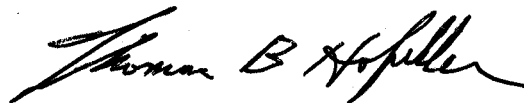


For: State and County Offices

New Statutory FOIA Requirements Taking Effect on December 31, 2008

Approved by: Associate Administrator for Operations and Management



1 Overview

A Background

Congress amended FOIA on December 31, 2007. Included in the new FOIA statute, entitled the “Openness Promotes Effectiveness in Our National (OPEN) Government Act of 2007”, are several provisions that take effect on December 31, 2008, and apply to FOIA requests filed on or after this date. These provisions:

- require agencies to route misdirected FOIA requests within the agency within 10 workdays of receipt
- impose limits on the number of times an agency can toll, or stop the clock on, FOIA’s 20-workday response time for perfected requests
- preclude agencies from assessing certain fees if FOIA’s time limits are **not** met, unless unusual or exceptional circumstances apply
- require agencies to assign tracking numbers to FOIA requests that will require more than 10 workdays to process
- require agencies to establish a telephone line or Internet service to provide status information about the processing of FOIA requests.

B Purpose

This notice provides:

- a brief explanation of the new FOIA requirements introduced by these provisions
- guidance for meeting these new FOIA requirements.

Disposal Date	Distribution
February 1, 2009	State Offices; State Offices relay to County Offices

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1 Overview (Continued)

C Exhibits

The following exhibits are provided:

- FOIA routing letter (Exhibit 1)
- FOIA acknowledgement letter (Exhibit 2)
- FOIA time-extension letter (Exhibit 3).

2 New FOIA Requirements

A New Requirement to Route Misdirected FOIA Requests

Section 6 of the OPEN Government Act of 2007 requires that all FSA offices that are authorized to respond to FOIA requests promptly review each FOIA request upon receipt to determine whether or not they are the appropriate FOIA office to process that request. If there is information in the request letter itself that indicates that the request was misdirected; that is, that another office within FSA or USDA is the appropriate office to respond to the request; they, as the receiving office, must route the FOIA request to the appropriate office within 10 workdays. Failure to comply with this requirement will mean that the appropriate office to respond to the FOIA request may have fewer than 20 workdays to process it. For a more detailed discussion of this requirement, go to www.usdoj.gov/oip/foiapost/2008foiapost31.htm.

B New Limitations on Tolling the FOIA's Response Time

Section 6 of the OPEN Government Act of 2007 limits the number of times an FSA office processing a FOIA request can stop the 20-workday processing clock **after** a request has already been perfected; that is, after a request has been received by the office that has the requested records and after all issues relating to the scope of the request and FOIA fee issues associated with its processing have been resolved. The FSA office processing the request may stop (or "toll") the clock only once to obtain additional information from the requester when requesting information about the scope of the request. However, the FSA office processing the request may stop the clock as many times as needed when requesting additional information about fees associated with processing the request. For a more detailed discussion of this requirement, go to www.usdoj.gov/oip/foiapost/2008foiapost29.htm.

2 New FOIA Requirements (Continued)

C New Limitations on Assessing Fees

Section 6 of the OPEN Government Act of 2007 precludes FSA from assessing search fees (when they would otherwise apply for commercial-use and other-use requesters), and from assessing duplication fees (when they would otherwise apply for requesters who qualify as representatives of educational or noncommercial scientific institutions or as representatives of the news media) when FOIA requests are **not** processed within 20 workdays **unless** unusual or exceptional circumstances apply to the processing of these requests. When these circumstances are met, FSA may continue to assess search and duplication fees when they would otherwise apply to the processing of particular requests even if the requests in question are **not** processed within the 20-workday time limit. For a more detailed discussion of this requirement, go to www.usdoj.gov/oip/foiapost/2008foiapost28.htm.

D Assigning Tracking Numbers

Section 7 of the OPEN Government Act of 2007 requires all FSA offices authorized to respond to FOIA requests to assign tracking numbers to all FOIA requests that will require more than 10 workdays to process. For a more detailed discussion of this requirement, go to www.usdoj.gov/oip/foiapost/2008foiapost30.htm.

E Providing Status Information for Requests

Section 7 of the OPEN Government Act of 2007 requires FSA to establish a telephone number that requesters may call or Internet service that requesters may use to obtain status information on their FOIA requests using FSA-assigned tracking numbers. Additionally, this section requires that FSA provides requesters, upon request, with the following information about their FOIA requests:

- the date that their requests were received by the office processing them
- the estimated date by which their requests will be completed.

Note: For a more detailed discussion of this requirement, go to www.usdoj.gov/oip/foiapost/2008foiapost30.htm.

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3 Guidance for Meeting New FOIA Requirements

A Requirement to Promptly Route Misdirected FOIA Requests

Effective December 31, 2008, all FSA offices authorized to process FOIA requests shall:

- date-stamp or otherwise annotate each FOIA request received with the date on which it was received
- review each FOIA request received on the date on which it is received to determine whether or not they are the appropriate FOIA office to process that request within FSA and/or USDA, or if the request was misdirected
- FAX or e-mail each misdirected FOIA request to the appropriate FOIA office within FSA to process that request, or to the appropriate USDA agency at the address listed in the USDA FOIA directory at www.da.usda.gov/foia_agency_pocs.htm, within 3 workdays of the date on which it was received or, in the case of FOIA requests containing bulky enclosures, by expedited mailing service
- notify the requester (of each misdirected FOIA request) of the office to which his or her request was routed, in writing (in a routing letter), and provide contact information for that office within 3 workdays of the date on which the FOIA request was received
- provide a copy of the routing letter to the office to which the misdirected FOIA request was routed (along with a copy of the FOIA request) within 3 workdays of the date on which the FOIA request was received
- on receipt of a misdirected FOIA request initially received by another FSA or USDA office, notify the requester of the date on which the FOIA request was received, in writing (in an acknowledgement letter), within 3 workdays of the date on which the FOIA request was received.

Note: An example of the FOIA routing letter is in Exhibit 1. An example of the FOIA acknowledgement letter is in Exhibit 2.

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3 Guidance for Meeting New FOIA Requirements (Continued)

B Requirement to Provide FOIA Tracking Number, Contact Information, and Status Information in an Acknowledgement Letter

Effective December 31, 2008, all FSA offices authorized to process FOIA requests shall:

- acknowledge each FOIA request received within 3 workdays of the date on which the FOIA request was received unless the request can be responded to in 5 workdays, in which case the response letter may also serve as an acknowledgement letter
- assign a tracking or control number in the “ss-ccc-yyyy-nnnnnn” format used by FOIA-CAP (FSA’s electronic FOIA tracking application), to each FOIA request received

Note: For the “ss-ccc-yyyy-nnnnnn” format:

- “ss” is the State code
 - “ccc” is the Service Center Agency code
 - “yyyy” is FY
 - “nnnnnn” is a unique, sequentially assigned number.
- assign each FOIA request received to 1 of the following processing tracks, depending on the office’s best estimate of the number of days that will be required to process the request:
 - simple track (1 to 5 workdays)
 - normal track (6 to 20 workdays)
 - complex track (more than 20 workdays)
 - include, at a minimum, the following information in the acknowledgement letter:
 - the tracking or control number assigned to the FOIA request
 - the date the FOIA request was received
 - the name of the FSA employee processing the request, along with his or her telephone number, FAX number, and USDA e-mail address
 - the processing track in which the request is being placed
 - provide a FOIA requester using the contact information provided in the acknowledgement letter, upon request, with the status of his or her request, along with the office’s best estimate of the date by which the processing of the request will be completed.

Note: An example of the FOIA acknowledgement letter is in Exhibit 2.

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3 Guidance for Meeting New FOIA Requirements (Continued)

C Requirement to Take a Time Extension When Unusual or Exceptional Circumstances Apply to the Processing of a FOIA Request

Effective December 31, 2008, all FSA offices authorized to process FOIA requests shall:

- determine, before “day 20” of the 20-workday response limit for any FOIA request whose processing is **not** yet completed, if any unusual or exceptional circumstances apply to the processing of that specific FOIA request, understanding that unusual or exceptional circumstances exist whenever 1 of the following applies:
 - there is a need to search for and collect records from Field Offices or other establishments that are separate from the office processing the request
 - there is a need to search for, collect, and examine a voluminous amount of records
 - there is a need for consultations with another agency or with more than 2 components within the same agency
- notify the requester that FSA is taking a 10-workday time extension whenever unusual or exceptional circumstances apply, by issuing a time extension letter on or before “day 20” of the 20-workday response limit for any FOIA request whose processing is **not** yet completed
- receive a 10-workday extension of the statutory processing period for each FOIA request for which a time extension letter has been validly issued
- **not** assess search fees for commercial-use or other-use requesters when unusual or exceptional circumstances do **not** apply to the processing of FOIA requests whose processing takes more than 20 workdays
- **not** assess duplication fees for requesters who qualify as representatives of educational or noncommercial scientific institutions or as representatives of the news media when unusual or exceptional circumstances do **not** apply to the processing of FOIA requests whose processing takes more than 20 workdays.

Note: An example of the FOIA time-extension letter is in Exhibit 3.

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4 Action

A State Office Action

State Offices shall:

- ensure that their respective FOIA programs comply with this guidance
- communicate this guidance to their respective County Offices, providing training in its implementation, if appropriate
- ensure that County Offices comply with this guidance.

B County Office Action

County Offices shall ensure that their respective FOIA programs comply with this guidance.

C Contacts

For questions about this notice, contact Sue Ellen Sloca, FSA FOIA Officer, at either of the following:

- e-mail at sueellen.sloca@wdc.usda.gov
- telephone at 202-720-1598.

Example of FOIA Routing Letter

	Control/Tracking Number
<p>[Name of Requester] [Requester's Street Address] [Requester's City, State, ZIP Code]</p>	
<p>Dear [Mr./Ms. Requester]:</p>	
<p>This is in response to your [CHOOSE ONE: Freedom of Information Act (FOIA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, to the United States Department of Agriculture (USDA), Farm Service Agency (FSA). FSA received a copy of your request on [month, day, year] _____ and assigned it control number _____. Please reference this number in any future communication with our office about your request.</p>	
<p>We have determined that the records you are seeking may be maintained in another FSA [or USDA] office: [SPECIFY WHICH FSA OR USDA OFFICE/AGENCY] _____. Therefore, we are routing your request to this office for direct response.</p>	
<p>You may expect to hear from this office shortly. If you do not, you may write or call:</p>	
<p>[Name of FSA office/USDA agency] [Contact person] [Mailing address] [City, State, Zip Code]</p>	
<p>[Telephone Number] [FAX Number] [E-mail address, if known]</p>	
<p>If you have any questions about any of the issues discussed in this letter, you may contact _____ at ___-___-____ (phone), by e-mail at _____, or by mail at _____.</p>	
<p>Sincerely,</p>	
<p>[Name] [Title] [FSA National/State/County Office]</p>	
<p>Attachments</p>	

Example of FOIA Acknowledgement Letter

<p>[Name of Requester] [Requester's Street Address] [Requester's City, State, ZIP Code]</p> <p>Dear [Mr./Ms. Requester]:</p> <p>This is in response to your [CHOOSE ONE: Freedom of Information Act (FOIA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, to the United States Department of Agriculture (USDA), Farm Service Agency (FSA). FSA received a copy of your request on [month, day, year] _____ and assigned it control number _____. Please reference this number in any future communication with our office about your request.</p> <p>FSA processes FOIA/PA requests on "first-in, first-out" basis. The actual processing time will depend upon the complexity of the request and whether or not it involves sensitive or voluminous records, or extensive searches and/or consultations. FSA also processes FOIA/PA requests on a multi-track basis. This means that simple requests, requiring minimal effort to respond (1-5 workdays), are processed in one track; normal requests requiring more time to respond (6-20 workdays) are processed in another track; and complex requests involving voluminous records, extensive searches or consultations (requiring more than 20 workdays to respond) are processed in yet another track. We have placed your request in the [CHOOSE ONE: simple / normal / complex] track.</p> <p>We have classified your request as a [CHOOSE ONE: commercial-use / media-use / educational noncommercial scientific-use / other-use] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees.</p> <p>If you have any questions about the status of your request, you may contact _____ at ___-___-___ (phone), by e-mail at _____, or by mail at _____.</p> <p>Sincerely,</p> <p>[Name] [Title] [FSA National/State/County Office]</p> <p>Attachments</p>	<p>Control/Tracking Number</p>
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Example of FOIA Acknowledgement Letter (Continued)

FOIA/PA Processing Fees

Freedom of Information Act processing fees:

Commercial-use requesters are charged for the cost of searching for responsive documents, reviewing responsive documents for release to the public, and duplicating documents released in full or in part.

Educational-use, noncommercial scientific-use, and media-use requesters are charged for the cost of duplication only. They are also entitled to receive the first 100 pages of duplication without charge.

Other-use requesters are charged for the cost of searching for responsive documents and duplicating documents released in full or in part. They are also entitled to two hours of search time, without charge, and 100 pages of duplication without charge.

Category	Search fees	Review fees	Duplication fees
Commercial use	Yes	Yes	Yes
Educational use	No	No	Yes (first 100 pages free)
Scientific use	No	No	Yes (first 100 pages free)
Media use	No	No	Yes (first 100 pages free)
Other use	Yes (first 2 hours free)	No	Yes (first 100 pages free)

Privacy Act processing fees:

Privacy Act requesters are charged only for the cost of duplicating responsive records.

All requesters are not charged FOIA fees if the total amount of the chargeable fee is equal to or less than \$25.00, because the cost of collecting the fee would exceed the amount collected, in accordance with Department of Agriculture regulations Title 7, CFR, Appendix A, to Subpart A, §3(b).

Example of FOIA Acknowledgement Letter (Continued)

Standard FOIA/PA Fees			
Category	Clerical time	Professional time	
Search services	\$10.00/hour*	\$20.00/hour*	charged in quarter hour increments
Review services	\$10.00/hour*	\$20.00/hour*	charged in quarter hour increments
<p>*Whenever feasible, search and review time is charged at the hourly rate of the actual salary of the individual conducting the search and reviewing the records + 16% of his/her basic pay. Otherwise, it is charged at standard USDA clerical and professional hourly rates (above).</p>			
Category	Unit cost	Unit description	
Duplication	\$.20/page	single-sided copy, 8½” x 14” or smaller	
	\$.50/page	single-sided copy, larger than 8½” x 14”	
Certifications	\$5.00/each	FSA certification that copies are “true copies”	
Authentications	\$10.00/each	authentication of copies under Departmental Seal	
Other services	Actual charges as established or incurred by FSA		
<p>Fees for electronic and other special services are charged in accordance with prevailing rates on a per minute basis.</p>			

Example of FOIA Time-Extension Letter

Control/Tracking Number

[Name of Requester]
[Requester's Street Address]
[Requester's City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in reference to your [CHOOSE ONE: Freedom of Information Act (FOIA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

We are writing to notify you that we are taking a ten-workday time extension in order to properly process your request, due to [CHOOSE ONE REASON TO INSERT FROM THE LIST BELOW:]

- a. the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- b. the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request.
- c. the need to consult with another agency or with more than two components within the same agency.

We hope to be able to respond to you on or before [month, day, year of new due date] _____.

In the interim, if you have any questions about the status of your request, you may contact _____ at ___-___-___ (phone), by e-mail at _____, or by mail at _____.

Sincerely,

[Name]
[Title]
[FSA National/State/County Office]

Attachments