

UNITED STATES
DEPARTMENT OF THE INTERIOR

**FREEDOM OF INFORMATION
ACT
HANDBOOK**

(383 DM 15)



OFFICE OF THE SECRETARY
Washington, D.C. 20240

FOREWORD

This Handbook supplements the requirements prescribed by 383 DM 15 and 43 CFR Part 2, Subparts A and B. The Handbook establishes Departmentwide policy and procedures for administering and implementing the Freedom of Information Act (FOIA). It provides detailed guidance on when and how to apply the nine FOIA exemptions and includes examples of the-types of information which may be withheld under each. It also requires bureaus and offices to establish control systems for tracking and monitoring requests. All FOIA requests will be processed in accordance with the procedures contained therein. Use of this Handbook and the applicability of its provisions are authorized in 383 DM 15. Questions regarding the content of the Handbook may be directed to the Bureau FOIA Officers or Coordinators, who can also supply additional copies.

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Director, Office of Management
Improvement

Date: March 28, 1991

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

TABLE OF CONTENTS

Chapter 1 General

- 1.1 Purpose
- 1.2 Policy
- 1.3 Applicability
- 1.4 Authorities
- 1.5 Definitions
- 1.6 Responsibilities
- 1.7 Requests Not Covered
- 1.8 Who Can Make an FOIA Request?
- 1.9 Personal Records
- 1.10 Litigation
- 1.11 Compulsory Process (Subpoena)
- 1.12 Disciplinary Action

Appendix 1 - Department of the Interior FOIA Regulations
(43 CFR Part 2, Subparts A and B)

- Illustration 1 - Records Do Not Exist - Sample Letter
- Illustration 2 - Examples of Personal Versus
Agency Records

Chapter 2 Controlling FOIA Requests

- 2.1 Control System
- 2.2 Bureau Responsibility
- 2.3** Action Office Responsibility
- 2.4 Handling FOIA Requests
- 2.5 Recordkeeping
- 2.6 Coordination

- Illustration 1 - Sample FOIA Log
- Illustration 2 - Sample Request Control Form

Chapter 3 Processing Requests

- 3.1 Inquiries for Information Versus Records
- 3.2 Time Limits
- 3.3 Extension of Time Limits
- 3.4 Describing the Requested Records
- 3.5 Locating the Records
- 3.6 Reviewing the Records
- 3.7 Interim Response
- 3.8 Records of Other Agencies
- 3.9 Intradepartmental Consultation and Referral

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

TABLE OF CONTENTS

- 3.10 Expedited Service
 - 3.11 Relationship of the FOIA and the Privacy Act
 - 3.12 Preparing the Response Letter
 - 3.13 Signature Authority
 - 3.14 Action Office Responsibility
 - 3.15 Initial Response - Granting Access
 - 3.16 Initial Response - Denying a Request in Part or Whole
 - 3.17 Deleted Portions
 - 3.18 Consulting with Submitters of Commercial and Financial Information
 - 3.19 Sensitive Requests
 - 3.20 Requests from Members of Congress
 - 3.21 White House Records
 - 3.22 Examples of Information Frequently Releasable Under the FOIA
 - 3.23 Requests for Records not yet Available
 - 3.24 Receipt of Classified Material
 - 3.25 Authenticating and Attesting Copies
-
- Illustration 1 - Extension of 10-Day Time Limit - Sample Letter
 - Illustration 2 - Clarifying a Vague or Overly Broad Request - Sample Letter
 - Illustration 3 - Records Cannot Be Located - Sample Letter
 - Illustration 4 - Interim Response--Delay in Processing Request - Sample Letter
 - Illustration 5 - Referral to Another Agency (Letter to Requester) - Sample Letter
 - Illustration 6 - Referral to Another Agency (Letter to Agency) - Sample Letter
 - Illustration 7 - Referral of Records - Sample Letter
 - Illustration 8 - Referral to Another Bureau - Sample Letter
 - Illustration 9 - Decentralized FOIA Program - Sample Letter
 - Illustration 10 - Checklist for Responding to an FOIA Request
 - Illustration 11 - Elements of an FOIA Request and the Response Letter
 - Illustration 12 - FOIA Denial - Sample Letter
 - Illustration 13 - Consultation with the Submitter - Sample Letter
 - Illustration 14 - Notifying Submitter of Agency's Intent to Release Documents - Sample Letter

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

TABLE OF CONTENTS

- Illustration 15 - Response to Requester - Release
Over Objection of Submitter (Release of
Documents Delayed) - Sample Letter
- Illustration 16 - Records not Available at this Time -
Sample Letter

Chapter 4 Fees and Fee Waivers

- 4.1 Scope
- 4.2 Authority
- 4.3 Policy
- 4.4 Fee Schedule
- 4.5 Categories of Requesters
- 4.6 Determining Category of Requester
- 4.7 Searches
- 4.8 Reviews
- 4.9 Administrative Actions to Improve
Assessment and Collection of Fees
- 4.10 Waiver of Fees
- 4.11 Reducing the Fee
- 4.12 Notice of Denial
- 4.13 Discretionary Waivers

- Illustration 1 - Fee Waiver Denial - Sample Letter
- Illustration 2 - Sample Bill for Collection (DI 1040)
- Illustration 3 - Assurance of Payment - Sample Letter
- Illustration 4 - Advance Payment - Delinquent Requester -
Sample Letter
- Illustration 5 - Advance Payment - Fees Over \$250 -
Sample Letter
- Illustration 6 - Determining Category of Requester -
Sample Letter
- Illustration 7 - Fee Waiver Clarification - Sample Letter

Chapter 5 FOIA Exemptions

- 5.1 General
- 5.2 Discretionary Release
- 5.3 Decisions to Withhold Information
- 5.4 The Nine Exemptions
- 5.5 Waiver of Exemption
- 5.6 Special Rules Governing Certain Information
Concerning Coal Obtained Under the
Mineral Leasing Act

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

TABLE OF CONTENTS

Chapter 6 FOIA Appeals

- 6.1 FOIA Appeal Rights
- 6.2 Initial Notification
- 6.3 Review of Appeals
- 6.4 Final Decisions on Appeals
- 6.5 Index of FOIA Appeal Opinions

Chapter 7 Report to Congress

- 7.1 Annual Report to Congress

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 1 General

1.1

1.1 Purpose. This Departmental Manual Handbook, authorized in 383.DM 15.8, provides policy and general guidance for administering and implementing the Freedom of Information Act (FOIA) in the Department of the Interior (DOI). It is to be used in conjunction with the Department's FOIA regulations, 43 CFR Part 2, Subparts A and B (see Appendix 1 to this Chapter), the Office of the Solicitor FOIA Updates, the Department of Justice FOIA Updates, and the latest Freedom of Information Case List published by the Department of Justice.

1.2 Policy. It is the Department's policy to make records available to the greatest extent possible in keeping with the spirit and intent of the FOIA. The Department will furnish the records promptly to any member of the public upon written request and in accordance with the fees specified in Chapter 4.

1.3 Applicability.

A. The policy and procedures set forth in this Handbook apply to all bureaus and offices of the Department, including the Office of the Secretary. They cover all records and informational materials generated, maintained, and controlled by the Department which come within the scope of 5 U.S.C. 552.

B. The procedures do not apply to (see 43 CFR 2.11(c)):

(1) Records published in the Federal Register.

(2) Opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under 43 CFR Part 2, Subpart A.

(3) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in paragraph 5.4G of Chapter 5 if--

(a) The investigation or proceeding involves a possible violation of criminal law, and

(b) There is reason to believe that--

(i) The subject of the investigation or proceeding is not aware of its **pendency**, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 1 General

1.3B(4)

(4) Informant records maintained by a criminal law enforcement component of the Department under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier unless the informant's status as an informant has been officially confirmed.

1.4 Authorities.

A. The Freedom of Information Act, as amended, 5 U.S.C. 552.

B. Executive Order 12600 of June 23, 1987, Predisclosure Notification Procedures for Confidential Commercial Information.

C. The Privacy Act of 1974, as amended, 5 U.S.C. 552a.

D. 43 CFR Part 2, Records and Testimony.

E. 383 DM 15, Freedom of Information Act.

F. 383 DM 1-13, Privacy Act of 1974.

1.5 Definitions.

A. "**Act**" and "**FOIA**" mean the Freedom of Information Act, 5 U.S.C. 552.

B. The "action office" is the office that is responsible for preparing the response to an FOIA request.

C. An "appeal" is a written notice the Department receives when--

(1) Records have been withheld;

(2) A request has been denied because of failure to describe requested records or for other procedural deficiency, or when it has been determined that the requested records do not exist or cannot be located;

(3) A fee waiver has been denied: or

(4) A request has not been decided within the time limits provided in paragraph 3.2 of Chapter 3.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

D. "Bureau" refers to all bureaus and offices of the Department of the Interior, including the Office of the Secretary.

E. "Commercial or financial information" means records provided to the Government by a submitter that contain material arguably exempt from release under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

F. A "commercial-use request" is a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The intended use of the records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

G. The "control office" is the office responsible for receiving, assigning, and monitoring FOIA requests and maintaining necessary records for the annual report to Congress.

H. The term "direct costs" means those expenditures which the Department actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request.

I. The term "duplication" refers to the process of making copies of documents in response to an FOIA request. Such copies can take the form of paper, microform, audiovisual **materials**, or machine-readable documentation. The Department will provide materials in the form in which they are stored and maintained, unless it is feasible to provide them in another form.

J. An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

K. An "FOIA request" (commonly referred to as the "initial request") is a written request for records made by the public that specifically invokes the Act. However, a bureau may treat a request for records that does not specifically invoke the Act as an FOIA request.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 1 General

1.5L

L. "Freelance journalists" may be considered representatives of the news media if they demonstrate a solid **basis** for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific freelance assignment from a news organization may indicate a solid basis for expecting publication.

M. An "individual" is any person, institution, or company: a State, local, or foreign government; or an Indian tribe.

N. An "initial denial" is the first letter sent to the requester denying either part or all of the initial request for a record or a fee waiver.

O. A "noncommercial scientific institution" is an institution that is not operated for commerce, trade, or profit and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

P. The term "record" includes all books, papers, maps, charts, plats, plans, architectural drawings and microfilm: all machine-readable material such as magnetic tape, disks, drums, and punched cards; all audiovisual material such as still pictures, sound and video recordings, and all other documentary materials, regardless of physical form or characteristics, made or received by the Department in pursuance of Federal laws or in connection with the transaction of public business and preserved or appropriate for preservation by the Department as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities, or because of the informational value of the recorded data.

Q. A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 1 General

1.5R

R. A "requester" is an individual who has asked in writing to see or receive a copy of an agency record.

S. The "responsible official" is the person in the action office who is charged with preparing the response to the initial request.

T. The term "review" refers to the process of examining documents located in response to a commercial-use request to determine whether any portion of any document located is permitted to be withheld and the subsequent processing of documents for disclosure by excising exempt material or otherwise preparing them for release. Review does not include time spent in resolving general legal or policy issues regarding the application of exemptions.

U. The term "search" refers to all the time spent looking for material that is responsive to a request, including line-by-line or page-by-page search to determine whether a record is responsive, even if the search fails to locate records or the records located are determined to be exempt from disclosure. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester. Line-by-line or page-by-page identification should not be necessary if it is clear on the face of the document that it is covered by the request. Searches may be done manually or by computer using existing programming.

V. A "submitter" is someone other than a representative of the Federal Government who provides information to the Department.

W. "Workday" means a regular Federal working day. It does not include Saturdays, Sundays, or legal holidays.

1.6 Responsibilities.

A. Departmental.

(1) The Assistant Secretary - Policy, Management and Budget (PMB) is responsible for administering the FOIA in the Department. PMB is also assigned appellate authority for deciding appeals after obtaining advice from the Office of the Solicitor and in consultation with the Assistant to the Secretary and Director, Office of Public Affairs, and the Assistant Secretary for the appropriate program. This authority, with limited exceptions, has been delegated to the Director, Office of Management Improvement (see 212 DM 9.3).

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 1 General

1.6A(2)

(2) The Departmental FOIA Officer, located in the Office of Management Improvement (**PMI**), Division of Directives and Regulatory Management (**DRD**), has overall responsibility for developing regulations, guidelines, procedures, and standards for the Department's FOIA program; training employees to ensure compliance with the Act; and preparing the Department's annual report to Congress. The Department's FOIA Appeals Officer, also located in DRD, is responsible for processing appeals and maintaining the information prescribed under 43 CFR 2.18. In addition, DRD is responsible for complying with the public information requirements prescribed in 383 DM 15, where appropriate and when applicable for the Secretariat.

(3) The Office of Administrative Services (**PMO**), in which the FOIA Coordinator for the Office of the Secretary is located, is responsible for coordinating FOIA requests directed to Office of the Secretary components, preparing and reviewing responses to requests pertaining to **PMO** programs and functions, and developing related guidelines and procedures. **PMO** is also responsible for gathering and compiling material for the Office of the Secretary's portion of the Department's annual report to Congress. The Office of Inspector General, the Office of the Solicitor, the Office of Aircraft Services, and the Office of Hearings and Appeals are responsible for their own FOIA programs.

(4) The Office of the Solicitor (**SOL**) is responsible for interpreting the Act and providing guidance to bureaus and offices as required by 43 CFR 2.16(a)(4). The Office also provides legal assistance in the development of regulations and FOIA training for its program attorneys.

(5) The Executive Secretariat is responsible for the receipt, assignment, routing, and monitoring of responses to FOIA requests directed to the Secretary, Deputy Secretary, the Secretary's Immediate Office, and the Department when a particular bureau/office is not specified.

B. Bureaus. Bureaus and offices are responsible for the following:

(1) Developing and issuing internal procedures to ensure compliance with the law and the Department's policy and procedures implementing the FOIA;

(2) Designating an FOIA Officer/Coordinator to implement the Act within the bureau--this individual is the primary contact between the Departmental FOIA Officer and the bureau for FOIA activities;

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 1 General

1.6B(3)

(3) Maintaining records necessary for the preparation of the annual report prescribed in 383 DM 15.6;

(4) Complying with the public information requirements prescribed in 383 DM 15.7; and

(5) Ensuring that at least one individual within each organization that handles FOIA requests is familiar with the Act and able to respond to a request properly.

1.7 Requests Not Covered.

A. The following types of requests are not covered under the FOIA:

(1) A request by an employee of a Federal agency acting in an official capacity. The FOIA does not govern exchanges of information between Federal agencies (see the DOJ FOIA Update, Winter 1985, Vol. VI, No. 1, p. 6).

(2) A request from a congressional committee or subcommittee on a subject within its jurisdiction. The FOIA does not give agencies the authority to withhold information from Congress (see 5 U.S.C. 552(d)). However, if an individual Member of Congress or a congressional staff member requests records pursuant to the FOIA, the request would be handled as any other FOIA request.

(3) A request by an individual for records about himself/herself which is processed under the Department's Privacy Act regulations (43 CFR 2, Subpart D) and 383 DM 1-13, **except**, however, that an individual may also invoke the FOIA to obtain records pertaining to himself/herself. In cases where the request states that it is being made pursuant to both statutes, records will be disclosed in accordance with the law which affords the greatest access.

(4) A request to declassify national security classified materials. Such requests are processed under 43 CFR 2.41.

(5) A request for information, as opposed to a request for records (see paragraph 3.1 of Chapter 3).

B. The requirement of the FOIA that records be available to the public refers only to records in existence at the time the request is made. It imposes no obligation on the Department to create a new record--for example, combining or compiling selected items from manual files, preparing a new computer program, or

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 1 General

1.7B

calculating proportions, percentages, frequency distributions, trends or comparisons--to respond to a request. When creating a new record is less burdensome than disclosing large volumes of unassembled material, the Department may elect to do so (see 43 CFR 2.14(c) and Illustration 1 to this Chapter).

C. The FOIA applies only to records maintained by agencies within the Executive Branch of the Federal Government, including the Executive Office of the President, and independent regulatory agencies. The personal staff of the President and units within the Executive Office of the President whose sole function is to advise the President do not fall within the definition of agency. Entities whose functions are not limited to advising and assisting the President (e.g., the Office of Administration within the White House) are subject to the **FOIA**.

D. Presidential transition teams are not Federal agencies subject to the FOIA.

1.8 Who Can Make an FOIA Request? An individual (including a non-U.S. citizen), corporation, association, public interest **group**, or the media; a State, local, or foreign government; or an Indian tribe can make a request under the FOIA. The only exception is a fugitive from justice. Official requests from other Federal agencies and Congress are not subject to the FOIA (see paragraph 1.7 of this Chapter).

1.9 Personal Records. The FOIA only applies to agency records, not to the personal records of individual employees. Personal records are not subject to agency creation or retention requirements, and are not distributed to other employees for their official use. They are created and maintained primarily for the convenience of the employee. In determining whether documents are personal records, evaluate the documents in light of the criteria given below. Illustration 2 provides examples of how to apply these criteria. Documents should be reviewed on a case-by-case basis considering the totality of the circumstances surrounding each document.

A. Creation. Was the document created by an agency employee on agency time, with agency materials, at agency expense? (If not, then it probably is not an agency record, on that basis alone.)

B. Content. Does the document contain substantive **information?** (If not, then it probably is not an agency record, on that basis alone.) Does it contain personal as well as

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

official business information? Even though a record may have certain personal characteristics when analyzed under the criteria in this paragraph, it may nevertheless be an agency record if its release would contribute to an understanding of the operations or activities of the Government.

C. Purpose. Was the document created solely for an individual employee's personal convenience? Alternatively, to what extent was it created to facilitate agency business?

D. Distribution. Was the document distributed to anyone else for any reason, such as for a business purpose? How wide was the circulation?

E. Use. To what extent did the document's author actually use it to **conduct** agency business? Did others use it?

F. Maintenance. Was the document kept in the author's possession, or was it placed in an official agency file? Personal records should be maintained separately and not placed in official files along with agency records. Once an FOIA request is received for an agency file, any personal records in that file will automatically be subject to disclosure under the FOIA.

Note: The nature of the document rather than its location or marking must be considered. The fact that an employee stamps a record "Personal" and places it in his/her desk drawer does not in and of itself make it a personal record.

G. Disposition. Was the document's author free to dispose of it at his/her personal discretion? What was the actual disposal practice?

H. Control. Has the agency attempted to exercise control over the document through applicable maintenance and disposition regulations? Did it do so by requiring the document to be created in the first place? If so, then it is an agency record.

I. Segregation. Is there any practical way to segregate out any personal information in the document from official business information?

J. Revision. Was the document revised or updated after the fact for recordkeeping purposes?

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT **HANDBOOK**
(383 DM 15)

Chapter 1 General

1.10

1.10 Litigation.

' A . If an official is aware of any litigation pending, he/she will notify the Bureau FOIA Officer and the Division of General Law, Office of the Solicitor. Officials located in the field will notify the appropriate headquarters, regional or field solicitor, and the Division of General Law.

B. If the requester sues the Department for withholding records or the submitter of the information sues the Department to prevent disclosure (reverse **FOIA**), the responsible official will cooperate with the Office of the Solicitor in responding to the litigation.

1.11 Compulsory Process (Subpoena). If the production of any record of the Department is sought by compulsory process, e.g., a subpoena, the procedures in 43 CFR 2.80 should be followed, including notifying the Office of the Solicitor.

1.12 Disciplinary Action. If an individual is suspected of acting arbitrarily or capriciously with respect to withholding records under the FOIA, the Office of the Special Counsel may conduct an investigation to determine whether disciplinary action is warranted. The Department is obligated to take whatever action the Office recommends in addition to any sanctions the Department decides to impose.

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

PART 2—RECORDS AND TESTIMONY; FREEDOM OF INFORMATION ACT

Subpart A—Opinions in Adjudication of Cases, Administrative Manuals

Sec.

- 2.1 Purpose and scope.
- 2.2 Opinions in adjudication of cases.
- 2.3 Administrative manuals.

Subpart A—Opinions in Adjudication of Cases, Administrative Manuals

§ 2.1 Purpose and scope.

This subpart contains the regulations of the Department of the Interior concerning the availability to the public of **opinions** issued in the **adjudication** of cases and of administrative manuals. Persons interested in **obtaining** access to other records are directed to the procedures for submission of Freedom of Information requests set out in Subpart B of this part.

§ 2.2 Opinions in adjudication of cases.

(a)(1) Copies of final decisions and orders issued on and after July 1, 1970, in the following categories of cases are available for inspection and **copying** in the Office of Hearings and Appeals, **Ballston Building** No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203:

- (i) Contract appeals;
- (ii) Appeals from decisions rendered by departmental officials relating to the use and disposition of public lands and their resources and the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf;
- (iii) Appeals from orders and **decisions** issued by departmental officials and administrative law judges in proceedings relating to mine health and safety; and
- (iv) Appeals from **orders and decisions** of administrative law judges in Indian probate matters other than those involving estates of Indians of the Five Civilized Tribes and Osage Indians.

(2) Copies of final **opinions and orders** issued in the following categories of cases are available for **inspection and copying** in the Docket and Records **Section, Office of the Solicitor**, Interior Building, Washington, DC 20240:

(i) Tort **claims** decided **in** the headquarters office of the **Office of the Solicitor**, and appeals from decisions of Regional **Solicitors or Field Solicitors** on tort **claims**;

(ii) Irrigation claims under Public Works **Appropriation** Acts (e.g., 79 Stat., 1103) or 25 U.S.C. 388 **decided** in the headquarters office of the Office of the Solicitor, and appeals from **decisions** of Regional **Solicitors** on Irrigation **claims**;

(iii) Appeals under § 2.18 respecting **availability** of records;

(iv) Appeals from decisions of officials of the Bureau of **Indian Affairs**, and Indian enrollment appeals; and

(v) Appeals from **decisions** of officers of the Bureau of Land Management and of the **Geological Survey** in proceedings relating to lands or interests in land, contract appeals, and appeals in Indian probate proceedings, issued prior to July 1, 1970.

(3) An Index-Digest is issued by the Department. All **decisions, opinions and orders** issued in the categories of cases described in paragraphs (a)(1), (i), (ii), and (iii) of this section (that is, contract appeals, land appeals, and mine health and safety appeals), are covered in the Index-Digest; in **addition**, the Index-Digest covers the more important **decisions, opinions and orders** in the remaining categories of cases **described in paragraphs (a)(1)(iv) and (a)(2)(i) through (iv)** of this section, and the more important opinions of law **issued** by the Office of the **Solicitor**. The Index-Digest is available for use by the public in the **Office of Hearings and Appeals, Ballston Building** No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, in the Docket and Records **Section, Office of the Solicitor**, Interior Building, Washington, DC 20240, and in the offices of the Regional **Solicitors** and **Field Solicitors**. Selected **decisions, opinions, and orders** are **published in a series** entitled "**Decisions of the United States Department of the Interior**" (cited as

I.D.), and copies may be obtained by **subscription** from the **Superintendent of Documents, U.S. Government Printing Office**, Washington, DC 20402.

(4) Copies of final **opinions and orders** issued by **Regional Solicitors on tort claims and irrigation claims, and copies of final opinions and orders** on appeals in Indian probate **proceedings** issued by Regional **Solicitors** prior to July 1, 1970, are available for **inspection and copying** in their respective **offices**. Copies of final **opinions and orders** issued by Field **Solicitors** on tort claims are available for inspection and **copying** in their respective offices.

(b)(1) Copies of final decisions and orders **issued** prior to July 1, 1970, on appeals to the Director, Bureau of Land Management, and by **hearing examiners** of the Bureau of Land Management, in proceedings relating to lands and interests in land are **available for inspection and copying** in the Office of Hearings and Appeals, **Ballston Building** No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, and in the **offices** of the Departmental **administrative law judges**.

(2) Copies of final **decisions, opinions and orders** issued on and after July 1, 1970, by departmental **administrative law judges** in all proceedings before them are available for **inspection and copying** in their respective offices and **in** the Office of Hearings and Appeals, **Ballston Building** No. 3, 4015 Wilson Boulevard, **Arlington, VA** 22203.

(3) Copies of final decisions, opinions and orders issued by administrative law judges in Indian probate **proceedings** are available for inspection and copying **in** their respective offices.

§ 2.3 Administrative manual.

The Departmental Manual is available for inspection **in the Departmental Library**, Interior Building, Washington, D.C., and at each of the regional offices of bureaus of the Department. The administrative manuals of those bureaus **which** have issued such documents are available for **inspection** at the headquarters offices and at the regional **offices** of the bureaus.

DEPARTMENT OF THE INTERIOR
Office of the Secretary
43 CFR Part 2

**PART 2—RECORDS AND TESTIMONY;
FREEDOM OF INFORMATION ACT**

Subpart B—Requests for Records

- Sec.
2.11 Purpose and scope.
2.12 Definitions.
2.13 Records available.
2.14 Requests for records.
2.15 Preliminary processing of requests.
2.11 Action on initial requests.

- Sec.
2.17 Time limits for processing initial requests.
2.18 Appeals.
2.19 Action on appeals.
2.20 Fees.
2.21 Waiver of fees.
2.22 Special ruler governing certain information concerning coal obtained under the Mineral Leasing Act.

Subpart B—Requests for Records

§ 2.11 Purpose and scope.

(a) This subpart contains the procedures for submission to and consideration by the Department of the Interior of requests for records under the Freedom of Information Act.

(b) Before invoking the formal procedures set out below, personnel seeking records from the Department may find it useful to consult with the appropriate bureau FOIA officer. Bureau offices are listed in Appendix B.

(c) The procedures in this subpart do not apply to:

(1) Records published in the Federal Register, opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under Subpart A of this part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 2.13(c)(7) if—

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that—
(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by a criminal law enforcement component of the Department under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

§ 2.12 Definitions.

(a) Act and FOIA mean the Freedom of Information Act, 5 U.S.C. 552.

(b) Bureau refers to all constituent bureaus of the Department of the Interior, the Office of the Secretary, and the other Departmental offices. A list of bureaus is contained in Appendix B.

(c) Working day means a regular Federal workday. It does not include Saturdays, Sundays or public legal holidays.

§ 2.13 Records available.

(a) Department policy. It is the policy of the Department of the Interior to make the records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) Statutory disclosure requirement. The Act requires that the Department, on a request from a member of the public submitted in accordance with the procedures in this subpart, make requested records available for inspection and copying.

(c) Statutory exemptions. Exempted from the Act's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the privacy Act), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information

compiled by a **criminal law enforcement authority** in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(o) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) **Decisions on requests.** It is the policy of the Department to withhold information falling within an exemption only if-

(i) Disclosure is prohibited by statute or Executive order or

(2) Sound grounds exist for invocation of the exemption.

(e) **Disclosure of reasonably segregable nonexempt material.** If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released.

§ 2.14 Requests for records.

(a) **Submission of requests.** (1) A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the requester, he or she may direct a request to the head of the appropriate bureau or to the bureau's FOIA officer. Addresses for bureau heads and FOIA officers are contained in Appendix B.

(2) **Exceptions.** (i) A request for records located in all components of the Office of the Secretary (other than the Office of Hearings and Appeals) shall be submitted to: Director, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240. A request for records located in the Office of Hearings and Appeals shall be submitted to: Director, Office of Hearings and Appeals, 4VIS Wilson Boulevard, Arlington, Virginia 22203.

(ii) A request for records of the Office of Inspector General shall be submitted to: Inspector General Office of the Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(iii) A request for records of the Office of the Solicitor shall be submitted to: Solicitor, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

(b) **Form of requests.** (1) Requests under this subpart shall be in writing and must specifically invoke the Act

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Department familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall-

(A) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requester claims the request to fall and the basis of this claim (see § 2.20(b)-(e) for definitions) and

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under § 2.20 (f) end (g), the time for responding to requests may be delayed—

(A) If a requester has not sufficiently identified the fee category applicable to the request

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Department or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Department.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 2.21 are met.

(5) To ensure expeditious handling, requests should be prominently marked, both the envelope end on the face of the request, with the legend "FREEDOM OF INFORMATION REQUEST."

(c) **Creation of records.** A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Department determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Department may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

§ 2.15 Preliminary processing of requests.

(a) **Scope of requests.** (1) Unless a request clearly specifies otherwise, requests to field installations of a bureau may be presumed to seek only records at that installation and requests to a bureau head a bureau FOIA officer may be presumed to seek only records of that bureau.

(2) If a request to a field installation of a bureau specifies that it seeks records located at other installations of the same bureau, the installation shall refer the request to the other installation(s) or the bureau FOIA officer for appropriate processing. The time limit provided in § 2.17(a) does not start until the request is received at the installation having the records or by the bureau FOIA officer.

(3) If a request to a bureau specifies that it seeks records of another bureau, the bureau may return the request (or the relevant portion thereof) to the requester with instructions as to how the request may be resubmitted to the other bureau.

(b) **Intradepartmental consultation and referral.** (1) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that originated with or is of substantial concern to another bureau, it shall consult with that bureau before deciding whether to release or withhold the records.

(2) As an alternative to consultation, a bureau may refer the request (or the relevant portion thereof) to the bureau that originated or is substantially concerned with the records. Such referrals shall be made expeditiously and the requester shall be notified in writing that a referral has been made. A referral under this paragraph does not restart the time limit provided in § 2.17

DEPARTMENT OF THE INTERIOR
Office of the Secretary

43 CFR Part 2

PART 2—RECORDS AND TESTIMONY;
FREEDOM OF INFORMATION ACT

Subpart B—Requests for Records

- Sec.
2.11 Purpose and scope.
2.12 Definitions.
2.13 Records available.
2.14 Requests for records.
2.15 Preliminary processing of requests.
2.18 Action on initial requests.

- Sec.
2.17 Time limits for processing initial requests.
2.18 Appeals.
2.19 Action on appeals.
2.20 Fees.
2.21 Waiver of fees.
2.22 Special ruler governing certain information concerning coal obtained under the Mineral Leasing Act.

Subpart B—Requests for Records

§ 2.11 Purpose and scope.

(a) This subpart contains the procedures for submission to and consideration by the Department of the Interior of requests for records under the Freedom of Information Act.

(b) Before invoking the formal procedures set out below, persona reeking records from the Department may find It useful to consult with the appropriate bureau FOIA officer. Bureau offices en listed In Appendix B.

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(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 2.13(c)(7) If-

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There la reason to believe that-

(A) The subject of the investigation or proceeding is not aware of its pendency, and

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§ 2.13 Records available.

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(b) Statutory disclosure requirement. The Act requires that the Department on a request from a member of the public submitted in accordance with the procedures in this subpart, make requested records available for inspection and copying.

(c) Statutory exemptions. Exempted from the Act's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are In fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel ruler and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the privacy Act), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be evailable by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar filer the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extant that the production of such law enforcement records at information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial • djudcatiat,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information

§ 2.17 Time limits for processing initial requests.

(a) **Basic limit.** Requester shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than 10 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) **Running of basic time limit.** (1) The 10 working day time limit begins to run when a request meeting the requirement of § 2.14(b) is received at a field installation or bureau headquarters designated in § 2.14(a) to receive the request.

(2) The running of the basic time limit may be delayed or tolled as explained in § 2.20(f), (g) and (h) if a requester-

(i) Has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver, or

(ii) Has not made a required advance payment

(c) **Extensions of time.** In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended for more than 10 working days:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the installation processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

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

(d) **Notice of extension.** A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made.

(e) **Treatment of delay as denial.** If no determination has been reached at the end of the 10 working day period for deciding an initial request, or an extension thereof under paragraph (c) of this section, the requester may deem the request denied and may exercise a right of appeal in accordance with § 2.18.

(f) **Notice of delay.** When a determination cannot be reached within the time limit, or extension thereof, the

requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal to the Assistant Secretary—Policy, Budget and Administration, including a description of the procedure for filing an appeal in § 2.18.

§ 2.18 Appeals.

(a) **Right of appeal.** A requester may appeal to the Assistant Secretary—Policy, Budget and Administration when-

(1) Records have been withheld.

(2) A request has been denied for failure to describe requested record or for other procedural deficiency or because requested records cannot be located,

(3) A fee waiver has been denied, or

(4) A request has not been decided within the time limits provided in § 2.17.

(b) **Time for appeal.** An appeal must be received no later than 20 working days after the date of the initial denial, in the case of a denial of an entire request, or 20 working days after records have been made available, in the case of a partial denial.

(c) **Form of appeal.** (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend "FREEDOM OF INFORMATION APPEAL."

§ 2.19 Action on appeals.

(a) **Authority.** Appeals shall be decided by the Assistant Secretary—Policy, Budget and Administration, or the Assistant Secretary's designee, after consultation with the Solicitor, the Director of Public Affairs and the appropriate program Assistant Secretary.

(b) **Time limit.** A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 2.18(c).

(c) **Extensions of time.** (1) If the time limit for responding to the initial request

for a record was not extended under the provisions of § 2.17(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 2.17(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to the right of review in a district court of the United States, as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit the appeal will nevertheless continue to be processed. On expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched and of the right to seek judicial review.

(d) **Form of decision.** (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested record or portion thereof, the Assistant Secretary—Policy, Budget and Administration shall immediately make the record available or instruct the appropriate bureau to make them immediately available. If the determination upholds in whole or in part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the United States District Court for the district in which the withheld record is located, or in which the requester resides or has his or her principal place of business or in the United States District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If a requested record (or portion thereof) is being made available over the objection of a submitter made in accordance with § 2.15(d), the submitter shall be provided notice as described in § 2.16(b)(2).

(c) *Records of other departments and agencies.* (1) If a requested record in the possession of the Department of the Interior originated with another Federal department or agency, the request shall be referred to that agency unless—

(i) The record is of primary interest to the Department.

(ii) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure, or

(iii) The originating agency is not subject to the Act.

The Department has primary interest in a record if it was developed or prepared pursuant to Department regulations, directives or request.

(2) In accordance with Executive Order 12356, a request for documents that were classified by another agency shall be referred to that agency.

(d) *Consultation with submitters of commercial and financial information.*

(i) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the bureau processing the request shall provide the submitter with notice of the request whenever—

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or

(ii) The bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(2) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(3) If a submitter's statement cannot be obtained within the time limit for processing the request under § 2.17, the requester shall be notified of the delay as provided in § 2.17(f).

(4) Notification to a submitter is not required if:

(i) The bureau determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this subpart);

(iv) Disclosure is clearly prohibited by a statute, as described in § 2.13(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submittal, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm.

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Department more than 10 years prior to the date of the request, unless the bureau has reason to believe that it continues to be confidential.

(5) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

§ 2.16 Action on initial requests.

(a) *Authority.* (1) Requests to field installations shall be decided by the head of the installation or by such higher authority, as the head of the bureau may designate in writing.

(2) Requests to the headquarters of a bureau shall be decided only by the head of the bureau or an official whom the head of the bureau has in writing designated.

(3) Requests to the Office of the Secretary may be decided by the Director of Administrative Services, an Assistant Secretary or Assistant Secretary's designee, and any official whom the Secretary has in writing designated.

(4) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the office of the appropriate associate, regional, or field solicitor.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the official processing the request shall notify the requester as to when and where the record is available for inspection or, as the case

may be, when and how copies will be provided. If fees are due, the official shall state the amount of fees due and the procedures for payment, as described in § 2.20.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(3) If a claim of confidentiality has been found frivolous in accordance with § 2.15(d)(4)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(c) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A reference to the specific exemption or exemptions authorizing the withholding;

(ii) If neither a statute or an Executive order requires withholding, the sound ground for withholding;

(iii) A listing of the names and titles or position, of each person responsible for the denial; and

(iv) A statement that the denial may be appealed to the Assistant Secretary-policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed to the Assistant Secretary-Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(i) Form *of payment*. Payment of **fees** should be **made** by check or *money order* payable to the **Department** of the Interior or the bureau **furnishing** the **information**. The term **United States** or the initials "U.S." should not be Included on the check or money order. Where appropriate, the official **responsible** for handling a request may require that payment by check be made in the **form of a certified check**.

(j) *Billing procedures*. A bill for collection, Form **DI-1040**, shall be prepared for each request that **requires** collection of **fees**. The **requester** shall be provided the **first sheet** of the **DI-1040**. This **Accounting Copy** of the **Form** shall be **transmitted** to the **agency's** finance office for entry into **accounts** receivable records. Upon receipt of payment *from the requester*, the recipient shall forward the payment along with a copy of the **DI-1040** to the **finance** office.

(k) *Collection of fees*. The bill for collection or an accompanying letter to the **requester** shall include a **statement** that interest **will** be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, *if the fees are* not paid within **30** calendar days of the date of the bill for collection **is mailed or hand-delivered** to the **requester**. This requirement does not apply if the **requester** is a unit of state or local government. **Other authorities** of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees (see 4 CFR Parts 101-105).

§ 2.21 Waiver of fees.

(a) *Statutory* fee waiver. (1) Document, shall be **furnished** without charge or at a **charge** reduced below the **fees** chargeable under 9 2.20 and Appendix A **if disclosure** of the **information** is in the public interest **because it—**

(i) **is likely** to contribute **significantly** to public **understanding** of the **operations** or **activities** of the **government** and

(ii) Is **not primarily** in the **commercial interest** of the **requester**.

(2) **Factors to be considered** in **determining** whether **disclosure** of **information** "is likely to contribute **significantly** to public **understanding** of the **operations** or **activities** of the **government**" are the following:

(i) Does the record concern the **operation** or **activities** of the **government**? **Records** concern the **operations** or **activities** of the **government** if they **relate** to or will illuminate the manner in which the **Department** or a **bureau** is **carrying out** identifiable **operations** or **activities** or the manner in which an **operation** or

activity **affects** the public. The connection between the records and the **operation** and **activities** to which they **are said** to relate **should** be clear and direct, not remote end attenuated.

Records developed **outside** of the **government** and **submitted** to or obtained by the **Department** may relate to **UK** operations and **activities** of the **government** if they **are** informative on how an **agency** is **carrying out** its **regulatory**, enforcement, procurement or other **activity** that involve private **entitiea**.

(ii) **If a record** concerns the **operation** or **activities** of the **government**, **is** its **disclosure** **likely** to **contribute** to public **understanding** of **these** **operations** and **activities**? The likelihood of a contribution to public **understanding** will depend on consideration of the content of the **record**, the **identity** of the **requester**, and the **intention** between the two. **Is** then a **logical** connection between the content of the **requested** record and the **operation** or **activities** in which the **requester** is interested? **Are** the **disclosable** contents of the record **meaningfully** informative on the **operations** or **activities**? **Is** the **focus** of the **requester** on contribution to public **understanding**, rather than on the **individual** **understanding** of the **requester** or a **narrow** segment of interested persons? **Does** the **requester** have **expertise** in the **subject** area and the **ability** and **intention** to **disseminate** the **information** to the **general** public or **otherwise** use the **information** in a manner that will contribute to public **understanding** of **government** operations or **activities**? **Is** the **requested** **information** sought by the **requester** **because** it may be informative on **government** operations or **activities** or **because** of the **intrinsic** value of the **information** independent of the light that it may shed on **government** operations or **activities**?

(iii) **If** then **is** likely to be a contribution to public **understanding**, will that contribution be **significant**? A contribution to public **understanding** will be **significant** if the **information** disclosed is **new**, clearly supports public oversight of **Department** operations, including the quality of **Department** **activities** and the effect of **policy** and **regulations** on public **health** and **safety**, or **otherwise** confirms or clarifies data on **past** or **present** operations of the **Department**. A contribution will not be **significant** if **disclosure** will not **have** a positive impact on the level of public **understanding** of the **operation** or **activity** involved that **existed** prior to the **disclosure**. In particular, a **significant** contribution is not likely to arise from **disclosure** of **information**

already in the public domain because it has, for example, previously been published or is routinely available to the general public in the public reading room.

(3) Factors to be considered in determining whether disclosure "is primarily in the commercial interest of the requester" are the following:

(i) Does the **requester** have a **commercial interest** that would be **furthered** by the requested **disclosure**? A **commercial interest** is the **commercial**, trade or profit **interest** as these terms are commonly understood. An **entity's** status is not determinative. Not only profit-making corporations, but also individuals or other organizations, may have a **commercial interest** to be served by disclosure, depending on the **circumstances** involved.

(ii) **If** the **requester** has a **commercial interest**, will **disclosure** be **primarily** in that **interest**? The **requester's** **commercial interest** is the primary **interest** if the magnitude of that **interest** is greater than the public **interest** to be served by disclosure. Where a **requester** is a **representative** of a **news** media organization **seeking** **information** as part of the **news** gathering process, it may be presumed that the public **interest** outweighs the organization's **commercial interest**.

(i) *Notice of denial*. If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:

(i) A **statement** of the **basis** on which the **waiver** or reduction has been denied.

(ii) A listing of the **names** and **titles** or positions of each person **responsible** for the **denial**

(iii) A **statement** that the **denial** may be appealed to the **Assistant Secretary-Policy, Budget and Administration** and a **description** of the **procedures** in 9 2.18 for **appeal**.

(b) *Discretionary waivers*. **Fees** otherwise **chargeable** may be waived at the **discretion** of a **bureau** if the **request** involves:

(1) **Furnishing** unauthenticated copies of documents reproduced for **gratuitous** public **distribution**;

(2) **Furnishing** one copy of a **personal** document (e.g., a **birth certificate**) to a **person** who has been **required** to furnish it for retention by the **Department**;

(3) **Furnishing** one copy of the transcript of a hearing before a **herring officer** in a **grievance** or **similar** proceeding to the **employee** for whom the **hearing** was held

(4) **Furnishing** records to **donors** with respect to their gifts;

(5) **Furnishing** records to **individuals** or **private non-profit organizations**

§ 2.20 Fees.

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 2.21, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the schedule of charge⁸ contained in Appendix A to this part.

(2) Fees shall not be charged if the total amount chargeable does not exceed \$15.00.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search, duplication and review.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(3) A commercial use request is a request from or on behalf of a person who seeks information for a use or purpose that further the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 page⁸ of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in-

(i) Searching for requested record^r.

(ii) Examining requested record⁸ to determine whether they are exempt from mandatory disclosure.

(iii) Deleting reasonably segregable exempt matter.

(iv) Monitoring the requesters' inspection of agency record^r, or

(v) Resolving legal and policy issue⁸ affecting access to requested records.

(3) An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher

education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(4) A "noncommercial scientific institution" is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) *News media requests.* (i) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in-

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure.

(iii) Deleting reasonably segregable exempt matter.

(iv) Monitoring the requester's inspection of agency record^r, or

(v) Resolving legal and policy issue⁸ affecting access to requested record^r.

(3)(i) A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio station⁸ broadcasting to the public at large, and publishers of periodical⁸ (but only in those instance⁸ when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. A traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication⁸ services), such alternative media would be included in this category.

(ii) Free-lance journalists may be considered "representative⁸ of the news media" if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(e) *Other requests.* (1) A requester not covered by paragraph⁸ (b), (c) or (d) of this section shall be charged fees for document search and duplication.

except that the first two hours of search time and the first 100 pager of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in-

(i) Examining requested records to determine whether they are exempt from disclosure,

(ii) Deleting reasonably segregable exempt matter,

(iii) Monitoring the requester's inspection of agency records, or

(iv) Resolving legal and policy issue⁸ affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d) or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purpose⁸ of the time limits established in § 2.17 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Department, and the requester has not sought and been granted a full waiver of fees under § 2.21, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fee⁸ are likely to exceed \$250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) When a requester has previously failed to pay a fee within 30 calendar days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request.

(3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 2.17 until receipt of payment.

Appendix A-Fees

The following uniform fee schedule is applicable to all constituent units of the Department. It states the fees to be charged to members of the public for services performed in searching for, reviewing and duplicating requested records in connection with FOIA requests made under Subpart B of this part and to services performed in making documents available for inspection and copying under Subpart A of this part. The duplicating fees stated in the schedule are also applicable to duplicating of records in response to requests made under the Privacy Act. The schedule also states the fee to be charged for certification of documents.

(1) **Copies, basic fee.** For copies of document reproduced on a standard office copying machine in sizes to 8 1/2" x 14", the charge will be \$0.13 per page.

Examples: For one copy of a three-page document, the fee would be \$0.39. For two copies of a three-page document, the fee would be \$0.78. For one copy of a 60-page document the fee would be \$7.80.

(2) **Copies, documents requiring special handling.** For copies of documents which require special handling because of their age, size, etc., cost will be based on direct costs of reproducing the materials.

(3)-(4) [Reserved]

(5) **Searches.** For each quarter hour, or portion thereof, spent by clerical personnel in manual searches to locate requested records: \$2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in manual searches to locate requested records because the search cannot be performed by clerical personnel: \$4.65.

Search time for which fees may be charged includes all time spent looking for material that is responsive to a request, including line-by-line or page-by-page search to determine whether a record is responsive, even if the search fails to locate records or the records located are determined to be exempt from disclosure. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester. Line-by-line or page-by-page identification should not be necessary if it is clear on the face of a document that it is covered by a request.

(6) **Review of records.** For each quarter hour, or portion thereof, spent by clerical personnel in reviewing records: \$2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in reviewing records: \$4.65.

Review is the examination of documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld and the subsequent processing of documents for disclosure by excising exempt material or otherwise preparing them for release. Review does not include time spent in resolving general legal or policy issues regarding the application of exemptions.

(7) [Reserved]

(8) **Certification.** For each certificate of verification attached to authenticated copies of records furnished to the public the charge will be \$0.25.

(9) [Reserved]

(10) **Computerized records.** Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

(a) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.

(b) An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output, remote terminal, storage, plotters, printing, tape/disc mounting, etc.) with related associated costs applicable to each operation.

(c) Material costs (i.e., paper, disks, tape, etc.) will be calculated using the latest acquisition price paid by the facility.

(d) ADP facility managers must assure that all cost estimates are accurate, and if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, itemized listings of operations and associated costs for processing the job may be furnished to members of the public.

(e) Requesters entitled to two hours of free search time under 43 CFR 2.20(e) shall not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.

(11) **Postage/ mailing costs.** Mailing charge may be added for services (such as express mail) that exceed the cost of first class postage.

(12)-(13) [Reserved]

(14) **Other services.** When a response to a request requires services or material other than those described in this schedule, the direct cost of such services or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

(15) **Effective date.** This schedule applies to all requester made under the Freedom of Information Act and Privacy Act after December 30, 1987.

having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department

(6) **Furnishing records** to state, local and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Department and to do so will help to accomplish the work of the Department;

(7) **Furnishing a record** when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Department's fee for the service would be included in a billing against the Department);

(8) **Furnishing records** when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees);

(9) **Furnishing one copy of a record** in order to assist the requester to obtain financial benefits to which he or she is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims or persons injured by the Government).

§ 2.22 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

(a) **Definitions.** As used in the section:

(1) "Act" means the Mineral Leasing Act of February 25, 1920, as amended by the Act of August 4, 1978, Pub. L. 94-377, 90 Stat. 1083 (30 U.S.C. 181 et seq.), and the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 et seq.)

(2) "Exploration license" means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Act pursuant to the authority in section 2(b) of the Act, as amended (30 U.S.C. 201(b)).

(3) "Fair-market value of coal to be leased" means the minimum amount of a bid the Secretary has determined he is willing to accept in leasing coal within lease tracts offered in general lease sales or tenders and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations, controlled by any of such entities pursuant to section 2(a) of the Act (30 U.S.C. 201(a)(1)).

(4) "Information" means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources, which fit within an exemption to the

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

(b) **Applicability.** This section applies to the following categories of information:

(1) **Category A. Information** provided to or obtained by a bureau under section 2(b)(3) of the Act from the holder of an exploration license;

(2) **Category B. Information** acquired from commercial or other sources under service contract with Geological Survey pursuant to section 8A(b) of the Act, and information developed by the Geological Survey under an exploratory program authorized by section 8A of the Act;

(3) **Category C. Information** obtained from commercial sources which the commercial source acquired while not under contract with the United States Government;

(4) **Category D.** Information provided to the Secretary by a federal department or agency pursuant to section 8A(e) of the Act; and

(5) **Category E.** The fair-market value of coal to be leased and comments received by the Secretary with respect to such value.

(c) **Availability of information.** Information obtained by the Department from various sources will be made available to the public as follows:

(1) **Category A—Information.** Category A information shall not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first.

(2) **Category B—Information.** Category B information shall not be withheld from the public; it will be made available by means of and at the time of open filing or publication by Geological Survey.

(3) **Category C—Information.** Category C information shall not be made available to the public until after the areas to which the information pertains have been leased by the Department.

(4) **Category D—Information.** Category D information shall be made available to the public under the terms and conditions to which, at the time he or she acquired it, the head of the department or agency from whom the Secretary later obtained the information agreed.

(5) **Category E—Information.** Category E information shall not be made public until the lands to which the information pertains have been leased, or until the Secretary has determined that its

release prior to the issuance of a lease is in the public interest.

SAMPLE LETTER

RECORDS DO NOT EXIST

(Agency Not Obligated to Create a Record)

Ms. Ella Cution
A & M Realtors
1316 Madison Street
Olney, MD 20832

Dear Ms. Cution:

This letter is in response to your Freedom of Information Act (FOIA) request of March 10, 1989, in which you seek access to an inventory of Government commercial activities for the State of Arizona. The Bureau does not maintain a listing of A-76 activities by State or geographical area, but rather by type of commercial activity.

Under 43 CFR 2.14(c), the Department is not required to create or compile a record to respond to an FOIA request. The Act applies only to records in existence at the time the request is made.

In addition to myself, Janice Jones, Attorney-Advisor, Office of the Solicitor, was involved in determining this response.

You may appeal this response, in accordance with 43 CFR 2.18, by writing to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. Your appeal must be received no later than 20 workdays after the date of this letter. Both the envelope and the letter should be marked "FREEDOM OF INFORMATION APPEAL." A copy of your original request and this letter should accompany your appeal, **along** with any information you have which leads you to believe the records do exist, including where they might be found, if the location is known to you.

Sincerely,

N. M. Small
Chief, Procurement and
Property Management Division

EXAMPLES OF PERSONAL VERSUS AGENCY RECORDS

1. A supervisor maintains his own personal notes to use as a memory jogger for performance evaluations. They are maintained privately and not circulated to any other employees. The notes are not kept in official agency files, and the supervisor can remove them from the office and destroy them at will.

Although the notes are physically located in the Department and concern DOI employees, they are not under the control of the Department and not subject to the Privacy Act. The supervisor created the notes solely for his own convenience and he is the only one privy to them. They may not be passed on to another supervisor nor may they be used wholly or in part to support a performance rating or any personnel action. The notes are personal records and as such exempt from the provisions of the FOIA.

Note: If personal records, e.g., supervisor's notes, are removed from the immediate custody of the supervisor and placed in the Supervisors' Personnel Files, they will be subject to releasability under the Act. Once an FOIA request is received, the files cannot be altered.

2. Every week the Director's secretary prepares a daily agenda listing the activities for each day of the upcoming week. The agenda is circulated to the staff for informational purposes.

The daily agenda is an agency record. The document, which is created at agency expense by an agency employee, is circulated to the staff for a business purpose. It is created for the express purpose of facilitating the daily activities of the office. Any personal information could easily be segregated from the business material, if necessary.

3. A supervisor keeps an appointment calendar on her desk on which she notes upcoming business meetings as well as personal appointments, e.g., lunch with an old schoolmate, doctor's appointment, etc. Her secretary may note appointments that have been scheduled for her.

The calendar is not an agency record. Although created by an agency employee at agency expense, it contains little, if any, substantive information. The calendar was created for the supervisor's personal convenience so that she could organize both her personal and business appointments. It is not circulated to other employees as it was not intended for their use. The agency did not require the supervisor to maintain the calendar and she is free to destroy it at any time.

Note: To avoid problems, an official may wish to maintain two calendars, one for business and another for personal use.

4. The division chief keeps old telephone message slips that indicate the names of the callers, the dates and times of the calls, the telephone numbers where the callers can be reached, and in some cases, brief messages.

The message slips are not agency records. Although created by the division chief's secretary at agency expense, the documents contain no substantive information. The documents were created solely for the official's personal convenience and not used by anyone other than the employee. The message slips, in this instance, are retained by the official and not placed in agency files. The official may destroy the notes at his own discretion.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 2 Controlling FOIA Requests

2.1

2.1 Control System.

A. Each bureau will establish and maintain a control system which ensures that--

(1) Responses are prepared properly and in a timely manner,

(2) Information provided in the Department's annual report to Congress is accurate and complete, and

(3) Background information is maintained to support possible litigation.

B. All FOIA requests will be entered into the system.

2.2 Bureau Responsibility. Each bureau will have at least one control office that will be responsible for:

A. Reviewing all incoming requests and determining the action office responsible for preparing the response.

B. Assigning a control number to each request (e.g., OS-90-001 would be assigned to the first request received by the Office of the Secretary in calendar year 1990).

C. Maintaining a log of all FOIA requests received (see Illustration 1 to this Chapter). The log should provide the following information:

- (1) FOIA control number assigned;
- (2) Name and affiliation of the requester;
- (3) Date of letter;
- (4) Date received;
- (5) Date response due;
- (6) Date response signed;
- (7) Action office;
- (8) Subject of request;
- (9) Disposition - whether granted or denied:

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 2 Controlling FOIA Requests

2.2C(10)

- (10) **Exemptions** applied if a denial;
- (11) Time extensions taken;
- (12) Fees due, collected, and waived; and
- (13) Any other remarks; e.g., whether it has been referred to another bureau in part.

D. Noting each FOIA request with the following information:

- (1) FOIA control number;
- (2) Date received;
- (3) Date due; and
- (4) Action office.

E. Controlling and tracking the requests to make sure that deadlines are met (see paragraph 3.2 of Chapter 3), responses are complete and accurate, records are provided, fees are collected, etc. (see Illustration 2 to this Chapter which provides a sample request control form).

2.3 Action Office Responsibility.

A. The action office will perform the necessary research and prepare the response to the requester, a copy of which will be sent to the control office (the FOIA control number should be indicated in the upper right-hand corner).

B. The action office will send a copy of all denials to the Bureau FOIA Officer.

2.4 Handling FOIA Requests.

A. Each request should be affixed to a transmittal sheet or folder that identifies it as an FOIA request requiring priority treatment.

B. To ensure a timely response by the Department, FOIA requests will be processed as expeditiously as possible. Requests will be designated "**FOIA**" and hand-carried from one office to the next whenever practical to do so.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 2 Controlling FOIA Requests

2.5

2.5 Recordkeeping. FOIA files may constitute a system of records under the Privacy Act if they are retrievable by name or some other type of personal identifier. Files subject to the Act will be maintained in accordance with the Department's regulations (43 CFR Part 2, Subpart D), 383 DM 1-13, and the appropriate Privacy Act systems notice (OS-71, FOIA Request Files System; and OS-69, FOIA Appeal Files).

A. Initial Requests.

(1) Bureaus will maintain an official file on each FOIA request received. The official file will include:

(a) A copy of the incoming letter and DOI's response;

(b) A detailed account of every record or part of it disclosed to a requester (or a copy of the documents disclosed, with any deletions marked);

(c) Notations of any request to waive fees and the agency's response;

(d) Any records concerning the status of the request, **followup** correspondence with the requester, and a record of any time extensions taken;

(e) Intra-agency communications concerning the request;

(f) A copy of the DI 1040, Bill for Collection, and any related records; and

(g) A copy of any appeal **filed** and the Department's determination on the appeal.

(2) Files created in response to requests for information under the FOIA are covered under General Records Schedule (GRS) 14, item numbers 11, 13 through 15, and 36, and are maintained by the action office, central file facility, or the FOIA Officer/Coordinator, as appropriate.

B. Appeals. The FOIA Appeals Officer maintains the official files for all FOIA appeals in accordance with GRS-14, item 12. The file consists of the appellant's letter and the Department's reply and any related correspondence and supporting documents.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 2 Controlling FOIA Requests

2.5C

C. Disposition Authority. An FOIA request for records maintained beyond their authorized destruction date will bar the disposal of such records pending final resolution of the request, including resolution of any appeal and litigation (see 384 DM 1.6F).

2.6 Coordination.

A. If a program office receives an FOIA request directly from the requester, it will send a copy of the request to the control office to be logged in and assigned a control number (see paragraph 2.4B of this Chapter).

B. Any time an action office refers an FOIA request to another component within the same bureau, or to another bureau or agency for direct response, the responsible official will notify the control office in writing.

C. An employee who receives an incorrectly routed FOIA request will promptly notify the control office and forward the request to that office for reassignment (see paragraph 2.4B of this Chapter).

D. The action office will notify the control office immediately whenever it has extended the time limit for responding to a request. The FOIA control number assigned to the request and the name of the requester should be provided, along with the justification for the extension.

E. Bureaus will advise the Departmental FOIA Officer whenever they receive a request involving multiple bureaus that may require coordination to ensure a uniform response by the Department.

FREEDOM OF INFORMATION ACT LOG
CY 1989

REQUEST NUMBER	NAME OF REQUESTER/ AFFILIATION	REMARKS/ SUBJECT	ACTION OFFICE	DATE REC'D	DATE LETTER	DATE DUE	DATE SIGNED	DISPOSITION		FEES			TE	
								GRANTED	DENIED EXEMPT / OFC	DUE	REC'D	W		
89-0001	W. A. Wood W. A. Wood & Co	ABC Contract Copiers	PMO	1/5	12/15	1/20	1/19		4				A	
89-0002	McGrath, Mark Tree Life	Timbers Harvesting Referred by EPA	PEA	1/6	12/21	2/7	2/6	X					P	X
89-0003	Vones, A. L. Arlington, VA	FOIA Appeal Log	PMI	1/9	12/26	1/25	1/30	X					A	
89-0004	Brower, Tammy Stamps Unlimited	Mail Contract	PMO	1/23	1/5	2/6	2/8		4*	PMO	18.60			
89-0005	Lyons, Eli Bethesda, MD	EEO Information	OEO	1/31	12/31	2/28	2/27		6	OEO	50.00	50.00	D	X

KEY:

W = Waiver
A = Automatic
P = Public Interest
D = Denied

TE = Time Extension
* = Full Denial

OS - 118
 (12 / 87)

**OFFICE OF THE SECRETARY
 FREEDOM OF INFORMATION ACT
 REQUEST CONTROL FORM**

FOIA Request Number OS - <u>8</u> <u>99</u> -o <u>5</u> <u>4</u> ----- Current Date <u>0</u> <u>5</u> / <u>0</u> <u>3</u> / <u>8</u> <u>9</u>

Action Office for Direct Response PMI/DRD	Mail Stop 2242	Requester's Name Elizabeth Barnes	Statutory Due Date _0 5 / _1 7 / 8 _9 _
--	-------------------	--------------------------------------	--

Instructions to Action Office: To meet the statutory ten (10) workday response requirement, your response should be completed and dated no later than the "Statutory Due Date" shown above. Processing of this request must adhere to Office of the Secretary Administrative Handbook (OSHB). Number 36. Processing of Freedom of Information Act Requests.

The bottom section of this form, reflecting costs incurred in processing the request, must be completed. The completed form along with a copy of the response should be forwarded to the Freedom of Information Act Officer, Office of the Secretary, Office of Administrative Services (PMO). Mail Stop 5412, Main Interior Building.

**PROCESSING FEES
 (See OSHB No. 36, 7.11)**

Service	cost
Clerical Search / Review (\$2.30 per quarter hour)	\$ _____
Professional / Managerial Search and Review (\$4.65 per quarter hour)	\$ 9.30
Photocopy (\$.13 per page)	\$ 13.65
Printing of Material (Actual Cost)	\$ _____
Copies Requiring Special Handling (Actual Cost for Reproduction)	\$ _____
Verification Certificates (\$.25 per certificate)	\$ _____
Computerized Records	\$ _____
Postage (Actual Cost Exceeding 1st Class)	\$ _____
TOTAL FEE	<u>\$ 22.95</u>

SAMPLE

CHECK THIS BOX IF PROCESSING FEES HAVE BEEN WAIVED

Response Prepared By Alice Long	Telephone -Number (202) 208-1000	Date 05-15-89
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DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.1

3.1 Inquiries for Information Versus Records. The recipient of a request should make a determination as to whether it is subject to the FOIA (i.e., a request for records) or merely a request for information. If the requester seeks an answer to a specific question, or an explanation of policy, procedures, or a Departmental action, DOI is not required to process the request under the FOIA. However, the action office should handle the request in a timely manner.

Examples:

(1) A request that asks whether XYZ company has ever submitted a contract proposal in response to any DOI solicitation, is not subject to the FOIA.

(2) A request that asks for the dollar amount of DOI's contract with the XYZ company for copiers or what type of equipment is covered under the contract would be subject to the FOIA if disclosure of the contract document would answer the questions.

3.2 Time Limits.

A. Initial Determinations. An action office will respond to an initial FOIA request no later than 10 workdays after the appropriate control office receives it. The response must advise the requester of the records DOI intends to disclose or to withhold, the exemption(s) authorizing the withholding (including a citation or summary of each exemption), and provide sound grounds for withholding the document(s).

B. Appeals. After receiving an appeal, DOI has 20 workdays in which to issue a determination.

C. Release of Records. As long as the requester has been informed of the agency's decision with respect to disclosure or nondisclosure, the Department need not release the requested records within the time limits set forth in A and B, above. If the records to be disclosed are not provided with the initial response, they will be sent as soon as possible thereafter.

D. Running of Basic Time Limit. The 10-workday time limit begins to run when a request is received by the appropriate bureau or office either at headquarters or in the field. When it is necessary to forward a request to another installation for response, the time limit begins upon receipt at the installation in possession of the records; The running of the basic time limit may be delayed under the following conditions:

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.2D(1)

(1) The requester has not stated a willingness to pay fees as high as those anticipated and has not sought and been granted a full fee waiver (see paragraph 4.9C of Chapter 4); or

(2) The requester has not made a required advance payment (see paragraph 4.9D of Chapter 4).

The 10 workdays will not begin until the request has been clarified or the records reasonably described and any fee issues resolved.

3.3 Extension of Time Limits.

A. Justification. In the following unusual circumstances, DOI may extend the time limits prescribed in paragraph 3.2 of this Chapter:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the installation processing the request:

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Department having substantial subject-matter interest therein.

B. Limitation. If necessary, more than one extension of time may be taken. However, the total extension of time must not exceed 10 workdays with respect to a particular request.

C. Notifying the Requester. If an extension is necessary, the responsible official will notify the control office and prepare a letter to the requester informing him/her of the reason for the extension (see A, above) and the anticipated date of the response (see Illustration 1 to this Chapter). The letter to the requester should be sent prior to the expiration of the basic time limit (the initial 10 workdays).

3.4 Describing the Requested Records.

A. The requester must describe the records sought in sufficient detail to enable an employee familiar with the subject area of the request to locate the records with a reasonable amount of effort.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.4B

B. When a request is overly broad in scope, unfocused, or involves an extremely voluminous amount of records or a burdensome search (e.g., "Send me any and all documents the Department has that reference or mention the XYZ Co. or any of its officers, employees, or consultants"), the action office should contact the requester to try to identify and clarify the records sought and to reformulate the request (see Illustration 2 to this Chapter). This includes explaining how the agency's records pertinent to the request are filed, indexed, grouped, etc., so that the requester understands how to narrow the request. The individual handling the request should work with the requester to:

- (1) Limit the scope of the request to specific components or geographical areas of a bureau or to a single bureau:
- (2) Define the subject matter;
- (3) Narrow the scope of the request to a certain timeframe: and
- (4) Clarify terms within the context of the request.

C. The lo-workday time limit will not start until D01 receives a request reasonably describing the records or clarifying the initial request.

3.5 Locating the Records.

A. Immediately upon receiving the initial request, the responsible official (see paragraph 1.5S of Chapter 1) will determine whether D01 has the records. If the agency does not have the records, the requester will be advised accordingly (see Illustration 3 to this Chapter).

B. If the official believes that records covered by the request are located at another D01 installation or another Federal agency, he/she will follow the procedures in paragraph 3.8 or 3.9 of this Chapter.

C. If the request involves the records of more than one office within the same bureau, the official will coordinate the request with the Bureau FOIA Officer or his/her counterpart in the field.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.5D

D. If the bureau has retired the records to a records center, the official will promptly locate the records and request their return to his/her custody or make other arrangements for them to be reviewed.

E. If the records cannot be located, the official will notify the requester in writing and send a copy of the letter to the Bureau FOIA Officer (see Illustration 3 to this Chapter). A notice to the requester that records cannot be found constitutes a denial under Departmental regulations; therefore, the letter will require a paragraph on appeal rights (see paragraph **3.16A(6)** of this Chapter).

F. If the request is unclear, the official will contact the requester for clarification. When it requires substantial clarification, DOI will ask the requester to submit an amended written request. The basic time limit does not begin until the clarification letter is received (see paragraph 3.4 of this Chapter).

3.6 Reviewing the Records.

A. The responsible official will make a detailed review of the requested records and consult interested offices before making a decision on the request (see paragraph **3.9A** of this Chapter).

B. The official will review the records and decide whether the information should be released or denied. He/she must consult the designated FOIA attorney prior to:

- (1) Withholding a requested record,
- (2) Releasing a requested record that is exempt from disclosure, or
- (3) Denying a fee waiver.

C. It is the policy of the Department to withhold information falling within an exemption only if:

- (1) Disclosure is prohibited by statute or Executive order, or
- (2) Sound grounds exist for invoking an exemption under the FOIA.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

3.7 Interim Response.

A. To avoid unnecessary appeals and litigation, bureaus will make every effort to keep requesters apprised of the status of their requests. If a decision on a request has not been made within the given time limits or an extension thereof, a requester may treat the delay or lack of response as a denial and file an appeal or sue the Department. It is essential to communicate with the requester--this shows good faith on the part of the Department.

B. When the action office is unable to respond in a timely manner, an interim response should be prepared. The letter should be brief, acknowledge receipt of the incoming correspondence, and advise the requester when he/she may expect a final response. The requester also will be advised of his/her right to treat the delay as a denial and appeal the matter (see Illustration 4 to this Chapter).

3.8 Records of Other Agencies.

A. If DOI receives a request for records in its possession that originated with another Federal agency, the Department will refer the request to that agency unless--

(1) The record is of primary interest to the Department (the Department has primary interest in a record if it was developed or prepared pursuant to DOI regulations, directives or at its request);

(2) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure; or

(3) The originating agency is not subject to the Act.

B. When the request is referred, the responsible official will:

(1) Inform the requester in writing that DOI is forwarding the request to another agency for response (see Illustration 5 to this Chapter), and

(2) Promptly send the request to the appropriate agency (see Illustrations 6 and 7 to this Chapter).

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.8C

C. In accordance with EO 12356 of April 2, 1982, National Security Information, requests for documents classified by another agency are to be referred to that agency for processing.

3.9 Intradepartmental Consultation and Referral.

A. If a bureau (other than the Office of Inspector General) receives a request for records in its possession that originated with or are of substantial concern to another bureau, it will:

(1) Consult with that bureau before deciding whether to release or withhold the material; or

(2) Refer the request (or the relevant portion thereof) to the appropriate bureau for direct response (see Illustration 8 to this Chapter). Such referrals will be made expeditiously.

B. If a request involves correspondence signed at the Deputy Assistant Secretary level or above, the appropriate Assistant Secretary's office and the FOIA attorney for that program area must be consulted. This applies even though the correspondence may have originated with a bureau/office (note exception in A, above).

C. If a request is referred to another bureau or another installation within the same bureau (e.g., from headquarters to a field office), the requester will be advised in writing of the referral. The letter to the requester should include:

(1) The name and telephone number of a contact, and

(2) The mailing address of the responsible bureau/office.

D. The action office will send a copy of any referral letter along with the original request to the appropriate control office.

3.10 Expedited Service. DOI does not provide expedited service for FOIA requests. Requests are generally processed on a "First in, first out" basis: however, exceptions may be made in the following circumstances (see the DOJ FOIA Update, Summer 1983, Vol. IV., No. 3, p. 3):

A. Whenever an individual's life or personal safety would be jeopardized by failure to act promptly, and

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.10B

B. Whenever the requested records are needed in connection with a judicial or administrative proceeding and are critical to preserving the requester's "due process rights," assuming the information is not otherwise available.

3.11 Relationship of the FOIA and the Privacy Act.

A. When an individual requests records pertaining to himself/herself that are contained in a Privacy Act system of records and cites both the FOIA and the Privacy Act, the request will be handled so that the individual is granted the greatest access to his/her records that either Act provides. When an individual submits an FOIA request for records pertaining to himself/herself that are not covered by the Privacy Act, the request will be treated as any other FOIA request.

B. A request from an individual for access to his/her records that cites neither Act may be processed under both Acts (e.g., "I would like all the records the Department of the Interior has on me..."). However, in the event the request is not processed under **DOI's** FOIA/Privacy Act regulations, the requester may not be denied access to any information required to be disclosed pursuant to the statutes.

C. When a third party submits an FOIA request for information that is subject to the Privacy Act and the information is not required to be released under the FOIA, the material may not be disclosed without the prior written approval of the individual on whom the record is maintained. For example: "Send me all the records DOI has on my husband, Justin Case". Any employee who knowingly and willfully discloses information protected by the Privacy Act may be subject to criminal penalties.

D. The Privacy Act never prohibits disclosure of material that the FOIA requires to be released, such as the grade level and salary of a Federal employee (see paragraph **3.22A** of this Chapter).

E. The Privacy Act, unlike the FOIA, only applies to U.S. citizens or lawfully admitted aliens.

F. In handling such combined FOIA/Privacy Act requests, the fee provisions and time limits applicable to the FOIA apply, except that with regard to those records that are subject to the Privacy Act, DOI only can charge the person who is the subject of the records for duplicating the material and not for search or review time.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.12

3.12 Preparing the Response Letter.

A. General.

(1) Respond promptly to requests and telephone calls related to the FOIA.

(2) Strive to convey a helpful, responsive attitude by the tone of voice, style, and wording chosen.

(3) Use clear, plain language which can be understood by the recipient.

(4) Be courteous and sensitive to the needs of the public.

(5) Comply with the requirements in paragraph 3.14 of this Chapter.

B. Content of Letter.

(1) Responses should open with a reference to the specific information requested, the date of the initial request, and the date of receipt if delayed. For example, "This responds to your January 7, 1989, Freedom of Information Act request (received in this office on February 1, 1989) in which you seek access to copies of travel vouchers for certain key officials."

(2) The name and telephone number of a contact familiar with the request should be included.

(3) If the records are not provided with the initial response, the requester should be advised of the circumstances of the delay and the date when he/she may expect to receive them.

(4) If the request involves records which may be located in several bureaus, the requester should be advised that the bureau is responding for records under its purview only (see Illustration 9 to this Chapter).

(5) Fees should be addressed even when the requester is not charged.

(a) The following language may be used when a fee is not charged:

(i) The fee incurred in responding to your request did not exceed \$15 and has, therefore, been waived.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.12B(5)(a)(ii)

(ii) We have reviewed your request and determined that disclosure of the requested information is in the public interest, therefore, all fees are waived.

(b) When a fee is to be charged, advise the requester as to how the fee is calculated. For example:

The fee for the enclosed documents is \$22.95, \$9.30 for search time and \$13.65 for photocopying. A breakdown of these costs is shown on the attached Bill for Collection.

See Illustration 2 to Chapter 4.

(c) If fees are applicable, provide explicit instructions to the requester for submission of payment or advise him/her that a bill will follow.

"A Bill for Collection is enclosed. Please make payment by check or money order clearly marked "FOIA Fee", payable to the "Department of the Interior (or name of the bureau or office)." The term United States or the initials "U.S." should not be included on the check or money order. Send the payment to the (insert title and address where payment is to be mailed). Your payment should be received within 30 days of the date of the Bill for Collection. Interest will be charged under the Debt Collection Act of 1982 (31 U.S.C. 3717) and implementing regulations (4 CFR 102.13) if the fee is not paid within 30 calendar days of the date on the Bill for Collection."

(d) The interest requirement does not apply if the requester is a State or local government. Other authorities will be used to collect outstanding fees. Consult with the appropriate budget/finance office for exact language to be used in these cases.

3.13 Signature Authority.

A. Final decisions on initial requests are made by the following officials:

(1) For requests to headquarters, the head of the bureau or an official whom the head of the bureau has designated in writing.

(2) For requests to field installations, the head of the installation or such higher authority as the head of the bureau may designate in writing.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.13A(3)

(3) For requests to the Office of the Secretary, the Director of Administrative Services, an Assistant Secretary or Assistant Secretary's designee, and any official whom the Secretary has designated in writing (see 210 DM 1.1 and 212 DM 9.7).

B. Bureaus will ensure that officials responsible for making FOIA determinations have the expertise necessary to exercise sound judgment.

3.14 Action Office Responsibility. The office handling the request is responsible for:

A. Notifying the requester of the Department's intention to disclose or withhold the requested records within the time limits specified in paragraph 3.2 of this Chapter;

B. Ensuring that an adequate search is conducted and that any records responsive to the request are reviewed properly;

C. Consulting with appropriate offices, including the Office of the Solicitor (SOL), if a decision is made to release a record exempt from disclosure or a denial is involved:

D. Obtaining necessary concurrences;

E. Following up to make sure that legible copies of the records are sent to the requester if not sent with the initial response;

F. Keeping a record of information that has been released **or** withheld as a reference for future requests (to determine whether the material is in the public domain) and for any appeal filed:

G. Obtaining assurance of payment or advance payment as necessary and preparing the Bill for Collection, DI 1040, when it **is** not prepared by Finance (see paragraph 4.9 and Illustrations 3 through 5 to Chapter 4); and

H. Sending a copy of the response to any affected office.

Illustrations 10 and 11 to this Chapter provide an overview for responding to an FOIA request.

3.15 Initial Response--Granting Access. When the action office decides to release a requested record, it will notify the requester as to when and where the record is available for inspection or as the case may be, when and how copies will be provided. If fees are due, a statement regarding the fees and

3/28/91 #383A-1

New

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

the procedures for payment is to be included in the initial response letter (see paragraph 3.12B(5) of this Chapter).

3.16 Initial Response--Denying a Request in Part or Whole.

A. When the action office decides that all or part of a requested record should be withheld (even if one word is deleted), it will notify the requester in writing (see Illustration 12 to this Chapter). The denial letter will:

(1) Indicate the date of the initial request and the date DOI received the request if delayed:

(2) Briefly describe the requested records; -

(3) Describe the documents or parts withheld fully (if the records are voluminous, they may be categorized for description purposes), being careful not to reveal the contents of the information withheld;

(4) Include the specific exemption(s) and the sound grounds for withholding each part denied;

(5) State the name and title of the official who is responsible for denying the request, if it is someone other than the person who signs the letter (the names of any individuals consulted in the review process also may be included);

(6) Advise the requester of his/her right to appeal in writing to the Assistant Secretary - Policy, Management and Budget. A sample paragraph follows:

"You may appeal this partial (full) denial to the Assistant Secretary - Policy., Management and Budget no later than 20 workdays (after the date of this letter/after receipt of the requested records). Your appeal must be in writing and addressed to: The Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, Department of the Interior, MS-2242, MIB, Washington, DC 20240. A copy of your original request and this denial letter should accompany the appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, "FREEDOM OF INFORMATION APPEAL." Your letter should also contain a brief statement of the reasons why you believe this initial decision to be in error."

DEPARTMENT OF THE INTERIOR,
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.16B

B. A decision denying a request for failure to reasonably describe requested records, for other procedural deficiency, or **because** requested records cannot be located will be in writing (see Illustration 3 to this Chapter) and will include:

(1) A -description of the basis of the decision;

(2) A list of the names and titles or positions of each person responsible (the names of any individuals consulted also may be included); and

(3) A statement that the matter may be appealed to the Assistant Secretary - Policy, Management and Budget (see A(6), above).

C. If the bureau fails to inform the requester of his/her appeal rights, the requester may sue the Department.

D. The Office of the Solicitor will be consulted whenever a decision is made to withhold a requested record, release a record that is exempt from disclosure, or to deny a fee waiver (see paragraph **3.6B** of this Chapter).

E. A copy of all denials will be sent to the Bureau FOIA Officer or the appropriate control office.

3.17 Deleted Portions. When a record contains both exempt and nonexempt material, any reasonably segregable part of an otherwise exempt document will be disclosed. When disclosing a record to a requester, the official will indicate all deletions clearly; it is a good practice to indicate which exemption is being used in the margin of the document--this avoids confusion. In the cover letter to the requester, describe in as much detail as possible the kind of material deleted, being careful not to reveal the information withheld. Deleting even one word constitutes a partial denial. Before disclosing a record, the official will note the parts withheld, either by marking the original or by keeping a page-by-page list.

3.18 Consulting with Submitters of Commercial and Financial Information.

A. Policy.

(1) If a requester seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal Government, the bureau processing

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.18A(1)

the request will provide the submitter with notice of the request whenever -

(a) The submitter has designated the information as commercially or financially sensitive, or

(b) The bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing a notice in a place that is reasonably accessible.

(2) Notification is not required if:

(a) The bureau determines prior to giving notice, that the request for the record should be denied;

(b) The information has previously been lawfully published or officially made available to the public;

(c) Disclosure is required by a statute (other than the FOIA) or regulation (other than 43 CFR 2, Subpart B);

(d) Disclosure is clearly prohibited by a statute, as described in 43 CFR 2.13(c)(3);

(e) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter (if the submitter was specifically afforded an opportunity to make such a designation) unless DOI has substantial reason to believe that disclosure of the information would be competitively harmful;

(f) The designation of confidentiality made by the submitter is obviously frivolous; or

(g) The information was submitted to the Department more than 10 years prior to the date of the request, unless the bureau has reason to believe that it continues to be confidential.

B. Procedures.

(1) If a bureau receives a request for records or information that an individual has submitted to the Government, the responsible official will telephone the submitter whenever possible and follow up in writing to:

3/28/91 #383A-1

New

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.18B(1)(a)

(a) Inform him/her that the bureau has received an **FOIA** request for information or records that he/she has provided (see Illustration 13 to this Chapter).

(b) Invite the submitter to provide a detailed statement of any objection to disclosure. The submitter's statement should explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement should also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(c) Inform the submitter that the bureau will consider his/her written recommendation if it receives it within a reasonable number of days (in most cases, not more than 10 workdays) after receipt of the agency's letter (the letter should be sent certified mail, return receipt requested). Depending on the circumstances, however, the bureau may at its discretion allow more time for the submitter to review the material.

(i) The official may wish to meet with the submitter to review the material or to discuss any problems.

(ii) If the submitter's statement is not received on time, the bureau should send the requester an interim response advising him/her of the reason for the delay.

(2) If the bureau decides to disclose any part of the information that the submitter has asked to be withheld, the responsible official will promptly:

(a) Telephone the submitter to inform him/her of **DOI's** decision, and:

(b) Confirm the telephone call with a letter sent certified mail, return receipt requested (see Illustration 14 to this Chapter), informing the submitter that the bureau will delay a reasonable number of days (in most cases, not more than 10 workdays) before disclosing the information (a copy will also be sent to the requester). The letter to the submitter will:

(i) Contain a complete copy of the material to be disclosed or will give the submitter an opportunity to review the material in **DOI's** offices;

(ii) Explain why his/her objections are not sustained;

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.18B(2)(b)(iii)

(iii) Include a disclosure date: and

(iv) Be sent for surnaming along with the bureau's letter of response and be dated and postmarked the same day as the letter to the requester (see Illustration 15 to this Chapter). The records will be mailed at a later date.

(3) If a claim of confidentiality has been found frivolous in accordance with 43 CFR 2.15(d) (4)(vi) and a determination is made to release the information without consulting the submitter, notify him/her of DOI's decision and the reasons **therefor** a reasonable number of days (in most cases, not more than 10 workdays) prior to the date on which disclosure is to be made.

(4) If, after an independent analysis, the bureau is in agreement with the submitter's position that all or a part of a record should be withheld, the responsible official will notify the submitter. In this event, the letter to the requester should state that the bureau's decision to withhold is based on a careful, objective analysis of the requested records and not merely on the fact that the submitter objected to disclosure.

(5) If a requester sues the Department to compel disclosure of the requested information, SOL will ensure that the submitter is notified promptly. If the submitter sues DOI to enjoin disclosure of the records, SOL also will ensure that the requester is notified promptly.

3.19 Sensitive Requests. After consulting with the bureau's Office of Public Affairs, the action office will notify the Special Assistant to the Secretary and Director of Public Affairs of any sensitive requests that may result in high visibility for the Department or the bureau. The action office is responsible for ensuring that the Special Assistant reviews and surnames all responses to such inquiries at headquarters. The bureau will designate an official at each field installation (preferably in the Office of Public Affairs) to monitor these requests (see paragraph **3.9A** of this Chapter).

3.20 Requests from Members of Congress.

A. Upon receipt of a request for records from a Member of Congress, bureaus should first determine whether the request is made under the authority of a congressional committee or subcommittee on a subject within its jurisdiction. If so, then the request falls within subsection (d) of the FOIA, and only an authorized claim of privilege may be used to justify nondisclosure. Any other request for information from a Member

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Reauests

3.20A

of Congress should be treated as an FOIA request (see paragraph 1.7A(2) of Chapter 1).

B. Before denying a request from a Member of Congress, the responsible official will consult with the Office of Congressional and Legislative Affairs and the designated FOIA attorney (see paragraphs 3.9A and 3.16D of this Chapter).

3.21 White House Records. If White House records are located in agency files that are responsive to an FOIA request, consult the Departmental FOIA Officer as they require special consideration.

3.22 Examples of Information Frequently Releasable Under the FOIA. The following information is generally, but not always, releasable under the FOIA.

A. Personnel-related information/records.

- (1) Names of present and former employees.
- (2) Present and past position titles and occupational series.
- (3) Present and past grades.
- (4) Present and past annual salary rates--including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials.-
- (5) Other awards and honors received and membership in professional groups.
- (6) Present and past duty stations.
- (7) Position descriptions, identification of job elements and those performance standards (but not actual performance appraisals) the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.
- (8) Factors used in ranking job applicants.
- (9) Post-graduate or technical education related to the employee's profession.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.22A(10)

(10) Prior employment in State or Federal Government positions **and in** the private sector when it pertains to an employee's duties.

(11) SF 171, Application for Federal Employment, for the successful candidate (sanitized of any exempt material--see paragraph 5.4F(7)(a) of Chapter 5).

(12) SF 50, Notification of Personnel Action (sanitized of any exempt material--see paragraph 5.4F(7)(a) of Chapter 5).

B. Administrative Documents (Sanitized of any Exempt Material).

(1) Travel Vouchers.

(2) Invoices.

(3) FOIA request letters.

(4) Transmittal memoranda and letters.

(5) Names of Federal employees involved in union activities during working hours.

(6) Records about deceased persons, unless exemption 6 is applicable (see paragraph 5.4F(5) of Chapter 5).

C. Contract Information.

(1) Best and final offer of the successful bidder.

(2) Prices charged the Government--what the Government pays for goods and services--what it costs to do business with the Government.

D. Policy Documentation.

(1) Final orders and opinions in administrative actions.

(2) Documents representing final decisions of agency officials, including documents adopted or incorporated by reference in the final decision.

(3) Official policy statements, interpretations, and guidelines that have been adopted by the agency.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 3 Processing Requests

3.23

3.23 Requests for Records not yet Available. The FOIA only applies to records in existence at the time the request is made. However, when a bureau receives a request for records that may be available at some future time, as a courtesy, it may advise the requester that:

A. The Department will provide the requested records as they become available (specify a date, if possible), or

B. He/she may wish to resubmit the request at a later date (e.g., after June 30).

See Illustration 16 to this Chapter.

3.24 Receipt of Classified Material. Whenever classified documents are referred to DOI for review by another agency, the following procedures will apply.

A. Classified documents will be handled in accordance with 442 DM, National Security Information.

B. The documents will be hand-carried to the Enforcement and Security Management Division (**PPS-S**) for processing immediately. In cases where this is not practicable, contact the designated security officer or call PPS-S for guidance.

3.25 Authenticating and Attesting Copies. See 310 DM 10.

SAMPLE LETTER

EXTENSION OF 10-DAY TIME LIMIT

Mr. Tom Jones
XYZ Company
1234 Holly Lane
Bethesda, MD 20814

Dear Mr. Jones:

This acknowledges your Freedom of Information Act request of September 1, 1989. We are taking a 10-day extension under 43 CFR 2.17(c) in order to properly process your request (insert one of the reasons below).

Reason for Time Extension:

- o Due to the need to search for, collect, and examine a voluminous amount of records.
- o Due to the need to search for and collect the requested records from another source.
- o Due to the need to consult with another agency or other components in the Department.

A final reply will be sent to you on or before October 5, 1989.

Sincerely,

Lillian Smith
Contracting Officer
Office of Construction
Management

SAMPLE LETTER

CLARIFYING A VAGUE OR OVERLY BROAD REQUEST

ms. Noel Claus
123 Candycane Lane
Snowtown, AK 01010

Dear Ms. Claus:

This letter is in response to your Freedom of Information Act request of (date of request), regarding (subject).

Because of the broad and general nature of the subject of your request, we are unable to identify which records are being sought. Under our regulations (43 CFR 2.14(b)(2)), the requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate them with a reasonable amount of effort. Your request does not meet this requirement.

Please be more specific concerning the type of documents you are requesting within each program area or relative to each project. In addition, if such information is available, the request should include the date, title or name, author, recipient, and subject matter of the record. Moreover, the geographical location and timeframe for which you are seeking records have not been defined. It is unclear whether your request covers only records in headquarters or in **the Department** of the Interior's field offices as well.

We will not proceed further with your request until we receive additional clarification from you. If you have any questions, I can be reached at (telephone number).

Sincerely,

Alisha Holiday
Management Analyst

SAMPLE LETTER

RECORDS CANNOT BE LOCATED

Ms. Shanda Lear
1707 88th Street
New York, NY 10128

Dear Ms. Lear:

This letter is in response to your Freedom of Information Act (FOIA) request of April 15, 1989, in which you seek access to two letters (dated November 3 and 10, 1988) from the Departmental FOIA Officer, Department of the Interior, to the Department of Justice concerning delinquent FOIA requesters. We have reviewed our files and were unable to locate any records responsive to your request.

Under 43 CFR 2.18, you may appeal this response by writing to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. Your appeal must be received no later than 20 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records do in fact exist, including where they might be found, if the location is known to you.

Sincerely,

William R. George
Director, Office of Management
Improvement

SAMPLE LETTER

INTERIM RESPONSE - DELAY IN PROCESSING REQUEST

Mrs. Jane Doe
001 Capital Street, S.E.
Washington, D.C. 20002

Dear Mrs. Doe:

This letter is in response to your Freedom of Information Act (FOIA) request of (date of request), regarding (subject of request).

Select the appropriate paragraph(s) below:

- 0 Because of the voluminous nature of your request, additional time is necessary to enable us to determine which records or portions thereof may be released. Accordingly, we anticipate a delay in providing you with our final response.
- 0 The requested documents have been retired to a Federal records center. We have asked that they be returned to us and will advise you when the material becomes available.
- 0 The (name of office processing the request) is unable to respond to your request within the time limits established by the FOIA due to a backlog of requests and other unforeseen circumstances. Please be assured, however, that your request is being handled as equitably as possible and that all documents which can be released will be made available at the earliest possible date. All requests are handled in chronological order based upon the date of receipt.
- 0 The records you requested are located at three of our field installations and at headquarters. The (name of responsible office) in Washington, D.C., will be coordinating the response since it has jurisdiction over these records. As a result, additional time is needed to search for, collect, and review the material.

- o In accordance with 43 CFR 2.15(d), the Department of the Interior is required to notify submitters of commercial and financial information when it receives an FOIA request for records they have submitted to the Government. Two of the submitters we contacted with regard to your request have taken longer than anticipated to review their material. We expect to hear from them by (estimated date) and a decision on your request will be forthcoming.

The bureau expects to complete its response to you by (specify date).

You have a right to treat this delay as a denial of your request. You may appeal this matter by writing to: The Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. A copy of your initial request should accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter and it must be received no later than 20 workdays after the date of this letter. We hope, however, that you will defer action until a decision has been reached on your initial request.

We regret the delay and appreciate your consideration in this matter. Should you have any additional questions, contact (name and telephone number).

Sincerely,

Stewart Johnson
Departmental FOIA Officer

SAMPLE LETTER

REFERRAL TO ANOTHER AGENCY
(Letter to Agency)

Ms. Barbara Goss
FOIA Coordinator
Room 400
Administration Building
Department of Agriculture
Washington, D.C. 20250

Dear Ms. Goss:

Enclosed is a Freedom of Information Act request from Mary Allen that you may be able to answer. We have advised Ms. Allen that she will receive a response directly from your office.

Sincerely,

Fred Smith
FOIA Coordinator for the
Office of the Secretary

Enclosure

SAMPLE LETTER

REFERRAL TO ANOTHER AGENCY
(Letter to Requester)

Ms. Mary Allen
P.O. Box 7775
Andrews, NC 28901

Dear Ms. Allen:

It has been determined that the records described in your February 13, 1989, Freedom of Information Act (FOIA) request may be located in the Department of Agriculture. Therefore, we have forwarded your request to that agency which will provide you with a direct response. If there is a need for you to contact the Department, the mailing address is:

Ms. Barbara Goss
FOIA Coordinator
Room 400
Administration Building
Department of Agriculture
Washington D.C. 20250
202-123-4567

Sincerely,

Fred Smith
FOIA Coordinator for the
Office of the Secretary

SAMPLE LETTER

REFERRAL OF RECORDS

Ms. Barbara Goss
FOIA Coordinator
Administration Building
Department of Agriculture
Washington, D.C. 20250

Dear Ms. **Goss**:

While processing a Freedom of Information Act request from Mary Allen, dated February 13, 1989, the Department of the Interior located three documents that originated in your agency (see the enclosed). We have advised Ms. Allen that she will receive a direct response from your office.

Sincerely,

Fred Smith
FOIA Coordinator for the
Office of the Secretary

Enclosures

3/28/91 #383A-1

New

SAMPLE LETTER

REFERRAL TO ANOTHER BUREAU

Mr. Mitch Demiens
President
Indian Conference, Inc.
1709 Second Avenue
Fairbanks, AK 99701-4897

Dear Mr. Demiens:

This letter is in response to your Freedom of Information Act (FOIA) request of May 12, 1989, in which you seek access to records concerning the Indian Child Welfare Act program. We have forwarded your request to the Bureau of Indian Affairs which will provide you with a direct response. If there is a need for you to contact the Bureau, the mailing address is:

Mr. Casey Jones
FOIA Coordinator
Bureau of Indian Affairs (DOI)
MS-337, SIB
Washington, D.C. 20245
202-208-3555

Sincerely,

Fred Smith
FOIA Coordinator for the
Office of the Secretary

cc: Casey Jones (BIA)

3/28/91 #383A-1

New

SAMPLE LETTER

DECENTRALIZED FOIA PROGRAM

Mr. Samuel Kaye
Attorney
Society for a Greener America
1007 15th Street
New York, NY 10001

Dear Mr. Kaye:

This is in response to your Freedom of Information Act (FOIA) request of May 16, 1989, in which you seek access to records related to a series of meetings which were held during the month of August 1988, involving the Society for a Greener America and several bureau officials.

The Department of the Interior (DOI) has a decentralized FOIA program which means that each bureau is responsible for responding to FOIA requests for its documents. Therefore, in accordance with DOI's regulations (43 CFR 2.15(a)), the Office of the Secretary will be responding for records under its purview only. If you are interested in records that may be located at another bureau within DOI, you must contact that bureau directly. We are enclosing a list of the Department's FOIA Officers for your information and use in making such inquiries.

Sincerely,

Fred Smith
FOIA Coordinator for the
Office of the Secretary

Enclosure

CHECKLIST FOR RESPONDING TO AN FOIA REQUEST

1. Know the Department's regulations.
 - A. DOI has its own regulations on the FOIA and can require that requesters follow them.
 - B. Apply regulations fairly.
2. Read the request.
 - A. Is it a request for records (i.e., an FOIA request) or a request for information (i.e., a public inquiry)?
 - B. Disregard **labels**-- "Under the provisions of the Privacy Act, I want a copy of Jim Smith's SF-171." Don't let the requester mislead you about which act applies. A third party request for an individual's record should be processed under the FOIA, not the Privacy Act.
3. Read the request again.
 - A. Does it reasonably describe the record(s) sought? That is, do you know what the requester wants? Do you know where to go to get the records?
 - B. How broadly or narrowly should you interpret the request?
 - C. Would discussion with the requester help to define, clarify, or narrow the scope of the request?
4. Identify and locate the records.
 - A. Do the records exist? Are they personal or agency records?
 - B. Are the records in the agency's possession and control?
 - C. Should another agency be consulted and/or deferred to?
 - D. Was your search for the records adequate and sufficient to ensure that all records within the scope of the request were identified and located?

5. Resolve questions about fees with the requester.
 - A.. Has the 'requester indicated a willingness to pay the cost of searching for, reviewing, and copying the records?
 - B. Has the requester asked for a waiver? Will disclosure of the material contribute significantly to an understanding of the operations or activities of the Government? Does the requester have a commercial interest that would be furthered by disclosure of the requested information?
 - C. Is collection of the fee economically feasible (\$15 or under)? That is, would the cost of collection be greater than the fee itself?
 - D. Is prepayment or assurance of payment required?
6. Review the records.
 - A. If necessary, duplicate the records so that you have a working copy in the file.
 - B. Are there exempt records or portions of records?
 - C. Does the bureau (office) want to make a discretionary release of exempt information?
7. Consult with the designated **FOIA** attorney before denying a requested record, releasing a record that is exempt from disclosure, or denying a fee waiver.
8. Prepare the records for disclosure/nondisclosure, segregating exempt records or portions of records from nonexempt portions.
 - A. Edit and excise.
 - B. Duplicate-- one copy to be released, one readable excised copy to be retained for file purposes and in case of an appeal.
9. Prepare letter to requester identifying:
 - A. When and where records will be available for inspection or when and how copies will be provided if they are not enclosed:

- B. Records or portions withheld and the authority for withholding them (applicable exemption(s));
 - C. Names and titles or positions of each person responsible for the denial (the names of any individuals consulted in the review process also may be included); and
 - D. Procedures and time limits for appealing the denial to a higher authority within the Department, including the name, title, or position and address of the_ FOIA Appeals Officer.
10. Prepare the Bill for Collection Form--DI 1040 (if a fee has been assessed).
11. Issue the response, enclosing records to be disclosed and the Bill for Collection Form (if appropriate).
- A. Maintain one copy of the response and bill (if appropriate) for the action office file.
 - B. Send one copy of the bill--the Accounting Copy--to the bureau's finance office.
 - C. Maintain a copy of the withheld records or a list which identifies the records to be made available to the Office of the Solicitor in the event of an appeal.

NOTE: When you work on an FOIA request, always assume that it may result in litigation. Keep good records--a telephone log or a written record of all conversations. Communicate with the requester--keep him/her advised of the status of the request.

ELEMENTS OF AN FOIA REQUEST AND THE RESPONSE LETTER

Elements of Request Letter

1. FOIA cited in initial request.
2. Reasonable description of record.
3. Letter addressed to appropriate office.
4. Assumption of financial liability.

Steps in Drafting Response

1. Include the date of the request, the date of receipt, if delayed, and the nature of the request.
2. Determine if record will be released, in whole or in part--consult with the designated FOIA attorney.
3. Indicate when and where records will be available.
4. Cite exemption for withholding.
5. Justify denial.
6. Notify requester of charges.
7. Notify requester of right to appeal when fee waiver or record is denied, when record cannot be located, when request fails to reasonably describe records, or for another procedural deficiency.
8. Include name and title of person(s) responsible for denial and any individual(s) consulted (optional).

SAMPLE LETTER

FOIA DENIAL

Mr. John Doe
1234 Main Street
Anytown, USA 00000

Dear Mr. Doe:

This responds to your letter of _____ (1) _____, in which you requested under the Freedom of Information Act (FOIA) copies of certain documents relating to _____ (2) _____

We have examined the files under our jurisdiction carefully, and are enclosing most of the information you requested.

Select one of the paragraphs below:

- (3) 0 Certain documents (identify specific material or records withheld), however, are being withheld because they reflect the personal opinions, recommendations, and advice of staff members, and were used to arrive at a final agency decision. Disclosure of such material would inhibit the open and candid expression of such views in similar future deliberations, could confuse the public as to the official agency position on an issue, and have a detrimental effect on our decisionmaking process. Therefore, sound grounds exist for withholding the materials pursuant to exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) which permits an agency to withhold "interagency or intra-agency memorandums or letters that would not be available by law to a party ... in litigation with the agency."
- (3) 0 The documents you requested are enclosed, however, the home addresses, telephone numbers, and social security numbers of the employees have been deleted. The Department maintains that an individual has a personal privacy interest in this information. We do not perceive, nor have you enunciated, any public interest that would be served in disclosing this data which would outweigh the privacy interest of the subject individuals. Therefore, sound grounds exist for withholding the information pursuant to exemption 6 of the FOIA (5 U.S.C. 552(b)(6)) which permits an agency

to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

- (5) In addition to myself, the officials responsible for this partial denial are (name(s), title(s), and organization(s) of official(s)). (The names of any individuals consulted in the review process also may be included.)

You may appeal this partial denial to:

- (6) Freedom of Information Act Appeals Officer
Office of the Assistant Secretary -
Policy, Management and Budget
U.S. Department of the Interior
MS-2242, MIB
Washington, D.C. 20240 .

Your appeal must be in writing and received no later than 20 workdays after the date of this letter or 20 workdays after the records have been made available. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

- (7) The fee incurred in responding to your request was minimal and has, therefore, been waived.
- (8) If you have any questions, please call (name and telephone number of someone familiar with the request).

Sincerely,

Director
(Name of bureau/office)

Enclosures

- (1) Date of request
- (2) Description of requested records
- (3) Sound grounds
- (4) Denial authority
- (5) Denial officials
- (6) Appeal procedure
- (7) Fees
- (8) Contact
- (9) Date letter received (Include if request delayed)

SAMPLE LETTER

CONSULTATION WITH THE SUBMITTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. **Bea** Good
Perry Corporation
5678 Market Street
Richland, VA 01010

Dear Ms. Good:

Pursuant to the Freedom of Information Act (5 U.S.C. 552), Ally Corporation of Newark, NJ, has requested a copy of your proposal and any related correspondence pertinent to the award of Contract No. **DOI-007** (letter dated January 2, 1989, enclosed).

To assist us in determining whether data should be released, we need your firm's views on which items, if any, are protected from disclosure by exemption 4 (5 U.S.C. 552(b)(4)). If you recommend that information be withheld, please provide us with the following:

- (1) The data to be withheld and the basis on which the information is exempt under the FOIA;
- (2) A detailed explanation of how disclosure would be competitively harmful to your company; and
- (3) A certification that the **information** is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

Please review all the materials that were submitted with your proposal and submit any recommendations you may have concerning disclosure of the information within ten days from the date of receipt of this letter. If you have any questions regarding this matter, contact Joe Williams of my staff at 202-123-3456.

Sincerely,

Roy L. Baker
Chief, Division of Contracts

Enclosures

3/28/91 #383A-1
New

SAMPLE LETTER

NOTIFYING SUBMITTER OF AGENCY'S INTENT TO RELEASE DOCUMENTS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

MS. **Bea** Good
Perry Corporation
5678 Market Street
Richland, VA 01010

Dear Ms. Good:

Thank you for your letter of January 19, 1989, in which you objected to the Department of the Interior's disclosure of Perry Corporation's contract proposal and related correspondence for Contract No. DOI-007.

After considering your comments, and thoroughly reviewing your proposal and the related correspondence, we plan on releasing the following information for the reasons discussed below.

1. Unit Prices - Disclosure of the unit prices is consistent with the fundamental purpose of the Freedom of Information Act (FOIA)--to ensure public access to Government records. Adequate information enables the public to evaluate the wisdom and efficiency of Federal programs and expenditures. To sufficiently evaluate the cost efficiency to the Government of this contract, unit prices must be disclosed. In addition, the Federal Acquisition Regulation (FAR) 15.1001(c) states that, with limited exceptions, the contracting officer must notify the unsuccessful offerors of unit prices of each award. Further, the disclosure of prices charged the Government is the cost of doing business with the Government and, as such, is a matter of public record. Finally, disclosure is consistent with current case law.

2. Name of the President/CEO of the Company - Since Perry Corporation is a publicly-owned company, this information is published in the company's annual report. Therefore, since it is already a matter of public record, we feel that the information is releasable under the FOIA.

3. Government Contracts and Information Available to the Public - The list of Government contracts previously awarded to the company, various sales brochures, and the annual report

are a matter of public record, and thus releasable under the FOIA.

We do not believe that release of this information will reveal confidential commercial or financial information or cause Perry Corporation substantial competitive harm.

The Department plans to release this information (copies enclosed) to the requester ten workdays from your receipt of this letter.

Sincerely,

Roy L. Baker
Chief, Division of Contracts

Enclosures

SAMPLE LETTER

RESPONSE TO REQUESTER - RELEASE OVER OBJECTION OF SUBMITTER
(Release of Documents Delayed)

Mr. James Sullivan
Ally Corporation
10 North Chestnut Street
Newark, NJ

Dear Mr. Sullivan:

This letter is in response to your Freedom of Information Act (FOIA) request of January 2, 1989, in which you seek access to records concerning Perry Corporation.

The requested information is enclosed except as follows:

1. Information concerning the qualifications, skills, educational background and past experience of the company's employees. Release of this data could encourage corporate raiding and would be detrimental to the internal operations and productivity of the company (Items 1-10).

2. Cost and financial data and the competitive pricing approaches of the contractor. Release of this information would reveal the contractor's internal operations and business practices, thereby diminishing its competitive abilities. In addition, release could render future negotiations difficult if offerors become reluctant to furnish such information for fear of disclosure by the Government (Items 20-30).

3. Certain technical and commercial data describing the company's equipment, and internal operating procedures, and the names and telephone numbers and other information concerning its non-Government clients for the same reasons cited above (Items 41-50).

The fourth exemption under the FOIA protects from mandatory disclosure "matters that are commercial or financial information obtained from a person and privileged or confidential." It is designed to protect the interests of both the Government and the submitter of the information. The test for determining whether commercial or financial information is confidential is dependent upon whether disclosure is likely to have either of two effects: (1) impair the ability of the Government to obtain information

in the future, or (2) cause substantial competitive harm to the submitter of the information. Therefore, we believe sound grounds exist for withholding the above information pursuant to exemption 4 of the FOIA (5 U.S.C. 552(b)(4)).

You are advised that the submitter (Perry Corporation) has objected to the release of some of the information contained in its contract. However, after a thorough review, the Department of the Interior has decided to disclose some of this data. It will be released no sooner than ten workdays from Perry's receipt of our determination to disclose the information.

The fee incurred in processing your request was minimal and has therefore been waived under 43 CFR 2.20(a)(2).

You have the right to appeal this partial denial with the Department. Your appeal should be in writing and should be addressed to: the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. Any such appeal must be received no later than 20 workdays after the date of this letter or 20 workdays after the records have been made available. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

If you have any additional questions regarding this matter, contact Joe Williams of my staff at 123-3456.

Sincerely,

Rose Power
Director, Office of
Procurement

Enclosures

3/28/91 #383A-1
New

SAMPLE LETTER

RECORDS NOT AVAILABLE AT THIS TIME

Mr. Joe Blow
555 Market Street
Anytown, USA 00000

Dear Mr. Blow:

This is in response to your Freedom of Information Act request of (date of request), regarding (subject of request).

In accordance with the Department of the Interior's regulations (43 CFR 2.14(c)), the requirement that records be made available to the public only applies to records in existence at the time the request is made. It imposes no obligation on the Department to place the requester's name on a mailing list for automatic receipt of certain kinds of records as they become available.

The documents you requested do not exist at the present time.
(Insert one of the paragraphs below.)

- o However, we anticipate that we may be able to provide you with the records by (specify a date). We will advise you when this material becomes available.
- o However, we anticipate that the records may be available after (specify a date). You may wish to resubmit your request at that time.

Should you desire any additional information, please contact (name and telephone number of contact).

Sincerely,

Fred Smith
FOIA Coordinator for the
Office of the Secretary

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 4 Fees and Fee Waivers

4.1

4.1 Scope. This Chapter sets forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search, review, and reproduction of D01 records.

4.2 Authority. Under the FOIA, D01 is authorized to charge fees to recover the direct costs of searching for, duplicating, and in the case of commercial-use requesters, reviewing documents to respond to an FOIA request.

4.3 Policy.

A. Unless waived, fees for responding to FOIA requests will be charged in accordance with the provisions of 43 CFR 2.20 and 43 CFR Part 2, Appendix A.

B. DOI will not charge the requester if the fee is \$15 or less, as the cost of collection would be greater than the fee.

C. Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

4.4 Fee Schedule. The following uniform fee schedule applies to all constituent units of the Department (see 43 CFR Part 2, Appendix A). The duplicating fees provided in the schedule are also applicable to requests processed under the, Privacy Act.

A. Review and Search Fees.

Manual searches and reviews by clerical personnel.	\$2.30 per quarter hour or fraction thereof.
---	--

Manual searches and reviews by professional or managerial personnel in cases where clerical staff would not be able to locate or review the records.	\$4.65 per quarter hour or fraction thereof.
---	--

B. Computerized Records. Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 4 Fees and Fee Waivers

4.4B(1)

(1) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.

(2) An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output remote terminal, storage, plotters, printing, tape/disc mounting, etc.) with related associated costs applicable to each operation.

(3) Material cost (i.e., paper, disks, tape, etc.) will be calculated using the latest acquisition price paid by the facility.

(4) ADP facility managers will ensure that all cost estimates are accurate, and if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, an itemized listing of operations and associated costs for processing the job may be furnished to members of the public.

(5) Requesters entitled to two hours of free search time under 43 CFR 2.20(e) will not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.

C. Reproduction Fees.

Pages no larger than 8 1/2 by 14 inches, when reproduced by standard office copying machines	\$0.13 per page
--	-----------------

Pages over 8 1/2 by 14 inches.	Direct cost of reproduction to DOI.
-----------------------------------	--

Documents requiring special handling.	Direct cost of reproduction to DOI.
--	--

D. Special Services.

(1) Certification. For each certificate of verification attached to authenticated copies of records furnished to the public, the charge will be \$0.25.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 4 Fees and Fee Waivers

4.4D(2)

(2) Postage/Mailing Costs. Mailing charges may be added for services (such as Express Mail) that exceed the cost of First-Class postage.

(3) Other Services. When a response to a request requires services or materials other than those described in this schedule, the direct cost of such service or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

4.5 Categories of Requesters. There are four categories of requesters: Commercial-use; educational and noncommercial scientific institutions; news media (including freelance journalists); and all others (see paragraph 1.5 of Chapter 1 for definitions). The fees set forth in paragraph 4.4 of this Chapter apply with the following exceptions:

A. Educational/noncommercial scientific institutions and the news media (including qualified freelance journalists) are charged for the cost of reproduction alone. These requesters are entitled to the first 100 pages (paper copies or the equivalent cost thereof if the records are in some other form) of duplication at no cost. The following are examples of how these fees are calculated.

(1) A request that results in 150 pages of material. No fee would be assessed for duplication of 150 pages. The reason is that these requesters are entitled to the first 100 pages at no charge. The charge for the remaining 50 pages would be \$6.50. This amount would not be billed because it is less than \$15. See paragraph 4.3B of this Chapter.

(2) A request that results in 350 pages of material. The requester in this case would be charged \$32.50.

B. Noncommercial requesters who are not included in A, above, are entitled to the first 100 pages (paper copies or the equivalent cost thereof if the records are in some other form) of duplication at no cost and 2 hours of search time without charge (see A(1) and (2), above).

C. Commercial-use requesters are charged for document search, review, and duplication. They are not entitled to any automatic free search or duplication costs.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 4 Fees and Fee Waivers

4.6

4.6 Determining Category of Requester.

A. DO1 may ask the requester to provide additional information at any time to determine what fee category he/she falls under (see Illustration 6 to this Chapter). This applies to all requesters.

B. The requester should be contacted promptly when clarification is required.

4.7 Searches.

A. When appropriate, DO1 may charge for time spent in the following activities (see paragraph 4.4 of this Chapter for applicable fees):

(1) Time spent in trying to locate DO1 records which come within the scope of the request, whether documents responsive to the request are located or not; and

(2) Direct costs involving the use of computer time to locate and extract requested records.

B. DO1 will not charge for the time spent in monitoring a requester's inspection of releasable records.

4.8 Reviews.

A. When appropriate, DO1 may charge for time spent in the following activities (see paragraph 4.4 of this Chapter for applicable fees):

(1) Time spent in examining a requested record to determine whether the record is permitted to be withheld in whole or in part; and

(2) Time spent in deleting exempt matter being withheld from records otherwise made available.

B. DO1 will not charge for the time spent in resolving legal and policy issues regarding the application of exemptions.

C. DO1 may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 4 Fees and Fee Waivers

4.8D

D. DOI will charge only commercial-use requesters for review time.

4.9 Administrative Actions to Improve Assessment and Collection of Fees.

A. Billing Procedures. The official processing a request that requires the collection of fees will prepare a Bill for Collection, DI 1040 (see Illustration 2 to this Chapter).

(1) One copy is sent to the requester along with the agency's response. The response to the requester is to include a statement concerning FOIA processing fees (see paragraph 3.12B(5) of Chapter 3).

(2) The Accounting Copy of the form is sent to the bureau's budget/finance/accounting office.

(3) Any payment received will be forwarded, along with a copy of the DI 1040, to the appropriate finance office.

B. Form of Payment. Payment is to be made by check or money order payable to the Department of the Interior or the bureau furnishing the information. Where appropriate, a certified check may be required.

C. Notice of Anticipated Fees.

(1) Unless the requester has been granted a fee waiver or has previously agreed to pay fees as high as those anticipated by the Department, or if the fee is negligible, the official will promptly notify him/her of the estimated cost and obtain written assurance of payment (see Illustration 3 to this Chapter).

(2) The official also should give the requester an opportunity to modify his/her request at that time to reduce the fee.

(3) DOI will not start processing the request until the requester agrees to pay the estimated fee.

D. Advance Payment.

(1) Where it is anticipated that FOIA fees are likely to exceed \$250 and the requester does not have a history of prompt payment of FOIA fees, the Department may require prepayment of the entire amount before it will begin processing the request. The Department will notify the requester that prepayment is due and at the same time provide him/her with an

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 4 Fees and Fee Waivers

4.9D(1)

opportunity to **modify** the request to reduce the fee (see Illustration 5 to this Chapter).

(2) Where a requester has previously failed to pay a fee within 30 calendar days of the date of the billing, the Department will--

(a) Require the requester to pay the full amount owed plus any applicable interest penalties as provided in E, below, and to make an advance payment of the full amount of the estimated fee (see Illustration 4 to this Chapter), or

(b) Demonstrate that he/she has, in fact, paid the fee.

(3) The Department will not start processing the request until the above issues are resolved.

E. Charging Interest. The response to the requester or the bill for collection will include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations in 4 CFR 102.13, if the fees are not paid within 30 calendar days of the date of the billing. This requirement does not apply if the requester is a unit of State or local government. Other authorities of the Debt Collection Act of 1982 will be used, as appropriate, to collect the fees (see 4 CFR Parts **101-105**).

4.10 Waiver of Fees.

A. Bureaus and offices will provide documents without charge or at a reduced charge if disclosure of the information is in the public interest because it:

(1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) Is not primarily in the commercial interest of the requester.

B. The following factors should be considered in determining whether disclosure of information is likely to contribute significantly to public understanding of the operations or activities of the Government:

(1) Does the record concern the operations or activities of the Government? Records concern the operations or activities of the Government if they relate to or will illuminate

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383-DM 15)

Chapter 4 Fees and Fee Waivers

4.10B(1)

the manner in which the Department or a bureau is carrying out identifiable operations or activities or the manner in which an operation or activity affects the public. The connection between the records and the operations and activities to which they are said to relate should be clear and direct, not remote and attenuated. Records developed outside of the Government and submitted to or obtained by the Department may relate to the operations and activities of the Government if they are informative on how an agency is carrying out its regulatory, enforcement, procurement, or other activities that involve private entities.

(2) If a record concerns the operations or activities of the Government, is its disclosure likely to contribute to public understanding of these operations and activities? The likelihood of a contribution to public understanding will depend on consideration of the content of the record, the identity of the requester, and the interrelationship between the two. For the purpose of releasing a document, the identity of the requester is generally irrelevant (see discussion of the Reporters Committee case and exemptions 6 and 7 in Chapter 5); however, it is an important factor in determining whether a fee waiver is appropriate. Is there a logical connection between the content of the requested record and the operations or activities in which the requester is interested? Are the disclosable contents of the record meaningfully informative on the operations or activities? Is the focus of the requester on contribution to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? Does the requester have expertise in the subject area and the ability and intention to disseminate the information to the general public or otherwise use the information in a manner that will contribute to public understanding of Government operations or activities? Is the requested information sought by the requester because it may be informative on Government operations or activities or because of the intrinsic value of the information independent of the light that it may shed on Government operations or activities?

(3) If there is likely to be a contribution to public understanding, will that contribution be significant? A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Department operations, including the quality of Department activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department. A contribution will not be significant if disclosure will not have a positive impact on the level of public understanding of the operations or activities involved that existed prior to the disclosure. In particular, a significant contribution is not likely to arise

3/28/91 #383A-1

New

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 4 Fees and Fee Waivers

4.10B(3)

from disclosure of information already in the public domain because it **has**, for example, previously been published or is routinely available to the general public in a public reading room.

C. The following factors should be considered in determining whether disclosure is primarily in the commercial interest of the requester:

(1) Does the requester have a commercial interest that would be furthered by the requested disclosure? A commercial interest is a commercial, trade or profit interest as these terms are commonly understood. Not only profitmaking corporations, but also individuals or other organizations may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(2) If the requester has a commercial interest, will disclosure be primarily in that interest? The requester's commercial interest is the primary interest if the magnitude of that interest is greater than the public interest to be served by disclosure. Where a requester is a representative of a news media organization seeking information as part of the news gathering process, it may be presumed that the public interest outweighs the organization's commercial interest.

D. DOI may ask the requester to furnish additional information to determine whether a fee waiver is in the public interest (see Illustration 7 to this Chapter).

E. The Department will not start processing a request until the fee waiver issue has been resolved, unless the requester has provided written assurance of payment in full if the fee waiver is denied by the agency.

4.11 Reducing the Fee. Under the FOIA and DOI's regulations, fees may be reduced (in contrast to a total fee waiver) when release of some of the records may be in the public interest. The criteria for a reduction in fees are the same as those for a total fee waiver.

A. A fee reduction may be appropriate when it is determined that disclosure of only some of the requested records would be likely to contribute significantly to public understanding of the operations or activities of the Government, and when disclosure would not be primarily in the commercial interest of the requester.

B. Fees in these cases should be prorated based on the percentage of records that meets the fee waiver criteria.

3/28/91 #383A-1

New

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 4 Fees and Fee Waivers

4.11B

Where the documents may be segregated, calculate the exact cost of **processing those** records which do not qualify for a fee waiver.

4.12 Notice of Denial. If a request for a fee waiver or reduction is denied, the action office will--

A. Send the requester a letter (see Illustration 1 to this Chapter) containing the following:

(1) A statement justifying why the waiver or reduction has been denied.

(2) A listing of the names and titles or positions of persons responsible for the denial. The names and titles of persons consulted also may be included even though they are not directly responsible for the denial.

(3) A statement that the denial may be appealed to the Assistant Secretary--Policy, Management and Budget and a description of the appeal procedures set forth in 43 CFR 2.18.

B. Send a copy of the denial letter to the Bureau FOIA Officer and the appropriate control office.

4.13 Discretionary Waivers. Fees may be waived at the discretion of the bureau if a request involves:

A. Furnishing unauthenticated copies of documents reproduced for gratuitous distribution:

B. Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department;

C. Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held;

D. Furnishing records to donors with respect to their gifts:

E. Furnishing records to individuals or private nonprofit organizations having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department;

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 4 Fees and Fee Waivers

4.13F

F. Furnishing records to State, local, and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to DOI and to do so will help to accomplish the work of the Department;

G. Furnishing a record when to do so saves costs and yields income equal to the direct cost of providing the records;

H. Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees); or

I. Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he/she is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims, or persons insured by the Government).

Note: Be consistent!

SAMPLE LETTER
FEE WAIVER DENIAL

Mr. Jerry Cook
Silva, Cook, and Grant
Attorneys at Law
One Maryland Street
Baltimore, MD 21212

Dear Mr. Cook:

This is in response to your Freedom of Information Act request of February 7, 1989, in which you seek access to certain records relating to Gas Lease No. 00-12-777.

In your letter you also sought a fee waiver since the information was being requested in connection with an action pending in the Superior Court of the State of Maryland entitled Norwood v. Glowmino Corp. The Department of the Interior's regulations state that "... documents shall be furnished without charge . . . if disclosure of the information is in the public interest because it (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government and (2) Is not primarily in the commercial interest of the requester." Your request did not contain sufficient evidence to support these criteria. Therefore, we are denying your request for a waiver pursuant to 43 CFR 2.21(a).

In addition to the undersigned, the official responsible for this denial is Thomas B. Jones, Associate Solicitor, Division of Energy and Resources.

Under 43 CFR 2.18, you have the right to appeal this decision to:

Freedom of Information Act Appeals Officer
Office of the Assistant Secretary -
Policy, Management and Budget
U.S. Department of the Interior
MS-2242, MIB
Washington, D.C. 20240

Your appeal must be in writing and must be received no later than 20 workdays from the date of this letter. The appeal must be accompanied by a copy of your original request and this denial letter. To expedite the appellate process and to ensure full consideration of your appeal, your letter should contain a brief statement of the reasons why you believe this decision is in

error. **The** appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

We estimate that it will cost \$18.60 to search for and review the requested records and \$130 to duplicate the material (1000 pages at \$.13 per page) for a total of \$148.60. If you still wish to obtain these documents, please provide written assurance of your willingness to pay the full amount to (name of individual and address where assurance is to be sent). You may wish to modify your request at this time to reduce the fee. We will not start processing your request until this written assurance has been received.

If you have any questions concerning this matter, I may be reached at 202-208-0000.

Sincerely,

James R. West
Associate Director for
Offshore Minerals Management

U. S. GOVERNMENT PRINTING OFFICE: 1983-399-220

SAMPLE
BILL FOR COLLECTION

DI-1040
 Revised
 (Aug. 1973)

Bill No. OS-89-054

Department of the Interior
 office of the Secretary
 (Bureau or Office)

Date 5-15-89

Mail Payment To: The Office Preparing the Response
 (Address)

PAYER:

Ms. Elizabeth Barnes
 3412 Dale Street
 Silver Spring, MD 20906

Please detach too portion of
 this bill and return with
 remittance.

Amount of Payment \$ 22.95

Date	DESCRIPTION	Quantity	Unit Price		Amount
			Cost	Per	
5-15-89	<u>FOIA Fee</u>				\$ 22 15
	Photocopying Cost (1st 100 pages not charged) 105 pages at \$.13 per/page		\$ 13.65		
	Professional Search (1st 2 hrs. not charged) 1/2 hr. at \$4.65 per/qt. hr.		\$ 9.30		
SAMPLE					
AMOUNT DUE THIS BILL,					\$ 22 95

NOTE: A receipt will be issued for all cash remittances and for all other remittances when required by applicable procedures. Failure to receive a receipt for cash payment should be promptly reported to the bureau or office shown above.

U. S. GOVERNMENT PRINTING OFFICE: 1983-399-220

DI-1040
 Revised
 (Aug. 1973)

SAMPLE
BILL FOR COLLECTION

Bill No. **OS-89-054**

Make Remittance Payable To: Department of the Interior
 Office of the Secretary
 (Bureau or Office)

Date 5-15-89

Mail Payment To: The Office Preparing the Response
 (Address)

PAYER:

Ms. Elizabeth Barnes
 3412 Dale Street
 Silver Spring, MD 20906

Please detach top portion of
 this bill and return with
 remittance.

Amount of Payment \$ 22.95

Date	DESCRIPTION	Quantity	Unit Price		Amount
			Cost	Per	
5-15-89	<u>FOIA Fee</u>				\$ 22 15
	Photocopying Cost (1st 100 pages not charged) 105 pages at \$.13 per/page		\$ 13.65		
	Professional Search (1st 2 hrs. not charged) 1/2 hr. at \$4.65 per/qt. hr.		\$ 9.30		
SAMPLE					
AMOUNT DUE THIS BILL,					\$ 22 95

NOTE: A receipt will be issued for all cash remittances and for all other remittances when required by applicable procedures. Failure to receive a receipt for cash payment should be promptly reported to the bureau or office shown above.

SAMPLE LETTER
ASSURANCE OF PAYMENT

Mr. J. R. Jones
Consultant
J. R. Jones Company
2200 Maryland Road
Baltimore, MD 21210

Dear Mr. Jones:

This letter is in response to your Freedom of Information Act request, dated June 1, 1989, for a copy of the Department of the Interior's contract with B and B, Inc.

The estimated fee for the documents you have requested is \$148.60, calculated as follows: 1,000 pages of duplication at \$.13 per page and 1 hour of search and review time at \$18.60 per hour. Prepayment is not requested at this time, however, please furnish written assurance of your willingness to pay the full amount for the documents to (insert name of individual and address where assurance is to be sent). You may wish to modify your request to reduce the fee at this time. We will not start processing your request until this written assurance has been received.

Sincerely,

Fred Smith
FOIA Coordinator for the
Office of the Secretary

3/28/91 #383A-1

New

SAMPLE LETTER

ADVANCE PAYMENT - DELINQUENT REQUESTER

Mr. John Doe
Contract Negotiator
Doe & Doe
107 Town Road
Arlington, VA 22211

Dear Mr. Doe:

We are in receipt of your Freedom of Information Act request dated July 26, 1989, regarding the Department of the Interior's fish hatchery project. The Fish and Wildlife Service estimates that fees for the Bureau to process your request will be \$167.20, \$130 for duplication (1,000 pages at \$.13 per page) and \$37.20 to search for and review the requested records (2 hours at \$18.60 per hour). Moreover, our records show that you owe a balance of \$85 on a previous request. Under the Department of the Interior's regulations (43 CFR 2.20(h)(2)), we will not begin processing your present request until these fees are paid in full (a total of \$252.20).

Please send a check or money order made payable to the Department of the Interior (or name of bureau or office) to (address where payment is to be mailed) or let us know if the \$85 has been paid. In the meantime, your request will be held until this matter is resolved.

If you have any questions, I can be reached on 703-443-1111.

Sincerely,

Sue Thompson
FOIA Officer
U.S. Fish and Wildlife
Service

SAMPLE LETTER

ADVANCE PAYMENT - FEES OVER \$250

Mr. Walter Plank
Mid-Atlantic Oceanography
1989 Boardwalk Lane
Ocean View, DE 19810

Dear Mr. Plank:

This letter is in response to your Freedom of Information Act (FOIA) request of August 14, 1989, concerning the Alameda oil-spill.

Our initial estimate is that fees for the Department to process your request will be \$29,275, calculated as follows:

\$13,000 for duplication	100,000 pages at \$.13 per page
\$16,275 for search and review time	875 hours at \$18.60 per hour

Assuming you are still interested in obtaining these documents, please send a check or money order made payable to the Department of the Interior to (address where payment is to be mailed). If complying with your request exceeds the total estimated above, you will be billed, and if the cost is less, the difference will be refunded to you. You may wish to modify your request to reduce the fee at this time. In accordance with our regulations (43 CFR 2.20(h)), we will not begin processing your request until payment is received.

If you have any questions, I can be reached on 202-208-0000.

Sincerely,

Stewart Johnson
Departmental FOIA Officer

SAMPLE LETTER

DETERMINING CATEGORY OF REQUESTER

Ms. Deanie Writ
P. O. Box 777
Winton, MN 55796

Dear Ms. Writ:

This is in response to your Freedom of Information Act (FOIA) request of March 30, 1989, concerning records related to the Cimarron Strip in Oklahoma.

In your letter you stated that you were an author and that you were doing research for a new book on the Cimarron Strip. However, you did not provide sufficient evidence for the Department to make a determination as to whether you qualify as a "freelance journalist"* under our regulations (see 43 CFR **2.20(d)(3)(ii)**). Have you published anything previously? Are you affiliated with any publishing house? Do you have a contract with a specific publisher for your book?

In accordance with our regulations (**43 CFR 2.20(f)**), we will not proceed further with your request until we hear from you. If you have any questions regarding this matter, please call me (**202-208-1111**).

Sincerely,

Allison Inge
FOIA Officer
Bureau of Land Management

SAMPLE LETTER

FEE WAIVER CLARIFICATION

Mrs. James Manning
Manning and Manning
Attorneys at Law
One Market Street
Hampton, VA 23662

Dear Mrs. Manning:

This is in response to your Freedom of Information Act (FOIA) request of February 21, 1989, in which you seek access to certain records relating to Contract No. 123456.

In your letter you also sought a fee waiver, however, you did not provide us with any justification as to why disclosure of the requested documents would be in the public interest. The Department's regulations state that "... documents shall be furnished without charge ... if disclosure of the information is in the public interest because it (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government and (2) Is not primarily in the commercial interest of the requester" (43 CFR 2.21(a)). We do not see how disclosure of the contract schedules and drawings would meet these criteria.

Our initial estimate is that fees for the Department to process your request will be \$148.60 (1,000 pages of duplication at \$.13 per page and one hour of professional search and review time at \$18.60). If you still wish to obtain these documents, please either explain why you feel disclosure is in the public interest, or provide us with your written assurance of payment for the amount specified above. Also, you may wish to modify your request at this time to reduce the fee. We **will** not proceed further with your request until we hear from you.

Sincerely,

Polly Frye
FOIA Officer
Geological Survey

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

(2) Sound grounds exist for invoking an exemption.

B. The exemptions may apply singly or in combination to a given request. If information does not fall under any of the exemptions, there is no basis for withholding. All nonexempt portions of the document must be released, unless inextricably intertwined with the exempt portions.

C. If it is unclear as to whether specific documents fall under any of the exemptions, consult the Bureau FOIA Officer, the designated FOIA attorney in the Office of the Solicitor, or the Departmental FOIA Officer for guidance.

5.4 The Nine Exemptions. Although the examples cited below are normally exempt from disclosure, either in whole or in part, documents should be reviewed on a case-by-case basis. Depending on how current the information is, whether an action is pending or has been completed, and other related circumstances, release may be appropriate. In accordance with 43 CFR **2.16(a)(4)**, any decision to withhold a record will be made only after consultation with the designated FOIA attorney.

A. Exemption 1. This exemption allows an agency to withhold information concerning the national defense or foreign policy providing that it has been properly classified under EO 12356, National Security Information (dated April 2, 1982), and any agency regulations implementing the Executive Order.

B. Exemption 2. Exemption 2 **relates** only to the internal personnel rules and practices of an agency. It encompasses two distinct categories of records:

(1) Those dealing with internal matters of a relatively trivial nature for which there is no legitimate public interest or benefit (referred to as "low 2"). This exemption is applicable when it would impose an administrative burden on the agency to process the request. Examples may include:

(a) Leave slips and time and attendance sheets:

(b) Routing slips, surname initials, copy distribution information, and data processing notations;

(c) Brief references to previous communications:

and

(d) Agency policies and procedures relating to the use of parking facilities, lunch hours, sick and annual leave, etc.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

5.1 General. Under the FOIA there are nine exemptions which serve as a basis for withholding information from the public. The nine exemptions are listed below and discussed at length in this Chapter.

Exemption 1 - Matters of National Defense
or Foreign Policy

Exemption 2 - Internal Personnel Rules
and Practices

Exemption 3 - Information Exempted by
Other Statutes

Exemption 4 - Trade Secrets, Commercial or
Financial Information (Confidential
Business Information)

Exemption 5 - Privileged Interagency or **Intra-**
agency Memoranda or Letters

Exemption 6 - Personal Information Affecting
an Individual's Privacy

Exemption 7 - Records Compiled for Law Enforcement
Purposes

Exemption 8 - Records of Financial Institutions

Exemption 9 - Geological and Geophysical
Information Concerning Wells

5.2 Discretionary Release. An exempted record may be released to a requester when, in the bureau's judgment, the interest of the Government would not be jeopardized, unless disclosure is restricted by statute or Executive order. Disclosure of documents protected under exemptions 1, 3, 4, and 6 will in most instances be restricted by a statute or an Executive order. Such documents are not subject to discretionary release. Discretionary releases will be made only after consultation with the designated FOIA attorney (see 43 CFR **2.16(a)(4)**).

5.3 Decisions to Withhold Information.

A. Bureaus will withhold information falling within an exemption only if:

(1) Disclosure is prohibited by statute or Executive order, or

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 5 FOIA Exemptions

5.4C(2)(f)

(f) National Materials and Minerals Policy, Research and Development Act of 1980, 30 U.S.C. **1604(f)**;

(g) National Historic Preservation Act Amendments of 1980, 16 U.S.C. **470w-3**;

(h) Indian Mineral Development Act of 1982, 25 U.S.C. **2103(c)**;

(i) Federal Cave Resources Protection Act of 1988, 16 U.S.C. 4301;

(j) Indian Gaming Regulatory Act, 25 U.S.C. 2701;

(k) Rule 6(e), Federal Rules of Criminal Procedure (Grand Jury), 18 U.S.C. Appendix:

(l) Juvenile Justice Delinquency and Prevention Act of 1974, as amended, 18 U.S.C. 5038; and

(m) Inspector General Act of 1978, **as** amended, 5 U.S.C. Appendix 3.

(3) The Privacy Act and the Trade Secrets Act are not exemption 3 statutes. Information involving privacy or commercial/financial interests would be considered under exemptions 6, **7(C)**, and 4, respectively.

(4) Examples of information withheld under exemption 3 include:

(a) Material collected by investigators and submitted to a grand jury (Rule **6e**);

(b) Witness interviews (Inspector General Act of 1978);

(c) The identity of employee whistleblowers (Inspector General Act of 1978);

(d) The location of caves and artifacts found (Federal Cave Resources Protection Act of 1988); and

(e) Information related to archaeological and/or historic resources (Archaeological Resources Protection Act of 1979).

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

(2) Those of a more substantive nature, the disclosure of which **would allow** circumvention of a statute or an agency regulation, or impede the effectiveness of the agency's activities (referred to as "high 2"). Examples include:

(a) Agency procedures, manuals and instructions involving investigatory or security matters, e.g., law enforcement or Inspector General manuals on how to conduct an investigation, audit guidelines, or security techniques; and

(b) Examination questions and answers; crediting plans used in determining the qualifications of a candidate for employment, advancement, or promotion; and criteria for interviewing prospective employees. Release of this kind of information would give someone an unfair advantage in the job selection process and may require the office to create replacement documents.

C. Exemption 3.

(1) This exemption allows an agency to withhold records that are specifically exempt from disclosure by other Federal statutes. Information may be withheld only if the statute--

(a) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(2) Exemption 3 statutes applicable to DOI include:

(a) Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. 1350 thru 1352;

(b) Federal Coal Leasing Act Amendments of 1976 (this includes the provisions of the Mineral Leasing Act), 30 U.S.C. 201(b)(3) and 208-1(b) thru (e);

(c) National Park System - Improvement in Administration, 16 U.S.C. 470a(a)(4);

(d) Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1257, 1258, and 1262;

(e) Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh(a);

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 5 FOIA Exemptions

5.4D(2)(b)(iii)(C)

National Parks and Conservation Association v. Morton, 498 F.2d 765, 770, n. 17 (D.C. Cir. 1974); and Critical Mass Energy Project v. NRC, 830 F.2d 278 (D.C. Cir. 1987).

(3) Government documents may be protected under exemption 4 if they contain summaries or reformulations of information supplied by an outside source.

(4) In accordance with EO 12600, Predisclosure Notification Procedures for Confidential Commercial Information (dated June 23, 1987), and 43 CFR 2.15(d), bureaus will notify submitters when their data is requested under the FOIA to determine if the material is confidential and exempt from disclosure (see paragraph 3.18 of Chapter 3).

(5) Bureaus must maintain adequate records to support their decision to disclose commercial or financial information in case a reverse FOIA suit is filed.

(6) Examples of information withheld under exemption 4 include:

(a) Commercial or financial information received in confidence in connection with bids, contracts, or proposals:

(i) Assets, income, profits, losses, and expenditures;

(ii) Names of consultants, subcontractors, and suppliers: performance, cost, and equipment information:

(iii) Labor costs, profit margins, and competitive vulnerability;

(iv) Business sales statistics, research data, and technical designs;

(v) Financial statements and balance sheets;

(vi) Technical proposals in whole or in part:

(vii) Price negotiation memos;

(viii) Names of customers and amounts and discounts offered to them;

(ix) Resumes and other employee-related information such as what the company pays its employees;

(x) A company's internal organization chart;

3/28/91 #383A-1

New

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

(2) Those of a more substantive nature, the disclosure of which **would allow** circumvention of a statute or an agency regulation, or impede the effectiveness of the agency's activities (referred to as "high 2"). Examples include:

(a) Agency procedures, manuals and instructions involving investigatory or security matters, e.g., law enforcement or Inspector General manuals on how to conduct an investigation, audit guidelines, or security techniques; and

(b) Examination questions and answers; crediting plans used in determining the qualifications of a candidate for employment, advancement, or promotion; and criteria for interviewing prospective employees. Release of this kind of information would give someone an unfair advantage in the job selection process and may require the office to create replacement documents.

C. Exemption 3.

(1) This exemption allows an agency to withhold records that are specifically exempt from disclosure by other Federal statutes. Information may be withheld only if the statute--

(a) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(2) Exemption 3 statutes applicable to DOI include:

(a) Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. 1350 thru 1352;

(b) Federal Coal Leasing Act Amendments of 1976 (this includes the provisions of the Mineral Leasing Act), 30 U.S.C. 201(b)(3) and 208-1(b) thru (e);

(c) National Park System - Improvement in Administration, 16 U.S.C. 470a(a)(4);

(d) Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1257, 1258, and 1262;

(e) Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh(a);

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 5 FOIA Exemptions

5.4E(1)(b)

includes documents prepared by outside consultants at the request of the agency and recommendations or advice from Congress or another Federal agency. It may be possible, in certain circumstances, to protect communications between Federal and State agencies. However, this should be done only after consultation with the designated FOIA attorney.

(2) Four of the privileges commonly invoked under exemption 5 are discussed below.

(a) Deliberative Process Privilege.

(i) This privilege is designed to protect the quality of the agency's decisionmaking process, i.e.:

(A) To encourage candid and frank discussions among agency officials;

(B) To protect against premature disclosure of proposed policies before they are finally adopted; and

(C) To avoid public confusion that might be caused by disclosing reasons and rationales that were not ultimately the basis for an agency's action.

(ii) In order to use this privilege, the material must be predecisional and part of the decisionmaking process in that it includes opinions, recommendations, or deliberations on legal or policy matters. Generally, protected information is analytical and subjective rather than factual. In determining whether a **document** is predecisional, the following should be considered:

(A) The document's language and its place in the decisionmaking process. Predecisional, deliberative process documents are written prior to the agency's final decision and usually contain recommendations or opinions, or represent the agency's tentative position on an issue. They typically discuss the pros and cons of the adoption of one viewpoint over another.

(B) The decisionmaking authority of the person issuing the document.

(C) The direction in which the document flows in the decisionmaking chain. Documents written by a subordinate and transmitted to a superior are more likely to be predecisional than those written by a person who is in a position to make the final decision for the agency.

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DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

D. Exemption 4.

(1) Exemption 4 protects trade secrets and commercial or financial information obtained from a person which is privileged or confidential. This exemption is intended to protect both the interests of commercial entities that submit proprietary information to the Government and the interests of the Government in receiving continued access to such data. If information is generally available to the public or would be made available if requested from the submitter, then exemption 4 protection has been waived.

(2) The following criteria will be used to determine whether exemption 4 is applicable:

(a) Trade Secret. Does it involve a trade secret (a formula, plan, process, or device used to make, prepare, or process a commodity)? There must be a direct relationship between the trade secret and the productive process.

(b) Commercial or Financial Information.

(i) Do the records contain commercial or financial information?

(ii) Was the information obtained from a person? A person may be a corporation, association, or public or private organization--anyone other than an agency of the Federal Government (including Indian tribes).

(iii) Is it privileged or confidential? Commercial or financial information is determined to be confidential if its disclosure would be likely to:

(A) Impair the Government's ability to obtain necessary information in the future. The agency must be able to demonstrate that the information was provided voluntarily and that the submitter would not have provided it if the submitter had believed that the material would be subject to disclosure;

(B) Cause substantial competitive harm to the person/business from whom the information was obtained. If no competition exists (i.e., the company is the sole producer of a given product), then the information cannot be withheld under the premise that release would cause competitive harm; or

(C) Harm other protected interests which are not encompassed by (A) or (B), above. For example, see

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 5 FOIA Exemptions

5.4E(2)(c)

privilege is designed to protect the client. Unlike the attorney work-product privilege, the use of the attorney-client privilege is not limited to instances where litigation is expected. However, the information shared between the attorney and client must be confidential. If it is shared with persons outside the attorney-client relationship, exemption 5 may no longer be used to protect the information.

(d) Government Commercial Information Privilege.

This privilege is available to the Government for information that it generates 'in the course of its business dealings, such as the process leading up to the award of a contract, or for appraisal information associated with the acquisition of real property. The premise is that premature release of such information would put the Government at a competitive disadvantage. However, once the contract has been awarded, property acquired, or the offer withdrawn, the privilege expires. The privilege applies to trade secrets or other confidential research, development, or commercial information.

(3) Examples of materials covered by exemption 5 include:

(a) Advisory opinions, recommendations, and deliberations which are part of the decisionmaking process;

(b) Draft documents regardless of whether they differ from the final version:

(c) Information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to a private entity in its dealings with the Government, or would impede the activities of the agency:

(d) Ratings given to job applicants by panel members and the names of panel members (ratings may be released if doing so will not reveal the identities of the panel members; the identities of panel members may be released if doing so will not reveal the ratings they gave);

(e) Financial formulas used to determine the financial capability of a contractor;

(f) Appraisals generated by the Government or on its behalf:

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

(xi) Letters of reference from private sector clients:

(xii) Approach and methodology for accomplishing work set forth in the solicitation: and

(xiii) Plant facility reports.

(b) Personal statements given in the course of an inspection, investigation, or audit, when such statements are received in confidence from the individual and retained in confidence because they meet the criteria in D(2), above.

(c) Scientific and manufacturing processes or developments containing technical or scientific data submitted with an application or report while research is in progress.

(d) Solid mineral information, including production data and royalty statistics.

(e) Geophysical information--location of oil and gas wells, drilling plans, exploration data, geologic reports, maps, etc.

(f) Financial information maintained on Indian tribes. (For purposes of the FOIA, Indians are considered persons outside the Government, as defined in D(2)(b)(ii), above.)

Note: If the information is not sensitive, i.e., it is published **in the** company's annual report or is available through the Securities and Exchange Commission, exemption 4 may not be invoked to protect it.

E. Exemption 5.

(1) Exemption 5 is designed to protect those interagency and intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency (i.e., those records which would not be made available routinely through the discovery process--the means by which the parties involved in a lawsuit exchange information prior to a hearing or trial).

(a) This exemption applies to inter- or intra-agency records--records that are transmitted within or among DOI components, or between or among Federal agencies.

(b) In some circumstances, it may also apply to documents generated or transmitted outside of an agency. It

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

(a) Examples of "similar files" include:

(i) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be, or has been taken:

(ii) Aircraft and personal injury report files;

(iii) Files containing information related to permits, applications, and licenses: and

(iv) Reports of investigation.

(b) Records concerning a business or association may not be withheld under exemption 6. However, where the business is owned and operated by an individual and the records of the business are in essence the records of the individual, the exemption may apply.

(2) The next step is to determine whether a privacy interest exists. Would disclosure of the information to the public violate the privacy of the subject of the information? Could it cause injury or embarrassment to the individual?

(3) In accordance with the March 1989 Supreme Court decision in Reporters Committee for Freedom of the Press v. Department of Justice (109 S. Ct. 1468 (1989)), the following steps should be followed in making decisions under exemptions 6 and 7(C):

(a) Determine whether a personal privacy interest is involved. There must be a privacy interest in the requested information for any further consideration of privacy-exemption protection to be appropriate. To qualify, the information must involve the privacy interest of an identifiable, living person (see (5), below). If a personal privacy interest does not exist, then exemptions 6 and 7(C) do not apply.

(b) Determine whether a public interest is involved. Consider how disclosure would benefit the general public, but only in light of the content and context of the requested document. The requester's particular purpose, circumstances, and proposed use should no longer be taken into account, except to the extent that it may coincide with an identifiable public interest. If disclosure to the general public would not serve a public interest, then any identified

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

(iii) The deliberative process privilege generally may not be used to withhold purely factual material or the factual portions of deliberative documents. The factual portion must be released where it can be segregated from the remainder of the document. However, if the manner of selecting or presenting those facts would reveal the deliberative process or if the facts are inextricably intertwined with the decisionmaking process, the facts may be withheld.

(iv) Drafts of documents are commonly exempt under the deliberative process privilege. They must be part of the decisionmaking chain and are usually prepared prior to the adoption of a final agency position. Drafts are reflective of the give and take of the review process that leads to a decision--agency officials need to be able to talk and discuss issues freely. Labeling a document "Draft" does not in itself protect the material.

(v) The deliberative process privilege may be used to protect a draft regardless of whether it differs from the final version providing the agency is able to show that it is part of the decisionmaking process and describes the role that the document plays in that process. The only exception is if an agency cites a draft document as binding precedent, adopts it as working agency law, or incorporates it by reference in a final agency decision. If several recommendations are presented in a draft and only one is adopted, the others may be withheld under exemption 5.

(vi) Final and postdecisional documents which discuss, analyze, or explain established policies and decisions may not be withheld under this privilege.

(b) Attorney Work-Product Privilege. This privilege protects documents and other memoranda prepared by an agency attorney in anticipation of litigation, including administrative proceedings. It covers all documents prepared by an attorney or under his/her supervision, such as reports prepared by a consultant or a program employee. Litigation need not have started but it must be reasonably contemplated, i.e., a specific claim must exist that is likely to lead to litigation. The privilege still applies after a case has ended **or** even if it never was begun, as long as it was reasonably contemplated. Attorney work-product documents may be withheld in their entirety.

(c) Attorney-Client Privilege. This privilege applies to confidential communications between an attorney and his/her client, usually an agency employee, relating to a legal matter for which the client has sought professional advice. The

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 5 FOIA Exemptions

5.4F(4)

(4) In accordance with Reporters Committee, the identity of an FOIA requester cannot be taken into consideration in determining what should be released. An exception to this rule is that a bureau may not invoke exemption 6 or 7(C) where the privacy interest to be protected is the requester's. For example, if a requester asks for a copy of a study or report--a record not covered by the Privacy Act--and it contains his/her home address, the bureau cannot withhold the information from the requester. Normally these exemptions cannot be used to withhold information from a requester that he/she would be entitled to under the Privacy Act (information about himself/herself).

(5) Exemptions 6 and 7(C) may not be used to protect the privacy of a deceased person; however, in some cases, they may be exercised to protect the family of the deceased.

(6) After the personal identifying information has been deleted, all reasonably segregable, nonexempt portions of the requested records must be released.

(7) Examples of exemption 6 material may include:

(a) Personal identifying information such as name, social security number, military service number, home address and telephone number, age, place and date of birth, marital status, an individual's party or union affiliation, educational background (not directly related to the position held), and work experience (not directly related to the professional qualifications for the position held), details of health and insurance benefits, allegations of misconduct or arrests, and information concerning or provided by relatives and references:

(b) Payroll information--number of deductions and the amounts, fringe benefit payments, number of withholding exemptions and net wages, hours worked, and rate of pay per hour (not valid for Wage Grade employees);

(c) Financial information such as an individual's credit rating and personal credit card numbers;

(d) The following types of personnel-related information:

(i) Performance appraisals,

(ii) Supervisory evaluation of a candidate for a particular position,

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 5 FOIA Exemptions

5.4E(3)(g)

(g) Advisory material in documents prepared on behalf of the agency by consultants;

(h) Cost estimates, technical ratings and evaluations, and recommendations for award prepared by the Government:

(i) Preaward and market surveys;

(j) Facts divulged by a client to his/her attorney in confidence and opinions given by an attorney to his/her client based upon those facts;

(k) Information gathered by agency investigators under the direction of agency attorneys (work-product);

(l) Memoranda that advise an agency of the types of legal challenges it may face in light of a proposed program, potential defenses available to the agency and the likely outcome:

(m) Documents relating to possible settlement of litigation:

(n) The nonfactual portions of predecisional staff papers, containing staff evaluations, advice, opinions, or suggestions;

(o) Records that are exchanged among agency personnel or with other agencies in preparing for litigation or an administrative proceeding; and

(p) Recommendations contained in official reports of inspection, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one of DOI's components.

F. Exemption 6. This exemption permits the withholding of information about individuals in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(1) To warrant protection, the information must fall within the category of personnel, medical, and similar files. The term "similar files" applies to any file or document which pertains to a specifically identifiable individual and contains information that is personal.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

(4) **Could** reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(Examples --any information which might identify a confidential source such as interviews, affidavits, or another witness' reference to the source)

(5) Would disclose guidelines, techniques, and procedures for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law; or

(Examples --certain portions of the Inspector General's manual, information on interviewing techniques, and conducting surveillances and investigations)

(6) Could reasonably be expected to endanger the life or physical safety of any individual..

Note: Under certain circumstances, records concerning pending investigations and informants may be considered as outside the scope of the FOIA (5 U.S.C. 552(c)(1) and (2)). These exclusions are discussed in the DOJ FOIA Case List. In such instances, the designated FOIA attorney should be consulted.

H. Exemption 8. Exemption 8 covers matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions such as the Federal Reserve Board or the Office of the Comptroller of the Currency. It generally does not apply to records in DOI's possession. Examples of documents withheld are:

(1) Bank examination reports--those evaluating a bank's stability, and its financial condition and operations, and

(2) Reports examining a bank's compliance with consumer laws and regulations.

I. Exemption 9. This exemption pertains to geological and geophysical information and data (including maps) concerning wells. Exemption 9 has been invoked to withhold well logs and

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 5 FOIA Exemptions

5.4E(3)(g)

(g) Advisory material in documents prepared on behalf of the agency by consultants;

(h) Cost estimates, technical ratings and evaluations, and recommendations for award prepared by the Government;

(i) Preaward and market surveys;

(j) Facts divulged by a client to his/her attorney in confidence and opinions given by an attorney to his/her client based upon those facts;

(k) Information gathered by agency investigators under the direction of agency attorneys (work-product);

(l) Memoranda that advise an agency of the types of legal challenges it may face in light of a proposed program, potential defenses available to the agency and the likely outcome;

(m) Documents relating to possible settlement of litigation:

(n) The nonfactual portions of predecisional staff papers, containing staff evaluations, advice, opinions, or suggestions;

(o) Records that are exchanged among agency personnel or with other agencies in preparing for litigation or an administrative proceeding: and

(p) Recommendations contained in official reports of inspection, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one of DOI's components.

F. Exemption 6. This exemption permits the withholding of information about individuals in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

privacy interest should be protected under the applicable exemption.

(c) Determine whether the identified public interest qualifies for balancing. Would disclosure of the information shed light on the agency's performance of its statutory duties? Information that reveals little or nothing about the operations or activities of the Government does not meet the new public interest standard, and as such, should be protected.

(d) Balance the personal privacy interest against the public interest. If it is determined that a public interest qualifying under the Reporters Committee standard is present, then that interest should be balanced against the personal privacy interest--the benefit to the public must be weighed against the potential harm to an individual's personal privacy. If the privacy interest is greater, then the information should be protected; if the public interest is greater, then the material should be released.

(i) Some information, such as the "rap sheets" in Reporters Committee, may be appropriate for "categorical withholding." It may be determined that a certain type of information is always protectable under exemption 7(C) without regard to individual circumstances.

(ii) A privacy interest may still exist even though personal information has been made available to the general public at some place and point in time. In such situations, the designated FOIA attorney should be consulted.

(iii) A requester's particular knowledge of the information in question should not be considered in deciding FOIA requests. For example, an agency should not disclose information to the spouse or relative of the subject individual that they would normally withhold from any member of the general public.

(iv) Exemption 6 material may be released with the prior written consent of the individual (subject of the record).

(v) The fact that disclosure of certain information about a particular individual to the media might provide some public interest does not in and of itself meet the test if it reveals nothing about the programs or activities of the agency.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 5 FOIA Exemptions

5.4F(7)(d)(iii)

(iii) Identities and qualifications of unsuccessful job applicants,

(iv) The knowledge, skills, abilities and personal characteristics of unsuccessful applicants,

(v) Referral lists of qualified candidates and the roster of applicants for a particular position, except for the successful candidate,

(vi) Reasons for job termination,

(vii) Results of a complaint by an employee against his/her supervisor, and

(viii) Letters of reprimand and suspension notices;

(e) Mailing lists that contain personal information where the release would not shed light on the operations or activities of the Government (see Reporters Committee); and

(f) Records on an employee's medical condition, history, and health test results.

G. Exemption 7. Exemption 7 protects records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information--

(1) Could reasonably be expected to interfere with enforcement proceedings;

(Examples-- investigative files, criminal, civil or administrative actions pending, background security investigations, affidavits, and audit reports where an investigation is involved)

(2) Would deprive a person of a right to a fair or an impartial adjudication;

(Examples--a report which may result in a disciplinary action involving a Department employee)

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy (see **F(3)**, above);

(Examples--names of special agents, informants, witnesses, interviewees, and "rap sheets")

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 6 POIA Appeals

6.2B

B. The foregoing distribution is made to give appropriate officials advance notice of FOIA appeal issues under consideration, and to permit them to participate in the decisionmaking process. Officials desiring to provide information concerning the appeal should contact either the Assistant Solicitor for Administrative Law and General Legal Services, SOL-GL, or the FOIA Appeals Officer.

6.3 Review of Appeals. The legal and administrative review of FOIA appeals will require that copies of the documents at issue be provided to SOL. Officials who have made decisions on FOIA requests that are subsequently appealed will ensure that upon request copies of any pertinent records are sent to SOL promptly.

6.4 Final Decisions on Appeals. Final decisions on appeals are made for the Department by the Assistant Secretary - Policy, Management and Budget or his/her delegate, with the advice and counsel of SOL. The Director, PMI, has been delegated authority to make such decisions on FOIA appeals (see 212 DM 9.3). In certain circumstances, appeals may be decided at a higher level. Copies of final decisions on FOIA appeals are distributed to the same officials listed in paragraph **6.2A**, above. The copies are provided for information and monitoring purposes, and may contain instructions to Departmental officials regarding any **followup** action required to complete the response.

6.5 Index of FOIA Appeal Opinions. The Law Library maintains an automated index of legal opinions rendered by SOL in FOIA appeal decisions. The index-can be searched in various ways to obtain information on prior Department positions concerning the release or withholding of various types of records, fee waivers, and FOIA procedural matters. Inquiries and requests for searches can be made to the Librarian in the Law Library. Copies of **FOIA** appeal opinions may be made in the Law Library.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

maps, seismic reports, and other exploratory findings of oil companies.

5.5 Waiver of Exemption. Depending upon the circumstances of the release, an agency may lose the right to invoke an exemption even when it is otherwise warranted, if the information has been disclosed previously. As a general rule, once a record has been released under the FOIA, it cannot be withheld from any subsequent requesters. A waiver does not apply in the following circumstances:

A. When records are circulated within an agency or between Federal agencies;

B. When material is disclosed to Congress (see paragraph **1.7A(2)** of Chapter 1) or an advisory committee;

C. When an agency must release a document under limited and controlled conditions, e.g., release of documents under a protective order in an administrative proceeding;

D. Where prior disclosure was unauthorized or unlawful, e.g., a leak: and

E. Where disclosure is necessary to carry out a Government purpose, e.g., disclosure of an investigatory report to a State.

Note: Close coordination with the designated FOIA attorney is necessary in these instances.

5.6 Special Rules Governing Certain Information Concerning Coal Obtained Under the Mineral Leasing Act. (See 43 CFR 2.22.)

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

6.1 FOIA Appeal Rights. Under the Department's regulations (43 CFR 2.181, requesters have the right to file an administrative appeal with the Department when:

- A. Records have been withheld either partially or entirely:
- B. A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located;
- C. A fee waiver request has been denied: or
- D. A decision on a request has not been communicated to the requester within the prescribed time limits.

6.2 Initial Notification.

A. The initial denial letter must advise the requester of the proper procedures for filing an FOIA appeal with the Department. Upon receipt of an appeal, the FOIA Appeals Officer, PMI, ensures that a copy is distributed to:

- (1) The Division of General Law, SOL-GL, for legal review and preparation of a legal opinion and recommendation on the appeal:
- (2) The pertinent Assistant Secretary in whose program area the request and response action originated:
- (3) The pertinent bureau or office director involved in the request and appeal action:
- (4) If applicable, the pertinent field official who was responsible for the handling of the initial request and subsequent response;
- (5) The Bureau FOIA Officer:
- (6) The Office of Public Affairs in the Office of the Secretary; and
- (7) The Departmental FOIA Officer.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL
FREEDOM OF INFORMATION ACT HANDBOOK
(383 DM 15)

Chapter 7 Report to Congress

7.1

7.1 Annual Report to Congress.

A. On or before February 1, bureaus are required to submit a report covering FOIA activities for the preceding calendar year to the Departmental FOIA Officer, PMI. Bureaus will ensure that the information is accurate and complete and is in compliance with the requirements set forth in 383 DM 15.6.

B. The Departmental FOIA Officer is responsible for preparing **DOI's** annual report due to Congress by March 1. Reports Control Symbol CON-74-013 has been assigned to this report.