could reasonably be expected to constitute an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(7)(C).

SOME OFFICES STILL PENDING

(One of these options is required)

[] At least one search is still pending

We are continuing to search for responsive records in the Office(s) of [*list Office(s)*] and will respond to you again as soon as (*that search/those searches*) and any necessary consultations are completed.

[] Some or all searches done but located documents require consultation

Please also be advised that we have completed our search in the Office(s) of [*list Office(s)*] and are currently reviewing the documents located. We will respond to you again once our review is completed and any disclosure determinations are made.

MISCELLANEOUS

(As appropriate)

[] When final response was delayed by need to consult

I apologize for the delay of this response, which was caused by the need to consult with another Department component and government agency.

[] Documents are exempt from the Privacy Act

The document(*s*) responsive to your [*client's*] request (*is/are*) totally exempt from the access provision of the Privacy Act of 1974 pursuant to [*5 U.S.C. § 552a(j)(2)/5 U.S.C. § 552a(k)(2)*] in conjunction with 28 C.F.R. §___ (2011). Accordingly, in order to provide you [*your client*] with access to these records, we have processed them pursuant to the Freedom of Information Act.

[] Some pages are of poor quality

We apologize for the quality of certain pages; however, no better copies could be obtained.

CLOSING

(One of these options is required)

[] Total grant of request initially received by OIP

Inasmuch as this constitutes a full grant of your request for records from the Office(s) of *[list Office(s)]*, I am closing this portion of your request in this Office.

[] Total grant of request on documents referred to OIP

Inasmuch as this constitutes a full grant of the document(s) that were referred by the *[Department component or federal agency]*, for processing on behalf of the Office(s) of *[list Office(s)]*, I am closing your file in this Office.

[] Interim appeal pitch

If you are not satisfied with my response on behalf of the Office(s) of *[list Office(s)]*, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Your appeal must be received within sixty days from the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

[] When case is in litigation

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal.

FINAL DETERMINATION ON RECORDS

(As appropriate)

[] Documents located by OIP referred elsewhere

Because [number] document(s), totaling [number] page(s), originated with the [name of Department component/federal agency], we have referred that material to the [name of Department component/agency] for processing and direct response to you. You may contact the [name of Department component/agency] at the following address: [FOIA contact address for Department component/agency]

[] Documents referred to OIP have been determined to be not responsive

Please be advised that, upon review by this Office, has determined that the material referred by the [name of Department component/agency] is not responsive to your request because [reason, if can be provided without revealing information about the material].

[] Release in full

I have determined that [number] document(s), totaling [number] page(s), (is/are) appropriate for release without excision and (a copy is/copies are) enclosed.

[] Release in part

(I have determined that/Also enclosed (is/are)) [number] document(s), totaling [number] page(s), (is/are) appropriate for release with (an) excision(s) made [on behalf of (component/agency)] pursuant to Exemption(s) [number(s)] of the FOIA, 5 U.S.C. § 552(b) [number(s)], which pertains to [see Exemptions below]

[] Withhold in full

(I have determined that/Additionally/Finally) [number] document(s), totaling [number] page(s), (is/are) being withheld in full [on behalf of (component/agency)] pursuant to Exemption(s) [number(s)] of the FOIA, 5 U.S.C. § 552(b) [number(s)], which pertains to [see Exemptions below]

[] Exemption 1

to information that is properly classified in the interest of national security pursuant to Executive Order 13526. _____

[] Exemption 2

to purely internal personnel practices.

[] **Exemption 3**

information exempted from release by statute, in this instance [*specific statute*].

[] **Exemption 5 – Deliberative Process Privilege**

to certain inter- and intra-agency communications protected by the deliberative process privilege.

[] **Exemption 5 – Attorney Work-Product Privilege**

to certain inter- and intra-agency communications protected by the attorney work-product privilege.

[] **Exemption 5 – Attorney-Client Privilege**

to certain inter- and intra-agency communications protected by the attorney-client privilege.

[] **Exemption 6**

to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of (a) third (*party/parties*).

[] **Exemption 7(A)**

to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings.

[] **Exemption 7(C)**

to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of (a) third (*party/parties*).

[] **Exemption 7(D)**

to records or information compiled for law enforcement purposes, the release of which would disclose the (*identity/identities*) of (a) confidential (*source/sources*).

[] **Exemption 7(E)**

to records or information compiled for law enforcement purposes, the release of which would disclose (*a/certain*) technique(s) or procedure(s) for law enforcement investigations or prosecutions.

☐ **Exemption 7(F)**

to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to endanger the life or personal safety of an individual.

☐ **Documents have been referred elsewhere for processing**

Because *[number]* document(s), totaling *[number]* page(s), originated with the *[name of Department component/federal agency]*, we have referred that material to the *[name of Department component/agency]* for processing and direct response to you. You may contact the *[name of Department component/agency]* at the following address: *[FOIA contact address for Department component/agency]*

☐ **Description of withheld material**

For your information, the withheld material(s) consist(s) of *[include a brief explanation of the material being withheld--e.g. drafts, names and addresses of individuals, deliberative memoranda, etc.]*.

DISCRETIONARY RELEASE

(One of these options is required if any excisions are taken)

☐ **Discretionary release is appropriate**

Although *[portions of]* this material could be withheld pursuant to Exemption(s) _____ of the FOIA, 5 U.S.C. § 552(b) *[number(s)]*, I have determined in this instance that such material may be disclosed as a matter of agency discretion.

☐ **Discretionary release is not appropriate**

None of the information being withheld is appropriate for discretionary disclosure *[because(basis for why discretionary release is not appropriate)]*.

GLOMAR

(As appropriate)

☐ **Standard GLOMAR**

With respect to the named individual(s), lacking their consent, an official acknowledgment of an investigation of *(him/her/them)*, or an overriding public interest, even to acknowledge the existence of such records pertaining to *(these/this)* individual(s) could reasonably be expected to constitute an unwarranted invasion of *(their/his/her)* personal privacy. Accordingly, I have decided to refuse to confirm or deny the existence of responsive records pursuant to Exemption 7(C) of the FOIA, 5 U.S.C. § 552(b)(7)(C).

☐ **Bifurcated GLOMAR**

Please be advised that we did not locate any noninvestigatory records responsive to your request in the Office(s) of *[list Office(s)]*. Insofar as your request is seeking investigatory records, I have decided to neither confirm nor deny the existence of any such records. Lacking *(an/these)* individual(s)'s consent, an official acknowledgment of an investigation, or an overriding public interest, even to acknowledge the existence of investigatory records pertaining to *(an/these)* individual(s) could reasonably be expected to constitute an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(7)(C).

MISCELLANEOUS

(As appropriate)

☐ **When final response was delayed by need to consult**

I apologize for the delay of this response, which was caused by the need to consult with another Department component and government agency.

☐ **Documents are exempt from the Privacy Act**

The document(s) responsive to your *[client's]* request *(is/are)* totally exempt from the access provision of the Privacy Act of 1974 pursuant to *[5 U.S.C. § 552a(j)(2)/5 U.S.C. § 552a(k)(2)]* in conjunction with 28 C.F.R. § _____ (2011). Accordingly, in order to provide you *[your client]* with access to these records, we have processed them pursuant to the Freedom of Information Act.

☐ **Some pages are of poor quality**

We apologize for the quality of certain pages; however, no better copies could be obtained.

CLOSING

(One of these options is required)

☐ **Total grant of request initially received by OIP**

Inasmuch as this constitutes a full grant of your request, I am closing your file in this Office.

☐ **Total grant of request on documents referred to OIP**

Inasmuch as this constitutes a full grant of the document(s) that were referred by the *[Department component or federal agency]*, for processing on behalf of the Office(s) of *[list Office(s)]*, I am closing your file in this Office.

[] **Appeal Pitch**

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Your appeal must be received within sixty days from the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

[] **When case is in litigation**

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal.

Miscellaneous Requests Blitz

INTRODUCTION

(One of these options is required)

☐] **When OIP receives request directly from requester**

This responds to your letter dated [date], and received in this Office on [date], in which you requested [subject of request]. This response is made on behalf of the Office(s) of [list Office(s)].

☐] **When OIP received request from Mail Referral Unit**

We have received your letter requesting [subject of request]. Because your request was not specifically addressed to this Office, your letter was initially sent to the FOIA/PA Mail Referral Unit, Justice Management Division, for appropriate routing and was received by this Office on [date]. This response is made on behalf of the Office(s) of [list Office(s)].

☐] **When OIP received request from Mail Referral Unit because it was addressed to them**

We have received your letter requesting [subject of request]. Because you directed your request to the FOIA/PA Mail Referral Unit, Justice Management Division, for appropriate routing, it was received by this Office on [date]. This response is made on behalf of the Office(s) of [list Office(s)].

☐] **When OIP receives request from another Department component or federal agency (other than the Mail Referral Unit)**

This responds to your letter dated [date], and received in this Office on [date], in which you requested [subject of request]. Your letter was originally directed to the [component/agency]. That [component/agency] forwarded your letter to this Office, which is processing it on behalf of the Office(s) of [list Office(s)].

☐] **When OIP received request from another Department component or federal agency who themselves received it from yet a third component/agency**

This responds to your letter dated [date], and received in this Office on [date], in which you requested [subject of request]. Your letter was originally directed to the [component/agency #1], which forwarded your letter to the [component/agency #2]. Subsequently, the [component/agency #2] referred your request to this Office, which is processing it on behalf of the Office(s) of [list Office(s)].

MISCELLANEOUS ITEMS

(As applicable)

☐] **OIP Function Language**

Please be advised that the Office of Information Policy of the United States Department of Justice processes Freedom of Information Act (FOIA) and Privacy Act (PA) requests for records it maintains as well as records maintained by the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Public Affairs, Legislative Affairs, Legal Policy, and Intergovernmental and Public Liaison and adjudicates administrative appeals of denials of FOIA/PA requests made to the Department. This Office maintains the case files for the initial requests and administrative appeals it processes.

[] OIP Function Language when requester seeks records on themselves or a third party

Please be advised that the Office of Information Policy of the United States Department of Justice processes Freedom of Information Act (FOIA) and Privacy Act (PA) requests for records it maintains as well as records maintained by the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Public Affairs, Legislative Affairs, Legal Policy, and Intergovernmental and Public Liaison and adjudicates administrative appeals of denials of FOIA/PA requests made to the Department. This Office maintains the case files for the initial requests and administrative appeals it processes. For your information, neither this Office nor any of these senior leadership offices of the Department typically maintain records on individuals. As such, this Office would not maintain the type of records you are seeking.

[] Department of Justice FOIA operation is decentralized

To the extent that you are seeking records from the Department of Justice, please be advised that the Department has a decentralized system for processing FOIA requests and each component of the Department maintains its own records. Accordingly, you need to direct your letter to the Department component(s) you believe have records pertaining to the subject of your request.

[] Department of Justice Freedom of Information Act Reference Guide

To be of assistance, I have enclosed a copy of the *Department of Justice Freedom of Information Act Reference Guide (Reference Guide)* which provides guidance for making FOIA/PA requests to the Department of Justice. The *Reference Guide* also contains a listing of the Department of Justice components, with a brief description of their functions and the records they maintain, as well as the addresses of their FOIA offices.

[] Requests seeking records on requester (first person) need Certification of Identity

To the extent that you are seeking records pertaining to yourself that may be maintained by a Department of Justice component, please be advised that Privacy Act requests submitted to the Department must include verification of the individual's identity. This verification is necessary to protect an individual's privacy and is required by Department regulation 28 C.F.R. § 16.41(d) (2011). A Certification of Identity form that may be used for this purpose may be found in the enclosed *Reference Guide*.

[] Requests seeking records on a third person need Certification of Identity form

You have requested records pertaining to a third party. In order for a records search to be conducted, and to allow the greatest possible access to records pertaining to [name of person], you should provide a written authorization signed by [name of person], permitting the disclosure to you of records pertaining to [him/her] or provide proof that [he/she] is deceased. The *Reference Guide* contains a Certification of Identity form which can be used for this purpose and should be provided along with all FOIA requests for records about an individual and all Privacy Act requests submitted to the Department. This verification is necessary to protect an individual's privacy and is required by Department regulation 28 C.F.R. § 16.41(d) (2011). If [name of person] does not provide [his/her] written authorization, you may still request records about [him/her] by providing their full name. However, your access rights to information about [name of person] will be limited to access under the FOIA, as opposed to access under the Privacy Act.

☐ **Returning completed Certification of Identity to requester for reuse**

I am returning your completed Certification of Identity form should you wish to direct your request to a specific Department component.

☐ **Certification of Identity applies only to Department of Justice**

Please be advised that the Certification of Identity form is applicable for Department of Justice components only. Should you wish to request records from another federal agency, you may have to complete a similar form, specific to that agency.

☐ **FOIA Function Language**

For your information, the FOIA provides a right of access to federal agency records that exist and can be located in agency files. The FOIA does not require agencies to compile information, conduct research, answer questions, or create new documents in response to FOIA requests.

☐ **FOIA Function Language when requester seeks already public material**

Please be advised that the FOIA provides a right of access to agency records that exist and can be located in agency files. The FOIA does not require agencies to compile information or provide copies of certain material, such as [appropriate (a)(1)/(a)(2) material], that are already available to the public.

☐ **FOIA Function Language + cannot provide legal assistance**

Please be advised the FOIA provides a right of access to federal agency records that exist and can be located in agency files. The FOIA does not require agencies to answer questions, compile information, or conduct research. Furthermore, the FOIA does not allow agencies to provide legal assistance on any matter. To the extent that you are seeking legal assistance regarding [subject of inquiry], I can only suggest that you retain private counsel.

☐ **FOIA does not pertain to the states**

Please be advised the FOIA pertains to federal agency records that exist and can be located in agency files. As such, the FOIA does not pertain to records maintained by the states.

[] **Historical records Language**

Please be advised that prior to 1975 there was no central repository for the maintenance and retention of Attorney General records in the Department of Justice. Rather, records prior to 1975 were disseminated to those Department components that had jurisdiction over the subject matter of the respective documents.

CLOSING
(Always required)

[] **Appeal Pitch**

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Your appeal must be received within sixty days from the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Standard Final Response Blitz

INTRODUCTION

(One of these options is required)

[] When OIP received request from requester

This responds to your Freedom of Information Act [/Privacy Act] (FOIA) request dated [date], and received in this Office on [date], for records pertaining to [subject of request]. This response is made on behalf of the Office(s) of [list Office(s)].

[] When OIP received request from requester's counsel

This responds to the Freedom of Information Act [/Privacy Act] (FOIA) request of your client(s), dated [date], and received in this Office on [date], for records pertaining to [subject of request]. This response is made on behalf of the Office(s) of [list Office(s)].

[] When OIP was referred documents from another component/federal agency

While processing your Freedom of Information Act [/Privacy Act] (FOIA) request dated [date] for records pertaining to [subject of request], the [Department component or federal agency] refer [number] document(s), totaling [number] page(s), to this Office for processing and direct response to you on behalf of the Office(s) of [list Office(s)]. For your information, the documents were received by this Office on [date].

NO RECORDS

(As appropriate)

[] No records located in AG/DAG/ASG and Exec Sec

Please be advised that a search has been conducted in the Office(s) of [list Office(s)], as well as of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office(s) [list Office(s)], and no records responsive to your request have been located.

[] No records located in Exec Sec, AG/DAG/ASG not searched

Please be advised that a search has been conducted of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office(s) of [list Office(s)], and no records responsive to your request have been located.

☐] **No records located in OLA/PAO/OIPL/OLP/OIP**

Please be advised that a search has been conducted in the Office(s) of *[list Office(s)]* and no records responsive to your request have been located.

☐] **No records located in Exec Sec, OLA not searched**

Please be advised that a search has been conducted of the electronic database of the Departmental Executive Secretariat, which maintains certain Office of Legislative Affairs records, *[including records of Department correspondence]*, and no records responsive to your request have been located.

☐] **Indices searched in addition to Exec Sec**

We also conducted a search of the records indices of the *[administration(s) of former Attorney General.../Office of...]*. The indices supplement the electronic database of the Departmental Executive Secretariat and list file folder titles, arranged according to subject, for the records of former Office of *[list Office(s)]* staff.

SEARCH COMPLETED WITH DOCUMENTS LOCATED

(As appropriate)

☐] **Search has been completed in AG/DAG/ASG and Exec Sec with records located**

Please be advised that a search has been conducted in the Office(s) of *[list Office(s)]*, as well as of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office(s) *[list Office(s)]*, and *[number]* record(s), totaling *[number]* page(s), have been located that are responsive to your request.

☐] **Search has been completed in Exec Sec with records located, AG/DAG/ASG not searched**

Please be advised that a search has been conducted of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office(s) of *[list Office(s)]*, and *[number]* record(s), totaling *[number]* page(s), have been located that are responsive to your request.

☐] **Search has been completed in OLA/PAO/OIPL/OLP/OIP**

Please be advised that a search has been conducted in the Office(s) of *[list Office(s)]* and *[number]* record(s), totaling *[number]* page(s), have been located that are responsive to your request.



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LANGUAGE

Introductory Paragraphs by Component

- Alcohol, Tobacco, Firearms and Explosives

You appealed from the action of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on your request for access to records concerning

- Criminal Division

You appealed from the action of the Criminal Division of the United States Department of Justice on your request for access to records concerning

- Civil Rights Division

You appealed from the action of the Civil Rights Division of the United States Department of Justice on your request for access to records concerning

- Drug Enforcement Administration

You appealed from the action of the Drug Enforcement Administration (DEA) on your request for access to records concerning

- Executive Office for Immigration Review

You appealed from the action of the Executive Office for Immigration Review (EOIR) on your request for access to records concerning

-Executive Office for United States Attorneys

You appealed from the action of the Executive Office for United States Attorneys (EOUSA) on your request for access to records concerning **[description of records]** located in the United States Attorney's Office for the _____ District of _____.

-Federal Bureau of Investigation

You appealed from the action of the Federal Bureau of Investigation on your request for access to records concerning

You appealed from the action of the [_____ Field Office] of the Federal Bureau of Investigation on your request for access to records concerning

- Federal Bureau of Prisons

You appealed from the action of the Federal Bureau of Prisons (BOP) on your request for access to records concerning

- Office of Information Policy

You appealed from the action of the Initial Request Staff (IR Staff) of the Office of Information Policy (OIP) [, acting on behalf of the Office of [component name],] on your request for access to records concerning

- United States Marshals Service

You appealed from the action of the United States Marshals Service (USMS) on your request for access to records concerning

- Records Referred from Other Agency/Component

You appealed from the action of [component name] on records referred to it by [name of other agency] pursuant to your request for access to records concerning

Additions to Opening Paragraph

- Attorney for Client

You appealed on behalf of your client, [client name], from the action of [component name] on [his/her/their/its] request for access to records concerning [description of records sought]

- Appeal is Limited in Scope (add after an opening paragraph)

I note that you have limited your appeal to [description of appeal].

- Request Split Into Multiple Files and Appeal is Limited

Please note that [component name] administratively divided your request into two/multiple request files. The subject of this appeal is limited to the portion of your request for [description of records sought]. The portion of your request concerning [description of records sought] was assigned [component name] Request No. [request number][and Appeal No. [appeal number]].

Exemption Affirmation Introductory Paragraph

[Note: For use in any instance where OIP is affirming the component's invocation of an exemption]

The Freedom of Information Act provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide

protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities.

Privacy Act Exemption Paragraphs

- Standard Privacy Act Exemption (j)(2)

In order to provide you with the greatest possible access to responsive records, please be advised that your request was reviewed under both the Privacy Act of 1974 and the FOIA. The records responsive to your request are exempt from the access provision of the Privacy Act pursuant to 5 U.S.C. § 552a(j)(2). See 28 C.F.R. § 16.### (2011). Because these records are not available to you under the Privacy Act, your request has been reviewed under the FOIA.

- Privacy Act Exemption (j)(2) Paragraph for Counsel

In order to provide your client with the greatest possible access to responsive records, please be advised that your client's request was reviewed under both the Privacy Act of 1974 and the FOIA. The records responsive to your client's request are exempt from the access provision of the Privacy Act pursuant to 5 U.S.C. § 552a(j)(2). See 28 C.F.R. § 16.### (2011). Because these records are not available to you under the Privacy Act, [his/her] request has been reviewed under the FOIA.

- Partial Privacy Act Exemption (j)(2)

[Note: Mix of records about requester as well records on another topic]

In order to provide you with the greatest possible access to responsive records, please be advised that your request was reviewed under both the Privacy Act of 1974 and the FOIA. The records responsive to the portion of your request pertaining to yourself are exempt from the access provision of the Privacy Act pursuant to 5 U.S.C. § 552a(j)(2). See 28 C.F.R. § 16.### (2011). Because these records are not available to you under the Privacy Act, this portion of your request has been reviewed under the FOIA.

- Privacy Act Exemption (j)(2) for Documents Referred to Components

After carefully considering your appeal, I am affirming the FBI's action on the records referred to it. These records are exempt from the access provision of the Privacy Act of 1974 pursuant to 5 U.S.C. § 552a(j)(2). See 28 C.F.R. § 16.xx (2011). Because these records are not available to you under the Privacy Act, they have been reviewed under the Freedom of Information Act in order to afford you the greatest possible access to them.

Other Commonly Used Privacy Act Exemptions

- Privacy Act 'Nolan' Case Language to Protect Identities of FBI Employees

Certain information withheld from you consists of information regarding third parties that does not pertain to you. Such information is not subject to access under the Privacy Act.

See, e.g., Haddon v. Freeh, 31 F. Supp. 2d 16, 22 (D.D.C. 1998). Accordingly, your access rights are limited to those provided by the FOIA. The FBI properly withheld this information because it is protected from disclosure under the FOIA pursuant to **[insert normal FOIA exemption language for Exemptions 6 and/or 7(C)]**.

- K(2)

Certain information was properly withheld from you because it is exempt from the access provision of the Privacy Act of 1974 pursuant to 5 U.S.C. § 552a(k)(2). See 28 C.F.R. § 16.### (2011). This provision concerns certain investigatory material compiled for law enforcement purposes. This information was also properly withheld under the FOIA because it is protected from disclosure pursuant to **[insert applicable FOIA exemption language here]**.

- K(5)

Certain information was properly withheld from you because it is exempt from the access provision of the Privacy Act of 1974 pursuant to 5 U.S.C. § 552a(k)(5). See 28 C.F.R. § 16.### (2011). This provision concerns investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal employment, but only to the extent that the disclosure would reveal the identity of a source who furnished information to the government under an express promise of confidentiality. This information was also properly withheld under the FOIA because it is protected from disclosure pursuant to **[insert applicable FOIA exemption language here (only Exemption 7(D))]**.

- K(6)

Certain information was properly withheld from you because it is exempt from the access provision of the Privacy Act of 1974 pursuant to 5 U.S.C. § 552a(k)(6). See 28 C.F.R. § 16.### (2011). This provision concerns testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal service, the release of which would compromise the objectivity or fairness of the testing or examination process. This information was also properly withheld under the FOIA because it is protected from disclosure pursuant to **[insert applicable FOIA exemption language here]**.

Appeal Adjudication Paragraphs -

- Decision Affirmed

After carefully considering your appeal, I am affirming **[component name]**'s action on your request.

For referred records:

After carefully considering your appeal, I am affirming **[component name]**'s action on the records referred to it by **[component/agency]**.

- Affirm Search

Use where no records were located:

After carefully considering your appeal, I am affirming [component name]'s action on your request. [Component name] informed you that it could locate no records responsive to your request in its files. I have determined that [component name]'s action was correct and that it conducted an adequate, reasonable search for responsive records.

Use where some records were located and search has been appealed:

After carefully considering your appeal, I am affirming [component name]'s action on your request. By letter dated [date], [component name] released to you [page number] pages of responsive records in full and [page number] pages in part. I have determined that [component name]'s response was correct and that it conducted an adequate, reasonable search for records responsive to your request.

Use where both search and redactions are at issue:

As to your appeal concerning the adequacy of [component name]'s search for responsive records, I have determined that [component name]'s response was correct and that it conducted an adequate, reasonable search for records responsive to your request.

Use where second search is conducted & no records are found:

After carefully considering your appeal, I am affirming [component name]'s action on your request. [Component name] informed you that it could locate no records responsive to your request in its files. Subsequent to your appeal, [component name] conducted a second search, but was unable to locate any responsive records. I have determined that [component name] has conducted an adequate, reasonable search for records responsive to your request.

- Affirm: Modified Form

After carefully considering your appeal, I am affirming, [on modified grounds / on partly modified grounds] [component name]'s action on your request.

- Affirm: No Records of This Type Maintained

After carefully considering your appeal, I am affirming [component name]'s action on your request. [Component name] informed you that it does not maintain records such as those that you described. I have determined that [component name]'s response was correct.

- Affirm: Records Requested Are Likely State Records

After carefully considering your appeal, I am affirming **[component name]**'s action on your request. **[Component name]** properly informed you that it does not maintain records such as those that you described and that the records you seek are likely to be maintained by state or local governments. If you have not already done so, I suggest that you make a request for such records to the proper authorities in accordance with the appropriate state or local records access provisions.

- Affirm: Destruction of Records

[Note: If possible, include destruction date]

After carefully considering your appeal, I am affirming **[component name]**'s action on your request. **[Component name]** informed you that records that might have been responsive to your request were destroyed **[on date]** pursuant to the agency's record retention and disposition schedules approved by the National Archives and Records Administration. I have determined that **[component name]**'s response was correct.

- Supplemental Release by OIP, No New Search Conducted

After carefully considering your appeal, and as a result of discussions between **[component name]** personnel and this Office, I am releasing **[page number]** pages [in full/in part] to you, copies of which I have enclosed. [I am otherwise affirming **[component name]**'s action on your request.]

- Supplemental Release by OIP, After Another Search

As a result of discussions between **[component name]** personnel and this Office, **[component name]** conducted a further search and located [additional] records responsive to your request. Accordingly, I am releasing **[page number]** pages [in full/in part] to you, copies of which I have enclosed. [I am otherwise affirming **[component name]**'s action on your request.]

- Supplemental Release by Component

As a result of discussions between **[component name]** personnel and this Office, **[component name]** has or will soon release additional records to you directly. [I am otherwise affirming **[component name]**'s action on your request.]

- Remand for Search/Further Search

After carefully considering your appeal, and as a result of discussions between **[component name]** personnel and this Office, I am remanding your request for a [further] search for [additional] responsive records. If **[component name]** locates [additional] releasable records, it will send them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by **[component name]**. If you would like to inquire about the status of this remand, please contact **[component name]** directly. [I am otherwise affirming **[component name]**'s action on your request.]

- Remand for Further Processing

After carefully considering your appeal, and as a result of discussions between [component name] personnel and this Office, I am remanding your request for [further processing of the responsive records] [further review and processing of records that it located subsequent to your appeal]. If [component name] determines that [additional] records are releasable, it will send them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by [component name]. If you would like to inquire about the status of this remand, please contact [component name] directly. [I am otherwise affirming [component name]'s action on your request.]

- Remand for FBI Cross-References Search

After carefully considering your appeal, and as a result of discussions between FBI personnel and this Office, I am remanding your request for a search for responsive cross-references. If the FBI locates releasable cross-reference records, it will send them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by the FBI. If you would like to inquire about the status of this remand, please contact the FBI directly.

- Remand Reprocessing: 7(A) No Longer Applicable

After carefully considering your appeal, and as a result of discussions between [component name] and this Office, I am remanding your request for further processing of the responsive records. Although [component name] invoked Exemption 7(A) of the Freedom of Information Act, 5 U.S.C. § 552(b)(7)(A), at the time your initial request was processed, that exemption is no longer applicable to withhold the records in full. Consequently, [component name] will process and send all releasable records to you directly, subject to any applicable fees. You may appeal any future adverse determination made by [component name]. If you would like to inquire about the status of this remand, please contact [component name] directly.

- Remand: Requester Submitted Notarized Signature/Certification of Identity on Appeal

[Note: TEMPORARY LANGUAGE]

As a result of discussions between [component name] personnel and this Office, [component name] has agreed to conduct a search for responsive records **[Note: For EOUSA only add the following:** in the United States Attorneys' Office for the District of _____]. While [component name] properly informed you that it could not process your request until you submitted your notarized signature or a certification of your identification under penalty of perjury, I note that you have provided such a certification with your appeal. If [component name] locates releasable records, it will send them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by [component name]. If you would like to inquire about the status of your request, please contact [component name] directly.

- Remand: Requester Provided Name of District for EOUSA to Submit on Appeal
[Note: TEMPORARY LANGUAGE]

As a result of discussions between EOUSA personnel and a member of my staff, EOUSA has agreed to conduct a search for responsive records. While EOUSA properly informed you that it could not process your request until you specified the United States Attorney's Office from which you seek records, I note that you have provided such information in your appeal. Accordingly, EOUSA will conduct a search for responsive records in the United States Attorney's Office for the _____ District of _____. If EOUSA locates releasable records, it will send them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by EOUSA. If you would like to inquire about the status of your request, please contact EOUSA directly.

- Request Not Reasonably Described

After carefully considering your appeal, I am affirming [component name]'s action on your request. A proper Freedom of Information Act request for records must reasonably describe the records sought. See 5 U.S.C. § 552(a)(3)(A). [Component name] informed you that you did not reasonably describe the subject of your request. I have determined that [component name]'s response was correct. **[Note: If warranted, please add further explanation as to why request was not reasonably described.]**

- Unduly Burdensome Search

[Note: LANGUAGE PENDING – See Reviewer for Temporary Language]

Closing Appeal on Other Grounds

- Request in Litigation

I have been informed that you filed a lawsuit concerning [component name]'s action in the United States District Court for the District of _____. Inasmuch as this matter is now before the Court, I am closing your appeal file in this Office in accordance with 28 C.F.R. § 16.9(a)(3) (2011).

- Untimely Appeal

You attempted to appeal from the action of [component name] on your request for access to information concerning _____.

Pursuant to 28 C.F.R. § 16.9(a) (2011), the Office of Information Policy must receive your appeal "within 60 days of the date of the letter denying your request." By letter dated [date], [component name] responded to your request and advised you of your appeal rights. Your letter attempting to appeal was received by this Office on [date], [[number] days/weeks/months/years] after the regulatory deadline. Therefore, I am closing your appeal file due to your failure to appeal timely.

- Failure to Respond: Appeal is Moot Because Component Responded After the Appeal

You attempted to appeal from the failure of [component name] to respond to your request for access to records concerning [description].

[Component name] responded to your request by letter dated [date of component's response] (copy enclosed). Because [component name] responded to your request, your appeal from [component name]'s failure to respond to your request is moot. Accordingly, I am closing your appeal file in this Office.

- Failure to Respond: Component Responded Before the Appeal

By letter dated [date of appeal], you attempted to appeal from the failure of [component name] to respond to your request for access to records pertaining to yourself.

Please be advised that [component name] responded to your request by letter dated [date of component's response] (copy enclosed). Because [component name] responded to your request, there is no action for this Office to consider on appeal, and I am closing your appeal file in this Office.

- Appeal is Moot: Full Grant

[Note: For use where solely withholdings appealed]

Subsequent to your appeal, [component name] provided you with a full release of all responsive records. Inasmuch as this action constitutes a full grant of your request, your appeal is now moot and I am closing your appeal file in this Office.

- Appeal is Moot: Warden Gave Access to Records

Additionally, in your appeal, you contend that the warden at [facility name] has not afforded you the opportunity to review your [Central/Medical] Files locally. I have been informed that you were recently provided the files for local review, thus rendering this aspect of your appeal moot.

- Requester Withdraws the Appeal

By letter dated [date], this Office notified you that your administrative appeal had been received and would be assigned for adjudication under Appeal No. [appeal number]. By letter dated [date], you stated that you no longer wish to pursue this administrative appeal. Accordingly, I am closing your administrative appeal file in this Office.

- No Record of Request Received

Department of Justice regulations provide for a Freedom of Information Act administrative appeal only after there has been an adverse determination by an identified component. See 28 C.F.R. § 16.9(a) (2011). [Component name] has no record of having received a FOIA request from you. Nor did you identify any other component of the Department of Justice from whose action you might be appealing. Accordingly, there is no action for this Office to consider on appeal, and I am closing your appeal file in this Office.

- Duplicate Appeal

By letter dated [date], this Office informed you that your administrative appeal from your Freedom of Information Act request made to [component name] for access to records concerning [description of records sought] had been received by this Office and would be assigned for adjudication under Appeal No. [duplicate appeal number]. However, this Office subsequently learned that your appeal file was a duplicate of Appeal No. [appeal number], [which was adjudicated by this Office by letter dated [date] (copy enclosed)]. In light of these circumstances, I am administratively closing Appeal No. [duplicate appeal number] in this Office.

- Reading Room Documents (other than (a)(2)(D) records) Need Not Be Made Available Under (a)(3)

[Note: LANGUAGE PENDING – See Reviewer for Temporary Language]

- Not FOIA / Not Within Office Function

Please note that the principal administrative function of the Office of Information Policy is the adjudication of appeals from the denial of access to information pursuant to the Freedom of Information Act and the Privacy Act of 1974 by components of the Department of Justice. This Office does not have the authority to [investigate your allegations, etc.]. I regret that I cannot be of any further assistance to you in this matter. Accordingly, I am administratively closing your appeal file in this Office.

- Assessed Fees not Paid

[Note: LANGUAGE PENDING]

- Privacy Act Amendment / Expungement Request

I note that you are [also] seeking an amendment of [e.g., your personnel file]. In accordance with Departmental regulations, any request for amendment of records should first be addressed to the component that originated the documents in question. Accordingly, you should make an amendment request directly to [component name]. Your letter should indicate the particular records involved, the nature of the amendment sought, and the justification for the amendment. You should also clearly mark your letter "Privacy Amendment Request." When

[component name] completes its action on this particular request and if your request to amend these records is denied, you may appeal that determination as [component name] provided in its letter to you.

- Privacy Act Accounting Language (Request Level)

[Note: This language does not work where the Requester has already gone to the component]

Finally, I note that you may also be seeking an accounting of disclosures from [component name] to other law enforcement entities. In accordance with departmental regulations, any request for an accounting of disclosures should be first addressed to the component that originated the documents in question. Accordingly, you should make your request directly to [component name]. You should also clearly mark your letter "Privacy Act Accounting Request." When [component name] completes its action on this particular request and if your request for an accounting is denied, you may appeal again to this Office. We will then open a new appeal and review the component's substantive action on your request.

- Privacy Act Accounting Language (On Appeal)

[Note: LANGUAGE PENDING – See Reviewer for Temporary Language]

- Job Applicant Language

You attempted to appeal from the action of [component name] on your application for employment. Although your letter mentioned a Freedom of Information Act-Privacy Act request made to [component name], your appeal does not appear to pertain to [component name]'s action on your Freedom of Information Act request. Rather, you requested this Office's assistance in reversing [component name]'s decision to decline your application for employment.

Please be advised that the principal administrative function of the Office of Information Policy is the adjudication of appeals from the denial of access to information pursuant to the Freedom of Information Act and the Privacy Act of 1974 by components of the Department of Justice. This Office does not have the authority to review your denial of employment with [component name]. I regret that I cannot be of any further assistance to you in this matter. Accordingly, I am closing your appeal file in this Office. I suggest that you contact the unit of [component name] that notified you that it was closing your applicant file.

- FOIA Waiver in Plea Agreement

After carefully considering your appeal, I am affirming [component name]'s action on your request. [Component name] determined that under the terms of a signed plea agreement filed with the United States District Court for the District of _____ on [date], you waived all rights to make any FOIA request or receive any records concerning your criminal case. I have determined that [component name]'s response was correct. Statutory provisions are presumed to be subject to waiver by voluntary agreement, "absent some affirmative indication in

the statute of Congress' intent to preclude waiver." United States v. Mezzanatto, 513 U.S. 196, 201 (1995) (citing Evans v. Jeff D., 475 U.S. 717, 730-32 (1986)). Neither the Freedom of Information Act nor the Privacy Act contain any indication that Congress intended to preclude waiver. See 5 U.S.C. §§ 552 and 552a, respectively. Consequently, for purposes of your request, the waiver of your FOIA and Privacy Act rights contained in your plea agreement is presumed to be valid, and [component name] properly refused to process your request.

- FOIA Request by Fugitive

[Note: LANGUAGE PENDING – See Reviewer for Temporary Language]

- Attempted Appeal: Component's Failure to Respond

You attempted to appeal from the failure of [component name] to respond to your request for access to records concerning [description of records sought].

Department of Justice regulations provide for an administrative appeal to the Office of Information Policy only after there has been an adverse determination by a component. See 28 C.F.R. § 16.9(a) (2011). As no adverse determination has yet been made by [component name], there is no action for this Office to consider on appeal.

As you may know, the Freedom of Information Act authorizes requesters to file a lawsuit when an agency takes longer than the statutory time period to respond. See 5 U.S.C. § 552(a)(6)(C)(i). However, I can assure you that this Office has contacted [component name] and has been advised that your request is [provide details regarding the current status]. If you are dissatisfied with [component name]'s final response you may appeal again to this Office.

This Office has forwarded a copy of your letter to [component name]. I suggest that you contact [component name]'s Requester Service Center at [XXX-XXX-XXXX] for further updates regarding the status of your request.

- Clarification Needed - Cannot Identify Which Action Requester is Appealing

It appears that you might be attempting to appeal from an action of a component of the Department of Justice on a Freedom of Information Act or Privacy Act request. [Although you reference Request No. [number], /OR/ However,] I am unable to determine from your letter what action you are appealing. Accordingly, please send copies of any pertinent prior correspondence, such as your initial request for access to records, the denial of access to those records, or any other relevant information about your request. Until our Office receives this information, we cannot act on your appeal. Your cooperation in this matter is appreciated.

- Records Transferred to NARA

Please be advised that [component name] has found a reference to records that might be responsive to your request. These records, however, were transferred to the National Archives and Records Administration (NARA) [add reference to accession number or file number if

known]. If you have not done so already, I suggest that you submit a request directly to NARA for the records you seek at the following address:

National Archives and Records Administration
Special Access and FOIA Staff
NWCTF-Room 6350
8601 Adelphi Road
College Park, MD 20740

- Records of Former Employees

It appears from your **[appeal/request]** letter that the subject of your request was formerly employed by **[component/agency name]**. The National Personnel Records Center (NPRC), which is part of the National Archives and Records Administration (NARA), bears primary responsibility for maintaining records of former federal government employees. I suggest that you submit a request to the NPRC for the records you seek at the following address:

National Archives and Records Administration
National Personnel Records Center, Annex
1411 Boulder Boulevard
Valmeyer, IL 62295

- Records of Discharged/Retired Veterans

It appears from your appeal letter that your military service occurred **[from/during] [date /OR/ date range]**. The National Personnel Records (NPRC), which is part of the National Archives and Records Administration, bears primary responsibility for maintaining veterans' records. I suggest that you submit a request to the NPRC for the records you seek at the following address:

National Archives and Records Administration
National Personnel Records Center
Military Personnel Records
9700 Page Avenue
St. Louis, MO 63132-5100

- Records Requested from Another Federal Agency

Please be advised that this Office only adjudicates appeals from adverse determinations made by components of the Department of Justice on Freedom of Information Act and Privacy Act requests. This Office has no jurisdiction over records maintained by other federal agencies. If you wish to appeal from the action of **[agency name]**, I suggest that you contact the FOIA office of **[agency name]** directly.

- Security Clearance/Background Checks

Please be advised that the FBI does not routinely conduct background investigations for any agency other than the Department of Justice, nor does it grant security clearances to anyone other than its own employees. I suggest that you write directly to the organization that conducted your background investigation.

- Records of Military Background Investigations (Prior to 2005 Only)

[Note: OPM would have background investigation records from 2005 or later]

It appears from your [appeal/request] letter that you are requesting information concerning your background investigation for a security clearance. Please be advised that military background investigations are conducted by special agents from the Department of Defense-Defense Security Service (DSS), rather than the Federal Bureau of Investigation. Because the law enforcement personnel from DSS are identified as "special agents," interviewees often believe that they have been interviewed by the FBI. I suggest, therefore, that you submit a request directly to DSS at the following address:

Defense Manpower Data Center
Attn: Privacy Act Office
P.O. Box 168
Boyers, PA 16020-0168

Exemptions Cited Paragraph

Single Exemption Cited

- Exemption One

[A portion /OR/ All] of the information responsive to your request is classified. I am affirming [component name]'s withholding of this information pursuant to 5 U.S.C. § 552(b)(1), which protects classified information from disclosure. I am, however, referring this information to the Department of Justice's Department Review Committee (DRC) so that it may determine if this information should remain classified under Executive Order No. 13,526. Once the DRC completes its review, this Office will inform you if any information is declassified.

[Note: We use "certain" in the paragraphs below when the withholding was in part, we use "this" when the withholding was in full, and we use "other" when we have previously cited Exemption 1 in the letter.]

- Exemption Two

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(2). This provision concerns matters that are related solely to internal agency personnel practices.

- Exemption Three

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(3). This provision concerns matters specifically exempted from release by statute (in this instance, [insert statutory cite], which pertains to [description of statute's withholding provision]).

- Selected Exemption Three Statutes

(in this instance, the Ethics in Government Act of 1978, 5 U.S.C. App. 4 § 107, which pertains to confidential financial disclosure reports).

(in this instance, Rule 6(e) of the Federal Rules of Criminal Procedure, which pertains to the secrecy of grand jury proceedings).

(in this instance, 15 U.S.C. § 18a(h), which exempts from disclosure any material filed with the Assistant Attorney General in the context of pre-merger notifications).

(in this instance, 18 U.S.C. § 2510, which pertains to Title III of the Omnibus Crime Control and Safe Street Act which protects information obtained through electronic surveillance).

(in this instance, 26 U.S.C. § 6103 of the Internal Revenue Code, which pertains to tax return information).

(in this instance, 26 U.S.C. §§ 5811, 5812, and 6103, which pertain to tax return information).

(in this instance, 50 U.S.C. § 403, which pertains to the National Security Act of 1947 and the Central Intelligence Agency Act of 1949).

(in this instance, the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, a permanent law, which prohibits ATF from using appropriated funds to disclose firearms database information). This prohibition against using appropriated funds to disclose firearms database information is reiterated in the current appropriations act.

- Exemption Four

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(4). This provision concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

- Exemption Five

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(5). This provision concerns certain inter- and intra-agency communications protected by the [deliberative process privilege /OR/ the attorney work-product privilege /OR/ the attorney-client privilege].

- **Exemption Six**

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(6). This provision concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

- **Exemption 7(A)**

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

- **Exemption 7(B)**

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(B). This provision concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication.

- **Exemption 7(C)**

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(C). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.

- **Exemption 7(C) - Glomar**

After carefully considering your appeal, I am affirming [component name]'s action in refusing to confirm or deny the existence of records responsive to your request. Without consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, confirming or denying the existence of law enforcement records concerning an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C).

- **Exemption 7(C), B6 / Glomar (used infrequently)**

After carefully considering your appeal, I am affirming [component name]'s action in refusing to confirm or deny the existence of records responsive to your request. Without consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, confirming or denying the existence of such records, including law enforcement records, concerning an individual would constitute a clearly unwarranted invasion of personal privacy,

and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C).

- Exemption 7(C) - Categorical Denial (no search has been conducted)

After carefully considering your appeal, I am affirming the FBI's action on your request. To the extent that responsive records exist, without consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, disclosure of law enforcement records concerning an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C). Because any records responsive to your request would be categorically exempt from disclosure, the FBI properly asserted Exemption 7(C) and was not required to conduct a search for the requested records. See Blackwell v. FBI, No. 10-5072, 2011 WL 2600831, at *2-4 (D.C. Cir. July 1, 2011) (upholding agency's refusal to conduct a search for law enforcement records pertaining to named third parties because such records are categorically exempt from disclosure in the absence of an overriding public interest).

- Exemption 7(D)

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(D). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources.

- Exemption 7(E)

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(E). This provision concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions.

- Exemption 7(E) "Terror" Glomar Language

After carefully considering your appeal, I am affirming the FBI's action on your request. To the extent that your request seeks access to records that would either confirm or deny an individual's placement on any government watch list, the FBI properly refused to confirm or deny the existence of any records responsive to your request pursuant to 5 U.S.C. § 552(b)(7)(E). This provision concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions. This response should not be taken as an indication that records do or do not exist. Rather, this is the standard response made by the FBI.

As to any other responsive records, the FBI informed you that it could locate no main files responsive to your request. I have determined that the FBI's response was correct and that it conducted an adequate, reasonable search for records responsive to your request.

- Exemption 7(F)

[Component name] properly withheld [this/certain/other] information [in full] because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(F). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

- Multiple Exemptions

[Note: We use "certain" in the paragraphs below when the withholding was in part, we use "this" when the withholding was in full, and we use "other" when we have cited Exemption 1 in the letter.]

[Component] properly withheld [this/certain/other] information that is protected from disclosure under the FOIA pursuant to:

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel practices; [and]

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute (in this instance, [statutory cite], which pertains to [description of statute]); [and]

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential; [and]

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege; [and]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties; [and]

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings; [and]

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication; [and]

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties; [and]

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources; [and]

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions; [and]

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

FBI-Specific Language

- FBI Cross-Reference Requests

Regarding your request for a cross-reference search, please be advised that you need to provide information sufficient to enable the FBI to determine with certainty that any cross-references it locates are identifiable to the subject of your request. This information may include the following:

- 1) the specific circumstances in which the subject of your request had contact with the FBI;
- 2) the date(s) of such contact;
- 3) the location(s) of such contact;
- 4) the full name (first, middle, and last) as well as any prior names or aliases used by the subject of your request;
- 5) Social Security number, date of birth, place of birth, and home address of the subject of your request;
- 6) names of associates of the subject of your request the mention of whom might aid in the identification of responsive records; and
- 7) other references of the subject of your request in media, such as books, articles, websites, etc.

You should provide this information to the FBI directly. Please note that the FBI may not be able to identify responsive cross-references despite the additional information you provide. You may appeal any future adverse determination made by the FBI.

- NCIC/CJIS Rap Sheet Requests

[Note: Print a copy of instructions and enclose - <http://www.fbi.gov/about-us/cjis/nics/general-information/cgbrochure>]

It appears that you might be seeking a copy of your FBI identification record or "rap sheet." To obtain a copy of your rap sheet, you need to make a written request, including your full name, date and place of birth, a certified check or money order in the amount of \$18 payable to the Treasury of the United States, and a set of rolled-in inked fingerprint impressions placed upon fingerprint cards or forms commonly used by law enforcement agencies for applicant or law enforcement purposes. I am enclosing a copy of the FBI's instructions for making a request for your rap sheet. Department regulations governing rap sheets can be found at 28 C.F.R. §§ 16.30-.34 (2011). Requests for access to rap sheets must be submitted to the following address:

Federal Bureau of Investigation
Criminal Justice Information Service Division
ATTN: SCU, Mod. D-2
1000 Custer Hollow Road
Clarksburg, WV 26306

- FBI Name Check Language

With regard to your request for assistance with a name check, please be advised that the principal administrative function of the Office of Information Policy is the adjudication of appeals from the denial of access to information pursuant to the Freedom of Information Act and the Privacy Act of 1974 by components of the Department of Justice. This Office does not have the authority to assist you with any matters related to the FBI's National Name Check Program (NNCP) [including expediting your name check with the FBI]. Accordingly, I am administratively closing your appeal file in this Office.

As a courtesy to you, I have enclosed two printouts that address common questions related to the NNCP. Please note that these printouts clearly explain that only customer agencies, not individuals, may request a name check. I trust that this information is of some assistance to you.

- FBI Manual Indices, Contents

Additionally, I note that you contend that the FBI unreasonably limited its search to the automated indices. To the extent that you assert that the FBI should have searched its manual indices for responsive records, please be advised that the manual indices primarily contain records created before 1959. Because the records that you requested would have been created after that period, the FBI's decision to limit its search to its automated indices was reasonable.

- FBI Manual Indices Unavailable (Automation)

Furthermore, the FBI informed you that it was unable to conduct a search of its manual indices because they are being prepared for automation. Subsequent to your appeal, FBI personnel informed a member of my staff that the manual indices are still unavailable for searching. I have determined that the FBI's response was correct and that it conducted an adequate, reasonable search for responsive records.

- FBI Transferring Records to NARA

After carefully considering your appeal, I am affirming the FBI's action on your request. Please be advised that the FBI has found a reference to records that might be responsive to your request. These records, however, are currently being prepared for transfer to the National Archives and Records Administration (NARA). For your information, the potentially responsive record is file number [file number]. After those records have been transferred to NARA, I suggest that you submit a request directly to NARA for the records you seek. The address for NARA's Freedom of Information Act Office is:

National Archives and Records Administration
Special Access and FOIA Staff
NWCTF-Room 6350
8601 Adelphi Road
College Park, MD 20740

Miscellaneous Appeals Paragraphs

[Note: Choose most appropriate paragraph]

- Not Required to Answer Questions or Create Records

With regard to the specific questions you asked in your appeal letter, please be advised that the Freedom of Information Act does not require federal agencies to answer questions or create records in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records. See Students Against Genocide v. Dep't of State, 257 F.3d 828, 837 (D.C. Cir. 2001) [*Students Against Genocide for creation of records /OR/ Harrison for questions*] See Harrison v. BOP, 681 F. Supp. 2d 76, 83 (D.D.C. 2010).

- Not Required to Conduct Research

Please be advised that the FOIA does not require agencies to answer questions or to conduct research. See, e.g., Harrison v. BOP, 681 F. Supp. 2d 76, 83 (D.D.C. 2010).

- Not Required to Certify Records Are "True" Versions

As a matter of administrative discretion, an agency may choose to comply with special requests, such as certifying that records are true copies. However, such certification is not required by the FOIA. Accordingly, you must contact [component name] directly in order to determine whether it provides such a service.

- Access to Presentence Investigation Report

[Note: For federal inmates ONLY]

Please be advised that **[component name]** did not provide you with a copy of your presentence investigation report (PSI). You can access your PSI locally by asking a staff member where you are incarcerated for an opportunity to review it. However, you will not be permitted to retain copies of your PSI because it has been determined that possession of it could reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution in which you are incarcerated. See BOP, DOJ, Program Statement 1351.05, at 15-16 (Sept. 19, 2002); see also, e.g., Jones v. N.C. Prisoners' Labor Union, Inc., 433 U.S. 119, 126 (1977) (noting that "[b]ecause the realities of running a penal institution are complex and difficult, [the Supreme Court has] recognized the wide-ranging deference to be accorded the decisions of prison administrators").

- Records of Inmate Telephone Calls
[Note: UNDER REVIEW]

BOP properly withheld the requested records in full. With regard to those portions of the records pertaining to a third party, they are protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(C). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. See, e.g., Pendergrass v. DOJ, No. 04-112, 2005 WL 137824, at *6 (D.D.C. June 7, 2005) (concluding that BOP did not have to release any part of recording of inmate's telephone call to his attorney without attorney's written consent). Further, those portions of the conversation spoken by you are not reasonably segregable from those of the other party to the conversation. See id. at 6 (information conveyed by third party during telephone conversation with another is inextricably intertwined with other portions of the conversation).

- Cannot Expand Scope of Request on Appeal

Finally, I note that on appeal you seek various additional records that you did not originally request. You may not on appeal expand the scope of your initial request, which was limited to records **[briefly describe records requested at initial stage]**. Accordingly, to the extent that you now seek records concerning **[description of new records sought]**, I suggest that you submit a new Freedom of Information Act request to **[component name]**.

- EOUSA: Records Regarding Prosecution in Federal Court

In your letter dated **[date]**, you indicated that you were prosecuted in federal court. If you are seeking records concerning your federal criminal case and have not done so already, I suggest that you submit a request to the Executive Office for United States Attorneys (EOUSA) for the records that you seek. Requests for EOUSA records should be addressed to:

Susan B. Gerson, Acting Assistant Director
FOIA/Privacy Unit
Executive Office for United States Attorneys
Department of Justice
Room 7300, 600 E Street, NW

- Missing or Lost Records

Please note although [component name] identified certain records in its indices that might be responsive to your request, [component name] searched for, but could not find, those records. Subsequent to your appeal, [component name] conducted additional searches in an attempt to find the missing records, but is still unable to find them. I have determined that [component name] conducted an adequate, reasonable search for these records. Indeed, [component name] has not used any exemptions to withhold any information from you; rather, it cannot find the records that [might be /OR/ are] responsive to your request.

- No Vaughn Index Paragraph

Furthermore, I am denying your request that we itemize and justify each item of the information withheld. You are not entitled to such a listing at the administrative stage of processing Freedom of Information Act requests and appeals. See Bangoura v. U.S. Dep't of the Army, 607 F. Supp. 2d 134, 143 n.8 (D.D.C. 2009).

- Not Provided With EOUSA Copies of Public Records

Further, please be advised that EOUSA did not provide you with copies of "public records" filed by you or the government in court. If you are interested in receiving these public records, please contact EOUSA directly and it will provide them to you, subject to any applicable fees.

- Only Responsive Record Is the Prior FOIA Request Correspondence

After carefully considering your appeal, I am affirming [component name]'s action on your request. [Component name] informed you that it could locate no records responsive to your request other than correspondence related to a prior Freedom of Information Act request that you made. I have determined that [component name]'s response was correct and that it conducted an adequate, reasonable search for records responsive to your request. If you are interested in receiving a copy of the correspondence related to your earlier FOIA request, I suggest that you contact [component name] directly.

- Exclusion Language

[Note: LANGUAGE PENDING]

- Favish Language

Notwithstanding the fact that the subject of your request is deceased, [component name] correctly withheld records in an effort to protect the privacy of the surviving family members. See NARA v. Favish, 541 U.S. 157 (2004).

- Records not Processed: Processed in Response to a Prior Request

Regarding [description of records], I note that [component name] did not process these records in response to your request because it previously processed these records for you in its response to your prior request in [month, year]. If you seek an additional copy of these records, I suggest that you contact [component name] directly for further assistance.

- Referral of Records to Other Component/Agency Appropriate

Please be advised that [component name] referred records to [other component/agency name] for processing and direct response to you. This referral was proper and in accordance with Department of Justice regulations. See 28 C.F.R. § 16.4 (2011). If you have any questions concerning the status of this referral, please contact [other component/agency name] directly. You may appeal any future adverse determination made by [other component/agency name].

- Referral of Request to Another Component Appropriate

[Note: UNDER REVIEW]

Please be advised that [Component A] forwarded your request to [Component B] for processing and direct response to you because [Component A] does not maintain the type of records that you are seeking. I have determined that [Component A]'s response was correct. If you have any questions concerning the status of your forwarded request, please contact [Component B] directly. You may appeal any future adverse determination made by [Component B].

- Request for Records of Another Agency

[Note: Suggest that Requester make a new request to [agency/component].]

- Requests Aggregated – 5 U.S.C. § 552(a)(6)(B)(iv) (unusual circumstances)

[Note: LANGUAGE PENDING]

- Brady Does Not Apply

[Note: LANGUAGE PENDING]

- Jencks Does Not Apply

Regarding your comments about "Jencks material," please be advised that the Jencks Act does not have any applicability to FOIA requests. See, e.g. Kishore v. DOJ, 575 F. Supp. 2d 243, 255-56 (D.D.C. 2008).

- Sealed Records – Letter to Requester

Additionally, please be advised that a portion of the records maintained by the [entity] are protected from disclosure by a court seal issued by [judge name] of the United States District Court for the [district name]. In this instance, [component] lacks the discretion to consider this information for release to you. See GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 384-86 (1980) (finding "no discretion for the agency to exercise" when records are sealed, thus no improper withholding).

Please note that I have contacted the District Court to verify that the court seal continues to prohibit disclosure of the records you seek. In the event that the District Court informs this Office that the court seal no longer prohibits disclosure of these records, this Office will reopen your appeal and take further action as appropriate.

- Sealed Records – Letter to Court

I am adjudicating an administrative appeal concerning a Freedom of Information Act request from [requester name] to [component name] for a copy of records concerning [description of records]. [Component name] denied the request for access to [some of] these records because it believed that such records were ordered sealed by you.

For your information, the particular records withheld by [component name] on this basis consist of [reference the docket number(s), if available; otherwise briefly describe the sealed records].

If these records are, in fact, the subject of a court seal, they may be withheld under the FOIA. See GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 386 (1980). However, under the controlling case law of the District of Columbia Circuit, I am required to verify that an existing sealing order was intended to operate as an injunction against the Department's disclosure of the records under the FOIA. See Morgan v. DOJ, 923 F.2d 195, 197-199 (D.C. Cir. 1991). Consequently, please advise me whether the above-referenced sealing order was intended to prohibit disclosure of the records under the FOIA.

For your convenience, I have enclosed copies of the FOIA request, [component name]'s response to this request, and the requester's administrative appeal to this Office. Please do not hesitate to contact me at (202) 514-4453 should you have any questions or need additional information. Thank you for your assistance in this matter.

- Public Acknowledgment Does Not Equal Waiver of Use of Exemptions

Regarding your comments, please be advised that even a public acknowledgment of the existence of an investigation into allegations of misconduct does not waive the use of exemptions on the underlying documents. See Kimberlin v. DOJ, 921 F. Supp. 833, 836 (D.D.C. 1998).

- Waiver/Non-Waiver - 7(D)

Testimony at trial does not necessarily waive the FBI's right to invoke Exemption 7(D) of the FOIA. See Davis v. DOJ, 968 F.2d 1276, 1281 (D.C. Cir. 1992).

- Death of Informant - 7(D)

Please be advised that the death of an alleged informant does not defeat the assertion of Exemption 7(D) to protect these records. See Blanton v. DOJ, 64 F. App'x 787, 790 (D.C. Cir. 2003).

Fee and Fee Waiver Language

[Note: LANGUAGE PENDING]

- No Fees Assessed

With regard to your request for a fee waiver, because [component] did not assess any fees in this instance, there is no action for this Office to consider on appeal.

Pre-closing Paragraph Denial Language

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the actions of [component name] in response to your request.

Judicial Review Closing Paragraph

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

Judicial Review Closing Paragraph (Attorney)

If your client is dissatisfied with my action on your appeal, the FOIA permits [her/him/them/it] to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

OGIS Language

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 301-837-1996; toll free at 1-877-684-6448; or facsimile at 301-837-0348.

Signature Block (BOP, EOIR, and IPOL)

Sincerely,

Janice Galli McLeod
Associate Director

By:

Anne D. Work
Senior Counsel
Administrative Appeals Staff

Signature Block (FBI)

EVEN APPEAL NUMBERS:

Sincerely,

Janice Galli McLeod
Associate Director

By:

Anne D. Work
Senior Counsel
Administrative Appeals Staff

ODD APPEAL NUMBERS:

Sincerely,

Janice Galli McLeod
Associate Director

By:

Sean R. O'Neill
Senior Attorney
Administrative Appeals Staff

Signature Block (All Others)

Sincerely,

Janice Galli McLeod
Associate Director

[END]



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

TEMPLATE for FEE WAIVER APPEAL - DELETE bold/bracketed material.

Name

Register No./Street Address

or Post Office Box

United States Penitentiary

City, State ZIP

Re: Appeal No.

Request No.

JGM:ABC

Dear

[1] You appealed from the fee waiver determination made by **[component]** on your request for access to records pertaining to **[yourself/subject matter]**.

[2] The statutory standard for evaluating fee waiver requests provides that fees shall be waived or reduced "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). In determining whether you have satisfied this statutory standard, I considered the six factors set out in the Department of Justice regulation that puts this statutory standard into effect. See 28 C.F.R. § 16.11(k) (2010) (**copy enclosed**). The first four of these factors concern the "public interest" requirement; the fifth and sixth factors concern whether your interest in the records is primarily commercial. **[NB: Add "copy enclosed" (but delete bold) ONLY for institutionalized requesters.]**

[3] **[Background paragraph - - if necessary.]**

[4] On the basis of all of the information available to me, I am affirming the denial of your request for a waiver of fees. Although the records you seek **[concern/appear to concern/ concern in part]** the operations or activities of the government, and you do not **[appear to]** have an overriding commercial interest in the records, you have not satisfied other necessary factors, in particular factors . . .

[5] **[Address the requester's assertions/claims and OIP's responses to each.]**

[6] **[Additional information -- if needed -- that is not part of our response to the appeal should be added after the appeal adjudication.]**

[7] If you are dissatisfied with my action on your appeal, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

-2-

Janice Galli McLeod
Associate Director

[Enclosure]



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

SHELL for FEE ISSUE APPEAL - remove bold/bracketed material.

Name.

Register No.

Post Office Box

United States Penitentiary

City, State ZIP

Re Appeal No.
Request No.
JGM:ABC

Dear

[1] You appealed from the fee determination [**fee estimate/fee category determination**] made by the [**component**] on your request for access to records pertaining to[**yourself/subject matter**].

[2] [**Background paragraph - - if necessary.**]

[3] On the basis of all of the information available to this Office, including the Department of Justice regulations that implement the Freedom of Information Act, 28 C.F.R. Part 16, Subpart A, and the administrative record with regard to this request, I have determined that [**component's**] action was correct.

[4] [**Address requester's assertions/claims and OIP's responses so that the action referred to in the paragraph one above is justified. END with**]: Accordingly, I am denying your appeal.

[5] [**Additional explanatory material if needed.**]

[6] If you are dissatisfied with my action on your appeal, the Freedom of Information Act permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

FEE WAIVER TEMPLATE for INDIGENCE assertion

Further, **[your particular financial situation/your claim of indigence/your inability to pay]** is not a proper basis for granting a fee waiver. This is well-supported by case law. See, e.g., Ely v. U.S. Postal Serv., 753 F.2d 163, 165 (D.C. Cir. 1985). Indeed, Congress considered but ultimately rejected a statutory fee waiver provision for indigents. Id.

Alternate:

In addition, **[indigence or the inability to pay]**, does not entitle you to a fee waiver. This is well supported by case law. See, e.g., Ely v. U.S. Postal Serv., 753 F.2d 163, 165 (D.C. Cir. 1985) (indigence alone insufficient basis for granting fee waiver; "Congress rejected a fee waiver provision for indigents"); Durham v. U.S. Dep't of Justice, 829 F. Supp. 428, 435 n.10 (D.D.C. 1993) (finding indigence alone does not constitute adequate grounds for granting fee waiver).

TEMPLATE for BENEFICIARY of release

Public interest factor three -- who will benefit from the release (whether stated or implied)?

Furthermore, it is readily apparent that you seek the requested records to defend [**against the imposition of two potential life sentences in connection with your recent conviction.**] Thus, it is you, and not the general public, that would be the primary beneficiary of any release.

or

. . . Inasmuch as you are the subject of the records [**and your stated use for these records is to "challenge your excessive sentence,"**] [**to overturn your conviction**] it appears that the only person who would benefit from their disclosure is you. The grant of a fee waiver on this basis would not contribute to "public understanding" as required by the fee waiver standard.

or

. . . In furtherance of your fee waiver request, you stated that you needed the information [**in order to perfect an appeal**]. Your personal need or use for the information is not a factor to be considered in the fee waiver analysis.

FEE WAIVER TEMPLATE for RESTATING STANDARD

... Mere [paraphrasing] [recitation] of the statutory standard, as you have done in [both] your [letter of appeal][and your] [initial request] is not a sufficient basis for a fee waiver. See Oglesby v. Dep't of the Army, 920 F.2d 57, 66 n.11 (D.C. Cir. 1990).



U.S. Department of Justice

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TEMPLATE for FAILURE TO PAY FEES - delete bold/brackets

Dear :

You appealed from the action of the [] on your request for access to records pertaining to [].

This is to advise you that your appeal has been administratively closed by this Office without adjudicating your challenges to [component or agency's] decision because you have not paid past-due fees. See 28 C.F.R. § 16.11(i)(3) (2011). You will be required to substantiate that you have paid this debt before this Office takes action on any new appeals you submit or that are pending in this Office.

If you are dissatisfied with my action on your appeal, the Freedom of Information Act permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Janice McLeod
Associate Director