

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS DIRECTIVE

1450.1
REVISION 3

2/8/07

FREEDOM OF INFORMATION AND PRIVACY ACT

I. PURPOSE

This directive outlines:

- A. Access to Federal records through the FOIA and the PA of 1974.
- B. ECIMS designations and roles for performing the FOIA and PA process.
- C. Procedures for processing a FOIA or PA request.
- D. Procedures for making an appeal under the FOIA or PA.
- E. Fees that may be charged to a FOIA or PA requester.
- F. Requirements for providing statistical information on processing FOIA and PA requests to include in USDA's annual FOIA Report to the DOJ.

II. CANCELLATION

This directive cancels FSIS Directive 1450.1, Revision 2, dated 7/9/01.

III. REASON FOR REISSUANCE

This revision reflects:

- A. Implemented changes made to the FOIA process by EO 13392.
- B. Implemented changes made to the FOIA organizational structure within ECIMS.
- C. New terminology, used by ECIMS, to comply with EO 13392.

DISTRIBUTION:
All Offices (Except IIC' s and Below)

OPI:
OPAEO - Executive Correspondence and
Issues Management Staff

IV. REFERENCES

5 U.S.C §552, Freedom of Information Act
5 U.S.C §552a, Privacy Act of 1974
7 CFR 1.18, Fee Schedule
7 CFR 1.20, Annual Report
E-Government Act of 2002
Executive Order 13392
Department of Justice FOIA/PA Reference Guide (revised April 2005)
FSIS Directive 4735.6, Safeguarding Confidential Industry Information
Office of Management and Budget Uniform FOIA Fee Schedule and Guidelines
(March 27, 1987)

V. ABBREVIATIONS

The following appear in their shortened form in this directive:

DOJ	Department of Justice
ECIMS	Executive Correspondence and Issues Management Staff
EO	Executive Order
FOIA	Freedom of Information Act
OPAE0	Office of Public Affairs, Education and Outreach
PA	Privacy Act
PIA	Privacy Impact Assessments

VI. POLICY

- A. The FSIS FOIA Service Center must:
1. Provide information to the public through a citizen-centered approach.
 2. Preserve the:
 - a. Confidentiality of sensitive, personal, and commercial information.
 - b. Integrity of Government decision-making information and law enforcement proceedings.
- B. Not disclose information that may:
1. Cause competitive harm.
 2. Cause unwarranted invasion of personal privacy.
 3. Compromise the integrity of Government decision-making processes.

C. FOIA provides access to Federal records or portions of records.
EXCEPTION: FOIA does not provide access to records that are protected from disclosure by legal exemptions and exclusions. Release is determined by the FSIS FOIA staff. Access information about the FSIS FOIA process and FOIA reference material at <http://www.fsis.usda.gov/FOIA/index.asp>.

VII. DEFINITIONS

A. **Privacy Impact Assessment (PIA).** A living document that requires regular updating as programs and systems are developed or changed.

B. **Personal Identified Information.** Information stored in a system or online collection that directly or indirectly identifies an individual. **EXAMPLES:** Name, date of birth, mailing address, telephone number, social security number, e-mail address, zip code, account numbers, and other information linked with or having a foreseeable link with identifying an individual.

VIII. BACKGROUND

A. The Privacy Act of 1974:

1. Protects against unwarranted invasion due to a Federal agency's collection, maintenance, use, or information disclosure.
2. Requires agencies to publish Systems of Records Notices that describe:
 - a. The system of records maintained.
 - b. Whether they are indexed under names, social security numbers, date of birth, or other easily identifiable information.
3. Allows individuals to access their own records.
4. Does not allow unauthorized Agency personnel or individuals to access records concerning another person without that person's written permission.

B. The E-Government Act of 2002:

1. Recognizes that computer technology changes, digitized networks, internet access, and new information products increase information availability. These advances have important ramifications for protecting personal information contained in Government records and systems.

2. Mandates a PIA of any substantially revised or new Information Technology System. Section 208 requires all Federal agencies to assess for all new or substantially changed technology that collects, maintains, or disseminates personal identified information. The PIA results from these mandated assessments.

C. **A PIA:**

1. Establishes trust between the Agency's operations and the public by addressing privacy issues.

2. Is completed for any system, program, technology, or rulemaking that involves personal identified information.

3. Must show that system owners and developers incorporate privacy protections throughout the system's entire life cycle.

4. Determines the risks and efforts of collecting, maintaining, and disseminating information in identifiable form via an electronic information system.

5. Evaluates protections and alternative processes for handling information to mitigate potential privacy risks.

6. Analyzes how personal identified information is collected, stored, protected, shared, and managed.

IX. **RESPONSIBILITIES**

A. **Director, ECIMS.** Serves as the FSIS FOIA Public Liaison and oversees the FSIS FOIA Service Center by ensuring compliance with FOIA and PA public disclosure requirements.

B. **Deputy Director, ECIMS.** Serves as the release and denial authority for FSIS FOIA Service Center requests.

C. **FSIS FOIA Service Center.** Serves as the central FOIA and PA office for FSIS and provides the following services:

1. Serves as the initial point of contact for all FOIA and PA inquiries.

2. Processes FOIA and PA requests received by FSIS and provides guidance on processing FOIA and PA requests.

3. Posts frequently requested records in an electronic format on the Internet.

4. Discloses information in a proactive fashion to respond to FOIA requests.

5. Maintains the FOIA reference guide to aid potential FOIA requesters.
6. Maintains management controls to ensure the FOIA Service Center is utilizing all available technologies to:
 - a. Process FOIA requests.
 - b. Reduce backlog.
 - c. Trouble-shoot FOIA system problems.
7. Determines FOIA and PA requests that are received for expedited processing.
8. Determines fee waivers for processing FOIA and PA requests.
9. Processes administrative appeals resulting from denied access to FSIS records under the FOIA and PA.
10. Prepares the FSIS portion USDA's annual FOIA Report to DOJ on FOIA activities.
11. Uses FOIA requester insight and feedback to improve services.

D. Program and Staff Office FOIA and PA Contacts. All personnel within the FSIS FOIA Service Center are designated FOIA and PA contacts for assistance with FOIA and PA inquiries. Contacts provide polite and courteous assistance when:

1. Gathering records and making recommendations on the nature and volume of responsive records.
2. Discussing possible ways for narrowing requests.
3. Consulting with other program offices and Federal agencies.
4. Determining whether to release records.

E. Privacy Act Officer.

1. Serves as a separate function within the FOIA Office.
2. Fulfills the statutory mandate prescribed by the E-Government Act.
3. Conducts a PIA on any new technologies or systems that handle or collect personal information.

4. Conducts a PIA on the commencement of a program pilot test.
5. Conducts a PIA on new or updated rulemaking that affects personal information.
6. Approves PIAs conducted by the Agency's offices and programs.
7. Develops system revisions (**example**: Oversees all modifications to a system containing personal information).

X. **PROCESSING INITIAL REQUESTS**

A. **FSIS FOIA Service Center.**

1. Receives and logs the request.
2. Acknowledges receipt of FOIA and PA requests through controlled correspondence.
3. Determines which program or district office maintains the responsive records and provides requests to the appropriate office for document search.
4. Reviews the records supplied by the office and processes the request. Upon receipt, a FOIA and PA case officer:
 - a. Reviews the records to determine if they are responsive.
 - b. Applies applicable exemptions.
 - c. Responds to the requester, explaining the:
 - (1) Agency's decision in a concise manner.
 - (2). Applied exemptions to facilitate understanding.
5. Makes determinations of whether to grant a request for expedited processing within 10 calendar days of receiving the request.
6. If no records are found, the FSIS FOIA Service Center notifies the requester.

B. Other FSIS Offices.

1. FSIS headquarters or field offices immediately refer FOIA and PA requests for Agency records to the FSIS FOIA Service Center for processing. These include Subpoenas for Agency records. The office provides the requester with the FSIS FOIA Service Center's address, telephone and facsimile numbers:

USDA FSIS
EXECUTIVE CORRESPONDENCE AND ISSUES
MANAGEMENT STAFF
FOIA SERVICE CENTER
ROOM 1140 SOUTH BUILDING
1400 INDEPENDENCE AVENUE SW
WASHINGTON DC 20250-3700
Telephone Number: (202) 720-2109
Facsimile Number: (202) 690-3023

2. Contact the FSIS FOIA Service Center for guidance on FOIA and PA requests.

C. Time Limits.

1. **FOIA Requests.** The statutory time limit for response under FOIA is 20 working days. Within that period, the Agency is required to make a determination. FSIS will inform the requester of its decision in writing and provide requested documents, if approved, according to the FOIA.

a. The statutory 20-day period begins when the request arrives at the FOIA and PA Office.

b. FOIA provides a n extension of 10 working days to accommodate:

- (1) Collecting responsive records from field offices.
- (2) "Voluminous" records that must be located, compiled, and reviewed.
- (3) Consulting with other agencies or USDA components that have substantial interest.

2. **PA Requests.** PA records are processed by the FOIA statutory guidelines.

XI. **APPEALS**

Appeal FOIA and PA decisions to the FSIS Administrator. A Senior FOIA and PA Specialist in the FSIS FOIA Service Center processes FOIA and PA appeals.

A. The USDA Office of General Counsel approves FOIA and PA appeals for legal sufficiency.

B. The time period for processing FOIA and PA appeals is specified in subparagraph X. C.

XII. **FEES**

A. **Types and Categories.** There is no initial fee to make a FOIA request. However, the Agency is authorized by law to recover the direct costs of providing information to a FOIA and PA requester. All fees collected are provided to the United States Treasury. In all cases, if the total fees do not exceed \$25.00, the FSIS FOIA Service Center will not charge a fee. For fee purposes only, the FOIA divides requesters into three categories:

1. **Commercial.** Charged for search time, document review, and duplication.
2. **News media, educational, or scientific requesters.** Charged for duplication only, after the first 100 pages.
3. **All other requesters.** Charged for search time (after two hours) and duplication (after 100 pages).

FEE SCHEDULE	
Charges	Costs
Duplication Charges	\$.20 per page
Search Charges	\$10.00 per hour for clerical search and \$20.00 per hour for professional search and review.

B. **Waiver of Fees.** The FSIS FOIA Service Center may waive or reduce fees if disclosing record information is of current public interest and significantly helps the public understand Government operations or activities. Such information is not primarily in the commercial interest of the requester.

C. **Right to Appeal.** Requesters may appeal the denial of a fee waiver request. See paragraph XI.

XIII. **STATISTICAL REPORTS**

The Code of Federal Regulations, 7 C.F.R. Part 1, Section 1.20, and the FOIA statute, 5 U.S.C. 552(e) requires FSIS to provide statistical information concerning the processing of FOIA and PA requests to include in USDA's annual FOIA Report to the DOJ. The FSIS FOIA Service Center prepares the Agency's submission to the USDA annual report.



Assistant Administrator
Office of Management

Attachment

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EXEMPTIONS

I. FREEDOM OF INFORMATION ACT (5 U.S.C. §552)

Material may be withheld if it can be established that it is protected by the following exemptions:

(b)(1) - Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive Order;

(b)(2) - Related solely to the internal personnel rules and practices of the Agency;

(b)(3) - Specifically exempts information from disclosure by statute;

(b)(4) - Trade secret and commercial or financial information obtained from a person that is privileged or confidential;

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

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

(b)(7) - Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

- a. Interfere with enforcement proceedings;
- b. Deprive a person of a right to a fair trial or an impartial adjudication;
- c. Constitute an unwarranted invasion of personal privacy;
- d. Reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency, authority or any private institution which furnished information on a confidential basis, and, in the case of a record 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;
- e. Disclose investigative techniques and procedures; or
- f. Endanger the life or physical safety of law enforcement personnel.

(b)(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

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

Records which are technically exempt from release may, in certain instances, be released as a matter of agency discretion if, for example, the public benefit which would result from the release significantly outweighs privacy considerations, or if there would be no substantial actual harm to agency interests as a result of release.

II. PRIVACY ACT (5 U.S.C. §552a)

Privacy Act systems of records are those which contain files that are indexed under an individual's name or that is readily identifiable with individuals (e.g., personnel files).

Material may be withheld if it can be established that it is protected by the following exemptions:

(d)(5) - Information compiled in reasonable anticipation of a civil action proceeding;

(j)(2) - Material reporting investigative efforts pertaining to the enforcement of criminal law, including efforts to prevent, control, or reduce crime, or apprehend criminals, except records of arrest;

(k)(1) - Specifically authorized by Executive Order to be kept secret;

(k)(2) - Investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit, or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(3) - Material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of 18 U.S.C. §3056;

(k)(4) - Required by statute to be maintained and used solely as statistical records;

(k)(5) - Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosures would reveal the identity of a source who furnished information under an express promise that the identity of the source would be held in confidence;

(k)(6) - Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service; or

(k)(7) - Evaluation material used to determine potential promotion in the armed services, but only to protect a confidential source.