

UNITED STATES
DEPARTMENT OF THE INTERIOR

**FREEDOM OF INFORMATION
ACT
HANDBOOK**

(383 DM 15)



OFFICE OF THE SECRETARY
Washington, D.C. 20240

FOREWORD

The Departmental Freedom of Information Act (FOIA) Handbook has been revised in its entirety. The Handbook has been updated to reflect changes in the Department's policies and procedures consistent with the Electronic FOIA Amendments of 1996, the Department of the Interior's (DOI) revised FOIA regulations (43 CFR Part 2, Subparts A through E), developments in case law, cost figures for calculating and charging fees, and organizational changes within DOI.

This Handbook supplements the requirements prescribed by 383 DM 15 and DOI's FOIA regulations. The Handbook establishes Departmentwide policies and procedures for administering and implementing the FOIA. It provides detailed guidance on when and how to apply the nine FOIA exemptions and includes examples of the types of information that may be withheld under each. It also requires all bureaus and offices with Internet access to use the Electronic FOIA Tracking System to track and manage their requests. All FOIA requests will be processed in accordance with the procedures contained in this Handbook. Use of this Handbook and the applicability of its provisions are authorized in 383 DM 15.

Questions regarding the contents of the Handbook may be directed to the Departmental FOIA Officer or to the Bureau FOIA Officers. Additional copies of the Handbook may be obtained by contacting the Bureau FOIA Officers.

A handwritten signature in black ink, appearing to read 'W. Hord Tipton', is positioned above the printed name and title.

W. Hord Tipton
Chief Information Officer

Date: April 22, 2004

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	Reading Room Materials
1.8	Frequently Requested FOIA Documents
1.9	Bureau FOIA Websites
1.10	Requests Not Covered
1.11	Who Can Make a FOIA Request?
1.12	Privacy Act Access Requests
1.13	Personal Records
1.14	Litigation
1.15	Production of Records (Subpoena)
1.16	Disciplinary Action
Chapter 2	Controlling FOIA Requests
2.1	Electronic FOIA Tracking System (EFTS)
2.2	Use of the EFTS
2.3	Bureau Responsibilities
2.4	Signature Authority
2.5	Action Office Responsibility
2.6	Handling FOIA Requests
2.7	Recordkeeping
2.8	Preservation of Records
2.9	Coordination
2.10	Coordinating Sensitive Requests
Chapter 3	Processing Requests
3.1	Inquiries for Information Versus Records
3.2	Time Limits

- 3.3 Extension of Time Limits
- 3.4 Expedited Processing
- 3.5 Describing the Requested Records
- 3.6 Locating the Records
- 3.7 Searching for Responsive Records
- 3.8 Reviewing the Records
- 3.9 Form or Format of Disclosure
- 3.10 Interim Responses
- 3.11 Referrals from Other Agencies
- 3.12 Records of Other Agencies
- 3.13 Consultations and Referrals with Agencies
 - Outside DOI
- 3.14 Consultations and Referrals within DOI
- 3.15 Relationship of the FOIA and the Privacy Act
- 3.16 Preparing the Response Letter
- 3.17 Signature Authority
- 3.18 Action Office Responsibilities
- 3.19 Initial Response – Granting Access
- 3.20 Initial Response—Denying a Request in Part or
 - Whole
- 3.21 Segregating and Releasing Nonexempt Information
- 3.22 Releasing Information that is Outside the Scope of
 - a Request
- 3.23 Consulting with Submitters of Commercial and
 - Financial Information
- 3.24 Requests for Federally-funded Research Data in the
 - Possession of a Private Entity
- 3.25 Sensitive Requests
- 3.26 Requests from Members of Congress
- 3.27 White House Records
- 3.28 Multitrack Processing of FOIA Requests
- 3.29 Examples of Information Frequently Releasable Under
 - the FOIA
- 3.30 Requests for Records Not Yet in Existence
- 3.31 Receipt of Classified Material
- 3.32 Certification of Documents

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 When Additional Information is Needed to Determine
 - Category of Requester
- 4.7 Searches

4.8	Reviews (Commercial-use Requests Only)
4.9	Notice of Anticipated Fees
4.10	Advance Payment
4.11	Unresolved Fee Issues
4.12	Billing Procedures
4.13	Failure to Pay Fees
4.14	Fee Waivers
4.15	Reducing the Fee (Partial Fee Waivers)
4.16	Fee Waiver Requests
4.17	Discretionary Fee Waivers
Chapter 5	FOIA Exemptions
5.1	General
5.2	Decisions to Withhold Information
5.3	Exemption 1 – Matters of National Defense or Foreign Policy
5.4	Exemption 2 – Internal Personnel Rules and Practices
5.5	Exemption 3 – Information Exempted by Other Statutes
5.6	Exemption 4 – Trade Secrets, Commercial or Financial Information (Confidential Business Information)
5.7	Exemption 5 – Privileged Interagency or Intra-agency Memoranda or Letters
5.8	Exemption 6 – Personal Information Affecting an Individual’s Privacy
5.9	Exemption 7 – Records Compiled for Law Enforcement Purposes
5.10	Exemption 8 – Records of Financial Institutions
5.11	Exemption 9 – Geological and Geophysical Information Concerning Wells
5.12	Waiver of Exemption Special Rules Governing Certain Information Concerning Coal Obtained Under the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands
5.13	Discretionary Release
Chapter 6	FOIA Appeals
6.1	FOIA Appeal Rights
6.2	Requester Contact with Bureaus
6.3	Time Limitations for Filing FOIA Appeals
6.4	Filing a FOIA Appeal
6.5	Appeal Notification
6.6	Review of FOIA Appeals

6.7	Authority for Making Final Decisions on FOIA Appeals
6.8	Decisions on FOIA Appeals
6.9	Denial of FOIA Appeals
6.10	Granting of FOIA Appeals
6.11	Time Limitations for Processing FOIA Appeals
6.12	Delay in Issuing Responses to FOIA Appeals
6.13	Distribution of FOIA Appeals' Responses
6.14	FOIA Appeals Files
Chapter 7	Annual Report to Congress
7.1	Annual Report to Congress
Appendix A	- Department of the Interior FOIA Regulations (43 CFR Part 2, Subparts A through E)
Appendix B	- Sample Letters and Other Illustrations
Appendix C	- Privacy Act System of Records Notice DOI-71 Electronic FOIA Tracking System and FOIA Case Files—Interior

Department of the Interior
Departmental Manual
Freedom of Information Act Handbook
(383 DM 15)

Effective Date: 4/22/04

Chapter 1: General

Originating Office: Office of the Chief Information Officer

1.1 Purpose. This Departmental Manual Handbook, authorized in 383 DM 15 provides policy and general guidance for administering and implementing the Freedom of Information Act (FOIA) in the Department of the Interior (DOI). The Handbook is to be used in conjunction with:

- A. The Freedom of Information Act, 5 U.S.C. 552;
- B. DOI's FOIA regulations, 43 CFR Part 2, Subparts A through E (see Appendix A to this Handbook);
- C. The Privacy Act, 5 U.S.C. 552a;
- D. DOI's Privacy Act regulations, 43 CFR Part 2, Subpart G;
- E. The Departmental Manual, 383 DM 1-13, Privacy Act of 1974;
- F. The Department of Justice (DOJ) FOIA Updates/FOIA Post;
- G. The most recently issued DOJ FOIA Guide and Privacy Act Overview and Case List; and
- H. Office of the Chief Information Officer/Information Resource Management bulletins or other directives (e.g., IRM Bulletin No. 96-04).

As the Handbook's purpose is to provide internal guidance, it is subject to the requirements of the FOIA and the Department's FOIA regulations. In the event that there are any inconsistencies between this Handbook and the Department's FOIA regulations, the FOIA regulations will prevail.

1.2 Policy. It is the Department's policy to make records available to the public consistent with the letter and spirit of the FOIA and the Privacy Act. The Department will furnish

nonexempt records promptly to any member of the public upon written request and in compliance with the fee structure specified in Chapter 4. Bureaus and offices are expected to comply fully with the policies and procedures in this Handbook.

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 that are in the possession and control of the Department that come within the scope of the FOIA (5 U.S.C. 552). See Paragraph 3.24 of Chapter 3 concerning the applicability of the FOIA to certain Federal grant documents.

B. The procedures do not apply to:

(1) Records published in the Federal Register (see 43 CFR 2.4(b)).

(2) Records that fall under the two law enforcement exclusions available to DOI (there is a third record exclusion which is not applicable to DOI):

(a) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in paragraph 5.9 of Chapter 5 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.

(b) 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. The Electronic FOIA Amendments of 1996, P.L. No. 104-231.

C. Executive Order 12,600 of June 23, 1987, Predisclosure Notification Procedures for Confidential Commercial Information.

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

E. 43 CFR Part 2, Records and Testimony: Freedom of Information Act, 43 CFR Part 2, Subparts A through E.

F. The Departmental Manual, 383 DM 15, Freedom of Information Act.

G. The Departmental Manual, 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, as amended.

B. Action office means the office that is responsible for preparing the response to a FOIA request.

C. Agency means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency.

D. Agency record means any documentary material that is (1) either created or obtained by an agency in the transaction of agency business and (2) under agency control.

(1) Agency records include:

(a) Books, papers, maps, charts, plats, plans, architectural drawings, photographs, and microfilm;

(b) Machine-readable materials such as magnetic tape and disks;

(c) Electronic records (including e-mail messages);

(d) Audiovisual material such as still pictures, sound and video recordings; and

(e) All other documentary materials, regardless of physical form, format or characteristics.

(2) This definition generally does not cover records of an individual that are:

(a) Created and maintained primarily for an individual's convenience;

- (b) Not subject to agency creation or retention requirements;
 - (c) Not distributed to other agency employees for their official use;
- and
- (d) Not integrated into the agency's official file system.

(3) Records of contracting and compacting tribes under the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended, generally are not subject to the FOIA. They also are not subject to the Privacy Act.

E. Appeal means a written challenge by a FOIA requester to the sufficiency of the FOIA response (this includes fax and e-mail) when permissible such as when--

- (1) Records or parts of records have been withheld;
- (2) The bureau informs the requester that he/she has not adequately described the records sought, or that it does not possess responsive records, and the requester has reason to believe that the bureau does or questions the adequacy of the bureau's search;
- (3) The bureau did not address all aspects of the request for records;
- (4) A fee waiver has been denied;
- (5) A request for expedited processing has been denied or not responded to on time;
- (6) A decision has not been made on a request within the time limits provided in paragraph 3.2 of Chapter 3; or
- (7) The requester believes there is a procedural deficiency (e.g., fees are improperly calculated).

F. Bureau means any major component of the Department administering its own FOIA program. A list of these components is contained in Appendix A of DOI's FOIA regulations (43 CFR Part 2).

G. Commercial or financial information should be given their ordinary meanings when assessing whether information qualifies for protection under exemption 4. Further, records are commercial so long as the submitter has a commercial interest in them. See paragraph 5.6 of Chapter 5.

H. Commercial-use request means 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. In determining whether a requester

falls into this category, the bureau will consider the identity of the requester and intended use of the records in addition to any other available information about the requester.

I. Direct costs mean those expenses that a bureau actually incurs to provide special services in searching for and duplicating (and in the case of commercial-use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary and benefits of the employee performing the work and the cost of operating duplicating equipment, as well as the unusual costs attributed to performing special services. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept. Calculating direct costs is necessary only for special services as direct costs are already factored into the charges established for duplication, and search and review costs.

J. Duplication means making a copy of a record, or the information contained in it, to respond to a FOIA request. Copies can take the form of paper, microform, photographs, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

K. Educational institution means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

L. Expedited processing means giving a FOIA request priority, and processing it ahead of other non-expedited requests pending in the bureau because a requester has shown an exceptional need or urgency for the records.

M. FOIA request means a written request (this includes fax and e-mail) made by any member of the public for Federal agency records.

N. Free-lance journalist means a representative of the news media who is able to 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.

O. Frequently requested documents means documents that have been requested at least three times under the FOIA. It also includes documents the agency anticipates would likely be the subject of three or more requests.

P. Initial denial means the first letter sent to the requester denying either part or all of the initial request for a record, a fee waiver, or expedited processing.

Q. Multitrack processing means placing simple requests, requiring relatively

minimal efforts to respond, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are processed on a first-in/first-out basis.

R. Noncommercial scientific institution means 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. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

S. Perfected request means a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

T. Privacy Act request means a written request (paper copy with an original signature) made by an individual for information about himself or herself that is contained in a Privacy Act system of records. The Privacy Act applies only to U.S. citizens and aliens lawfully admitted for permanent residence. Therefore, only those individuals may make Privacy Act requests.

U. Privacy Act system of records means a grouping of records about individuals under the control of a Federal agency from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual.

V. Published research findings means research findings that are either:

- (1) Published in a peer-reviewed scientific or technical journal; or
- (2) Publicly and officially cited by a Federal agency in support of an agency action that has the force and effect of law.

W. Reading room materials means records (paper or electronic) that are required to be made available to the public under 5 U.S.C. 552(a)(2), as well as other records that a bureau, at its discretion, makes available to the public for inspection and copying without requiring the filing of a FOIA request.

X. Representative of the news media means 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, newspapers, 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. To be in this category, a requester must not be seeking the requested records for a commercial use. Further, a bureau

normally will not consider requests for records involving news dissemination to be commercial-use requests.

Y. Requester means any individual who has asked in writing to see or receive a copy of an agency record.

Z. Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not such things as trade secrets, commercial information, personnel and medical information and any similar information, which is protected under law.

AA. Responsible official means the person in the action office who is charged with preparing the response to the initial request.

BB. Review means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes the deletion of exempt material or other processing necessary to prepare the record(s) for disclosure, including routine consultation among bureau staff and attorneys regarding the applicability of exemptions; and time spent considering any formal objection to disclosure made by a submitter under 43 CFR 2.23(f).

CC. Search means the process of looking for and retrieving agency records and information responsive to a request (manually or by automated means).

DD. Submitter means any person or entity outside the Federal Government from whom the Department directly or indirectly obtains commercial or financial information. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments. This term does not include the Federal Government.

EE. Workday means a regular Federal workday. It does not include Saturdays, Sundays, or Federal legal holidays.

1.6 Responsibilities.

A. Departmental.

(1) The Chief Information Officer (CIO) is delegated authority for administering the FOIA and related laws in the Department. The CIO is also assigned appellate authority for deciding appeals after obtaining advice, in certain instances, from the Office of the Solicitor (see 210 DM 18.1H).

(2) The Departmental FOIA Officer, located in the Information Management Division (IMD), OCIO, has overall responsibility for developing and administering the FOIA Program in DOI. This includes developing regulations, guidelines, procedures, and standards for the Department's FOIA program; providing program oversight, technical assistance, and training

to employees to ensure compliance with the Act; and preparing the Department's annual report to the Department of Justice/Congress. The Departmental FOIA Officer, along with the Department's FOIA Appeals Officer, has primary responsibility for developing and conducting FOIA training for DOI.

(3) The Department's FOIA Appeals Officer, also located in IMD, is responsible for administering the FOIA Appeals Program in DOI. This includes making decisions on appeals; developing guidelines, procedures, and standards for the Department's FOIA Appeals Program; providing program oversight, technical assistance and training to employees to ensure compliance with the Act; and maintaining the information prescribed under 43 CFR 2.30.

(4) The Office of the Secretary (OS) FOIA Officer, located in the National Business Center (NBC), is responsible for tracking and managing Departmental FOIA requests and coordinating sensitive requests involving multiple bureaus and offices, as well as administering and providing program oversight for the OS FOIA program.

(5) The FOIA Officers for the bureaus, the Office of Inspector General, and the Office of the Solicitor (SOL) are responsible for administering their own FOIA programs, including developing policies and procedures consistent with Departmental guidance (see paragraph 1.6B, below).

(6) SOL is responsible for making legal interpretations of the Act and providing guidance to bureaus and offices. The SOL provides legal reviews of FOIA determinations and appeals, as necessary, and assists in developing the FOIA regulations. Along with the Departmental FOIA Officer and the FOIA Appeals Officer, SOL assists in training Departmental staff.

B. Bureaus. Heads of Bureaus are responsible for ensuring that their Bureaus perform the following:

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

(2) Designate a FOIA Officer and an alternate to serve in his/her absence to implement the Act within the bureau—this individual is the primary contact between the Departmental FOIA Officer and the bureau for FOIA activities;

(3) Track and manage the FOIA requests that their bureau receives consistent with the requirements in Chapter 2;

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

(5) Comply with the public information requirements prescribed in 5 U.S.C.

552(a)(2) (see paragraph 1.7 of this Chapter);

(6) Develop and maintain a FOIA home page to ensure compliance with E-FOIA;

(7) Provide technical assistance and training to ensure that personnel within each organization that handles FOIA requests are familiar with the Act and able to respond to requests in accordance with DOI's FOIA regulations and the procedures in this Handbook; and

(8) Make all employees aware of their statutory obligations under the FOIA and the Privacy Act, which include providing thorough and prompt responses to the requests, identifying and protecting sensitive information, including privacy-protected information, and identifying information that should be made available to the public.

1.7 Reading room materials.

A. Under 5 U.S.C. 552(a)(2), bureaus and offices are responsible for making the information listed in subparagraphs (1) through (5), below, available for public inspection and copying unless the materials are promptly published and copies offered for sale. Bureaus must make any such records created on or after November 1, 1996, available electronically, preferably via the Internet (in an electronic reading room), or by other computer telecommunication methods or electronic means, as well as in hard copy, as quickly as practicable. The electronic availability requirement applies only to those records that DOI created—not to those generated elsewhere. This requirement applies to the following categories of records:

- (1) Final opinions rendered in the adjudication of cases;
- (2) Policy statements and interpretations which have been adopted by DOI and are not published in the Federal Register;
- (3) Administrative staff manuals and instructions affecting the public;
- (4) Copies of records that have been or are likely to become the subject of frequent FOIA requests, and an index of those documents as described in paragraph 1.8 of this Chapter; and
- (5) A subject matter index of the bureau's reading room records.

B. Bureau FOIA Officers should work with their program offices, directives staff, and other offices, as appropriate, to identify those documents that must be made available to the public under 5 U.S.C. 552(a)(2) of the FOIA.

C. Bureaus may, at their discretion, make other records available for inspection and copying in reading rooms or in their electronic reading rooms via the Internet. Bureaus should

have a computer with Internet access along with a printer available in their reading rooms or at another location for the public to use in accessing this information. Bureaus do not have to maintain a hard copy of the information listed in paragraph 1.7A (1) through (5), above, if the public can access and print a copy of the material from the electronic reading room.

1.8 Frequently Requested FOIA Documents.

A. Under 5 U.S.C. 552(a)(2)(D), bureaus and offices will make available for public inspection and copying all records that have been released to any person under section 552(a)(3) (i.e., released pursuant to a FOIA request) of the FOIA if they determine that the records have become or are likely to become the subject of frequent FOIA requests for substantially the same records (e.g., travel records of high level officials, reports generating considerable public interest (e.g., certain records relating to an energy or Endangered Species Act controversy), the FOIA annual reports to DOJ/Congress, lists of credit cardholders, etc.). Documents that have been requested at least three times under the FOIA are considered “frequently requested documents.”

B. Prior to making records available for public inspection in reading rooms and/or electronic reading rooms (see paragraph 1.7A of this Chapter), bureaus must determine whether any information in the records should be withheld from public release, and make any necessary redactions (deletions). They should carefully consider the interests of the Government and commercial entities, the personal privacy of individuals, and any potential security implications that might be impacted by disclosure before placing any document in a reading room or posting it to their FOIA website.

(1) If information is deleted from a document prior to placing it in a reading room, the bureau will indicate the volume of information that has been deleted on the document and the exemption used to withhold it. If a requester would like access to the entire record, he/she must submit a FOIA request to the appropriate FOIA Contact. However, this does not guarantee that the entire record will be released. If a requester submits a FOIA request for reading room materials and is not satisfied with the bureau’s response, he/she may file an appeal.

(2) The requester also may request a fee waiver (for copying charges) for information in a reading room. Such requests will be processed under the procedures in paragraphs 4.14 and 4.16 of Chapter 4.

C. If the Departmental FOIA Officer or a Bureau FOIA Officer receives a FOIA request for reading room materials, he/she will forward the request to the FOIA Contact who is responsible for the records (see Appendix A to the FOIA regulations for a list of DOI’s FOIA Contacts). In that case, or where a requester files a request directly with the appropriate FOIA Contact, the FOIA Contact should advise the requester by telephone or e-mail that the requested information is available via the Internet or in the reading room. Then, the FOIA Contact should advise the requester by written notice that if the bureau does not hear from him/her within 20 workdays, it will assume the requester is satisfied and will close the file on the request. The requester, nevertheless, may ask the bureau to process his/her request as any other FOIA request. In that case, the bureau will have to do so. The time limit starts when the FOIA request is

received by the appropriate FOIA Contact, providing it complies with all the procedures in 43 CFR 2.8 and 2.10. If the information is not available electronically or the requester does not have access to the Internet, the FOIA Contact may either send the requester the information or forward the request to the appropriate reading room and provide the name and telephone number of a contact.

D. The Department (OCIO) will maintain an index of records that are frequently requested under the FOIA (only those specified in paragraph 1.8A, above), based on input provided by the bureaus and offices, and make the index available to the public in reading rooms and/or via the DOI FOIA home page or by other electronic means. Each bureau/office will:

- (1) Ensure that the information they submit to OCIO is accurate, complete, and up-to-date; and
- (2) Advise OCIO of necessary changes.

1.9 Bureau FOIA Websites.

A. Each Bureau FOIA Officer is responsible for developing and maintaining a FOIA website to ensure compliance with E-FOIA. (Information pertaining to the Office of the Secretary is included on the Department's FOIA Home Page.) The bureau's website will comply with the mandates affecting web publishing in DOI, e.g., web privacy policy; Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the FY 2001 Appropriation for Military Construction Act (Pub. L. 106-246) and OCIO Bulletin 2001-06, adopting the web technical standards for accessible technology as developed by the Architectural and Transportation Barriers Compliance Board (Access Board); the Department's and the bureaus' information quality guidelines, and Section 515(a) of the Treasury and General Appropriations Act for FY 2001. The bureau's FOIA website should be designed to ensure the public's search for information is fast, easy, logical, and customer friendly. The Bureau FOIA Officer will review the information on its FOIA website regularly to ensure that it is current, of high quality, accurate, and usable.

B. The bureau's home page should contain a "FOIA link/button" which is readily visible and connects to its own FOIA home page as well as a "general information link/button" which connects to the Department's Reference Guide for obtaining information under the FOIA, Privacy Act, and by other means.

C. Bureau FOIA websites should supplement the information already provided on the Department's FOIA home page (<http://www.doi.gov/foia>) and should include links to both the DOI FOIA home page and the bureau's home page. At a minimum each bureau's FOIA home page should include the following components:

- (1) A link to DOI's Reference Guide for obtaining information under the FOIA, Privacy Act, and by other means (<http://www.doi.gov/foia/foitabl.htm>). A bureau also may include specific guidance on how to request information from the bureau. A list of records

routinely available to the public without submitting a FOIA request should also be included if available.

(2) An electronic reading room where documents required to be made available under 5 U.S.C. 552(a)(2) may be found—this includes frequently requested FOIA documents. If documents are already posted to DOI’s FOIA home page, the bureau may link directly to that website.

(3) A link to the index of frequently requested documents.

(4) A link to the index and description of DOI’s major information systems.

(5) A list of the bureau’s FOIA contacts, including their name, telephone and fax numbers, and mailing and e-mail addresses.

(6) Any FOIA policies or guidance developed by the bureau. To avoid discrepancies and to ensure policies are accurate and up-to-date, the bureau will include only those policies and procedures that it has developed. With regard to all other pertinent FOIA/Privacy/Records/information resources management policies, etc., the bureau will link to the appropriate Departmental sites.

1.10 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 (usually the chairman of the committee) 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)). The Office of Congressional and Legislative Affairs must be consulted when requests for documents are received from Members of Congress or a congressional committee to ensure proper coordination and conformity of responses.

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

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

B. In order for a document to be considered a record subject to the provisions of the FOIA, it must be in the bureau’s possession and control as of the date the bureau begins its

search for responsive records.

(1) There is no obligation for the bureau to create or compile a record to satisfy a request--for example, by combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons or creating maps--to respond to a request (see 43 CFR 2.7(d)(1) and Appendix B, Illustration 1*). Normally, if a bureau is extracting information from an existing computer database, this would not constitute the creation of a new record. However, a bureau has the option of creating a new record if--

- (a) Doing so will provide a more useful response to the requester,
- (b) It is less burdensome than providing the existing records, and
- (c) The newly created record is fully responsive to the request.

(2) If a bureau decides to create a new record in responding to a request, the fee will not be more than the fee for the individual records.

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. However, information prepared by the bureaus and provided to a transition team normally would be considered an agency record under the FOIA.

1.11 Who Can Make a FOIA Request? Any 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 1.10A(1) and A(2) of this Chapter).

1.12 Privacy Act Access Requests. If an individual requests information pertaining to him/herself that is contained in a Privacy Act system of records, it will be processed under both the Privacy Act and the FOIA, regardless of the statute(s) cited, to afford the individual the greatest access to information about him/herself (see paragraph 1.5T of this Chapter). Only U.S. citizens and aliens lawfully admitted for permanent residence may make Privacy Act requests. Such Privacy Act access requests are processed according to the Department's Privacy Act

** Note: It is possible that some of the illustrations referenced in the text do not appear sequentially.*

regulations (43 CFR Part 2.62 through 2.66), and the Departmental Manual (383 DM 6). See paragraph 3.15 of Chapter 3 for a more detailed explanation.

1.13 Personal Records. The FOIA only applies to agency records (see paragraph 1.5D of this Chapter), not to the personal records of individual employees. The distinction between agency and personal records can be difficult to determine. The determination is heavily fact driven. Similar documents created by different employees might be treated differently depending on the application of the ten factors below. Personal records generally are not subject to agency records retention requirements, and not distributed to other employees for their official use. They are created, used, 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. See Appendix B, Illustration 2, for 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 or received 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 official business information? Even though a record may have certain personal information, it may nevertheless be an agency record if its release would shed light on the activities of the Government.

C. Purpose. Was the document created solely for an individual employee's personal convenience, e.g., to serve as a memory jogger? 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?

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. The placement of a record in an agency file creates the presumption that it is an agency record. Once a 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 record keeping purposes?

1.14 Litigation.

A. If a bureau FOIA Contact or Designated FOIA Attorney is aware of any litigation pending, he/she will notify the Bureau FOIA Officer and the Branch of General Legal Services, Division of General Law, SOL. Individuals located in the field also will notify the appropriate headquarters, regional or field solicitor, as well as the Division of General Law.

B. When a requester sues the Department for withholding records or the submitter of the information sues the Department to prevent disclosure (reverse FOIA suit), the responsible official will cooperate with SOL in responding to the litigation.

1.15 Production of Records (Subpoena). If the production of any record of the Department is sought for use in Federal, state, territorial or tribal judicial, legislative or administrative proceedings, e.g., by a subpoena, bureaus must consult with SOL. In addition, in certain circumstances, the procedures in 43 CFR 2.80 through 2.90 will be applicable.

1.16 Disciplinary Action. In accordance with the FOIA (5 U.S.C. 552(a)(4)(F)), where a court issues a written finding that the circumstances surrounding an improper withholding of agency records raises questions whether agency personnel acted arbitrarily or capriciously with regard to the withholding, the Office of Special Counsel is required to initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee primarily responsible for the withholding. If the Office of Special Counsel recommends that corrective action be taken, the Department must comply.

Department of the Interior
Departmental Manual
Freedom of Information Act Handbook
(383 DM 15)

Effective Date: 4/22/04

Chapter 2: Controlling FOIA Requests

Originating Office: Office of the Chief Information Officer

2.1 Electronic FOIA Tracking System (EFTS). The EFTS is a mandatory system for tracking and managing FOIA and Privacy Act requests for all bureaus with Internet access. The EFTS will assist bureaus/offices in processing their FOIA and Privacy Act (PA) requests more efficiently, ensure consistency in responses, and facilitate preparation of the annual report to DOJ/Congress.

A. The EFTS contains the following pertinent information: a control number which is automatically assigned to each request by bureau (e.g., OS-2003-00001 would be assigned to the first request received by the Office of the Secretary in fiscal year 2003); date of request, receipt, and date of perfection, name, address, and telephone number of the requester; subject of the request, date completed and disposition of request, fees incurred, etc.

B. The EFTS will:

- (1) Generate the Department's FOIA annual report to DOJ/Congress and a report for each bureau;
- (2) Generate search and statistical reports based on data in the system;
- (3) Generate a Departmentwide log of all FOIA/PA requests that have been received. The log will provide the following information:
 - (a) FOIA control number assigned;
 - (b) Name of the requester;
 - (c) Date of request;
 - (d) Date received;
 - (e) Completion date;
 - (f) Subject of the request; and
 - (g) Responsible bureau.

2.2 Use of the EFTS. Only DOI's FOIA/PA Officers and Coordinators (the FOIA Contacts), Designated FOIA Attorneys and attorneys in the Division of General Law, the FOIA Appeals

Officer, and the Departmental Privacy Act Officer are authorized to use the EFTS. Bureau FOIA Officers will grant access only to those employees with a “need to know” for the purposes of carrying out their FOIA/PA responsibilities. All users of the system will comply with the Business Rules and Guidelines and the Rules of Behavior for the EFTS. Users also should refer to the User’s Manual developed by the contractor. Since the EFTS is a Privacy Act system of records (See Appendix C to this Handbook for a copy of DOI-71, Electronic FOIA Tracking System and FOIA Case Files), employees who have access to data in the system must be aware of the maintenance, use, and other handling requirements established by the Privacy Act (see DOI’s Privacy Act regulations (43 CFR Part 2, Subpart G), and the Departmental Manual (383 DM 1-13)).

2.3 Bureau Responsibilities. Each bureau will designate one or more individuals (e.g., the Bureau FOIA Officer and the regional/field FOIA Contacts) who will be responsible for:

A. Reviewing all incoming requests, logging them into the EFTS, and determining the action office responsible for preparing the response.

B. Annotating each FOIA request and/or transmittal sheet with the following information:

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

C. Tracking and managing all FOIA requests to ensure that:

- (1) Responses are accurate, complete, and prepared in a timely manner in accordance with applicable laws, and DOI’s policies and procedures;
- (2) Records are provided to the requester; and
- (3) Fees are assessed properly under the Department’s fee schedule (see Appendix C of DOI’s FOIA regulations) and collected, as appropriate, etc.

D. Coordinating with other offices and bureaus where appropriate to ensure that documents are treated consistently.

E. Maintaining background information to support potential appeals and litigation.

F. Providing supplemental information for the Department’s FOIA annual report (e.g., information concerning staffing, training, and other efforts to improve the program).

G. Maintaining necessary backup data in case there are any unforeseen circumstances that would prohibit the bureau from accessing the system.

H. Entering the following information into the EFTS for all FOIA requests received--

(1) Request:

(a) FOIA control number assigned (automatically generated by the system);

(b) Type of request (FOIA, Privacy Act, Records Referred);

(c) Sensitivity (Non Sensitive, Sensitive, Supersensitive);

(d) Type of Processing (Normal, Simple, Complex, Expedited);

(e) Status (Open, Completed, Closed);

(f) Date of request

(g) Date received;

(h) Date perfected;

(i) Date completed; and

(j) Subject of request.

(2) Requester: Name, address, and telephone number (if available) of requester.

(3) Fees:

(a) Fee category of requester; and

(b) Fee incurred in processing the request.

(4) Response:

(a) Disposition - whether granted, partially granted, denied or any other reason for nondisclosure;

(b) Exemptions cited; and

(c) If exemption 3 cited, the name of the law.

(5) Comments: Name of contact in the action office, whether the request has been referred to another bureau/office for response, name of individual who initially received and referred the request, etc.

I. Establishing a bureau email address for requesters to use when submitting electronic requests (requests should not be directed to the personal email addresses of the FOIA Contacts).

2.4 Signature Authority.

A. Each bureau will designate in writing those officials who are authorized to make final decisions on FOIA requests for the bureau.

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

2.5 Action Office Responsibility. The action office will perform the necessary research and prepare the response to the requester, a copy of which will be sent to the appropriate FOIA Contact (the FOIA control number should be included).

2.6 Handling FOIA Requests.

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

B. To ensure a timely response by the bureau, the appropriate FOIA Contact will fax, e-mail, or hand-carry all requests designated as "FOIA" to the action office for response whenever feasible.

C. See paragraph 1.12 of Chapter 1 and paragraph 3.15 of Chapter 3 regarding the handling of Privacy Act requests.

2.7 Recordkeeping. The EFTS and the FOIA case files that the bureaus maintain constitute a system of records under the Privacy Act. The records are covered by three DOI Privacy Act systems of records: DOI-71, Electronic FOIA Tracking System and FOIA Case Files (see Appendix C); DOI-69, FOIA Appeals; and DOI-57, Privacy Act Files. Files subject to the Privacy Act will be maintained in accordance with the Department's Privacy Act regulations (43 CFR Part 2, Subpart G), 383 DM 1-13, and the appropriate Privacy Act system of records notice (DOI-71, DOI-69, and DOI-57).

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) A note justifying the withholding of any records or a discretionary release;
- (d) A copy of any request to waive fees or expedite processing and the bureau's response;
- (e) Any records concerning the status of the request, follow-up correspondence with the requester (e.g., clarifying the scope of the request or any fee issues), and a record of any time extensions taken;
- (f) Any intra-agency or interagency communications concerning the request;
- (g) A copy of the bill for collection and any related records; and
- (h) 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 GRS 20, Electronic Records, and are maintained by the action office or the Bureau FOIA Officer/FOIA Contact, 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, any related correspondence, supporting documents, the legal opinion prepared by SOL, and a copy of any related litigation.

C. Disposition. If there are files scheduled for records destruction under the Federal Records Act, those records cannot be disposed of if there is an outstanding FOIA request, appeal, and/or litigation concerning those records (see 384 DM 1.6F).

2.8 Preservation of Records. Bureaus are responsible for maintaining copies of the FOIA requests that they receive along with the responses, any responsive records, and related materials. Records will be preserved consistent with the requirements of Title 44 of the United States Code and the National Archives and Record's Administration's GRS 14 and GRS 20. Bureaus must appropriately preserve all records that are the subject of a pending request, appeal, or lawsuit under the FOIA or the Privacy Act as well as any FOIA requests and related records pertaining to individual Indian trust data (IITD) or tribal trust data (TTD). The website for the Department's records management program found at <http://www.doi.gov/OCIO/records> provides additional guidance.

2.9 Coordination.

A. If a program office receives a FOIA request directly from the requester, it will send a copy of the request promptly to the FOIA Contact to be logged into the EFTS and assigned a control number (see paragraph 2.3H of this Chapter).

B. If an action office determines that a FOIA request should be referred to another office within the same bureau or another bureau for response, it will send a copy of the request to the FOIA Contact or Bureau FOIA Officer, as appropriate, identifying the office or bureau that should process the request.

C. An employee who receives an incorrectly routed FOIA request will promptly notify the FOIA Contact and forward the request to his/her office for reassignment.

D. The action office will notify the FOIA Contact immediately whenever it has extended the time limit for responding to a request and/or made a decision regarding a request for a fee waiver or expedited processing. The FOIA control number assigned to the request and the name of the requester should be provided, along with the justification for the extension or the bureau's decision.

E. Whenever an office receives a request that does or may involve other offices within the same bureau, it will advise the Bureau FOIA Officer. The Bureau FOIA Officer will decide whether the request requires coordination to ensure a uniform approach by the bureau.

F. Bureaus will advise the Office of the Secretary (OS) FOIA Officer whenever they receive a request involving multiple bureaus that may require coordination to ensure a uniform response by the Department.

2.10 Coordinating Sensitive Requests.

A. If DOI receives a request involving potentially controversial or sensitive issues and affecting multiple bureaus, the OS FOIA Officer will designate a lead bureau/office to coordinate the response for the Department. The lead bureau may prepare a consolidated response, on behalf of DOI, after consulting with all affected bureaus/offices. This will ensure that uniform and consistent responses are prepared and any litigation-sensitive information is protected.

B. Normally, the lead bureau is the bureau that has the primary interest in the records at issue. If it is difficult to determine which bureau has the primary interest, OS FOIA Officer will designate a lead based on the bureau that has the greatest volume of responsive documents and/or the office within SOL that is handling any pending litigation.

C. The lead bureau is responsible for:

(1) Deciding whether to grant a request for a fee waiver or expedited processing;

(2) Ensuring that all pertinent files are searched for documents that may be responsive to the request (this includes regional and field offices where applicable);

(3) Coordinating the review of the documents to make sure that they are treated consistently and that multiple responses to the same request are consistent;

(4) Following up with the other bureaus to ensure that responses have been sent to the requester; and

(5) Maintaining the official file for the FOIA request (the consolidated response).

D. The other bureaus/offices involved in responding to the request will cooperate fully with the lead bureau to ensure that FOIA responses are complete, consistent, and timely. They also are responsible for maintaining official files relating to their involvement with the request. The file should indicate which bureau/office was the lead.

E. SOL is responsible for coordinating legal review of the material. If a consensus cannot be reached between the bureaus regarding the release/withholding of documents (or portions thereof), SOL will make the final determination.

Department of the Interior
Departmental Manual
Freedom of Information Act Handbook
(383 DM 15)

Effective Date: 4/22/04

Chapter 3: Processing Requests

Originating Office: Office of the Chief Information Officer

3.1 Inquiries for Information Versus Records. Upon receipt of a request, the bureau FOIA Contact 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. Nonetheless, the FOIA Contact should refer the request for information to the appropriate office for response 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 because it is not seeking records.

(2) A request is received that states, “What does DOI’s contract with XYZ company say?” Although this is framed as a question, it is clearly asking for the record (as that is the best evidence of what the “contract says.”) This request should be processed under the FOIA. In more questionable cases, the FOIA office may wish to contact the requester to determine whether he/she is seeking records.

3.2 Time Limits.

A. Initial Determinations. The action office will respond to an initial FOIA request no later than 20 workdays after the appropriate bureau FOIA Contact receives the request and it is perfected (i.e., all issues regarding fees and the scope of the request are resolved). See paragraph 1.5S of Chapter 1.

(1) The 20-workday time limit begins to run the workday after a request complying with the procedures in 43 CFR 2.8 and 2.10 (i.e., it is perfected) is received by the FOIA Contact at the bureau office that has the requested records. If a request is received that is unperfected, the action office or the FOIA Contact must contact the requester as soon as possible to resolve the issues and perfect the request.

(2) The time limit for an e-mail request begins the workday after a request complying with the procedures in 43 CFR 2.8 and 2.10 (i.e., it is perfected) is received in the e-mail box of the appropriate FOIA contact, not when it is opened by the FOIA contact. Normally, this should be the same day. If the request is received after normal working hours, over the weekend or on a Federal holiday, or the system is down for the day, then the date of receipt would be the next Federal workday. The same applies for requests received via the U.S. Postal Service or fax.

(3) The start of the basic time limit may be delayed under the following conditions:

(a) The requester has not stated a willingness to pay fees as high as those anticipated;

(b) The requester has sought a fee waiver and has not indicated a willingness to pay regardless of whether a fee waiver is granted. The delay applies only to the issue of providing a substantive response to the request, as the bureau must decide whether to grant the fee waiver within the statutory time limit (see paragraphs 4.9A and 4.11 of Chapter 4));

(c) The requester has not made a required advance payment (see paragraph 4.10 of Chapter 4); or

(d) The requester has not reasonably described the records sought or clarified the initial request.

(4) The 20-workday time limit, or 30 workdays if an extension has been taken (see paragraph 3.3 of this Chapter), does not apply to requests for expedited processing (see paragraph 3.4 of this Chapter).

B. 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 C. If the records to be disclosed are not provided with the initial response, the bureau will notify the requester when and where they will be made available.

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

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 multiple offices;

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

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

B. Limitations.

(1) 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.

(2) A bureau may not take an extension of time to decide whether to grant a request for a fee waiver.

(3) A bureau may not extend the time limits prescribed in paragraph 3.2 of this Chapter due to the need to consult with a submitter of commercial or financial information.

C. Notifying the Requester. If an extension is necessary, the responsible official will notify the appropriate FOIA Contact and prepare a letter to the requester informing him/her of the reason for the extension (see paragraph 3.3A, above) and the anticipated date of the response (see Appendix B, Illustration 3). The letter to the requester should be sent prior to the expiration of the basic time limit (the initial 20 workdays).

3.4 Expedited Processing.

A. When requested, a bureau will provide expedited processing if the requester demonstrates to the satisfaction of the bureau that the request involves (see 43 CFR 2.14):

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(2) An urgency to inform the public about an actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information. In most cases, a person primarily engaged in disseminating information will be a representative of the news media. The requested information must be the type of information which has particular value that will be lost if not disseminated quickly, and ordinarily refers to a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(3) Records that are needed in connection with a judicial or administrative proceeding when a delay in releasing the records will result in the loss of substantial due process rights.

B. The requester must explain the basis for requesting expedited processing in the FOIA request and certify that his/her need for expedited processing is true and correct to the best of his/her knowledge. For example, a requester under category 3.4A(2), if not a full time member of the news media, must establish that he/she is a person whose main professional activity or occupation is information dissemination, though it need not be his/her sole occupation.

C. The bureau will notify a requester whether it will grant expedited processing within 10 calendar days of receipt of his/her request.

(1) If expedited processing is granted, the bureau will give priority to that FOIA request and process the request as soon as practicable, ahead of other FOIA requests that do not warrant expedited processing.

(2) If expedited processing is denied, the bureau will notify the requester in writing providing the basis for the denial and a statement that the denial of expedited processing may be appealed to the FOIA Appeals Officer (see Appendix B, Illustration 18).

D. If the bureau has not responded to a request for expedited processing within 10 calendar days, the requester may file an appeal for nonresponse.

3.5 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.

B. Bureaus should interpret FOIA requests liberally when determining which records are responsive to them. Further, communication with the requester is essential when addressing any questions regarding the scope of the request. (See paragraph 3.22C of this Chapter and DOJ FOIA Update, Fall 1995, Vol.XVI, No. 3, pp. 3-5 for additional guidance.)

C. 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 bureau should contact the requester to try to identify and clarify the records sought and to reformulate the request (see Appendix B, Illustration 4). 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 bureaus/offices or geographical locations (e.g., headquarters or a regional/field office) of a bureau or to a single bureau;

(2) Identify the date, title or name, author, recipient, and the subject of the record; the office that created the document, and present custodian of the record;

- (3) Narrow the scope of the request to a certain timeframe; and
- (4) Clarify terms within the context of the request.

D. When a request requires substantial clarification, the bureau will ask the requester to submit an amended written request.

E. The statutory time limit for responding to a request will not start until the bureau receives a request reasonably describing the records or the initial request is clarified.

F. If the bureau asks for additional clarification and does not hear from the requester within 20 workdays, it will assume the requester is no longer interested in pursuing the request. The responsible official should advise the requester in writing that it is closing the file since it has not received a response from him/her clarifying the initial request whenever practicable.

3.6 Locating the Records.

A. Immediately upon receiving the initial request, the responsible official will determine whether DOI has the records. If the agency does not have the records, the requester will be advised accordingly (see Appendix B, Illustration 5).

B. If the official believes that records covered by the request are located at another bureau/office within DOI or another Federal agency, he/she will follow the procedures in paragraph 3.13 or 3.14 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 the appropriate FOIA contact in the field.

D. If the bureau has transferred the records to a Federal records center, the official will promptly contact the appropriate records center. If the records are still in existence, he/she will request their return or make other arrangements for them to be reviewed. If the records have been transferred to the National Archives and Records Administration (NARA), the bureau will advise the requester to send his/her request to that agency for response.

E. If the records cannot be located, the official will notify the requester in writing and send a copy of the letter to the appropriate FOIA Contact (see Appendix B, Illustration 5). The bureau should explain why there are no records whenever possible, e.g., the bureau does not maintain such records as they are related to a program the responsibility for which falls under another agency, or the records have been destroyed in accordance with NARA's records retention and disposal policy, citing the appropriate records retention schedule (a copy should be sent to the requester). The bureau will advise the requester that the matter may be appealed to the FOIA Appeals Officer within 30 workdays of the date of the response, as this constitutes a denial under Departmental regulations. (see paragraph 3.20A(8) and 3.20B of this Chapter).

3.7 Searching for Responsive Records. After all the criteria in 43 CFR 2.8 and 2.10 have been met, the bureau will make a reasonable effort to search for records responsive to the request. This means searching for records in all offices that have or are likely to have responsive records. In determining which records are responsive, the bureau will include records in its possession and control as of the date it begins its search. This will include searching for records in electronic form/format, except where it would interfere significantly with the bureau's automated information systems. The responsible official should annotate the file to show which offices conducted a search in response to the request to support any potential appeal(s) and/or litigation.

3.8 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 3.14D 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 (a discretionary release), or
- (3) Denying a fee waiver.

C. The Department may withhold information only if one of the nine exemptions listed in paragraph 1 of Chapter 5 applies to all or part of the records requested.

3.9 Form or Format of Disclosure. In accordance with the Department's regulations (43 CFR 2.9), a bureau must provide the records sought in the requested form/format if the office responding to the request can readily reproduce the records in that form/format with reasonable efforts. However, if the process of providing the information in the requested format would damage or destroy an original document (e.g., in the case of a very old and brittle paper document), the bureau may not be able to honor the requester's format request. In this situation, the bureau should contact the requester to see if alternative arrangements can be made. A bureau must make a reasonable effort to maintain its records in forms or formats that are reproducible.

A. A bureau can charge the requester the direct costs involved in converting the information to the requested format if it does not maintain the information in that format.

B. In the event of litigation, a bureau/office may have to prepare an affidavit concerning the reproducibility of the record(s) in the requested form/format.

3.10 Interim Responses.

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 Appendix B, Illustration 6).

3.11 Referrals from Other Agencies. Bureaus should handle referrals from other agencies (i.e., outside DOI) on the same first-in, first-out basis as their other FOIA requests using the date of the request's initial receipt at the referring agency to establish its processing priority. These requests will be logged into the EFTS as of the date they are received by the appropriate bureau FOIA Contact, and will be processed as expeditiously as possible.

3.12 Records of Other Agencies.

A. If, in response to a request, a bureau locates documents that originated with another Federal agency, it will refer the request and the responsive documents to that agency for a release determination and direct response (see paragraph 3.12B, below). The bureau will notify the requester of the referral in writing and, if possible, provide the name of a contact at the other agency. However, in the following situations, the bureau will make the release determination, after consulting with the originating agency:

- (1) When the record is of primary interest to DOI (a record is of primary interest to DOI if it was developed or prepared according to DOI regulations or directives or in response to a DOI request);
- (2) If DOI is in a better position than the originating agency to assess whether the record is exempt from disclosure;
- (3) If the originating agency is not subject to the FOIA; or
- (4) When it is more efficient or practical depending on the circumstances.

B. When referring documents to another agency, the responsible official will:

- (1) Inform the requester in writing that DOI is forwarding the request and the responsive record(s) to another agency for response (see Appendix B, Illustration 9);

- (2) Include the name, address, and telephone number of a contact person at the other agency;
- (3) Advise the requester that he/she may treat the response as a denial and file an appeal (see paragraph 6.1 of Chapter 6); and
- (4) Promptly send the request and record(s) to the appropriate agency (see Appendix B, Illustration 8).

C. If a bureau receives a request for records classified by another agency under Executive Order 12,958, Classified National Security Information, or a superseding Executive order, it must refer the request to that agency for response.

3.13 Consultations and Referrals with Agencies outside DOI. If a bureau receives a request for records not in its possession, but which may be in the possession of another Federal agency, the bureau will return the request to the requester and advise him/her to submit it directly to the other agency (see Appendix B, Illustration 7). The letter to the requester should:

- A. Include the name, address, and telephone number of a contact person at the other agency; and
- B. Advise the requester that he/she may treat the response as a denial and file an appeal (see paragraph 6.1 of Chapter 6).

3.14 Consultations and Referrals within DOI.

- A. If a bureau receives a request for records that are not in its possession, but which it knows another bureau has or is likely to have, it will refer the request to that bureau for response.
- B. If a request to a bureau states that it seeks records located at another specific office of the same bureau, the appropriate FOIA Contact will refer the request to the other office. If the request states that it seeks records from other unspecified offices within the same bureau, the FOIA Contact will send the request to the Bureau FOIA Officer who will refer it to those offices which, to the best of his/her knowledge, have or are likely to have responsive records.
- C. If a request to a bureau states that it seeks records of another specified bureau, the bureau will refer the request to the bureau for response. If the request states that it seeks records from other unspecified bureaus, the FOIA Contact will send the request to his/her Bureau FOIA Officer who will ensure that the request is referred to those bureaus which, to the best of his/her knowledge, have or are likely to have responsive records.
- D. If a bureau (other than the Office of Inspector General (OIG)) receives a request for records in its possession that another bureau created or is substantially concerned with, 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) along with the records, to that bureau for direct response. Such a referral does not restart the time limit for responding to the request.

E. In accordance with 16 U.S.C. 5937 (an exemption 3 statute (see paragraph 5.5B(14) of Chapter 5), if a bureau receives a request for records concerning the nature and specific location of i) a National Park System resource that is endangered, threatened, rare, or commercially valuable; ii) mineral or paleontological objects within units of the National Park System; or iii) objects of cultural patrimony within units of the National Park System, it will:

(1) Inform the requester that the bureau must consult with the National Park Service (NPS) prior to deciding whether to release the records;

(2) Forward the FOIA request to the NPS; and

(3) Include either a) a preliminary recommendation that the information be withheld; b) a preliminary recommendation that it be released; or c) a statement that the bureau has no recommendation on whether the information should be released.

If the NPS agrees that the request seeks information covered by this paragraph, NPS will instruct the referring bureau to withhold the information unless the NPS determines that release: will further the purposes of the unit of the National Park System in which the resource is located; will not lead to an unreasonable risk of harm, theft, or destruction of the resource; and will not be inconsistent with other applicable laws.

F. If a bureau (except the OIG) locates correspondence signed at the Deputy Assistant Secretary level or above in response to a request, and it plans to make a discretionary release, the bureau will consult with the appropriate Assistant Secretary's office as well as its Designated FOIA attorney (see paragraph 5.14 of Chapter 5 regarding discretionary releases).

G. Whenever a request is referred to another bureau, the referring bureau will advise the requester of the referral in writing. The letter to the requester should include the name, telephone number, and mailing address of a contact in the other bureau(s) to which the referral was made. The FOIA Contact will send a copy of the letter notifying the requester of the referral along with the request to the appropriate FOIA Contact at the other bureau (see Appendix B, Illustration 10).

H. Whenever it is necessary for a bureau to refer a request to another bureau FOIA office for response, it will do so as expeditiously as possible. With the exception of paragraph 3.14D, above, the time limit for responding to such requests starts when the request reaches the bureau office that has the records.

3.15 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 (i.e., the information contained in the system of records is retrieved by the bureau/office using the requester's name or other personal identifier), it will be processed under both the FOIA and the Privacy Act regardless of the statute(s) cited, so that the individual is granted the greatest access to his/her records that either Act provides (see paragraph 1.12 of Chapter 1). Before the bureau begins processing a request covered by the Privacy Act, it will ensure that the requester has provided the necessary identifying information, e.g., a legible signature or photo ID (see the appropriate Privacy Act system notice and 43 CFR Subpart G).

B. If an individual submits a 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.

C. A request from an individual for access to his/her records that cites neither Act will be processed under both Acts (e.g., "I would like all the records the Department of the Interior has on me...") if the information sought is contained in a Privacy Act system of records applicable to the requester.

D. When a third party (an individual other than the person who is the subject of the Privacy Act record) submits a FOIA request for information that is subject to the Privacy Act (e.g., "Send me all the records the agency has on my husband, Justin Case, an employee with DOI.") the material may not be disclosed without the prior written approval of the individual on whom the record is maintained unless—

(1) The release is permissible under one of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)), e.g., the release to the requester would be for one of the routine uses listed in the applicable Privacy Act system of records notice, or if it is required to be released under the FOIA, or

(2) The individual is deceased (see 43 CFR 2.8(d) (4)). However, if the release of the information would result in a clearly unwarranted invasion of the personal privacy of a living individual, e.g., a member of the deceased individual's family, the information must be withheld.

E. Any employee who knowingly and willfully discloses information protected by the Privacy Act may be subject to criminal penalties.

F. 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 3.29A of this Chapter). In order to withhold information from the subject of the file (a first party requester) both a Privacy Act and a FOIA exemption must apply.

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

H. In handling such combined FOIA/Privacy Act requests, the fee provisions and time limits applicable to the FOIA apply. With regard to those records that are subject to the Privacy Act, DOI can charge the person who is the subject of the records only for duplicating the material and not for search or review time. There will be no charge if the fee for processing the request is \$30 or less.

I. For additional guidance regarding the handling of Privacy Act requests, refer to the appropriate Privacy Act system of records notice and DOI's Privacy Act regulations (43 CFR Subpart G, in particular 43 CFR 2.63 and 2.64) and the Departmental Manual (383 DM 6, Privacy Act Notification, Access and Amendment Procedures).

3.16 Preparing the Response Letter.

A. General.

- (1) Respond promptly to requests, telephone calls, and emails 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 paragraphs 3.16B, 3.19, and 3.20. These requirements also apply to responses sent to the requester electronically.

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, 2003, Freedom of Information Act request (received in this office on January 16, 2003) in which you seek access to copies of travel vouchers for certain key officials."
- (2) The name, telephone number, fax number, and e-mail address (as appropriate) 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 that may be located in several bureaus, the requester should be advised that the bureau is responding for records under its purview only, or

that it is responding on behalf of DOI in the event that a consolidated response has been prepared.

(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 is less than \$30 and is not being charged in accordance with 43 CFR 2.16(b)(2).

(ii) The bureau has reviewed your request for a fee waiver and determined that disclosure of the requested information is in the public interest consistent with the FOIA and DOI's FOIA regulations; therefore, all fees are waived. (The bureau will explain the basis for its decision, i.e., how the request meets the criteria for granting a fee waiver under DOI's FOIA regulations (43 CFR 2.19 and Appendix D).

(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 [insert \$ amount], calculated as follows: [insert #] hours of search/review time at [insert rate] per hour and [insert #] pages of duplication at \$.13 per page. A breakdown of these costs is included on the Bill for Collection.

(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 in accordance with 31 U.S.C. 3717, as amended, 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, as 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.

3.17 Signature Authority. See paragraph 2.4 of Chapter 2.

3.18 Action Office Responsibilities. The office handling the request (in many cases this is the FOIA office) is responsible for:

- A. Acknowledging receipt of the request promptly in writing, including informing the requester of the FOIA control number and contact information.
- B. Making determinations on fee waiver and expedited processing requests within the statutory time limits.
- C. 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.
- D. Ensuring that an adequate search is conducted and that any records responsive to the request are reviewed properly.
- E. 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.
- F. Obtaining necessary concurrences.
- G. Following up to make sure that legible copies of the records are sent to the requester if not sent with the initial response.
- H. 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) to support any potential appeal(s) and/or litigation.
- I. Annotating the official file to show which offices conducted a search in response to the request to support any potential appeal(s) and/or litigation.
- J. Obtaining assurance of payment or advance payment as necessary and preparing the Bill for Collection when it is not prepared by the bureau's finance office (see paragraphs 4.9 and 4.10 of Chapter 4).
- K. Sending a copy of the response to the FOIA Contact who is tracking and managing the bureau's requests via the electronic FOIA tracking system.

Appendix B, Illustration 12, provides an overview for responding to a FOIA request.

3.19 Initial Response--Granting Access.

- A. When the action office decides to release the requested records, it will include them with the response letter or notify the requester of how, when, and where the records will be made available (see Appendix B, Illustration 11).
- B. A description and/or list of the records being provided will be included in the response letter or as an enclosure to the letter.

C. If the bureau determines that a discretionary release is appropriate consistent with Departmental policy, the action office should advise the requester that the requested information is exempt from disclosure under the FOIA, but the bureau has decided to exercise its discretion and is releasing it.

D. The response to the requester will be prepared consistent with the guidance in paragraph 3.16 of this Chapter).

3.20 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 Appendix B, Illustration 13). 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 including a list if practicable.
- (3) Describe the documents or parts fully withheld (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) authorizing the withholding for each part denied and provide an explanation of the reason(s) for the denial.
- (5) Include an estimate of the volume of information being withheld. The bureau will make a reasonable effort to estimate the volume of any records denied, or portions of records (e.g., 100 pages, 4 Federal Record Center boxes, 1,000 kilobytes, etc.) unless such an estimate would harm an interest protected by the exemption used to withhold the information.
- (6) State the name and title of the person(s) responsible for the denial if it is someone other than the person who signs the letter.
- (7) State the name and title of the Office of the Solicitor attorney or any other persons consulted in the review process.
- (8) Advise the requester of his/her right to appeal in writing to the FOIA Appeals Officer. A sample paragraph follows:

"You may appeal this partial (full) denial to the FOIA Appeals Officer within 30 workdays of the date of this letter or 30 workdays after the records have been released. Your appeal must be in writing and addressed to: The Freedom of Information Act Appeals Officer, Office of the Chief Information Officer, Department of the Interior, 1849 C Street, NW, MS 5312, 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 include in as much detail as possible any reason(s) why you believe the bureau's response is in error."

B. If records do not exist within DOI, cannot be located, are not reasonably described, or if a procedural issue remains unresolved (e.g., a fee issue), the bureau will notify the requester in writing (see Appendix B, Illustrations 1, 5, and 17). The letter to the requester will include the following information as applicable:

(1) An explanation of the basis of the decision;

(2) The names and titles of the person(s) responsible for the decision (the names of any individuals consulted also may be included); and

(3) A statement that the matter may be appealed within 30 workdays to the FOIA Appeals Officer (see paragraph 3.20A(8), above).

C. The bureau must inform the requester of his/her appeal rights; otherwise, the requester may sue the Department without having to first file an appeal.

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 3.8B of this Chapter).

3.21 Segregating and Releasing Nonexempt Information. When a record contains both exempt and nonexempt material, the bureau will generally segregate and release reasonably segregable nonexempt information, e.g., any factual information.

A. When disclosing a record in part, the bureau will indicate on the released portion of the record how much information was deleted and the appropriate exemption, unless doing so would harm an interest protected by the exemption used to withhold the information. All deletions will be marked clearly.

B. If technically feasible, the amount of the information and the exemption used to withhold the information will be indicated where the deletion is made--this avoids confusion.

C. Before releasing records that contain exempt information, the responsible official will review the records to ensure that any redacted (deleted) information is not visible. The redacted portions of a paper document should be heavily blacked out and then photocopied at least twice (i.e., copy the redacted page and then copy the copied page). The bureau may wish to use other methods of redaction, but whichever method is used, it is critical that no exempt information is disclosed.

D. In the response to the requester, the bureau will 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 document, the official will keep a record of the parts withheld, either by marking the original or by keeping a page-by-page list.

E. If the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases, the entire portion may be withheld.

3.22 Releasing Information that is Outside the Scope of a Request. When a bureau locates a document that contains information that is both responsive and nonresponsive to a FOIA request, the following procedures apply:

A. If any of the information on a page of a document falls within the subject matter of a FOIA request, then the entire page should be considered subject to the request. The bureau will release all of the information on a page of a document that contains both responsive and nonresponsive information unless there is a FOIA exemption that protects any of the information on that page from disclosure. Doing so provides useful information for the requester, involves no additional duplication cost to the requester, and ordinarily does not impose an additional burden on the bureau.

B. However, if a document with responsive information contains pages with only nonresponsive information on them, then those pages that contain only nonresponsive information are outside the scope of the FOIA request and do not need to be processed. In this case, the bureau will advise the requester that it is not processing these pages as they are clearly outside the scope of his/her request.

C. If there is any question regarding what information is responsive to a given FOIA request, the bureau should contact the requester promptly (see paragraph 3.5 of this Chapter).

3.23 Consulting with Submitters of Commercial and Financial Information.

A. If a bureau receives a FOIA request for records containing commercial or financial information submitted by a person or entity outside of the Federal Government (a submitter), under Executive Order 12,600, Predisclosure Notification Procedures for Confidential Commercial Information or superseding Executive order, the bureau processing the request must provide the submitter with prompt written notice of the request, except as provided in paragraph 3.23I, below, whenever:

(1) The submitter has designated the information as confidential commercial or financial information, or

(2) The bureau has reason to believe that the information may be protected under exemption (4) or it cannot readily determine whether the information is commercially or financially sensitive.

B. The notice to the submitter will:

(1) Inform the submitter that the bureau has received a FOIA request for information or records that he/she has provided (see Appendix B, Illustration 14) and include a copy of the FOIA request.

(2) Describe the information requested or include copies of the pertinent records.

(3) Advise the submitter of the procedures for objecting to the release of the requested material and specify the time limit for responding. The responsible official may wish to meet with the submitter to review the material or to discuss any problems.

(4) Give the submitter no less than 10 workdays from receipt (the letter should be sent certified mail, return-receipt requested), or publication as set forth in paragraph 3.23C, below, of the bureau's notice to object to the release and explain the basis for the objection, if any.

(5) Advise the submitter that:

(a) Information contained in his/her objections may be subject to disclosure under the FOIA if the bureau receives a FOIA request for it; and

(b) If the submitter's objections contain commercial or financial information and a requester asks for the objections under the FOIA, the notification procedures in 43 CFR 2.23 will apply.

(6) Advise the submitter that it is the bureau, rather than the submitter, that is responsible for deciding whether the information will be released or withheld.

(7) If the submitter designated the material as confidential, commercial or financial information 10 or more years before the request, request the submitter's views on whether he/she still considers the information to be confidential.

C. Where a large number of submitters are involved, the bureau may, rather than providing written notice to each submitter, publish a notice in a manner reasonably calculated to reach the attention of the submitters (e.g., in newspapers/newsletters, the bureau's web site, or the Federal Register).

D. Whenever the bureau notifies the submitter that it may be required to disclose information that he/she provided in response to a FOIA request, the bureau also will notify the requester that it is giving the submitter an opportunity to review and comment on the material.

E. If the submitter has any objection to disclosure, he/she must submit a detailed written statement including the following:

(1) The justification for withholding any portions of the information under any exemption of the FOIA. In the case of exemption 4, he/she must provide a specific and detailed discussion of:

(a) Whether the Government required the information in question to be submitted, and if so, how substantial competitive or other business harm would likely result from the release; or

(b) Whether the submitter provided the information voluntarily and, if so, how the information in question fits into a category of information that the submitter customarily does not release to the public.

(2) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is essentially non-public because it is not routinely available from other sources.

F. The bureau will review and consider all objections to release that are received within the timeframe specified in the notice to the submitter. If the bureau has not heard from the submitter within the specified timeframe, the responsible official will telephone the submitter to check on the status of his/her response. Depending on the circumstances, the bureau may, at its discretion, allow more time for the submitter to review the material. If the bureau still has not received a response from the submitter even after contacting him/her by telephone, the bureau will presume the submitter has no objection to disclosure.

G. 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 (see Appendix B, Illustration 6).

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

(1) Telephone the submitter to inform him/her of DOI's decision, and;

(2) Confirm the telephone call with a letter sent certified mail, return-receipt requested (see Appendix B, Illustration 15) to the submitter's last known address (a copy also will be sent to the requester). The letter to the submitter will:

(a) 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;

(b) Include the bureau's reasons for deciding to release them;

(c) Advise him/her that the bureau intends to release the records 10 workdays after receipt of the notice by the submitter; and

(d) Be sent for surnaming along with the bureau's response letter to the requester and be dated and postmarked the same day as the letter to the requester (see Appendix B, Illustration 16). The records will be mailed at a later date depending on whether the submitter initiates a lawsuit to prevent the release.

I. Consultation is not required if:

(1) The bureau responsible for the decision determines prior to giving notice, that the information is exempt from disclosure;

(2) The information has been lawfully published or otherwise been made available to the public, such as in response to an earlier FOIA request or if the submitter has made the information public;

(3) Disclosure of the information is required by a statute (other than the FOIA) or regulation (other than 43 CFR Part 2, Subpart C);

(4) Disclosure of the information is prohibited by a statute; or

(5) The designation of confidentiality made by the submitter appears obviously frivolous. However, the bureau will notify the submitter of any final decision to disclose the information 15 workdays prior to releasing it.

J. 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.

K. If a requester files a lawsuit against DOI for access to any of the withheld records, the bureau will notify the submitter within 10 workdays of the Department's receipt of the complaint. Similarly, if the submitter files a lawsuit to prohibit the bureau from disclosing the records, the bureau will notify the requester within 10 workdays of the Department's receipt of the complaint.

L. If the bureau determines that the requested information is protected from release by exemption 4, it has no discretion to release the information as doing so would violate the Trade Secrets Act (18 U.S.C. 1905).

3.24 Requests for Federally-funded Research Data in the Possession of a Private Entity. When published research findings are produced under a grant or other Federal assistance, and the findings are used by a bureau in developing an agency action that has the force and effect of law (e.g., a policy or regulation), the research data related to such findings are considered agency records even if they are in the possession of the recipient of the Federal financial assistance (recipient) (see paragraphs 1.5V and 1.5Z of Chapter 1). Consistent with OMB Circular A-110, this provision applies only to grants and Federal assistance awarded to institutions of higher

education, public and private hospitals, and other quasi-public and private nonprofit organizations. It does not apply to grants, contracts, or other agreements between the Federal Government and local and Federally-recognized Indian tribal governments covered under OMB Circular A-102.

A. If a FOIA request for such research data is received, the bureau will require the recipient to provide the information to it within a reasonable amount of time, so the bureau can consider the data for release to the public under the FOIA.

B. The bureau will notify the requester that it may charge him/her for any additional fees incurred as a result of obtaining the research data from the recipient. This fee is in addition to any fees the bureau may charge the requester to process the FOIA request.

C. The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information consistent with DOI's FOIA regulations (43 CFR Part 2, Subparts A through E). The recipient will forward a copy of any responsive records that are located, along with his/her recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data to the appropriate bureau FOIA contact.

D. The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested data. However, it is the bureau, rather than the recipient, that is responsible for deciding whether the information will be released or withheld.

3.25 Sensitive Requests. The Bureau FOIA Officer will notify its Office of Communications/Public Affairs and the Office of Congressional and Legislative Affairs promptly of any sensitive requests (e.g., those from the media) regarding issues of top priority for the bureau or the Department. The action office is responsible for ensuring that the bureau's Office of Communications/Public Affairs reviews and surnames all responses to such inquiries at headquarters. The bureau will designate an official at each field office (preferably in the Office of Communications/Public Affairs) to review and surname such requests (see paragraph 3.18F of this Chapter).

3.26 Requests from Members of Congress.

A. Upon receipt of a request for records from a Member of Congress, the bureau should first determine whether the request is made under the authority of a congressional committee or subcommittee on a subject within its jurisdiction (usually the letter will be signed by the chairman of the committee or subcommittee). The bureau must consult with the Office of Congressional and Legislative Affairs (OCL) to ensure proper coordination and conformity of responses. Requests from individual Members of Congress may require different types of responses. Bureaus must consult with OCL to determine the appropriate response.

B. Before denying a request from a Member of Congress, the responsible official will consult with OCL and the bureau's designated FOIA attorney (see paragraphs 3.18E and 3.20D of this Chapter).

3.27 White House Records. If White House records responsive to a FOIA request are located in agency files or if a response needs be coordinated with the White House due to the potential impact it could have on the Administration, consult the Departmental FOIA Officer. The Departmental FOIA Officer will coordinate the response with the White House.

3.28 Multitrack Processing of FOIA Requests.

A. A bureau may use two or more different processing tracks for simple and complex requests based on the amount of work and/or time needed to process the request, including the number of pages involved.

B. If a bureau uses multitrack processing, it will advise the requesters in its slower track(s) of the criteria of its faster track(s). For example, a bureau may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the bureau's faster track(s). A bureau doing so will contact the requester by telephone or in writing, whichever is more efficient in each case.

3.29 Examples of Information Frequently Releasable Under the FOIA. The following information is generally, but not always, releasable under the FOIA (see 5 CFR 293.311).

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 amounts received for performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials (normally, the name of the individual, position, type of award, and the dollar amount are releasable).
- (5) Other awards and honors received in an individual's professional capacity, and membership in professional groups related to the employee's profession.
- (6) Present and past duty stations (this includes official mailing and email addresses of DOI employees) as well as telephone numbers as they appear in the DOI Telephone Directory.

(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 (not to be confused with a crediting plan).

(9) Information regarding an employee's education when it is related to his/her profession.

(10) Prior employment in State or Federal Government positions and in the private sector when it is related to the position held by the employee.

(11) Resumes and SF 171, Application for Federal Employment, for the successful candidate only (sanitized of any exempt material--see paragraph 5.8C (1) of Chapter 5).

(12) SF 50, Notification of Personnel Action (sanitized of any exempt material--see paragraph 5.8C (1) of Chapter 5).

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

(1) Travel Vouchers.

(2) Invoices.

(3) FOIA request letters.

(4) Frequently requested FOIA records (see paragraph 1.8 of Chapter 1).

(5) Transmittal memoranda and letters.

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

(7) Records about deceased persons, unless exemption 6 is applicable (see paragraph 5.8B (7) of Chapter 5).

C. Contract Information. Best and final offer of the successful bidder when included in the final contract or award. If not, this information would be protected by exemption (3) (see the Federal Property and Administrative Services Act, 41 U.S.C. 253b, as amended by the National Defense Authorization Act for FY 1997, Pub. L. 104-201).

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.

3.30 Requests for Records not yet in Existence. The FOIA only applies to records in the bureau's possession and control at the time it begins its search for responsive records. When a bureau receives a request for records that are not yet in existence, but may be created at some future time, as a courtesy it may advise the requester that he/she may wish to resubmit the request at a later date. The bureau should explain in the response why the records are not in existence and provide the requester with his/her appeal rights (see paragraph 3.20B of this Chapter.) See Appendix B, Illustration 17.

3.31 Receipt of Classified Material. Whenever another agency refers classified documents to DOI for review, 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 immediately to the Office of Law Enforcement and Security (OLES) for processing. In cases where this is not practicable, contact the bureau/office's designated security officer or call OLES for guidance.

3.32 Certification of Documents. See 310 DM 10.

Department of the Interior
Departmental Manual
Freedom of Information Act Handbook
(383 DM 15)

Effective Date: 4/22/04

Chapter 4: Fees and Fee Waivers

Originating Office: Office of the Chief Information Officer

4.1 Scope. This Chapter sets forth policies and procedures to be followed in determining, assessing, and collecting fees from a requester for the search, review, and duplication of Department of the Interior (DOI) records.

4.2 Authority. Under the Freedom of Information Act (FOIA), DOI 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 a 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 2.15 through 2.20 and 43 CFR Part 2, Appendix C.

B. DOI will not charge the requester if the fee is \$30 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 has divided a request into a series of requests on a single subject or related subjects to avoid fees, the requests may be aggregated and fees charged accordingly. Multiple requests involving unrelated matters will not be aggregated.

(1) Bureaus may presume that multiple requests of this type that are made within a 30-day period have been made in order to avoid fees.

(2) Where requests are separated by a longer period, bureaus will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved.

D. Where a bureau responds to a request on behalf of more than one bureau, the fees that would be chargeable by all bureaus involved will be considered in determining whether the total FOIA processing fee is \$30 or less.

E. If a bureau is responding on behalf of more than one bureau and the requester falls under:

(1) The educational/noncommercial scientific institution or news media category, he/she will be entitled to receive up to a total of 100 pages of duplication without charge (there is no charge for searching for responsive records).

(2) The other requester category, he/she will be entitled to receive up to a total of 100 pages of duplication and two hours of search time without charge.

F. If a bureau obtains research data solely in response to a FOIA request, it may charge the requester a reasonable fee equaling the full cost of obtaining the research data from the recipient (see paragraph 3.24 of Chapter 3). This fee is in addition to any fees the bureau may charge the requester to process his/her request.

4.4 Fee Schedule. The following uniform fee schedule applies to all bureaus and offices within the Department (see 43 CFR Part 2, Appendix C). The duplicating fees provided in the schedule also are applicable to requests processed under the Privacy Act.

A. Search and review (review applies to commercial-use requesters only). Fees are based on: the average hourly salary (base salary plus D.C. locality payment), plus 16 percent for benefits, of employees in the following three categories. The average grade was established by surveying the bureaus to obtain the average grade of employees conducting FOIA searches and reviews. Fees will be increased annually consistent with Congressionally approved pay increases. Fees are charged in quarter hour increments.

- (1) Clerical--Based on GS-6, Step 5, pay
(all employees at GS-7 and below)
- (2) Professional--Based on GS-11, Step 7, pay
(all employees at GS-8 through GS-12)
- (3) Managerial--Based on GS-14, Step 2, pay
(all employees at GS-13 and above)

B. Duplication.

Pages no larger than 8.5 x 14 inches, when reproduced by standard office copying machines.	\$.13 per page (\$.26 for double-sided copying)
--	--

Color copies of pages no larger than 8.5 x 11 inches.	\$.90 per page
---	-----------------

Pages larger than 8.5 x 14 inches	Direct cost to DOI
Color copies of pages no larger than 11 x 17 inches.	\$1.50 per page

Photographs and records requiring special	Direct cost to DOI
---	--------------------

handling (e.g., because of age, size, or format).

C. Electronic Records.

Charges for services related to processing requests for electronic records.

Direct cost to DOI

D. Certification.

Each certificate of verification attached to authenticate copies of records.

\$.25

E. Postage/Mailing.

Charges that exceed the cost of first class postage. Examples of such charges are express mail or overnight delivery.

Postage or Delivery charge

F. Other Services.

Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them. (Note: This includes certain special searches for records conducted by contractors. For example, if DOI must pay a contractor special fees to conduct searches of databases due to contractual provisions, DOI would pass that charge on to the requester provided the requester consented in advance to the special search and its additional fees.)

Direct cost to DOI

4.5 Categories of Requesters.

A. There are four categories of requesters for the purposes of assessing fees. When submitting a FOIA request, a requester should specify what fee category he/she is in, e.g., commercial-use, news media requester, etc. If a requester is submitting a FOIA request on behalf of another person or organization (for example, if a requester is an attorney submitting a request on behalf of a client), it is the underlying requester's identity and intended use that determines the fee category. Based on the information provided by the requester, the bureau office processing the request will decide the fee category. The fees set forth in paragraph 4.4 of this Chapter apply with the following exceptions:

(1) Commercial-use requesters are charged fees for costs incurred in document search, review, and duplication. They are not entitled to any duplication or search time without charge.

(2) Educational/noncommercial scientific institutions are charged for document duplication alone, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) will be provided without charge. The bureau will not charge such requesters for document search and review. The following are examples of how these fees are calculated.

(a) A request that results in 200 pages of material. No fee would be assessed for duplication of 200 pages. The reason is that these requesters are entitled to the first 100 pages without charge. The charge for the remaining 100 pages would be \$13. This amount would not be billed because it is less than \$30.

(b) A request that results in 500 pages of material. The requester in this case would be charged \$52.

(3) News media requesters (including qualified freelance journalists) are charged for document duplication alone, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) will be provided without charge. The bureau will not charge such requesters for document search and review.

(4) Requesters not covered by paragraph 4.5A (1) through 4.5A (3) above, "other requesters," are charged fees for document search and duplication, except that they are entitled to the first two hours of search time and the first 100 pages of paper copies without charge (or the equivalent cost thereof if the records are in some other form). The bureau will not charge such requesters for document review.

B. The following table summarizes the chargeable fees for each category of requester.

Category	Search fees	Review fees	Duplication fees
Commercial Use.....	Yes.....	Yes.....	Yes.....
Educational Institution.....	No.....	No.....	Yes..... (100 pages free)
Non-Commercial Scientific Institution...	No.....	No.....	Yes..... (100 pages free)
News Media.....	No.....	No.....	Yes..... (100 pages free)
All Other.....	Yes (2 hours free)...	No.....	Yes..... (100 pages free)

4.6 When Additional Information is Needed to Determine Category of Requester. If the requester does not submit sufficient information in the FOIA request for the bureau to determine the fee category (see paragraph 4.5A (1) through 4.5A (4) of this Chapter), the bureau may ask the requester to provide additional clarification (see Appendix B, Illustration 22). This applies to

all requesters. The bureau will notify the requester promptly when additional information is needed. In these circumstances, the 20-workday statutory time limit for responding to the request will not begin to run until the requester provides sufficient information. If the bureau requests additional clarification and does not hear from the requester within 20 workdays, it will assume that the requester is no longer interested in pursuing the request. The responsible official will advise the requester in writing that it is closing the file since it has not received a response from him/her clarifying the initial request.

4.7 Searches.

A. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the requester and the bureau. Except where provided in paragraph 4.5A (2) through 4.5A (4) of this Chapter, bureaus will charge for time spent in the following search activities (see DOI's FOIA home page at <http://www.doi.gov/foia/> for applicable fees):

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

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

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

4.8 Reviews (Commercial-use Requests Only).

A. Bureaus will charge commercial-use requesters (see DOI's FOIA home page at <http://www.doi.gov/foia/> for applicable fees) for

(1) Time spent by bureau staff and attorneys in reviewing requested records to determine whether they may be withheld in whole or in part; and

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

B. Review costs will be assessed even if a record ultimately is not disclosed.

4.9 Notice of Anticipated Fees.

A. Unless the requester has been granted a fee waiver or has previously agreed to pay all the fees associated with the request, or the anticipated fee is \$30 or less, the bureau will:

(1) Promptly notify the requester of the estimated costs and ask the requester to provide written assurance of payment of all fees or fees up to a designated amount; and

(2) Give the requester an opportunity to modify the request at that time to reduce the fee (see Appendix B, Illustration 19).

B. After the bureau begins processing the request, if it finds that the actual cost will exceed the amount the requester previously agreed to pay, the bureau will:

(1) Stop processing the request;

(2) Promptly notify the requester of the higher amount and ask the requester to provide written assurance of payment or modify the request to reduce the fee; and

(3) Resume processing once the requester has agreed to pay the higher amount or modify the request to reduce the fee.

4.10 Advance Payment.

A. The bureau will require advance payment when the estimated fee is over \$250 and:

(1) The requester has never made a FOIA request to DOI requiring the payment of fees; or

(2) The requester did not pay a previous FOIA fee promptly.

B. If the requester has previously failed to pay a fee within 30 calendar days of the date of billing, the bureau will require the requester to:

(1) Pay the full amount owed plus any applicable interest penalties (see paragraph 4.13 of this Chapter) and to make an advance payment of the full amount of the estimated fee of the new request; or

(2) Demonstrate that the prior fee has been paid.

C. At the same time the bureau notifies the requester that an advance payment is due, it will give the requester an opportunity to modify the request to reduce the fee (see Appendix B, Illustrations 20 and 21).

4.11 Unresolved Fee Issues. The bureau will not start processing a request until the fee issue has been resolved (see paragraph 3.2 of Chapter 3). If the bureau seeks clarification from the requester about a fee issue and does not hear from the requester within 20 workdays, the bureau will assume that the requester is no longer interested in this matter and will close the file on the request. The responsible official should advise the requester in writing that he/she is closing the file since a response has not been received from the requester clarifying the fee issue. However, if the requester has asked for a fee waiver, the bureau must make a determination on the fee waiver request within 20 workdays based on the information on hand (see 43 CFR 2.19(a)).

4.12 Billing Procedures. If the requester is required to pay a fee associated with the request, the bureau that processes the request will send the requester a bill for collection. Bills will be processed under the bureau's financial/accounting procedures. The requester should submit a check or money order made 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 be made in the form of a certified check. The requester also may pay by credit card if the bureau accepts such payments.

4.13 Failure to Pay Fees. The bill for collection or the response letter will include a statement that interest will be charged in accordance with 31 U.S.C. 3717, as amended, if the fees are not paid within 30 calendar days of the date of the bill. This requirement does not apply if the requester is a state, local, or tribal government. The Debt Collection Improvement Act of 1996 will be used, as appropriate, to collect fees (Pub. L. 104-134).

4.14 Fee Waivers.

A. If a requester is seeking a fee waiver, it is his/her responsibility to provide detailed information to support it. The requester must submit this information with the FOIA request. The requester should explain how the release of the information contributes significantly to the public's understanding of the Government's operations and activities. The burden is on the requester to justify entitlement to a fee waiver.

B. The bureau will evaluate each request on its own merit—the bureau will not grant "blanket" fee waivers. The fact that a requester has received a fee waiver in the past does not mean the requester is automatically entitled to a fee waiver for every request he or she may submit, because the essential element of any fee waiver determination is whether the release of the particular documents sought in the request will likely contribute significantly to public understanding of the operations or activities of the Government.

C. The bureau will provide records 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 and activities of the Government; and

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

D. In deciding whether the requester is entitled to a fee waiver, the bureau will consider the criteria in paragraph 4.14D (1) through 4.14D (4), below. The requester should address each of these criteria in his/her letter.

(1) How do the records concern the operations or activities of the Government?

(2) If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?

(a) How are the contents of the records the requester is seeking meaningfully informative on the Department's or a bureau's operations and activities? Is there a logical connection between the content of the records and the operations or activities the requester is interested in?

(b) Other than enhancing the requester's knowledge, how will disclosure of the requested records contribute to the understanding of the public at large or a reasonably broad audience of persons interested in the subject?

(c) The requester's identity, vocation, qualifications, and expertise regarding the requested information (whether the requester is affiliated with a newspaper, college or university, have previously published articles, books, etc.) may be relevant factors. However, the requester merely stating that he/she is going to write a book, research a particular subject, or perform doctoral dissertation work, is insufficient, without demonstrating how the requester plans to disclose the information in a manner which will be informative to a reasonably broad audience of persons interested in the subject.

(d) Does the requester have the ability and intention to disseminate the information to the general public or a reasonably broad audience of persons interested in the subject?

(i) How and to whom does the requester intend to disseminate the information?

(ii) How does the requester plan to use the information to contribute to public understanding of the Government's operations or activities?

(3) If there is likely to be a contribution to public understanding, will release of the requested records contribute significantly to public understanding?

(a) Is the information being disclosed new?

(b) Does the information being disclosed confirm or clarify data which has been released previously?

(c) How will disclosure increase the existing level of public understanding of the operations or activities of the Department or a bureau?

(d) Is the information already publicly available? If the Government previously has published the information that the requester is seeking or if it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue (e.g., the listing of the spotted owl as an endangered species), it is less likely that there will be a significant contribution from release.

(4) Would disclosure be primarily in the requester's commercial interest?

(a) Does the requester have a commercial interest that would be furthered by disclosure? A commercial interest is a commercial, trade, or profit interest as these terms are commonly understood. The requester's status as "profitmaking" or "non-profitmaking" is not the deciding factor. Not only profitmaking entities, but other organizations or individuals may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(b) If the requester does have a commercial interest that would be furthered by disclosure, would disclosure be primarily in that interest? Would the public interest in disclosure be greater than any commercial interest the requester or the requester's organization may have in the documents? If so, how would it be greater?

(c) The requester's identity, vocation, and the circumstances surrounding the request are all factors to be considered in determining whether disclosure would be primarily in the requester's commercial interest. For example:

(i) If the requester is a representative of a news media organization seeking information as part of the news gathering process, the bureau will presume that the public interest outweighs the requester's commercial interest.

(ii) If the requester represents a business/corporation/association or the requester is an attorney representing such an organization, the bureau will presume that the requester's commercial interest outweighs the public interest unless the requester demonstrates otherwise.

E. The bureau will rely on the fee waiver justification the requester has submitted in his/her request. If the requester does not submit sufficient justification, the fee waiver request will be denied. The bureau may, at its discretion, communicate with the requester to request additional information if necessary (see Appendix B, Illustration 23). However, the bureau must make a determination on the fee waiver request within 20 workdays, even if the bureau has not received such additional information.

F. The bureau should consider only the releasable portions of the responsive documents in determining eligibility for a fee waiver, because exempt portions of documents will not contribute to public understanding. The general importance or sensitivity of the underlying subject matter of the FOIA request should not override the analysis of whether release of the information itself will contribute significantly to public understanding.

4.15 Reducing the Fee (Partial Fee Waivers). 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 qualifies for a fee waiver. The criteria for reducing the fees are the same as those for a total fee waiver.

A. A fee reduction may be appropriate when it is determined that 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 would be prorated based on the percentage of records that meets the fee waiver criteria. Where the documents may be segregated, the bureau should calculate the exact cost of processing those records that do not qualify for a fee waiver.

4.16 Fee Waiver Requests.

A. Denying a Request. If a request for a fee waiver or reduction is denied, the bureau will notify the requester, in writing, of the following (see Appendix B, Illustration 24):

- (1) The basis for the denial, including a full explanation of why the fee waiver request did not meet DOI's fee waiver criteria;
- (2) The name(s) and title(s) or position(s) of each person responsible for the denial;
- (3) The name and title of the Office of the Solicitor attorney consulted;
- (4) His/her right to appeal, in writing, within 30 workdays after the date of the denial letter to the FOIA Appeals Officer; and
- (5) That it will not start processing the request until it receives his/her written assurance of payment of all fees or the maximum amount that he/she is willing to pay. The bureau also may give the requester an opportunity to narrow the scope of his/her request to reduce the fee.

B. Granting a Request. If a bureau decides to grant the fee waiver request, it will notify the requester, in writing, that it is granting the fee waiver because disclosure of the requested information (1) is likely to contribute significantly to public understanding of the agency's operations and activities, and (2) is not primarily in his/her commercial interest. The bureau will explain the basis for its decision, i.e., how the request meets the criteria for granting a fee waiver under DOI's FOIA regulations (43 CFR 2.19 and Appendix D).

4.17 Discretionary Fee Waivers.

A. A bureau may waive fees at its discretion if a request involves:

- (1) Furnishing a copy of a document that the bureau has reproduced for free 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 hearing 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 nonprofit organizations having an official, voluntary or cooperative relationship with the Department to assist the individual or organization in working with the Department;
 - (6) Furnishing a reasonable number records to members of the U.S. Congress, 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 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
 - (8) Furnishing one copy of a single record in order to assist the requester in obtaining financial benefits to which he or she may be entitled (e.g., veterans or their dependents, employees with Government employee compensation claims).
- B. The requester cannot appeal the denial of a discretionary fee waiver.

Department of the Interior
Departmental Manual
Freedom of Information Act Handbook
(383 DM 15)

Effective Date: 4/22/04

Chapter 5: FOIA Exemptions

Originating Office: Office of the Chief Information Officer

5.1 General. Under the FOIA there are nine exemptions and three law enforcement exclusions that 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 Decisions to Withhold Information.

A. Bureaus will withhold information responsive to a FOIA request only if it is protected from release by one of the nine statutory exemptions (see paragraph 5.1 of this Chapter) or if one of the law enforcement exclusions discussed in paragraph 1.3B of Chapter 1 is applicable. DOI rarely uses the two law enforcement exclusions available to it. Before withholding information based on one of the exemptions or a law enforcement exclusion, the bureau must consult with the Office of the Solicitor (SOL).

4/22/04 #383A-2

Replaces 3/28/91 #383A-1

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. Any reasonably segregable non-exempt portions of a document must be released after deletion of the exempt portions (see paragraph 5.7B (1) (c) of this Chapter).

C. Examples of information withheld under each exemption are discussed below. They are not intended to be all inclusive or to apply in every situation. All records must be reviewed on a case-by-case basis.

D. Depending on how current the information is, whether an action is pending or has been completed, and other related circumstances, release may be appropriate on a discretionary basis even if it is otherwise protected by an exemption.

E. If it is unclear as to whether specific documents fall under any of the exemptions, consult the FOIA Officer or the designated FOIA attorney for the bureau/office, or the Departmental FOIA Officer for guidance. In accordance with 43 CFR 2.21(f), any decision to withhold a record will be made only after consultation with the bureau's designated FOIA attorney.

5.3 Exemption 1 - Matters of National Defense or Foreign Policy. This exemption allows an agency to withhold information concerning the national defense or foreign policy providing that it has been properly classified under Executive Order 12,958, Classified National Security Information (dated October 14, 1995), or superseding Executive order.

5.4 Exemption 2 - Internal Personnel Rules and Practices. Exemption 2 protects from public disclosure records that are related to the internal personnel rules and practices of an agency. It includes two distinct categories of records:

A. 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"). Exemption "low 2" is applicable when it would impose an administrative burden on the agency to process and release the requested records. Examples of records protected under "low 2" include information relating to the use of parking facilities, lunch hours, sick and annual leave rules, etc.

B. Those of a more substantive nature, the disclosure of which would allow circumvention of a statute or agency regulation, or impede the effectiveness of the agency's activities (referred to as "high 2"). The premise under "high 2" is that disclosure should not benefit those attempting to violate the law and avoid detection. Examples of records protected under "high 2" include:

(1) Agency procedures, manuals and instructions concerning investigatory or security matters, e.g., records that reveal how investigations or audits are conducted, security techniques, etc.);

(2) Sensitive information related to America's Homeland security, including critical infrastructure information (e.g., inundation maps, vulnerability assessments, plans, blueprints, and architectural drawings of Federal buildings, National monuments, etc.);

(3) Agency records which, if released, would give someone an unfair advantage in the job selection process and may require the office to create replacement documents (e.g., 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, etc.)--these records can be withheld only if a bureau intends to use the documents in the future;

(4) Government charge card numbers (the details of purchases more than likely have to be released); and

(5) Information related to computer security the release of which could result in the alteration, loss, damage, or destruction of data contained in computer systems, e.g., computer security plans, passwords, IP addresses, and URL addresses of restricted web sites.

5.5 Exemption 3 - Information Exempted by Other Statutes.

A. 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:

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

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

B. Exemption 3 statutes applicable to DOI include (see DOI's FOIA home page for an updated listing):

(1) Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. 1350 through 1352;

(2) Federal Coal Leasing Act Amendments of 1976, including the provisions of the Mineral Leasing Act, 30 U.S.C. 201(b)(3) and 208-1(b) through (e);

(3) Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1257, 1258, and 1262;

(4) Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh (a);

(5) National Materials and Minerals Policy, Research and Development

Act of 1980, 30 U.S.C. 1604(f);

- (6) National Historic Preservation Act Amendments of 1992, 16 U.S.C. 470w-3;
- (7) Indian Mineral Development Act of 1982, 25 U.S.C. 2103(c);
- (8) Federal Cave Resources Protection Act of 1988, 16 U.S.C. 4301;
- (9) Indian Gaming Regulatory Act, 25 U.S.C. 2701;
- (10) Rule 6(e), Federal Rules of Criminal Procedure (Grand Jury), 18 U.S.C. Appendix;
- (11) Juvenile Justice Delinquency and Prevention Act of 1974, as amended, 18 U.S.C. 5038;
- (12) Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3;
- (13) Federal Property and Administrative Services Act, 41 U.S.C. 253b, as amended by the National Defense Authorization Act for FY 1997, Pub. L. 104-201; and
- (14) National Parks Omnibus Management Act of 1998, 16 U.S.C. 5937, Section 207.

C. Examples of information protected by some of the above exemption 3 statutes include:

- (1) Material collected by investigators and submitted to a grand jury (Federal Rules of Criminal Procedure);
- (2) Certain witness interviews (Inspector General Act of 1978);
- (3) The identity of employee whistleblowers (Inspector General Act of 1978);
- (4) Certain information related to archaeological and/or historic resources (Archaeological Resources Protection Act of 1979).
- (5) The location of caves and artifacts found (Federal Cave Resources Protection Act of 1988);
- (6) Names and contract proposals of unsuccessful bidders (vendors) (Federal Property and Administrative Services Act, 41 U.S.C. 253b, as amended by the National Defense Authorization Act for FY 1997);

4/22/04 #383A-2

Replaces 3/28/91 #383A-1

(7) In certain circumstances, information concerning the specific location of a National Park System resource, e.g., a threatened or endangered species within a unit of the National Park System (National Parks Omnibus Management Act of 1998, section 207); and

(8) Information regarding the location of a historic property included in or eligible for inclusion on the National Register (National Historic Preservation Act Amendments of 1980).

D. The Privacy Act and the Trade Secrets Act are not exemption 3 statutes.

(1) Privacy-protected information should be considered under exemptions 6 and 7(C).

(2) Information involving commercial/financial interests should be considered under exemption 4.

5.6 Exemption 4 - Trade Secrets, Commercial or Financial Information (Confidential Business Information). Exemption 4 protects trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential.

A. 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.

B. Exemption 4 is not applicable if the information is generally available to the public, e.g., if it is published in the company's annual report or available through the Securities and Exchange Commission, or would be made available if requested from the submitter.

C. The following criteria will be used to determine whether exemption 4 is applicable:

(1) Trade Secrets. The records must contain information regarding a trade secret. A trade secret is defined as a secret, commercially valuable plan, formula, process, or device used to make, prepare, or process a commodity. Because this is a rarely used aspect of exemption 4, any bureau considering using it should consult the bureau's designated FOIA attorney.

(2) Commercial or Financial Information.

(a) The records must contain commercial or financial information. Information is commercial if a person has a commercial interest in it (see paragraph 1.5G of Chapter 1).

(b) The information must be obtained from a person. A person may be a corporation, association, a state or local government, or any public or private organization, including an Indian tribe. An agency of the Federal Government would not be a person for the purposes of this provision (see paragraph 5.7B (4) of this Chapter regarding the protection of Government commercial information).

(c) The information must be privileged or confidential. The test for whether commercial or financial information is confidential depends in part on whether the information was voluntarily or involuntarily submitted to the Government.

(i) Where a submitter voluntarily provides information to the Government, the information will be considered confidential for the purposes of exemption 4 if “it is of a kind that would not customarily be released to the public by the person from whom it was obtained.” The agency has the burden of proving that the submitter does not customarily release the information to the public.

(ii) Where the Government requires the submitter to provide information, commercial or financial information is “confidential” for purposes of exemption 4 if disclosure is likely to have either of the following effects:

(A) Impair the Government's ability to obtain necessary information in the future. The agency must be able to demonstrate that the submitter would not have provided the information if he/she believed it would be subject to disclosure or that the reliability or quality of the information it receives from the submitter in the future would be diminished.

(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 an identifiable private or governmental interest, e.g., impair the effectiveness of a Government program or agency compliance.

D. A submitter's voluntary participation in an activity--such as seeking a Government contract or applying for a grant or loan, does not govern whether any submissions made in connection with that activity are likewise voluntary. Bureaus should focus on whether the Government required those who chose to participate in a given activity or process to submit the information at issue. Information is considered required if any legal authority compels submission as a condition of doing business with the Government.

E. Government documents may be protected under exemption 4 to the extent that they contain summaries or reformulations of information supplied by an outside source.

F. In accordance with Executive Order 12,600, Predisclosure Notification

Procedures for Confidential Commercial Information, June 23, 1987, or superseding Executive order, and 43 CFR 2.23, 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 3.23 of Chapter 3). That notice must give submitters a reasonable amount of time to comment on the proposed release before the bureau releases the information.

G. The bureau must maintain adequate records to support its decision to disclose commercial or financial information in case a lawsuit is filed by the submitter (commonly called a “reverse FOIA.”)

H. Examples of information the courts have found to be properly withheld under exemption 4 include:

- (1) Commercial or financial information received in confidence in connection with bids, contracts, or proposals, including:
 - (a) Assets, income, profits, losses, and expenditures;
 - (b) Names of consultants, subcontractors, and suppliers; performance, cost, and equipment information;
 - (c) Labor costs, profit margins, and competitive vulnerability;
 - (d) Business sales statistics, research data, and technical designs;
 - (e) Financial statements and balance sheets;
 - (f) Price negotiation memos;
 - (g) Names of customers and amounts and discounts offered to them;
 - (h) Resumes and other employee-related information such as what the company pays its employees;
 - (i) A company's internal organization chart;
 - (j) Letters of reference from private sector clients;
 - (k) Approach and methodology for accomplishing work set forth in the solicitation; and
 - (l) Plant facility reports.

(2) Scientific and manufacturing processes or developments containing technical or scientific data submitted with an application or report while research is in

progress.

(3) Solid mineral information, including production data and royalty statistics.

(4) Geophysical information--location of oil and gas wells, drilling plans, exploration data, geologic reports, maps, etc.

(5) Financial information maintained on Indian tribes.

5.7 Exemption 5 - Privileged Interagency or Intra-agency Memoranda or Letters.

A. 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 normally would not be made available through the discovery process--the means by which the parties involved in a lawsuit exchange information prior to a hearing or trial).

(1) This exemption applies to inter- or intra-agency records--records that are transmitted within or among DOI components, or between or among Federal agencies.

(2) In some circumstances, it may also apply to documents generated outside of an agency. Documents prepared by outside consultants at the request of the agency and recommendations or advice from Congress or the States can be protected if those documents played a role in the agency's deliberative process and the outside parties are not advocating their own interests in seeking a Government benefit at the expense of others. This may include Indian tribes under limited circumstances. However, the bureau should conclude that documents generated outside of the Federal Government meet the "intra- or inter-agency" threshold requirement only after consulting with its designated FOIA attorney.

(a) Communications to or from an outside party will meet the threshold test (i.e., the communications would qualify as inter- or intra-agency records) where the outside party does not represent his/her own interest, or an interest of another client, when it gives advice to the agency.

(b) Communications to or from outside parties who, though characterized as consultants by an agency, communicate with the agency in order to advance their own self-interest at the expense of others seeking benefits, would not meet the exemption 5 threshold.

(c) On the other hand, communications from an outside party who represents its own self interest, but not at the expense of others seeking benefits, may meet the exemption 5 threshold requirement. Examples might include tribal communications with a bureau regarding an asset entirely its own (i.e., tribal timber, mineral, oil or gas deposits) the use of which would not deprive others of their use.

(d) If the documents meet the threshold and contain information covered by an exemption 5 privilege, it qualifies for protection under exemption 5.

(e) The courts have made it clear that exemption 5 does not protect, on the basis of the trust relationship alone, communications between the Indian tribes and the Department, and bureaus cannot withhold communications with the tribes solely on that basis.

B. Four of the privileges most commonly invoked under exemption 5 are discussed below:

(1) Deliberative-Process Privilege.

(a) This privilege is designed to protect the quality of the agency's decisionmaking process, i.e.:

(i) To encourage candid and frank discussions among agency officials;

(ii) To protect against premature disclosure of proposed policies before they are finally adopted; and

(iii) To avoid public confusion that might be caused by disclosing reasons and rationales that were not ultimately the basis for an agency's action.

(b) In order to fall within this privilege, the material must be both predecisional and deliberative (i.e., 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 and deliberative, the following should be considered:

(i) The document's language and its place in the decisionmaking process. Predecisional, deliberative 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.

(ii) The decisionmaking authority of the person issuing the document, i.e., whether the person who issues the document has the authority to speak finally and officially for the agency. If the author lacks the authority to make the final decision for the agency, the document is more likely to be predecisional.

(iii) 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.

(c) The deliberative process privilege generally may not be used to withhold purely factual material or the factual portions of deliberative documents. The factual portions must be released where they can be segregated from the deliberative portions 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. Agencies also may withhold factual material where the facts are such a negligible part of the document that releasing them would be meaningless.

(d) Drafts of documents are exempt under the deliberative process privilege. They must be part of the decisionmaking chain and 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. However, labeling a document "Draft" does not in itself protect the material.

(e) 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. An exception to withholding a draft document is when an agency cites it 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 unadopted recommendations may be withheld under the deliberative process privilege of exemption 5.

(f) Final documents (documents that represent the final agency action on an issue) and generally post-decisional documents which discuss, analyze, or explain established policies and decisions may not be withheld under this privilege. Under certain circumstances, a post-decisional document may be withheld if it contains predecisional information, e.g., guidance for decisions of similar cases arising in the future or information that reflects the agency's decisionmaking process or the author's own recommendations.

(2) Attorney-Work-Product Privilege. This privilege protects documents and other memoranda prepared by an agency attorney during or in anticipation of litigation, including administrative proceedings. It covers litigation-related documents prepared by an attorney or under his/her direction that reveal the attorney's mental impressions, theories of the case, legal strategies, such as reports prepared by a consultant or a program employee which were prepared under the direction of any attorney in anticipation of litigation. 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 because unlike the deliberative-process privilege, the attorney-work-product privilege protects facts.

(3) Attorney-Client Privilege. This privilege applies to confidential communications between an agency attorney and his/her client (here the client is the

Department, which acts through its employees), relating to a legal matter for which the client has sought professional advice. The privilege is designed to protect the client so only the client can waive this privilege. Unlike the attorney-work-product privilege, the use of the attorney-client privilege is not limited to instances where litigation is expected. However, in order to withhold information under this privilege, the documents must meet 4 elements: 1) the non lawyer must have been or sought to be a client of the lawyer; 2) the lawyer must have acted in the capacity as a lawyer; 3) the document must relate to facts communicated confidentially to secure a legal opinion; and 4) the client must not have waived the privilege. If it is shared with persons outside the attorney-client relationship, exemption 5 may no longer be used to protect the information. Information circulated within the agency to employees involved in the matter for which advice is sought does not breach confidentiality. Special rules apply to communications between attorneys and clients on individual Indian trust matters. The bureau should consult its designated FOIA attorney on these matters. Factual information may only be withheld under this privilege if it is part of the confidential communication. If the facts are not covered by the four elements of the attorney-client privilege, they must be segregated and released.

(4) 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 some 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 or would endanger the consummation of a contract. 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 generated by the Government. Factual information in the document, that would not compromise the Government's position, must be segregated and released.

C. Examples of materials covered by exemption 5 may include:

(1) Advisory opinions, recommendations, and deliberations which are part of the decisionmaking process (deliberative process privilege);

(2) Draft documents regardless of whether they differ from the final version (deliberative process privilege);

(3) The nonfactual portions of predecisional staff papers, containing staff evaluations, advice, opinions, or suggestions (deliberative process privilege);

(4) 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 (deliberative process privilege);

(5) Ratings given to job applicants by panel members (ratings may be released if they cannot be linked to the panel members who gave them) (deliberative process privilege);

(6) In some circumstances, advisory material prepared on behalf of the agency by consultants (deliberative process privilege);

(7) 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 (deliberative process privilege/commercial information privilege);

(8) Financial formulas used to determine the financial capability of a contractor (deliberative process privilege/commercial information privilege);

(9) Certain information in an appraisal generated by the Government or on its behalf (commercial information privilege);

(10) Cost estimates, technical ratings and evaluations, and recommendations for award prepared by the Government (deliberative process privilege/commercial information privilege);

(11) 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 (attorney-client privilege);

(12) Information gathered by agency investigators under the direction of agency attorneys (attorney work-product);

(13) Memoranda prepared by an agency attorney 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 (attorney work-product); and

(14) Records prepared by an agency attorney concerning his/her legal strategy in a case that are exchanged among agency personnel or with other agencies in preparing for litigation or an administrative proceeding (attorney work-product).

5.8 Exemption 6 - Personal Information Affecting an Individual's Privacy.

A. This exemption permits the withholding of information about individuals in personnel, medical, or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(1) To warrant protection under exemption 6, the information must fall within the category of personnel, medical, or similar files. The term "similar files" applies to any file or document that pertains to a specifically identifiable individual and contains information that can be identified as applying to that person. Examples of "similar files" may

include:

- (a) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be, or has been taken that are identified to a specific individual;
- (b) Aircraft and personal injury report files;
- (c) Files containing information related to permits, applications, and licenses; and
- (d) Certain information in reports of investigation (see paragraph 5.9C).

(2) Records concerning a business or association generally may not be withheld under exemption 6 (e.g., business addresses and telephone numbers). In certain circumstances, 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. If a bureau believes this exceptional situation exists, it should consult its Designated FOIA Attorney.

B. The bureaus should consider the following in making decisions under exemptions 6 and 7(C) (see paragraph 5.9C of this Chapter pertaining to exemption 7(C)):

(1) Determine whether a privacy interest exists. There must be a privacy interest in the requested information for any further consideration of privacy-exemption protection to be considered.

(a) To qualify, the information must concern the privacy interest of an identifiable, living person (see paragraph 5.8B (7), below).

(b) A privacy interest exists if disclosure of the information to the public would violate the privacy of the subject individual, and/or could cause injury or embarrassment to the individual.

(c) If a personal privacy interest does not exist, then exemptions 6 and 7(C) do not apply.

(d) Exemption 6 material that is covered by the Privacy Act may be released with the prior written consent of the person who is the subject of the record (see paragraph 3.15D of Chapter 3). However, there is no requirement for prior written consent for exemption 6 information that is not covered by the Privacy Act. Whether this information should be released is determined by the balancing test.

(2) If there is a privacy interest, determine whether there also is a public interest.

(a) 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 public interest standard and should be withheld.

(b) Consider how disclosure would benefit the general public in light of the content and context of the requested document.

(c) The requester's particular purpose, circumstances, and proposed use should not be taken into account, except to the extent that it may coincide with an identifiable public interest.

(3) Balance the personal privacy interest against the public interest. If the bureau determines that a public interest 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, the information should be withheld. If the public interest is greater, the material should be released.

(a) 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 (this is referred to as the practical obscurity standard). In such situations, the bureau FOIA Officer and the designated FOIA attorney should be consulted.

(b) The fact that disclosure of certain information about a particular individual to the media might be interesting to the public does not in and of itself create a public interest that is recognized under the FOIA. Disclosure must reveal something about the operations or activities of the agency in order to be considered as a public interest in the balancing test.

(4) A requester's particular knowledge of, or relationship to, 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 withhold from any member of the general public.

(5) The identity of a FOIA requester cannot be taken into consideration in considering what should be released. An exception to this rule is that a bureau may not invoke exemption 6 or 7(C) where the only 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 requester's home address from him/her. 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).

(6) Exemptions 6 and 7(C) generally may be used only to protect the

privacy of living individuals--not businesses or deceased persons. However, in some cases, they may be invoked to protect the family of the deceased. Particularly sensitive, often graphic, personal details about the circumstances surrounding an individual's death may be withheld when necessary to protect the privacy interests of surviving family members. For example, the audiotape of the Challenger astronauts recorded immediately before their deaths was withheld to protect the family members from the pain of hearing the final words of their loved ones. In another case involving the National Park Service, the autopsy and death photographs of an individual were withheld to protect the family members from the pain of seeing them. Also, privacy information about a deceased member of a tribe may be withheld in order to protect the privacy interests of a surviving relative.

(7) After the privacy-protected, personal identifying information has been deleted, all reasonably segregable, nonexempt portions of the requested records must be released.

(8) In accordance with 5 CFR 293.311, certain personnel-related information pertaining to present and former employees is generally releasable under the FOIA (see paragraph 3.29A of Chapter 3).

C. Examples of information withheld under exemption 6 may include:

(1) Personal identifying information such as name, social security number, military service number, home address, home telephone number except if the individual is operating a business out of his/her home, personal cell telephone number, fax number, and e-mail address, PIN, and beeper number is in and of itself protected by its nature;

(2) Information such as a particular individual's age, place and date of birth, marital status, party or union affiliation, education (not directly related to the position held, e.g., information about primary school, name of college attended, year of graduation (high school and college), etc.) and work experience (not directly related to the professional qualifications for the position held) of the employee or successful applicant, details of health and insurance benefits, allegations of misconduct or arrests, and information concerning or provided by relatives and references;

(3) Payroll information--number of deductions and the amounts, fringe benefit payments, number of withholding exemptions and net wages (the gross salary is releasable), hours worked, and rate of pay per hour (not valid for Wage Grade employees);

(4) Financial information such as an individual's credit rating and personal credit card numbers;

(5) Information pertaining to security and law enforcement officials, e.g., their names (including the name of the Secretary's security detail) (see paragraph 5.9F(4) of this Chapter) and pager and cell telephone numbers;

- (6) The following types of personnel-related information:
 - (a) Performance appraisals;
 - (b) Supervisory evaluation of a candidate for a particular position;
 - (c) Identities and qualifications of unsuccessful job applicants;
 - (d) The knowledge, skills, abilities and personal characteristics of unsuccessful applicants;
 - (e) Referral lists of qualified candidates and the roster of applicants for a particular position, except for the successful candidate;
 - (f) Justifications for awards based on performance of the employee's duties;
 - (g) Reasons for job termination;
 - (h) Results of a complaint by an employee against his/her supervisor; and
 - (i) Letters of reprimand and suspension notices.
- (7) Mailing lists that contain names and home addresses where the release would not shed light on the operations or activities of the Government; and
- (8) Records on an employee's medical condition, history, and health test results.

5.9 Exemption 7 - Records Compiled for Law Enforcement Purposes. 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 could cause one of the harms specified below. In order to invoke exemption 7, an agency must demonstrate that the requested records were compiled for a law enforcement purpose. The law to be enforced within the meaning of the term law enforcement purposes includes civil (e.g., EEO statutes) as well as statutes authorizing administrative and regulatory proceedings. The records do not have to be initially compiled for law enforcement purposes, so long as they are being used for that purpose at the time the response to the FOIA request is made. Exemption 7 allows withholding if the production of such law enforcement records or information:

A. Could reasonably be expected to interfere with enforcement proceedings (Exemption 7(A)).

(1) Law enforcement proceedings include civil and criminal proceedings. In order to qualify for exemption 7(A) protection, the agency must show that a law enforcement proceeding is pending or prospective and disclosure of the documents could reasonably be expected to cause harm, i.e., disrupt, impede, delay, or otherwise harm the

enforcement proceeding (e.g., destroy or alter the evidence or intimidate a witness).

(2) Generally, an agency may invoke exemption 7(A) as long as the law enforcement proceeding remains pending or prospective. Once the proceeding is closed, the information can be withheld only if another exemption applies.

(3) Agencies may make categorical withholdings of documents under exemption 7(A) if they can show that release of particular kinds of documents would generally interfere with enforcement proceedings. If documents do not fall under one of the categories, then they must be released.

(4) Examples of categories of information that may be withheld under exemption 7(A) include: reports of investigation, witness statements, lab reports, evidence logs, affidavits, and audit reports where an investigation is involved.

B. Would deprive a person of a right to a fair or an impartial adjudication (Exemption 7(B)). This exemption is rarely used. Contact the bureau's designated FOIA attorney before using exemption 7(B) to withhold information.

C. Could reasonably be expected to constitute an unwarranted invasion of personal privacy (Exemption 7(C)).

(1) As with exemption 6, exemption 7(C) requires identifying and balancing the relevant privacy and public interests to determine whether disclosing certain law enforcement information could cause an unwarranted invasion of personal privacy (see paragraph 5.8B). Under exemption 7(C), agencies may determine that a certain type of information may be protected always (categorical withholding) regardless of the individual circumstances.

(2) Under exemption 7(C), the names and addresses of private individuals appearing in law enforcement files may be categorically withheld unless access is necessary to confirm or reject evidence that an agency is involved in an illegal activity.

(3) Individuals involved in a criminal investigation—including suspects, witnesses, interviewees, middle and low-ranking law enforcement officers, investigators, and other individuals named in investigatory files possess privacy interests under exemption 7(C), in not having their names revealed in connection with an investigation because disclosure may result in embarrassment or harassment. On the other hand, the names of supervisory law enforcement officers are normally released.

(4) An agency may continue to invoke exemption 7(C) even if the information is compiled into a non-law enforcement file at a later date if the non-law enforcement file essentially reproduces and is substantially the equivalent of all or part of an earlier record made for law enforcement purposes. Contact your designated FOIA attorney before making a determination on this issue.

(5) Examples of information that may be withheld under exemption 7(C) include the following: names of low to mid-level special agents and law enforcement personnel, informants, witnesses, interviewees, and suspects (this information also may be withheld under exemption 6 (see paragraph 5.8C (4)).

D. 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 (Exemption 7(D)).

(1) The identity of a source is protected whenever he/she has provided information under either an express promise of confidentiality or under circumstances where such an assurance could reasonably be implied. In considering whether to invoke exemption 7(D), consider whether the information was furnished by a confidential source during the course of a legitimate law enforcement investigation.

(2) Not all sources furnishing information in the course of criminal investigations are entitled to a "presumption of confidentiality." Source confidentiality must be determined on a case-by-case basis. Two factors should be applied in deciding whether implied confidentiality exists: the nature of the crime and the source's relation to it. A key consideration is the potential for retaliation, reprisal, or harassment against the source who provided the information.

(3) Under exemption 7(D), there is no balancing--if the source was confidential, the exemption may be invoked regardless of the public interest in disclosure. The nature of the information is not considered. The question is not whether the requested document is of the type that the agency usually treats as confidential, but whether the source spoke under an express or implied promise that the communication would remain confidential.

(4) Exemption 7(D) may be used regardless of the fact that an investigation has been closed--its protection cannot be lost through the passage of time or the death of the source.

(5) Examples of information withheld under exemption 7(D) include: any information that might identify a confidential source such as interviews, affidavits, or another witness' reference to the source.

E. Would disclose: 1) techniques and procedures for law enforcement investigations or prosecutions; or 2) guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law (Exemption 7 (E)).

(1) Under the first clause of exemption 7(E), an agency does not have to

show that a particular harm would be caused by release of the information. Information may receive categorical protection.

(2) Under the second clause of exemption 7(E), an agency has to show that harm would be caused by release of the information. The agency can only withhold those portions that would cause harm.

(3) Techniques and procedures may be withheld even if they are known to the public if disclosure could lessen their effectiveness.

(4) Examples of material the courts have found to be properly withheld under exemption 7(E) include: certain portions of the Inspector General's manual, information on interviewing techniques, and conducting surveillances and investigations.

C. Could reasonably be expected to endanger the life or physical safety of any individual (Exemption 7(F)).

(1) To withhold the names of individuals mentioned in law enforcement files or other information under exemption 7(F), an agency must show that there is a concern for the safety of people, i.e., release of the information could result in physical attacks, threats, risks to physical safety, or harassment.

(2) Exemption 7(F) is applicable even after a law enforcement officer has retired or after an individual has testified at trial.

(3) Agencies are not required to balance the public's interest in disclosure against the individual's personal privacy interest as in exemptions 6 and 7(C).

(4) Examples of material covered under exemption 7(F) include: names and other identifying information pertaining to law enforcement personnel, including the Secretary's security detail (see paragraph 5.8C (4) and 5.9C (5)), and critical infrastructure/sensitive information related to America's Homeland security, e.g., inundation maps, if disclosure could reasonably be expected to jeopardize our national security or endanger the life or physical safety of our citizens.

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 (see paragraph 1.3B of Chapter 1) are discussed in the DOJ FOIA Guide. In such instances, the designated FOIA attorney should be consulted.

5.10 Exemption 8 - Records of Financial Institutions. 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:

A. Bank examination reports--those evaluating a bank's stability, and its financial condition and operations, and

B. Reports examining a bank's compliance with consumer laws and regulations.

5.11 Exemption 9 - Geological and Geophysical Information Concerning Wells. This exemption pertains to geological and geophysical information and data (including maps) concerning wells. Exemption 9 has been invoked to withhold well logs and maps, seismic reports, and other exploratory findings of oil companies. The exemption applies to wells broadly, including oil wells, natural gas wells, and water wells.

5.12 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, i.e., shared with parties outside the Federal Government. The Department has not waived its right to invoke an exemption 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 1.10A (2) of Chapter 1);

C. Depending on the facts, 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; or

E. Where disclosure is in furtherance of a legitimate Government purpose.

Note: Close coordination with the bureau's designated FOIA attorney is necessary whenever the issue of possible waiver arises. The bureau will consult with its designated FOIA attorney if it is unclear as to whether it has waived its right to invoke an exemption.

5.13 Special Rules Governing Certain Information Concerning Coal Obtained Under the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands. See DOI's FOIA regulations, 43 CFR Part 2, Appendix F.

5.14 Discretionary Release. A discretionary release of otherwise exempt information may be appropriate consistent with DOI's FOIA policy. DOI's policy is subject to the Department of Justice's policy, which traditionally the Attorney General issues for each Administration.

A. Disclosure of information that is protected under exemptions 1, 3, and 4, and 6

and 7(C) (to the extent that they are covered by the Privacy Act) will in most instances be restricted from discretionary release by a statute or Executive order. Such documents are not subject to discretionary release.

B. On the other hand, documents covered by exemptions “low 2”, 5, and 9 may be considered for discretionary release under certain circumstances. Legally it is possible to consider documents covered by exemptions “high 2,” 6 and 7(C) (to the extent the information is not covered by the Privacy Act), 7(A), 7(B), 7(D), 7(E), and 7(F) for discretionary release. However, as a matter of Departmental policy, only in extremely rare circumstances would such information be subject to discretionary disclosure.

C. The bureau/office must consult with its Designated FOIA Attorney and obtain his/her surname before making a discretionary release of information.

D. The bureau/office will document the FOIA case file to reflect the fact that it has considered the interests that could be implicated by disclosure and include the reasons why a discretionary release is appropriate.

E. The bureau/office should advise the requester in its response that the requested information is exempt from disclosure under the FOIA, but that the bureau office has decided to exercise its discretion to release the information.

F. Discretionary release of information does not mean that all information related to the subject must be disclosed.

Department of the Interior
Departmental Manual
Freedom of Information Act Handbook
(383 DM 15)

Effective Date: 4/22/04

Chapter 6: FOIA Appeals

Originating Office: Office of the Chief Information Officer

6.1 FOIA Appeal Rights. Under the Department's regulations (see 43 CFR 2.28), requesters have the right to file an administrative appeal with the Department when:

- A. Records or parts of records have been withheld;
- B. A request has been denied because the bureau determined that the requester did not adequately describe the records being sought, and the requester has reason to believe that the description was adequate;
- C. A request has been denied because the requested records cannot be located, and the requester has reason to believe that the records exist, or questions the adequacy of the bureau's search for responsive records;
- D. A decision has not been made on the requester's FOIA request within the time limits provided in 43 CFR 2.12;
- E. The bureau did not address all aspects of the request for records;
- F. There is a procedural deficiency (*e.g.*, fees are improperly calculated);
- G. A fee waiver request has been denied; or,
- H. A request for expedited processing has been denied or not responded to on time. (Special procedures apply to this type of appeal (see 43 CFR 2.14, and 2.32(b)). An appeal of this type relates only to a request for expedited processing and does not constitute an appeal of an underlying request for records.

6.2 Requester Contact with Bureaus. Before filing an appeal, the requester may wish to communicate with the contact person listed in the FOIA response or the bureau's FOIA Officer, in an attempt to resolve the issue informally. Informal resolution may be appropriate to clarify a request, or when the requester believes that the file search was not adequate. In the latter instance, the requester may be able to provide additional information that may assist the bureau in locating the requested records. However, if the requester wishes to file an appeal, it must be received by the FOIA Appeals Officer within the time limits prescribed in 43 CFR 2.29.

4/22/04 #383A-2

Replaces 3/28/91 #383A-1

6.3 Time Limitations for Filing FOIA Appeals.

A. Appeals with the exception of those in paragraph 6.1D and 6.1H of this Chapter must be received by the FOIA Appeals Officer no later than 30 workdays after the date of the final response or 30 workdays after receipt of any records provided to the requester;

B. Appeals covered by 6.1D of this Chapter can be filed at any time after the time limit for responding to a FOIA request has passed; and,

C. Appeals covered by 6.1H of this Chapter should be filed as soon as possible.

6.4 Filing a FOIA Appeal.

A. Appeals must be submitted in writing, *i.e.*, by mail, fax or e-mail, to the FOIA Appeals Officer (see 43 CFR Part 2, Appendix A).

B. All communications concerning an appeal should be clearly marked with the words: "FREEDOM OF INFORMATION ACT APPEAL." However, the Department will accept any written communication that fulfills the requirements of a FOIA appeal.

C. The appeal must be accompanied by a copy of the initial FOIA request, and the bureau's response letter (if there is one). (DOI will not begin processing an appeal, and the time limits for responding to an appeal will not begin, until these documents are received by the FOIA Appeals Officer.)

D. The FOIA Appeals Officer will attempt to obtain copies of the missing required document(s). If the missing document(s) cannot be obtained, the FOIA Appeals Officer will advise the appellant in writing that the Department cannot accept the appeal.

E. The appeal should state the issue(s) that are being appealed.

F. All appeals, in particular those pertaining to denials of a fee waiver request or a request for expedited processing should include as much detail as possible to justify such requests.

6.5 Appeal Notification. The FOIA Appeals Officer will ensure that copies of the appeal documents are distributed to:

A. The pertinent bureau FOIA Officer involved in the request and appeal action, and/or the appropriate reviewing and approving office(s). The bureau FOIA Officer will be directed to refer a copy of the appeal to the pertinent field office if a field office was responsible for handling the initial request.

B. The Office of the Solicitor - Division of General Law (SOL), for appeals that pertain to the denial of:

- (1) Records; or
- (2) Fee waivers.

6.6 Review of FOIA Appeals. The legal review of appeals involving withheld material will require that copies of the material at issue be provided to SOL. Officials who have made decisions on FOIA requests that are subsequently appealed are responsible for maintaining copies of this material, and making it available for the legal review.

6.7 Authority for Making Final Decisions on FOIA Appeals. The Assistant Secretary - Policy, Management and Budget has the authority for making final decisions on appeals for the Department. This authority is delegated through the Chief Information Officer to the FOIA Appeals Officer (see 210 DM 18).

6.8 Decisions on FOIA Appeals. FOIA appeals will be decided by the FOIA Appeals Officer. When necessary, the FOIA Appeals Officer will consult other appropriate offices, including SOL. The FOIA Appeals Officer must consult with SOL in cases of FOIA appeals involving the denial of records or fee waivers. The final decisions on an appeal will be in writing to the appellant, and will state the basis for the decision.

6.9 Denial of FOIA Appeals. If the FOIA Appeals Officer denies an appeal, or a portion of an appeal, he/she will advise the appellant of his/her right to seek judicial review.

6.10 Granting of FOIA Appeals. The following actions will be taken when an appeal has been granted in whole or in part:

A. Withheld Records. If the FOIA Appeals Officer grants an appeal involving withheld records, he/she will release copies of the records directly to the appellant, or instruct the appropriate bureau to release the records as soon as possible. The FOIA Appeals Officer will advise the appellant of this action, and close the file on the appeal. In instances of a partial granting, the FOIA Appeals Officer will release only those records that have been approved for release directly to the appellant, or instruct the appropriate bureau to release the records as soon as possible. The FOIA Appeals Officer will advise the appellant that a portion of the appeal is granted, although the remaining portion is denied, and close the file on the appeal.

B. Fee Waivers. If the FOIA Appeals Officer grants an appeal involving a denial of a fee waiver request, he/she will instruct the bureau to take the appropriate corrective billing actions. The FOIA Appeals Officer will advise the appellant of these actions, and close the file on the appeal.

C. Non-Possession. If the FOIA Appeals Officer grants an appeal involving an issue of “non-possession” because the bureau has subsequently determined that it is in possession of

the requested documents, he/she will direct the bureau to make an appropriate records release directly to the requester as soon as possible. The FOIA Appeals Officer will advise the appellant of this action, and close the file on the appeal.

D. Non-Response and Incomplete Response. If the FOIA Appeals Officer grants an appeal involving an issue of “non-response” or “incomplete response,” because the bureau has subsequently issued a complete response to the requester, the FOIA Appeals Officer will advise the appellant that he/she will close the file on the appeal.

E. Procedural Deficiencies. If the FOIA Appeals Officer grants an appeal involving procedural deficiencies, because he/she determines that the bureau was in error in making the subject decision, he/she will direct the bureau to correct the error, and advise the requester as soon as possible. The FOIA Appeals Officer will advise the appellant of this determination, and close the file on the appeal.

F. Expedited Processing of FOIA Requests. If the FOIA Appeals Officer grants an appeal involving a denial of a request for expedited processing, he/she will direct the bureau to process the FOIA request as soon as practicable. The FOIA Appeals Officer will advise the appellant of this determination, and close the file on the appeal.

6.11 Time Limitations for Processing FOIA Appeals. The statutory time limitation for responding to an appeal is 20-workdays after receipt of an appeal that meets the Department’s requirements (see 43 CFR 2.30.) Decisions to grant requests for expedited processing of an appeal will be made within 10 calendar days of receipt of the appeal. If expedited processing of an appeal is granted, the appeal will be given priority for processing ahead of the other pending appeals (see 43 CFR 2.14 and 2.32(b)).

6.12 Delay in Issuing Responses to FOIA Appeals. If the Department does not issue a decision on a FOIA appeal within 20-workdays, the FOIA Appeals Officer will issue a letter to the appellant advising of the status of the FOIA appeal, and advising the appellant of his/her right to seek review in a District Court of the United States.

6.13 Distribution of FOIA Appeals’ Responses. Copies of the Department’s final decisions on FOIA appeals are distributed to the appellant and to the same officials listed in paragraph 6.5 of this Chapter. The copies are provided for information and monitoring purposes, and may contain instructions to Departmental and/or bureau officials regarding any follow-up action(s) required to complete the response to an appeal. Copies of SOL memoranda regarding appeal determinations (if issued) are distributed to the same officials listed in paragraph 6.5 of this Chapter.

6.14 FOIA Appeals Files. The FOIA Appeals Officer maintains an automated index of “open” and “closed” FOIA appeals. The index can be searched in various ways to obtain information on appeals including by names of appellants and organizations, dates of appeals, subjects of records, appeals issues, and action bureaus and field offices. Also the FOIA Appeals Officer maintains copies of all “open” appeals files, and all appeals files that have been “closed”

during the prior six years. Copies of appeals files including final appeal decisions and SOL legal opinions (if issued) may be obtained by contacting the FOIA Appeals Officer.

Department of the Interior
Departmental Manual
Freedom of Information Act Handbook
(383 DM 15)

Effective Date: 4/22/04

Chapter 7: Annual Report to Congress

Originating Office: Office of the Chief Information Officer

7.1 Annual Report to Congress.

A. On or before February 1 of each year, in accordance with 5 U.S.C. 552(e), the Department of the Interior (DOI) is required to submit to the Office of Information and Privacy, Department of Justice (DOJ), a report covering the agency's FOIA activities for the preceding fiscal year. The report includes information about FOIA requests, appeals, and litigation against the Department, the cost to administer the program, the total amount of fees collected for processing requests, and other data regarding DOI's backlog, etc. DOI's reports may be accessed electronically by visiting DOI's FOIA home page.

B. DOJ will post the agency reports to its FOIA home page and notify Congress no later than April 1 that such reports are available via the Internet.

C. The electronic FOIA tracking system (EFTS) will generate the Department's annual report as well as a report concerning each bureau's activities (see paragraph 2.1B (1) of Chapter 2). The bureau FOIA Officers will provide additional information required for the report, e.g., information regarding the use of exemption 3 statutes, FOIA staff and resources, and the bureau's efforts to improve the FOIA program. This information is due to the Departmental FOIA Officer on or before December 1. Bureaus will ensure that the information is accurate and complete and in compliance with the requirements set forth in 383 DM 15.

D. The Departmental FOIA Officer is responsible for preparing DOI's annual report. Reports Control Symbol CON-74-013 has been assigned to this report.

DEPARTMENT OF THE INTERIOR
FREEDOM OF INFORMATION ACT REGULATIONS
(43 CFR Part 2, Subparts A through E)

4/22/04 #383A-2
Replaces 3/28/91 #383A-1

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117**

[CGD08-02-028]

**Drawbridge Operation Regulation;
Three Mile Creek, Mobile, AL****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Alabama State Docks Terminal Railway railroad swing span drawbridge across Three Mile Creek, mile 0.7, at Mobile, Alabama. This deviation allows the draw of the railroad swing span bridge to remain closed to navigation from 7 a.m. until 5 p.m. from October 19, 2002 until October 28, 2002; except that, the bridge will open on signal between noon and 12:30 p.m. daily if at least two hours advanced notification is given. This temporary deviation is necessary to allow for the replacement of all rail, railway timbers and bridge joints.

DATES: This deviation is effective from 7 a.m. on Saturday, October 19, 2002 until 5 p.m. on Monday, October 28, 2002.

ADDRESSES: Materials referred to in this notice are available for inspection or copying at the office of the Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130-3396 between the hours of 7 a.m. and 3 p.m. Monday through Friday except Federal holidays. The Bridge Administration Branch, Eighth District (obc), maintains the public docket for this notice.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: The Alabama State Docks Terminal Railway railroad swing span drawbridge across Three Mile Creek, Baldwin County, Alabama has a vertical clearance in the closed-to-navigation position of 4 feet above mean high water. The bridge provides unlimited vertical clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows. Presently, the draw opens on signal for the passage of vessels as required by 33 CFR 117.5.

Alabama State Docks Terminal Railway requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work. The work involves

replacement of all rails, railway timbers and bridge joints on the bridge. This work is essential for continued safe operation of the draw span of the bridge.

This deviation allows the draw of the railroad swing span bridge to remain closed to navigation from 7 a.m. until 5 p.m. from October 19, 2002 until October 28, 2002; except that, the bridge will open on signal between noon and 12:30 p.m. daily if at least two hours advanced notification is given. The draw will open on signal between 5 p.m. and 7 a.m. The draw will be opened for emergencies but delays of up to one hour may occur during repair operations. The telephone number to call to request an opening during this repair work is 251-441-7300.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 9th, 2002.

Roy J. Casto,

*Rear Admiral, U.S. Coast Guard, Commander,
Eighth Coast Guard District.*

[FR Doc. 02-26551 Filed 10-18-02; 8:45 am]

BILLING CODE 4910-15-P**DEPARTMENT OF THE INTERIOR****43 CFR Part 2****RIN 1090-AA61****Revision of the Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996****AGENCY:** Department of the Interior.**ACTION:** Final rule.

SUMMARY: This document amends the Department of the Interior's (DOI or Agency) regulations implementing the Freedom of Information Act (FOIA). The FOIA regulations have been completely rewritten in plain language, question and answer format. The regulations also contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA). Additionally, the regulations have been updated to reflect changes in the Department's policies and procedures, developments in case law, cost figures for calculating and charging fees, and organizational changes within DOI. As a result, the public will have a clearer understanding of DOI's policies and procedures implementing the FOIA.

EFFECTIVE DATE: November 20, 2002.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Department of the Interior, 1849 C Street, NW, Room 5323, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Alexandra Mallus by telephone at (202) 208-5342, by fax at (202) 501-2360, or by e-mail at alexandra_mallus@ios.doi.gov.

SUPPLEMENTARY INFORMATION:**Background**

On July 16, 2001, the Department of the Interior published a proposed rule that revised its existing regulations under the FOIA and added new provisions implementing the Electronic FOIA Amendments. See 66 FR 36966, July 16, 2001. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The Department received three responses to its proposed rule. The Department has adopted several of the modifications suggested by the commenters and has made other revisions to its proposed rule for clarity as well.

The revision of Part 2, Subparts A and B, incorporates changes to the language and structure of the regulations and adds new provisions to implement the E-FOIA (Public Law 104-231). New provisions implementing the amendments are found at § 2.4(c) (electronic reading rooms), § 2.9 (format of disclosure), § 2.12 (timing of responses), § 2.14 (expedited processing), § 2.21(a) (electronic searches), § 2.21(c) (marking deletions), § 2.21(d)(3) (volume estimation), and § 2.26 (multitrack processing).

Subpart B now describes information that is routinely available to the public through the agency reading rooms and the Internet. Requesters are encouraged to use these resources first before filing a FOIA request. Subpart E is added to include information on DOI's FOIA annual report.

Section 2.3(t) has been revised to clarify that the term "review" includes the time spent by bureau staff and attorneys considering any formal objection to disclosure made by a submitter under § 2.23(f).

In light of the decision in *Public Citizen v. Department of State*, 276 F.3d 634 (D.C. Cir. 2001), DOI has revised §§ 2.7(d) and 2.21(a) of the final rule. These sections now provide that in determining which records are responsive to a FOIA request, the bureau will consider any records in its

possession and control as of the date it begins its search.

Requesters now have 30 workdays, instead of 20 workdays, to file an appeal after the date of DOI's response or receipt of any records provided (§ 2.29(a)).

New sections have been added, such as: (1) § 2.24 concerning submitter designations; (2) § 2.25 regarding requests for Federally-funded research data; (3) § 2.27 on handling a request for information contained in a Privacy Act system of records; and (4) § 2.33 on providing notice to requesters and submitters concerning appeal decisions dealing with commercial or financial information.

Revisions to the Department's fee schedule may be found in Appendix C. The duplication charge will remain the same, at thirteen cents per page. Document search and review charges will increase to reflect the average hourly labor costs, plus 16 percent for benefits, of employees in the following three categories: Clerical, professional, and managerial. (The managerial category is new and designed to cover employees at the GS-13 level and above.) The average grade for the clerical and professional categories has been adjusted in the final rule to more accurately reflect the hourly labor costs for those categories and to clarify the employee grade levels that are covered by each category.

Also, the criteria for determining fee waivers have been clarified to make it clear that DOI decides fee waiver requests on a case-by-case basis and to ensure that requesters know that they must provide sufficient justification to support their fee waiver requests (§ 2.19 and Appendix D).

The new rule increases the dollar amount below which we will not bill a requester. Under the old regulations, we charged a fee only if it cost us more than \$15 to process a FOIA request. Under the new regulations, we will charge a fee only if the cost is more than \$30. The new fee provisions are located in § 2.16(b)(2).

Paragraphs (c)(3) and (c)(4) of Appendix F, Mineral Leasing Act and Mineral Leasing Act for Acquired Lands—Special Rules, have been revised to make them more consistent with the statutory provisions from which they are derived.

Because we have rewritten the FOIA regulations extensively, Subparts C through E of the old regulations will be redesignated as Subparts F through H in the final rule. While the final rule redesignates these three subparts, it does not revise Subparts G or H. Subpart F is revised to clarify that this Subpart

applies to information pertaining to Federal coal resources on acquired lands, as well as to Federal coal leases on lands that are governed by the Mineral Leasing Act. The Mineral Leasing Act for Acquired Lands applies to acquired Federal lands; the Mineral Leasing Act applies to other Federal lands. Both have similar provisions. In Appendix F, paragraph (a)(3), the clause "which fit within an exemption to the FOIA" has been removed. The Mineral Leasing Act, 30 U.S.C. 201(b)(3), applies to information collected pursuant to that provision, regardless of whether the information is subject to an exemption under the FOIA. Therefore, the clause "which fit within an exemption to the FOIA" is not necessary.

The Department received three responses from commenters: the first, from a national trade association; the second, from a nonprofit consumer advocacy organization; and the third, from a statewide nonprofit public interest organization. Due consideration has been given to each of the comments received. A discussion of the comments follows.

Issue 1: One commenter suggested adding an amendment to the Department's final rule incorporating the requirements of Public Law 105-277 which directed OMB to amend Section .36 of OMB Circular A-110. OMB's revised Circular A-110 articulates the procedures by which Federally-funded research data that were used by the Federal Government in developing an agency action may be made available to the public under the FOIA.

Our Response: This comment has been adopted by the Department. A new section has been added to DOI's final rule (§ 2.25) which provides procedures for handling FOIA requests for Federally-funded research data in the possession of a private entity.

Issue 2: One commenter indicated that the Department's regulations should retain the existing requirement to articulate a "sound ground" for a denial or partial denial of an information request. This commenter suggested that the bureau must not only cite legal authority for the denial but also must provide a brief explanation why, given the record(s) and exemption(s) at issue, it is appropriate for the bureau to invoke the exemption rather than exercise its discretion (except where prohibited by law) to waive the exemption and disclose the record(s) in accordance with guidance issued by the Attorney General in May 1997 and September 1999.

Our Response: Although the Department declines to adopt this

commenter's suggestion, it has modified the proposed rule. The 1997 and 1999 guidance which this commenter references has been superseded by guidance issued by the Attorney General in October 2001. It is subject to further revision by this or subsequent administrations. There is nothing in the FOIA which requires the inclusion of the "sound grounds" language in the Department's FOIA regulations. In light of these considerations, the Department has changed the language to avoid conflicts with current and future Department of Justice (DOJ) guidance on this subject. DOI also has modified the language in § 2.21(d)(2) to make clear that the bureau's response should include an explanation of the reasons for the denial of the request. Finally, § 2.21(b)(2) of this rule has been revised to provide that a bureau may, consistent with Departmental policy, determine that a discretionary release is appropriate under the particular circumstances.

Issue 3: One commenter indicated that the availability of immediate judicial relief, without filing an appeal, was not clearly stated in the proposed rule, and suggested that the requester's right to sue be stated more explicitly throughout the regulations.

Our Response: DOI believes that it has given sufficient notice concerning a requester's right to file a lawsuit (see § 2.12(a), § 2.13(c), and § 2.31(b)) and, accordingly, has declined to adopt this commenter's suggestion.

Issue 4: DOI received several comments from one individual concerning the fee waiver criteria that are included in Appendix D of the proposed regulations. This commenter objected to the requirement that a requester submit detailed information to support a fee waiver request, claiming that the requester may not be able to provide "detailed information" without having seen the information in the requested records. According to this commenter, the criteria in Appendix D could unreasonably restrict the availability of fee waivers by making it unreasonably difficult to show that disclosure of the information "is likely to contribute significantly to public understanding of the operations or activities of the government." This commenter also discussed the potential value of previously released information, and the definition of "public at large" as it relates to fee waivers. Finally, this commenter pointed out an error in paragraph numbering in Appendix D.

Our Response: The intent of the Department's regulations is not to demand "detailed information" about

the records being sought, but rather to clarify for the public the determinative factors that the Department considers when deciding whether to grant a fee waiver. Requesters then can adequately address these factors in their fee waiver requests. DOI has added the following language to the first paragraph of Appendix D in response to this commenter's concerns: "You should explain the significance of the release of the information to the public's understanding of the Government's operations and activities based on your understanding of the type of information that you are requesting."

DOI agrees with the comment on the potential value of previously released information. Confirmation or clarification of previously released information can be as important to public understanding of Government activities as the initial disclosure of information when it was new information. The Department has amended the regulations at paragraph (b)(3)(i) of Appendix D to clarify this.

In response to another comment, DOI has added "a reasonably broad audience of persons interested in the subject" at the end of the initial question in paragraph (b)(2) (iv) of Appendix D. Finally, DOI has corrected the paragraph designation in Appendix D, Fee Waiver Criteria.

Issue 5: Two comments concerned expedited processing of requests. One commenter asked the Department to adopt an additional provision expediting the processing of records that are subject to multiple pending requests. This commenter also urged DOI to expand the criteria covering who may make a request for expedited processing to include organizations whose business includes disseminating information, even if disseminating information is not their primary business, *i.e.*, non-news media requesters when those entities have an urgent need to report on a Government activity.

Our Response: DOI has declined to adopt these comments. With regard to the first comment, while Congress did give agencies latitude to expand expedited processing to other categories, it also admonished agencies that being "unduly generous" in creating other categories for expedited processing "would unfairly disadvantage other requesters." H.R. Rep. No. 104-795, at 26 (1996). Accordingly, the Department declines to create a fourth expedited processing category for records subject to multiple requests. In response to the second issue, the language in § 2.14(a)(2) has been modified to allow entities other than representatives of the news media to be considered for

expedited processing. However, consistent with the language in the statute, their main professional activity or occupation must be information dissemination.

Issue 6: One commenter stated that while the bureaus should be allowed to develop their own standards for multitrack processing, these standards, once formulated, should be made available for public comment prior to implementation.

Our response: Prior to implementing a multitrack processing system, the Department will provide guidance in the **Federal Register** and/or on its FOIA website so that requesters will know how to draft their requests to qualify for a faster processing track (see amended language at § 2.26(b)).

Issue 7: One commenter pointed out that § 2.4(c)(iv) of the proposed rule contains an incomplete description of the records that should be in DOI's electronic reading rooms and thus does not comply fully with E-FOIA.

Our Response: The Department has adopted this comment and has revised the language in § 2.4(c)(1)(iv) of the final rule to read as follows: "Copies of records that have been or are likely to become the subject of frequent requests under the FOIA and an index of those documents." DOI also has added a definition of "frequently requested records" under § 2.3(l) for clarification purposes.

Issue 8: One commenter recommended that the Department provide the same notice to requesters whose requests have been referred to other Federal agencies as those whose requests have been referred to other DOI bureaus.

Our Response: DOI has amended the language in § 2.22(b)(2) to provide for such notification in the event a bureau refers documents to another agency (the originating agency) for a release determination. However, if a bureau receives a request for records not in its possession, but which it believes may be in the possession of another Federal agency, it will return the request to the requester and advise him/her to submit it to the other agency directly.

Issue 9: One commenter indicated that if DOI receives a FOIA request for a record in its possession that originated with another agency (or with which another agency is substantially concerned), it should make the release determination after consulting with the originating agency. This commenter suggested that DOI should not refer the record to the originating agency if that agency has a backlog or the agency's policy on processing referrals will delay the response to the requester.

Our Response: The Department declines to adopt this comment. DOI must consider which agency is in a better position to make the proper release determination. Consideration of workload issues should not drive the determination of which agency is best suited to make the release determination. Use of workload considerations for this determination could result in improper releases.

Issue 10: Another commenter suggested that DOI should have a central location where all FOIA requests can be sent if the requester is not certain which bureau has the records he/she is seeking.

Our Response: DOI has not adopted this comment. The Department's FOIA regulations provide the public with sufficient notice on how requests will be processed. In response to another issue this commenter raised involving intra-bureau requests, § 2.10(b)(3) has been revised. Under § 2.10(b)(3), as revised, if the request states that it seeks records from unspecified offices within the same bureau, the FOIA Contact will send the request to the Bureau FOIA Officer, who will refer it to those offices which, to the best of his/her knowledge, have or are likely to have responsive records.

Issue 11: One commenter stated that the standard for starting the statutory time limits should be the same for "regular mail and e-mailed" requests/appeals, *i.e.*, the time period for an electronic request/appeal should begin when the request is received, not when it is opened.

Our Response: The Department has adopted this comment. Sections 2.12(b), 2.30(b), and 2.32(a) of this rule have been changed to provide that the time limit for an electronic request/appeal begins when the request is received, not when it is opened.

Regulatory Planning and Review (E.O. 12866)

DOI has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore is not subject to OMB review because it is not likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights or obligations of their recipients; or
(4) Raise novel legal or policy issues.

Regulatory Flexibility Act

DOI certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 606(b)). Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by DOI are nominal.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not result in an annual effect on the economy of more than \$100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based enterprises. It deals strictly with implementation of the FOIA within DOI.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have any takings implications. It deals strictly with implementation of the FOIA within DOI. Therefore, a takings assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have Federalism implications as it deals strictly with implementation of the FOIA within DOI. Therefore, a Federalism assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not

unduly burden the judicial system and the requirements of §§ 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) is required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (42 U.S.C. 4321–4347) of 1969 is not required.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Courts, Freedom of information, Government employees, Privacy.

Dated: October 2, 2002.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

Regulation Promulgation

For the reasons stated in the preamble, we amend Part 2 of Title 43 of the Code of Federal Regulations, as follows:

PART 2—RECORDS AND TESTIMONY: FREEDOM OF INFORMATION ACT

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701 and 43 U.S.C. 1460–1461. Appendix F to Part 2 also is issued under 30 U.S.C. 201–209; 30 U.S.C. 351–360.

Subparts C Through E [Redesignated as Subparts F Through H]

2. Subparts C through E are redesignated as Subparts F through H.
3. Subparts A and B are revised in their entirety and redesignated as Subparts A through E to read as follows:

Subpart A—General Information

Sec.

- 2.1 What do the regulations cover?
- 2.2 What is DOI's policy regarding release of records under the FOIA?
- 2.3 What terms do I need to know?

Subpart B—Information Routinely Available to the Public Without Filing a FOIA Request

- 2.4 How do I obtain information routinely available to the public?
- 2.5 Does DOI maintain an index of its reading room materials?
- 2.6 Will the Department accept written requests, including fax, e-mail, or telephone requests, for routinely available information?

Subpart C—Requests for Records Under the FOIA

- 2.7 What do I need to know before filing a FOIA request?
- 2.8 What information do I include in my request?
- 2.9 May I specify the form or format of disclosure?
- 2.10 Where do I send my request?
- 2.11 Why is it important to send my request to the right office?
- 2.12 When can I expect the response?
- 2.13 When may the bureau take a time extension to respond to my request?
- 2.14 When can I get expedited processing?
- 2.15 Will I be charged fees?
- 2.16 How are fees determined?
- 2.17 How will my requester category affect the fees that I am charged?
- 2.18 How are fees assessed and collected?
- 2.19 When will bureaus waive fees?
- 2.20 When will bureaus grant discretionary fee waivers?
- 2.21 How will the bureau respond to my request?
- 2.22 What happens if a bureau receives a request for records it does not have or did not create?
- 2.23 How will a bureau handle a request for commercial or financial information that it has obtained from a person or entity outside the Federal Government?
- 2.24 Is a submitter required to designate information that is commercially or financially sensitive?
- 2.25 How will a bureau handle a request for Federally-funded research data in the possession of a private entity?
- 2.26 Does the bureau provide multitrack processing of FOIA requests?
- 2.27 How will a bureau handle a request for information that is contained in a Privacy Act system of records? (See DOI's Privacy Act regulations (Subpart G of this part) for additional information)

Subpart D—FOIA Appeals

- 2.28 When may I file an appeal?
- 2.29 How long do I have to file an appeal?
- 2.30 How do I file an appeal?
- 2.31 How will DOI respond to my appeal?
- 2.32 How long does DOI have to respond to my appeal?
- 2.33 How will the Department notify you and the submitter of commercial or financial information when it makes an appeal decision concerning such information?

Subpart E—FOIA Annual Report

2.34 Where can I get a copy of DOI's FOIA annual report?

* * * * *

Subpart A—General Information**§ 2.1 What do the regulations cover?**

(a) The regulations implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and contain the procedures by which the public may inspect and obtain copies of Department of the Interior (DOI or Department) records through the FOIA or by other means.

(b) They apply to all agency records as defined in § 2.3(c).

(c) The policy and procedures set forth in these regulations apply to all bureaus and offices of the Department.

(d) Nothing in the regulations will entitle you to any service or any record that is not required to be provided under the FOIA.

(e) These regulations do not apply to records that fall under the law enforcement exclusions contained in 5 U.S.C. 552(c).

§ 2.2 What is DOI's policy regarding release of records under the FOIA?

It is our policy to make records of the Department available to the public consistent with the spirit of the FOIA and the Privacy Act.

§ 2.3 What terms do I need to know?

For the purposes of this part, the following definitions apply:

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

(b) *Agency* means any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency.

(c) *Agency record* means any documentary material which is either created or obtained by an agency in the transaction of agency business and under agency control. See §§ 2.21 and 2.25.

(1) Agency records include:

(i) Books, papers, maps, charts, plats, plans, architectural drawings, photographs, and microfilm;

(ii) Machine-readable materials such as magnetic tape and disks;

(iii) Electronic records (including e-mail messages);

(iv) Audiovisual material such as still pictures, sound and video recordings; and

(v) All other documentary materials, regardless of physical form, format or characteristics.

(2) This definition generally does not cover records of an individual which are:

(i) Created and maintained primarily for an individual's convenience;

(ii) Not subject to agency creation or retention requirements; and

(iii) Not distributed to other agency employees for their official use.

(d) *Bureau* means any major component of the Department administering its own FOIA program. A list of these components is contained in Appendix A to this part.

(e) *Commercial-use request* means 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. In determining whether a requester falls into this category, the bureau will consider the identity of the requester and intended use of the records in addition to any other available information about the requester.

(f) *Direct costs* means those expenses that a bureau actually incurs in searching for and duplicating (and in the case of commercial-use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary and benefits of the employee performing the work and the cost of operating duplicating equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(g) *Duplication* means making a copy of a record, or the information contained in it, to respond to a FOIA request. Copies can take the form of paper, microform, photographs, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

(h) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(i) *Expedited processing* means giving a FOIA request priority, and processing it ahead of other requests pending in the bureau because a requester has shown an exceptional need or urgency for the records (see § 2.14).

(j) *FOIA request* means a written request (this includes facsimile (fax) and electronic mail (e-mail)) made by any member of the public for Federal agency records.

(k) *Free-lance journalist* means a representative of the news media who is able to 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.

(l) *Frequently requested documents* means documents that have been requested at least three times under the FOIA. It also includes documents the agency anticipates would likely be the subject of three or more requests.

(m) *Multitrack processing* means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are processed on a first-in/first-out basis.

(n) *Noncommercial scientific institution* means 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. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(o) *Privacy Act request* means a written request (paper copy with an original signature) made by an individual for information about himself or herself that is contained in a Privacy Act system of records. The Privacy Act applies only to U.S. citizens and aliens lawfully admitted for permanent residence. Therefore, only those individuals may make Privacy Act requests.

(p) *Published research findings* means research findings that are either:

(1) Published in a peer-reviewed scientific or technical journal; or

(2) Publicly and officially cited by a Federal agency in support of an agency action that has the force and effect of law.

(q) *Reading room materials* means records (paper or electronic) that are required to be made available to the public under 5 U.S.C. 552(a)(2), as well as other records that a bureau, at its discretion, makes available to the public

for inspection and copying without requiring the filing of a FOIA request.

(r) *Representative of the news media* means 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, newspapers, 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. To be in this category, a requester must not be seeking the requested records for a commercial use. Further, a bureau normally will not consider requests for records involving news dissemination to be commercial-use requests.

(s) *Research data* means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not such things as trade secrets, commercial information, personnel and medical information and any similar information which is protected under law.

(t) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes the deletion of exempt material or other processing necessary to prepare the record(s) for disclosure, including routine consultation among bureau staff and attorneys regarding the applicability of exemptions; and time spent considering any formal objection to disclosure made by a submitter under § 2.23(f).

(u) *Search* means the process of looking for and retrieving agency records and information responsive to a request (manually or by automated means).

(v) *Submitter* means any person or entity outside the Federal Government from whom the Department directly or indirectly obtains commercial or financial information. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

(w) *Workday* means a regular Federal workday. It does not include Saturdays, Sundays, or Federal legal public holidays.

Subpart B—Information Routinely Available to the Public without Filing a FOIA Request

§ 2.4 How do I obtain information routinely available to the public?

A great deal of information is available to the public without filing a FOIA request. Examples are Departmental policies, procedures, and organizational descriptions. The following guidance will help you obtain this information. [Note: For copies of records that are not routinely available, you must submit a FOIA request to the DOI office where the records are located. Procedures for requesting records under the FOIA are provided in Subpart C of this part.]

(a) General.

(1) General information about DOI or one of its bureaus may be obtained by visiting DOI's home page (see Appendix B to this part for a list of Internet addresses) or by contacting the Office of Public Affairs/Communications for the appropriate bureau (see Appendix A to this part for a list of DOI contacts). Many documents are made available to the public through DOI's reading rooms. Some documents also may be available in DOI's electronic reading rooms on the Internet.

(2) Information on DOI's FOIA Program and a Reference Guide to assist you in obtaining various types of information are available in DOI's reading rooms, through the FOIA home page, or by contacting the Departmental FOIA Officer.

(3) To obtain information about specific records in DOI, you also may refer to:

(i) The index of documents frequently requested under the FOIA, which is available in DOI's reading rooms, through the FOIA home page, or by contacting one of the bureau FOIA Officers; and

(ii) The index and description of DOI's major information and record locator systems, which are available in DOI's reading rooms, through the FOIA home page, or by contacting one of the bureau FOIA Officers.

(4) Another source of information is DOI's Library, which contains over one million holdings dealing with a broad range of matters pertaining to the Department's mission. You may wish to visit the Library, which is located at the C Street entrance of the Main Interior Building, 1849 C Street, NW., Washington, DC 20240 (see Appendix A to this part). The Library is open to the public for on-site reference use from 7:45 a.m.–5:00 p.m., Monday–Friday (excluding Federal legal public holidays). Additional information

regarding the Library's holdings and services may be obtained by visiting its home page (see Appendix B to this part).

(b) *Published information and rules.* Under 5 U.S.C. 552(a)(1), bureaus are required to publish certain information in the **Federal Register** for the guidance of the public, such as descriptions of their central and field organizations, functions, procedures, substantive rules, and statements of general policy.

(c) *Reading room materials.*

(1) Under 5 U.S.C. 552(a)(2), each bureau is responsible for making the information listed in paragraphs (c)(1)(i) through (v) of this section available for public inspection and copying unless the materials are promptly published and copies offered for sale. Bureaus must make any such records created on or after November 1, 1996, available by the Internet or by other computer telecommunication methods or electronic means as quickly as practicable.

(i) Final opinions rendered in the adjudication of cases.

(ii) Policy statements and interpretations which have been adopted by DOI and are not published in the **Federal Register**.

(iii) Administrative staff manuals and instructions affecting the public.

(iv) Copies of records that have been or are likely to become the subject of frequent FOIA requests and an index of those documents.

(v) A subject-matter index of its reading room records (see § 2.5).

(2) Bureaus may, at their discretion, make other records available for inspection and copying in reading rooms or via their home pages.

(d) *Inspection and copying of reading room materials.*

(1) Reading room materials are available for inspection and copying at the locations listed in Appendix A to this part and, in some cases, through the Internet; however, not all records may be available in all locations.

(i) If you need assistance in determining the location and availability of the records you are seeking, contact the appropriate reading room or FOIA Contact listed in Appendix A to this part.

(ii) If you file a FOIA request for reading room materials and the information you request is available on the Internet, the FOIA Contact should refer you to the appropriate Web site. If the reading room materials are not available electronically, the FOIA Contact may either send you the materials, or forward your request to the appropriate reading room and provide the name and telephone number of a

staff member you may contact. You may, nevertheless, ask the bureau to process your request as any other FOIA request.

(2) A bureau may delete exempt information from some records before making them available for inspection and copying in a reading room. (See § 2.21(c)). You may not appeal a bureau's decision to delete exempt information from a document it places in a public reading room. If you would like access to the entire record, you must submit a FOIA request under the procedures in Subpart C of this part. However, this does not guarantee that the entire record will be released. If you submit such a FOIA request and are not satisfied with the response, you may file an appeal as described in § 2.28.

(3) There is no charge to inspect reading room materials. Copying services will be provided at the fees specified in Appendix C to this part. However, other fees may apply where a bureau has a statute that specifically requires the bureau to set fees for particular types of records.

(4) If you submit a fee waiver request for information in a reading room, it will be processed under the procedures in § 2.19.

§ 2.5 Does DOI maintain an index of its reading room materials?

Each bureau will maintain and make available for public inspection and copying a current subject-matter index of its reading room materials (5 U.S.C. 552(a)(2)). The index will be available in the bureau's reading room(s) and in their electronic reading rooms on the Internet. Each index will be updated regularly.

§ 2.6 Will the Department accept written requests, including fax, e-mail, or telephone requests, for routinely available information?

Yes. Although a request for this type of information is not a FOIA request, the bureau will send you the requested information and charge you for the copies, according to the fee schedule in Appendix C to this part. While the bureau will attempt to respond to oral requests (those made by telephone or otherwise) for routinely available information, you should submit complex requests in writing to avoid any risk of misunderstanding.

Subpart C—Requests for Records under the FOIA

§ 2.7 What do I need to know before filing a FOIA request?

(a) If the records you are seeking are not routinely available as described in Subpart B of this part, you must submit

a FOIA request to the FOIA Contact at the bureau office where you believe the records are maintained (see Appendix A to this part). FOIA requests must be submitted in writing (this includes fax and e-mail)—DOI does not accept oral FOIA requests. Before submitting a request, you may find it useful to contact the appropriate bureau FOIA Contact or the Departmental FOIA Officer for additional information concerning DOI's FOIA Program. You may find the Department's Reference Guide, which is available electronically through the FOIA home page and in paper form as well, helpful in making your request.

(b) The FOIA requires that we release records unless they are protected by one of nine exemptions (see Appendix E to this part).

(c) The Act does not require a bureau to answer questions that may be asked in a FOIA request.

(d)(1) In order for a record to be considered subject to your FOIA request, it must be in the bureau's possession and control at the time the bureau begins its search for responsive records. There is no obligation for the bureau to create or compile a record to satisfy a FOIA request (for example, by combining or compiling selected items from manual files, preparing a new computer program, calculating proportions, percentages, frequency distributions, trends and comparisons, or creating maps). Normally if a bureau is extracting information from an existing computer database, this would not constitute the creation of a new record. However, a bureau has the option of creating a new record if—

- (i) Doing so will provide a more useful response to the requester,
- (ii) It is less burdensome than providing the existing records, and
- (iii) The newly created record is fully responsive to the request.

(2) The fee in this case will not be more than the fee for the individual records. Fees will be charged consistent with the schedule in Appendix C to this part.

§ 2.8 What information do I include in my request?

(a) Description of records.

(1) You must describe the requested records in enough detail to enable an employee familiar with the subject area of the request to locate the record(s) with a reasonable amount of effort. Be as specific as possible in describing the records you are seeking. For example, whenever possible:

- (i) Identify the date, title or name, author, recipient, and the subject of the record; the office that created it, the

present custodian of the record and the geographical location (e.g., headquarters or a regional/field office); the timeframe for which you are seeking records; and any other information that will assist the bureau in locating the material.

(ii) If the request involves a matter in litigation, state the case name and docket number as well as the court in which the case was filed.

(2) The bureau will not begin processing your request until any issues regarding the scope or nature of your request are resolved. When a request is overly broad, unclear, involves an extremely voluminous amount of records, or a burdensome search, the bureau will contact you to identify and clarify the records you are seeking. It will work with you to define the subject matter, clarify terms that are used, or narrow the scope of your request.

(3) The time limit for responding to your request will not start until the bureau receives a request reasonably describing the records or clarifying the initial request. If the bureau asks you for additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in pursuing your request and will close the file on your request.

(b) Fee information.

(1) Unless you request a fee waiver (see paragraph (b)(2) of this section), you should state that you are willing to pay all fees associated with processing your request or that you are willing to pay up to a specified amount. The bureau will not begin processing your request until this written assurance has been received. If the bureau anticipates that the fees for processing your request exceed the amount you have indicated you are willing to pay, the bureau will notify you that it needs your assurance of payment of fees as high as are anticipated, or an advance payment (see § 2.18(b) and (c)). If the bureau does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(2) You may request a fee waiver. If you are seeking a fee waiver, you must provide sufficient justification to support your fee waiver request (see the criteria in § 2.19 and in Appendix D to this part). Failure to provide adequate justification will result in a denial of your fee waiver request. Remember that if you are requesting a fee waiver, the burden is on you to demonstrate in your request that you are entitled to it. The bureau will not begin processing your request until the fee issues are resolved. As an option, at the same time you request a fee waiver you may state your willingness to pay regardless of whether

a fee waiver is granted. This will permit the bureau to process your request for records at the same time it is considering the fee waiver request. If you are required to pay a fee, and it is later determined on appeal that you are entitled to a full or partial fee waiver, an appropriate refund will be made.

(3) You should indicate what fee category you are in, *i.e.*, if you are a commercial-use requester, news media, educational institution/noncommercial scientific institution, or other requester (see §§ 2.3 and 2.17(a)). If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), it is the underlying requester's identity and intended use that determines the fee category. If your fee category is unclear to the bureau, the 20-workday statutory time limit for processing your request will not begin to run (see § 2.12(b)) until this matter has been resolved. If the bureau requests additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(c) Mailing address information: Your postal address is required for the bureau to mail any responsive documents to you.

(d) The following information will assist the bureau in processing your request:

(1) The words "FOIA REQUEST" (prominently displayed) on the request letter and the envelope, or subject line of a request sent via e-mail or fax, or "PRIVACY ACT REQUEST" when requesting records pertaining to yourself that you believe are covered by the Privacy Act, as well as citing the appropriate act in your letter;

(2) Your telephone number (where you can be reached during normal business hours), e-mail address and fax number, if available, in case the bureau, or the Department needs to communicate with you about your request. This information is very important.

(3) A list of all the bureau FOIA Contacts to which you are sending your request. For the quickest possible handling, you should address a separate copy of your request to each bureau FOIA Contact where you believe the records are maintained.

(4) When making a request for personal records about another individual, a written authorization from that individual and any other information required by the Privacy Act system of records notice; or proof that the individual is deceased (for example, a copy of a death certificate or an

obituary) as the Privacy Act does not apply to a deceased individual. (**Note:** Information about a deceased individual may be subject to protection under exemption (6) of the FOIA if the release of the information could result in an invasion of the privacy of a living individual.)

§ 2.9 May I specify the form or format of disclosure?

Generally, you may choose the form or format of disclosure for records that you request under the FOIA (5 U.S.C. 552(a)(3)(B)). Bureaus must provide the record in the requested form/format if the office responding to the request can readily reproduce the record in that form/format with reasonable efforts. However, if the process of providing the information in the requested format would damage or destroy an original document, it may not be possible to honor your format request. Bureaus must make reasonable efforts to maintain their records in forms or formats that are reproducible. You may be charged the direct costs involved in converting information to the requested format if the bureau normally does not maintain the information in that format.

§ 2.10 Where do I send my request?

(a) DOI does not have a central location where you may submit your FOIA request nor does it maintain a central index or database of documents in its possession. DOI's files are decentralized and are maintained by various bureau offices throughout the country.

(b) Submit your request in writing to the FOIA Contact at the bureau office where you believe the records are maintained. If it is unclear where to send your request, seek assistance from the FOIA Contact of the bureau that manages the programs whose records you are requesting or the Departmental FOIA Officer. You may have to do a little research to find the proper office to handle your inquiry, but you will save time in the long run if you send your request directly to the FOIA Contact at the appropriate bureau office. The bureau will process your request as follows:

(1) A request to a bureau headquarters office may be presumed to seek only records from the headquarters office, unless the request specifies otherwise.

(2) A request to a regional/field office of a bureau may be presumed to seek only records at that office, unless the request specifies otherwise.

(3) If a request to a bureau states that it seeks records located at another specific office of the same bureau, the appropriate FOIA Contact will refer the

request to the other office. If the request states that it seeks records from other unspecified offices within the same bureau, the FOIA Contact will send the request to the Bureau FOIA Officer who will refer it to those offices that, to the best of his/her knowledge, have or are likely to have responsive records.

(4) If a request to a bureau states that it seeks records of another specified bureau, the bureau will refer the request to the appropriate bureau for response. If the request states that it seeks records from other unspecified bureaus, the FOIA Contact will send the request to the Bureau FOIA Officer who will ensure that the request is referred to those bureaus which, to the best of his/her knowledge, have or are likely to have responsive records. In either case, the Bureau FOIA Officer will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made.

§ 2.11 Why is it important to send my request to the right office?

The bureau and office FOIA Contacts listed in Appendix A to this part have primary responsibility for responding to FOIA requests. Failure to send your request to the FOIA Contact at the appropriate bureau office may delay processing, because the time limit for the bureau to respond will not begin to run until a request complying with §§ 2.8 and 2.10 is received by the bureau office where the records are maintained. The processing of your request may be delayed if you send it to the Secretary of the Interior (or other high-level officials), the Office of Public Affairs/Communications, the DOI FOIA Officer, or the Department/bureau's webmaster.

§ 2.12 When can I expect the response?

(a) *Basic time limit.* Ordinarily, a bureau has 20 workdays from the date of receipt to determine whether to grant or deny your FOIA request (see paragraph (b) of this section). The bureau will notify you immediately upon reaching its decision. If you have not received a response within 20 workdays, or 30 workdays if an extension has been taken (see § 2.13) (be sure to allow for mailing time), you may contact the bureau to ask about the delay (see Appendix A to this part). You also have the right to consider any nonresponse within these time limits as a denial of records and file a formal appeal (see § 2.28(a)(3)) or lawsuit. These time limits do not apply to requests for expedited processing (see § 2.14).

(b) *Running of basic time limit.* The 20 workday time limit begins to run when a request complying with the

procedures in §§ 2.8 and 2.10 is received by the FOIA contact at the bureau office that has the records you are seeking. This means that all issues regarding fees and the scope of your request must be resolved before the bureau will begin processing your request.

§ 2.13 When may the bureau take a time extension to respond to my request?

(a) The bureau may extend the 20-workday time limit for 10 more workdays when it needs to:

(1) Search for and collect the requested records from multiple offices; or

(2) Search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request or with one or more bureaus of the Department having substantial subject-matter interest in the request.

(b) If the bureau intends to take an extension under this subsection, it will notify you in writing and provide the reason for the extension and the date it expects to make a determination on your request.

(c) If an extension is necessary and the bureau is unable to respond to your request within 30 workdays, it will notify you in writing when you may expect a final response and advise you of your appeal rights. If an extension is taken and you have not received a response in 30 workdays, you may consider the request denied and file an appeal under § 2.28(a)(3) or file a lawsuit.

(d) A bureau may not take an extension of time to decide whether to grant a request for a fee waiver.

§ 2.14 When can I get expedited processing?

(a) When requested, a bureau will provide expedited processing if you demonstrate to the satisfaction of the bureau that the request involves:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information. In most situations, a person primarily engaged in disseminating information will be a representative of the news media. The requested information must be the type of information which has particular

value that will be lost if not disseminated quickly, and ordinarily refers to a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news; or

(3) The loss of substantial due process rights.

(b) A request for expedited processing should be submitted with your FOIA request. For a prompt determination, you must submit a request complying with the requirements of §§ 2.8 and 2.10 to the FOIA Contact at the bureau office that maintains the records you are seeking.

(c) If you are seeking expedited processing, you must submit a statement explaining in detail the basis for your request. You must certify in your letter that your need for expedited processing is true and correct to the best of your knowledge and belief. For example, a requester within the category of paragraph (a)(2) of this section, if not a full time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his/her sole occupation.

(d) Within 10 calendar days of receipt of your request, the bureau will notify you whether it will grant expedited processing. If expedited processing is granted, the bureau will give priority to that FOIA request and process the request as soon as practicable. If expedited processing is denied, the bureau will notify you of your right to appeal the decision on expedited processing. Appeals of denials of requests for expedited processing will be processed ahead of other appeals (see § 2.32(b)). If the bureau has not responded to your request for expedited processing within 10 calendar days, you have a right to file an appeal for nonresponse (see § 2.28(a)(7)).

§ 2.15 Will I be charged fees?

Bureaus will charge fees consistent with the provisions in §§ 2.16 and 2.17. The fee schedule in Appendix C to this part applies to all bureaus of the Department.

§ 2.16 How are fees determined?

(a) *Authority.* Bureaus are authorized to charge fees to recover the direct costs of searching for, reviewing (commercial-use requesters only) and duplicating documents to respond to a FOIA request. However, nothing in this subsection will supersede any statutory authority which requires the bureau to

charge specific fees for certain types of records.

(b) *Policy.* (1) Unless waived under the criteria in §§ 2.19 or 2.20, bureaus will charge fees for responding to FOIA requests consistent with the provisions of this section and the fee schedule in Appendix C.

(2) A bureau normally will not charge a fee where the fee would be \$30 or less. However, if the bureau has a reasonable basis to conclude that a requester or group of requesters has divided a request into a series of requests on a single subject or related subjects to avoid fees, the requests may be aggregated and fees charged accordingly. Bureaus may presume that multiple requests of this type that are made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, bureaus will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(3) Where a bureau responds to a request on behalf of more than one bureau, the fees that would be chargeable by all bureaus involved will be considered in determining whether the total FOIA processing fee is \$30 or less. If a bureau is responding on behalf of more than one bureau, and you fall under one of the fee categories in § 2.17(a)(2) or (a)(3), you will be entitled to receive up to a total of 100 pages of duplication without charge (there is no charge for searching for responsive records). If a bureau is responding on behalf of more than one bureau, and you fall under the fee category in § 2.17(a)(4), you will be entitled to receive up to a total of 100 pages of duplication and two hours of search time without charge.

(4) If a bureau obtains research data solely in response to your FOIA request, it may charge you a reasonable fee equaling the full cost of obtaining the research data from the recipient.

(c) *Searches.* Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both you and the bureau. Except where provided in §§ 2.17(a)(2) and (a)(3), bureaus will charge for time spent in the following search activities:

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

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

(d) *Reviews (Commercial-use requests only)*. (1) Bureaus will charge commercial-use requesters (see § 2.17(a)(1)) for time spent by bureau staff and attorneys in reviewing requested records for releasability. (See § 2.3(e).)

(2) Review costs will be assessed even if a record ultimately is not disclosed.

(e) *Duplication*. Bureaus will charge duplication fees according to the fee schedule in Appendix C to this part.

(f) *Categories of requesters*. There are four categories of requesters for the purposes of determining fees—commercial-use, educational and noncommercial scientific institutions, news media, and all others. (See §§ 2.3 and 2.17.)

§ 2.17 How will my requester category affect the fees that I am charged?

(a) When you submit a FOIA request, you must specify your fee category. Based on the information you provide, the bureau office processing your

request will decide your fee category and charge as follows:

(1) Commercial-use requesters are charged fees for costs incurred in document search, review, and duplication.

(2) Educational/noncommercial scientific institutions are 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) will be provided without charge. The bureau will not charge such requesters for document search and review.

(3) News media requesters are 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) will be provided without charge. The bureau will not charge such requesters for document search and review.

(4) Requesters not covered by paragraphs (a)(1) through (a)(3) of this section—“other requesters” are charged fees for document search and duplication, except that they are

entitled to the first two hours of search time and the first 100 pages of paper copies without charge (or the equivalent cost thereof if the records are in some other form). The bureau will not charge such requesters for document review.

(b) If you do not submit sufficient information in your FOIA request for the bureau to determine your fee category (see paragraphs (a)(1) through (a)(4) of this section), the bureau may ask you to provide additional clarification. This applies to all requesters. The bureau will notify you promptly when additional information is needed. In these circumstances, the 20-workday statutory time limit for responding to your request will not begin to run until you provide sufficient information. If the bureau requests additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(c) The following table summarizes the chargeable fees for each category of requester.

Category	Search fees	Review fees	Duplication fees
Commercial Use	Yes	Yes	Yes
Educational Institution.			
Non-Commercial Scientific Institution	No	No	Yes (100 pages free)
News Media.			
All Other	Yes	No	Yes (100 pages free)
	(2 hours free)		

§ 2.18 How are fees assessed and collected?

(a) *Threshold for charging fees*. Except in those situations covered by § 2.16(b)(2), the bureau will not charge you if the fee is \$30 or less.

(b) *Notice of anticipated fees*. (1) Unless you have been granted a fee waiver or have previously agreed to pay all the fees associated with your request, or the anticipated fee is \$30 or less, the bureau will:

- (i) Promptly notify you of the estimated costs and ask you to provide written assurance of payment of all fees or fees up to a designated amount; and
- (ii) Give you an opportunity to modify your request at that time to reduce the fee.

(2) After the bureau begins processing your request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the bureau will:

- (i) Stop processing your request;
- (ii) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

(iii) Give you an opportunity to modify your request to reduce the fee.

(c) *Advance payment*. (1) The bureau will require advance payment when the estimated fee is over \$250 and—

(i) You have never made a FOIA request to DOI requiring you to pay fees; or

(ii) You did not pay a previous FOIA fee promptly.

(2) If you have previously failed to pay a fee within 30 calendar days of the date of billing, the bureau will require you to:

(i) Pay the full amount owed plus any applicable interest penalties (see paragraph (g) of this section) and to make an advance payment of the full amount of the estimated fee of the new request; or

(ii) Demonstrate that you have, in fact, paid the prior fee.

(3) At the same time the bureau notifies you that an advance payment is due, it will give you an opportunity to modify your request to reduce the fee.

(d) *Resolving the fee issue*. The bureau will not start processing your request until the fee issue has been resolved (see

§§ 2.8(b) and 2.12(b)). If the bureau seeks clarification from you about a fee issue and does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(e) *Billing procedures*. If you are required to pay a fee associated with your request, the bureau that processes your request will send you a bill for collection.

(f) *Form of payment*. You should submit a check or money order made 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. Some bureaus accept payment by credit card. Contact the bureau to determine what forms of payment it accepts.

(g) *Failure to pay fees*. The bill for collection or the response letter will include a statement that interest will be charged in accordance with the Debt

Collection Act of 1982, as amended (31 U.S.C. 3717) and implementing regulations, if the fees are not paid within 30 calendar days of the date of the bill. This requirement does not apply if the requester is a state, local, or tribal government.

§ 2.19 When will bureaus waive fees?

(a) Fees for processing your request may be waived if you meet the criteria listed in paragraph (b) of this section and Appendix D to this part. The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis. The fact that you have received a fee waiver in the past does not mean you are automatically entitled to a fee waiver for every request you may submit, because the essential element of any fee waiver determination is whether the release of the particular documents sought in the request will likely contribute significantly to public understanding of the operations or activities of the Government. The bureau will rely on the fee waiver justification you have submitted in your request letter. If you do not submit sufficient justification, your fee waiver request will be denied. The bureau may, at its discretion, communicate with you to request additional information if necessary. However the bureau must make a determination on the fee waiver request within the statutory time limit, even if the agency has not received such additional information. In certain circumstances, a partial fee waiver may be appropriate, if some, but not all, of the requested records are likely to contribute significantly to public understanding of the operations and activities of the Government.

(b) Bureaus will waive fees (in whole or part) if disclosure of all or part of the information is in the public interest because its release—

(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.

(c) If a bureau denies your request for a fee waiver, it will notify you, in writing, of the following:

(1) The basis for the denial, including a full explanation of why your fee waiver request did not meet DOI's fee waiver criteria (see paragraph (b) of this section and Appendix D to this part);

(2) The name(s) and title(s) or position(s) of each person responsible for the denial;

(3) The name and title of the Office of the Solicitor attorney consulted; and

(4) A statement that the denial may be appealed within 30 workdays after the date of the denial letter to the FOIA Appeals Officer (see Appendix A to this part) under the procedures in § 2.30.

§ 2.20 When will bureaus grant discretionary fee waivers?

(a) A bureau may waive fees at its discretion if a request involves:

(1) Furnishing a copy of a document that the bureau has reproduced for free 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 hearing 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 nonprofit organizations having an official, voluntary or cooperative relationship with the Department to assist the individual or organization in working with the Department;

(6) Furnishing a reasonable number records to members of the U.S. Congress, 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 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

(8) Furnishing one copy of a single record in order to assist the requester in obtaining financial benefits to which he or she may be entitled (*e.g.*, veterans or their dependents, employees with Government employee compensation claims).

(b) You cannot appeal the denial of a discretionary fee waiver.

§ 2.21 How will the bureau respond to my request?

(a) After all the criteria in §§ 2.8 and 2.10 have been met, the bureau will make a reasonable effort to search for records responsive to your request. In determining which records are responsive to your request, the bureau will include any records in its possession and control as of the date it begins its search. This will include

searching for records in an electronic form/format, except where it would interfere significantly with the bureau's automated information systems.

(b) In response to your request, the bureau will do one of two things:

(1) Include the requested records with the response letter or notify you of how, when, and where the records will be made available; or

(2) Deny part or all of your request, except that the bureau may, consistent with Departmental policy, determine that a discretionary release is appropriate under the particular circumstances. Your request will be denied or partially denied only if one of the nine statutory exemptions listed in Appendix E to this part applies to all or part of the records you have requested.

(c) Where a document contains both exempt and nonexempt material, the bureau will generally separate and release the nonexempt information. When disclosing a record in part, the bureau will indicate on the released portion of the record how much information was deleted, unless doing so would harm an interest protected by the exemption used to withhold the information. Further, if technically feasible, the amount of information deleted and the exemption used to withhold the information will be indicated where the deletion is made. If the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases, the entire portion may be withheld.

(d) If a bureau denies your request for records in whole or in part, the bureau's response will include:

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

(2) An explanation of the reason(s) for the denial;

(3) An estimate of the volume of information being withheld. The bureau will make a reasonable effort to estimate the volume of any records denied, or portions of records (*e.g.*, 100 pages, 4 Federal Record Center boxes, 1,000 kilobytes, etc.), unless such an estimate would harm an interest protected by the exemption used to withhold the information.

(4) The name(s) and title(s) of the person(s) responsible for the denial;

(5) The name and title of the Office of the Solicitor attorney consulted; and

(6) A statement that the denial may be appealed to the FOIA Appeals Officer (see Appendix A to this part), within 30 workdays of the date of the denial letter or 30 workdays after the records have been released under the procedures in § 2.30.

(e) If records do not exist within DOI, cannot be located, are not reasonably described, or if a procedural issue remains unresolved (e.g., a fee issue), the bureau will respond to you in writing, including the following information, as applicable:

(1) An explanation of the basis of the decision;

(2) The name(s) and title(s) of the person(s) responsible for the decision; and

(3) A statement that the matter may be appealed within 30 workdays of the date of the response, to the FOIA Appeals Officer under the procedures in § 2.30.

(f) The bureau must consult with the Office of the Solicitor if it is considering withholding a requested record or denying a fee waiver.

(g) If any fees are due, the bureau will notify you in writing of the amount.

(h) All bureau responses will include the name and telephone number of a contact person in case you have questions concerning the response.

(i) Requests for information concerning coal under the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands are subject to special rules (see Appendix F to this part).

§ 2.22 What happens if a bureau receives a request for records it does not have or did not create?

(a) *Consultations/referrals within DOI.*

(1) If a bureau receives a request for records not in its possession, but which it knows another bureau has or is likely to have, it will refer the request to that bureau(s) for response. It also will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made. The time limit for responding to your request starts when the request reaches the bureau office that has the records.

(2) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that another bureau created or is substantially concerned with, it will consult with the other bureau before deciding whether to release or withhold the records. As an alternative, the bureau may refer the request along with the records to that bureau for direct response. It will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made. Such a referral does not restart the statutory time limit for responding to your request.

(b) *Consultations/referrals with agencies outside DOI.* (1) If a bureau receives a request for records not in its

possession, but which the bureau believes may be in the possession of another Federal agency, the bureau will return your request and advise you to submit it directly to the other agency. If you still believe that the records exist within DOI, you should notify the bureau FOIA contact of any additional information which leads you to believe the records exist and where they might be found. Alternatively, you may treat such a response as a denial of records and file an appeal.

(2) If, in response to a request, a bureau locates documents that originated with another Federal agency, it will refer the request, along with any responsive document(s), to that agency for a release determination and direct response. If the bureau refers the documents to another agency, it will notify you of the referral in writing and provide the name of a contact at the other agency. However, in the following situations, the bureau will make the release determination, after consulting with the originating agency:

(i) When the record is of primary interest to DOI (a record is of primary interest to DOI if it was developed or prepared according to DOI regulations or directives, or in response to a DOI request);

(ii) If DOI is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(iii) If the originating agency is not subject to the FOIA; or

(iv) When it is more efficient or practical depending on the circumstances.

(3) If a bureau receives a request for records which have been classified by another agency under Executive Order 12958, Classified National Security Information, or superseding Executive order, it must refer the request to that agency for response.

§ 2.23 How will a bureau handle a request for commercial or financial information that it has obtained from a person or entity outside the Federal Government?

(a) If a bureau receives a FOIA request for records containing commercial or financial information submitted by a person or entity outside the Federal Government, under Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, or superseding Executive order, the bureau must provide the submitter with prompt written notice of the request, except as provided in paragraph (h) of this section, whenever:

(1) The submitter has designated the information as confidential commercial or financial information, or

(2) The bureau has reason to believe that the information may be protected under exemption (4).

(b) The notice to the submitter will—
(1) Include a copy of the FOIA request.

(2) Describe the information requested or include copies of the pertinent records.

(3) Advise the submitter of the procedures for objecting to the release of the requested material and specify the time limit for responding.

(4) Give the submitter no less than 10 workdays, from receipt (or publication as set forth in paragraph (c) of this section) of the bureau's notice, to object to the release and to explain the basis for the objection, if any.

(5) Advise the submitter that:

(i) Information contained in his/her objections may be subject to disclosure under the FOIA if the bureau receives a FOIA request for it; and

(ii) If the submitter's objections contain commercial or financial information and a requester asks for the objections under the FOIA, the notification procedures of this subsection will apply.

(6) Advise the submitter that it is the bureau, rather than the submitter, that is responsible for deciding whether the information will be released or withheld.

(7) If the submitter designated the material as confidential commercial or financial information 10 or more years before the request, request the submitter's views on whether he/she still considers the information to be confidential.

(c) Where a large number of submitters is involved, the bureau may, rather than providing written notice to each submitter, publish a notice in a manner reasonably calculated to reach the attention of the submitters (e.g., in newspapers/newsletters, the bureau's Web site, or the **Federal Register**).

(d) Whenever a bureau notifies a submitter that he/she may be required to disclose information in response to a FOIA request, it also will notify you that it is giving the submitter an opportunity to review and comment on the material.

(e) If the submitter has any objection to disclosure he/she must submit a detailed written statement including the following:

(1) The justification for withholding any portion of the information under any exemption of the FOIA. In the case of exemption (4), there must be a specific and detailed discussion of:

(i) Whether the Government required the information in question to be submitted, and if so, how substantial

competitive or other business harm would likely result from release; or

(ii) Whether the submitter provided the information voluntarily and, if so, how the information in question fits into a category of information that the submitter customarily does not release to the public.

(2) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is essentially non-public because it is not routinely available to the public from other sources.

(3) If not already provided, a telephone number (where the submitter can be reached during normal business hours, an e-mail address and a fax number (if available). This information is very important to help the bureau or Department communicate with the submitter.

(f) The bureau will review and consider all objections to release that are received within the time specified in the notice to the submitter. However, it is the bureau, rather than the submitter, that is responsible for deciding whether the information should be released or withheld. If a submitter fails to respond to the bureau within the time limits specified in the notice, the bureau will presume that the submitter has no objection to disclosure of the information.

(g) If the bureau decides to release records over the submitter's objections, it will inform the submitter and you in writing. The notice to the submitter will be sent by certified mail, return receipt requested, to the submitter's last known address and will include copies of the records the bureau intends to release and the bureau's reasons for deciding to release them. The notice also will inform the submitter that it intends to release the records 10 workdays after receipt of the notice by the submitter.

(h) The bureau will not consult with the submitter if:

(1) The bureau responsible for the decision determines that the information is exempt from disclosure;

(2) The information has been lawfully published or otherwise made available to the public, such as in response to an earlier FOIA request or if the submitter has made the information public;

(3) Disclosure of the information is required by statute (other than the FOIA) or regulation (other than this subpart);

(4) Disclosure of the information is prohibited by statute; or

(5) The designation of confidentiality made by the submitter appears obviously frivolous. However, the bureau will notify the submitter of any final decision to disclose the

information 15 workdays prior to releasing it.

(i) The bureau will inform the submitter within 10 workdays of the Department's receipt of a court complaint if you file a lawsuit for access to any of the withheld records. Similarly, the bureau will notify you within 10 workdays of the Department's receipt of a court complaint if the submitter files a lawsuit to prohibit the bureau from disclosing the records.

(j) If the bureau determines that the requested information is protected from release by exemption (4) of the FOIA, the bureau has no discretion to release the information as doing so would violate the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

§ 2.24 Is a submitter required to designate information that is commercially or financially sensitive?

No. If in the course of responding to a FOIA request, a bureau cannot readily determine whether the information obtained from a person is commercially or financially sensitive information, the bureau will obtain and consider the views of the submitter of the information and provide the submitter an opportunity to object to any decision to disclose the information.

§ 2.25 How will a bureau handle a request for Federally-funded research data in the possession of a private entity?

When published research findings are produced under a grant or other Federal assistance, and the findings are used by a bureau in developing an agency action, *e.g.*, a policy or regulation, research data related to such findings are considered agency records even if they are in the possession of the recipient of the Federal financial assistance (recipient).

(a) If you submit a FOIA request for such research data, the bureau will require the recipient to provide the information to it within a reasonable amount of time, so the bureau can consider the data for release to the public under the FOIA.

(b) The bureau will notify you that it may charge you for any additional fees incurred as a result of obtaining the research data from the recipient. This fee is in addition to any fees the bureau may charge to process your request under the FOIA.

(c) The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with DOI's FOIA regulations (43 CFR part 2). The recipient will forward a copy of any responsive records that are located, along with his/

her recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data to the appropriate bureau FOIA contact.

(d) The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested data. However, it is the bureau, rather than the recipient, that is responsible for deciding whether the information will be released or withheld.

§ 2.26 Does the bureau provide multitrack processing of FOIA requests?

(a) A bureau may use two or more processing tracks to distinguish between simple and complex requests based on the amount of work and/or time needed to process the request, including the number of pages involved.

(b) If a bureau uses multitrack processing, it will advise requesters in its slower track(s) of the criteria of its faster track(s). For example, a bureau using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the bureau's faster track(s). A bureau doing so will contact the requester by telephone or in writing, whichever is more efficient in each case.

§ 2.27 How will a bureau handle a request for information that is contained in a Privacy Act system of records? (See DOI's Privacy Act regulations (Subpart G of this part) for additional information.)

(a) When you request information pertaining to yourself that is contained in a Privacy Act system of records applicable to you (*i.e.*, the information contained in the system of records is retrieved by the bureau using your name or other personal identifier), the request will be processed under both the FOIA and the Privacy Act. If you request information about yourself, you must submit certain identifying information, usually an original signature (see the appropriate Privacy Act system notice and, Subpart G of this part) before the bureau will process your request. (Note: If you request information about yourself that is not covered by the Privacy Act, *e.g.*, the information may be filed under another subject, such as an organization, activity, event, or an investigation not retrievable by a name or personal identifier, the request will be treated only as a FOIA request.)

(b) The Privacy Act never prohibits disclosure of material that the FOIA requires to be released. Both a Privacy Act and a FOIA exemption must apply to withhold information from you if the information you seek is contained in a

Privacy Act system of records applicable to you.

(c) Sometimes a request for Privacy Act information is submitted by a "third party" (an individual other than the person who is the subject of the Privacy Act record). If you request Privacy Act information about another individual, the material will not be disclosed without prior written approval by that individual unless—

(1) The release is provided for under one of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)), one of which is that Privacy Act information is releasable if it is required to be released under the FOIA, or

(2) In most circumstances, if the individual is deceased. See § 2.8(d)(4).

(d) In handling a request covered by paragraph (a) of this section, the fee provisions and time limits under the FOIA will apply, except that with regard to information that is subject to the Privacy Act, the bureau will charge only for duplication and not for search and review time (see Appendix C to this part). There will be no charge if the fee for processing the request is \$30 or less.

Subpart D—FOIA Appeals

§ 2.28 When may I file an appeal?

(a) You may file an appeal when:

(1) Records or parts of records have been withheld;

(2) The bureau informs you that you have not adequately described the records you are seeking, or that it does not possess responsive records and you have reason to believe it does or you question the adequacy of the bureau's search for responsive records;

(3) A decision has not been made on your request within the time limits provided in § 2.12;

(4) The bureau did not address all aspects of your request for records;

(5) You believe there is a procedural deficiency (e.g., fees are improperly calculated);

(6) A fee waiver has been denied; or

(7) A request for expedited processing has been denied or not responded to on time. (Special procedures apply to this type of appeal (see §§ 2.14, 2.29(c), and 2.32(b)). An appeal of this type relates only to the request for expedited processing and does not constitute an appeal of your underlying request for records.

(b) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response or the bureau's FOIA Officer to see if the issue can be resolved informally. Informal resolution of your concerns may be appropriate where the bureau has not responded to your request or

where you believe the search conducted was not adequate. In this latter instance, you may be able to provide additional information that may assist the bureau in locating records. However, if you wish to file an appeal, it must be received by the FOIA Appeals Officer within the time limits in § 2.29.

§ 2.29 How long do I have to file an appeal?

(a) Appeals covered by §§ 2.28(a)(1), (2), and (4) thru (6). Your appeal must be received by the FOIA Appeals Officer no later than 30 workdays after the date of the final response or 30 workdays after receipt of any records that are provided to you.

(b) Appeals covered by § 2.28(a)(3). You may file an appeal any time after the time limit for responding to your request has passed.

(c) Appeals covered by § 2.28(a)(7). You should file an appeal as soon as possible.

§ 2.30 How do I file an appeal?

(a) You must submit your appeal in writing, *i.e.*, by mail, fax or e-mail, to the FOIA Appeals Officer, U.S. Department of the Interior (see Appendix A for the address). Your appeal must include the information specified in paragraph (b) of this section. Failure to send your appeal directly to the FOIA Appeals Officer may result in a delay in processing.

(b) Your appeal must contain copies of all correspondence between you and the bureau, including your request and the bureau's response (if there is one). DOI will not begin processing your appeal and the time limits for responding to your appeal will not begin to run until these documents are received.

(c) You also should include in as much detail as possible any reason(s) why you believe the bureau's response was in error.

(d) Include your name and daytime telephone number (or the name and telephone number of an appropriate contact), e-mail address and fax number (if available), in case DOI needs additional information or clarification of your appeal.

(e) If you file an appeal concerning a fee waiver denial or a denial of expedited processing, you should, in addition to complying with paragraph (b) of this section, demonstrate fully how the criteria in § 2.19(b) (see Appendix D) or § 2.14(a) are met. You also should state in as much detail as possible why you believe the initial decision was incorrect.

(f) All communications concerning your appeal should be clearly marked

with the words: "FREEDOM OF INFORMATION APPEAL."

§ 2.31 How will DOI respond to my appeal?

(a) Appeals will be decided by the FOIA Appeals Officer. When necessary, the FOIA Appeals Officer will consult other appropriate offices, including the Office of the Solicitor (in the case of all denials of information and fee waivers, and other technical issues as necessary).

(b) The final decision on an appeal will be in writing and will state the basis for DOI's decision as follows:

(1) *Decision to release or withhold records.*

(i) If the FOIA Appeals Officer decides to release the withheld records or portions thereof, he/she will make the records available or instruct the appropriate bureau to make them available as soon as possible.

(ii) If the FOIA Appeals Officer decides to uphold in whole or part the denial of a request for records, he/she will advise you of your right to obtain judicial review.

(2) *Non-possession of records.* If the FOIA Appeals Officer decides that the requested records exist, the bureau that has the records will issue a response to you promptly and the FOIA Appeals Officer will close the file on your appeal. If the FOIA Appeals Officer decides that the requested records cannot be located or do not exist, he/she will advise you of your right to treat the decision as a denial and seek judicial review.

(3) *Non-response to a FOIA request.* If a bureau has not issued an appropriate response to your FOIA request within the 20-workday statutory time limit, the FOIA Appeals Officer will direct the bureau to issue a response directly to you as soon as possible. If the bureau responds to your request within 20-workdays after receipt of the appeal, the FOIA Appeals Officer will close the file on your appeal. Otherwise, the FOIA Appeals Officer will advise you that you may treat the lack of a response by the bureau as a denial of your appeal and seek judicial review.

(4) *Incomplete response to a FOIA request.* If a bureau has not issued a complete response to your FOIA request, the FOIA Appeals Officer will direct the bureau to issue a complete response directly to you as soon as possible, and provide you with the name and telephone number of a contact person. The FOIA Appeals Officer will close your FOIA appeal and advise you that you may treat the incomplete response by the bureau as a denial of your appeal and seek judicial review.

(5) *Procedural deficiencies.* If the FOIA Appeals Officer decides that the bureau was in error, he/she will instruct the bureau to correct the error and advise you accordingly. If the FOIA Appeals Officer decides that the bureau acted properly, he/she will deny your appeal and advise you of your right to seek judicial review.

(6) *Fee waiver denials.* If the decision is to grant your request for a fee waiver, the FOIA Appeals Officer will advise the appropriate bureau of the Department's decision and instruct the bureau to proceed with processing the request or to refund any monies you have paid. If the decision is to deny the fee waiver request, the Department will advise you of your right to seek judicial review. You also should contact the bureau office to make further arrangements to process your request if you still wish to obtain the records.

(7) *Denial of expedited processing.* If the FOIA Appeals Officer decides to grant expedited processing, he/she will direct the bureau to process your request as soon as practicable. If your request for expedited processing is denied on appeal, the FOIA Appeals Officer will advise you of your right to seek judicial review of the denial of expedited processing.

§ 2.32 How long does DOI have to respond to my appeal?

(a) The statutory time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2.30.

(b) If you request expedited processing of your appeal, you must demonstrate to the Department's satisfaction that the appeal meets one of the criteria under § 2.14(a). The FOIA Appeals Officer will advise you whether the Department will grant expedited processing within 10 calendar days of its receipt of your appeal. If the FOIA Appeals Officer decides to grant expedited processing, he/she will give your appeal priority and process it ahead of other pending appeals.

(c) If you have not received a decision on your appeal within 20 workdays, you have the right to seek review in a District Court of the United States (see 5 U.S.C. 552(a)(4) and (6)). In the event that the Department is unable to reach a decision within the given time limits, the FOIA Appeals Officer will notify you of the reason for the delay and the right to seek judicial review.

§ 2.33 How will the Department notify you and the submitter of commercial or financial information when it makes an appeal decision concerning such information?

(a) *Notice of appeal decision.* If the Department decides on appeal to release records over the objections of a submitter who has advised DOI that the information is protected from release by exemption (4), the Department will advise you and the submitter that it intends to release the records 10 workdays after the notice to the submitter regarding the appeal decision.

(b) *Notice of litigation.*

(1) The Department will notify the submitter within 10 workdays of receipt of the court complaint if you file a lawsuit seeking access to any records found on appeal to be protected from release by exemption (4).

(2) The Department will notify you within 10 workdays of receipt of the court complaint if the submitter files a lawsuit requesting the court to prohibit the Department from releasing information it alleges qualifies for protection under exemption (4).

Subpart E—FOIA Annual Report

§ 2.34 Where can I get a copy of DOI's FOIA annual report?

Under 5 U.S.C. 552(e), DOI is required to prepare an annual report regarding its FOIA activities. The report includes information about FOIA requests, appeals, and litigation against the Department. Copies of DOI's annual FOIA report may be obtained from the Departmental FOIA Officer or by contacting DOI's Library which is located at the C Street entrance of the Main Interior Building (MIB), 1849 C Street, NW., Washington, DC 20240 (see Appendix A to this part). You may access the annual reports electronically by visiting DOI's FOIA home page (see Appendix B to this part for the Internet address).

4. Appendices A and B to part 2 are revised and Appendices C through F to part 2 are added to read as follows:

BILLING CODE 4310-RK-P

Appendix A To Part 2—Department of the Interior FOIA/Public Affairs Contacts and Reading Rooms

DEPARTMENTAL

Departmental FOIA Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5342 Fax No. (202) 208-6867	Departmental FOIA Appeals Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5339 Fax No. (202) 208-6677	Departmental Privacy Act Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 219-0868 Fax No. (202) 501-2360
Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room - DOI's Library MIB © Street Entrance) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

OFFICE OF THE SECRETARY

FOIA Officer MS-1413, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6045 Fax No. (202) 208-5048	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Office of Trust Records 6301 Indian School Road NE Suite 300 Albuquerque, NM 87110 Telephone No. (505) 816-1600 Fax No. (505) 816-1612
		Reading Room - DOI's Library MIB © Street Entrance) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773

OFFICE OF AIRCRAFT SERVICES

FOIA Officer PO Box 15428 Boise, ID 83715-5428 Telephone No. (208) 387-5752 Fax No. (208) 387-5830	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room National Interagency Fire Center 2350 W. Robinson Rd. Boise, ID 83705 Telephone No. (208) 387-5750 Fax No. (208) 387-5830
--	--	---

OFFICE OF HEARINGS AND APPEALS (OHA)
HEADQUARTERS

FOIA Officer MS-QC-300 800 North Quincy St. Arlington, VA 22203 Telephone No. (703) 235-3800 Fax No. (703) 235-9014	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room Office of the Director Room 1103, BT #3 4015 Wilson Blvd. Arlington, VA 22203 Telephone No. (703) 235-3800 Fax No. (703) 235-9014
--	--	--

OHA REGIONAL/FIELD OFFICES

Oklahoma State Office 215 Dean McGee Ave., Rm 820 Oklahoma City, OK 73102 Telephone No. (405) 231-4896 Fax No. (405) 231-5568	Minnesota State Office The Court International Bldg. 2550 University Ave., Suite 416N St. Paul, MN 55114 Telephone No. (612) 725-3920 Fax No. (612) 727-2780	Utah State Office Elks Bldg. 139 East South Temple, Suite 600 Salt Lake City, UT 84111 Telephone No. (801) 524-5344 Fax No. (801) 524-5539
California State Office 801 I St., Rm 406 Sacramento, CA 95814 Telephone No. (916) 978-4326 Fax No. (916) 568-7422	New Mexico State Office 1700 Louisiana, NE., Ste 220 Albuquerque, NM 87110 Telephone No. (505) 262-6265 Fax No. (505) 262-6267	

OFFICE OF THE INSPECTOR GENERAL

FOIA Officer MS-5341, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4356 Fax No. (202) 219-1944	Public Affairs Office MS-5060, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4599 Fax No. (202) 219-1944	Reading Room Room 5060, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4599 Fax No. (202) 219-1944
---	--	---

OFFICE OF THE SOLICITOR (SOL)
HEADQUARTERS

FOIA Officer MS-7456, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 208-5206	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room Room 7069, MIB 1849 C St., NW. Washington DC 20240 Telephone No. (202) 208-5763 Fax No. (202) 208-5206
---	--	--

SOL REGIONAL/FIELD OFFICES

<p>Alaska Region Office of the Regional Solicitor 4230 University Dr., Suite 300 Anchorage, AK 99508-4626 Telephone No. (907) 271-4131 Fax No. (907) 271-4143</p>	<p>Northeast Region Office of the Regional Solicitor 1 Gateway Center, Suite 612 Newton Corner, MA 02458-2802 Telephone No. (617) 527-3400 Fax No. (617) 527-6848</p>	<p>Pittsburgh Field Office Office of the Field Solicitor 3 Parkway Center, Suite 385 Pittsburgh, PA 15220 Telephone No. (412) 937-4000 Fax No. (412) 937-4003</p>
<p>Twin Cities Field Office Office of the Field Solicitor Bishop Whipple Federal Building 1 Federal Dr., Rm. 686 Fort Snelling, MN 55111 Telephone No. (612) 713-7100 Fax No. (612) 713-7121</p>	<p>Pacific Northwest Region Office of the Regional Solicitor 500 NE Multnomah St., Suite 607 Portland, OR 97232 Telephone No. (503) 231-2126 Fax No. (503) 231-2166</p>	<p>Billings Field Office Office of the Field Solicitor 316 North 26th St., Rm. 3004 Billings, MT 59101 Telephone No. (406) 247-7583 Fax No. (406) 247-7587</p>
<p>Boise Field Office Office of the Field Solicitor Federal Building, U.S. Courthouse 550 West Fort St., Rm. 365 Boise, ID 83724 Telephone No. (208) 334-1911 Fax No. (208) 334-1378</p>	<p>Pacific Southwest Region Office of the Regional Solicitor 2800 Cottage Way, Rm. E-1712 Sacramento, CA 95825-1890 Telephone No. (916) 978-5670 Fax No. (916) 978-5694</p>	<p>Palm Springs Field Office Office of the Field Solicitor 901 E. Tahquitz Canyon Way Suite C-101 Palm Springs, CA 92262 Telephone No. (760) 416-8619 Fax No. (760) 416-8719</p>
<p>Phoenix Field Office Office of the Field Solicitor Sandra Day O'Connor U.S. Courthouse, Suite 404 401 West Washington Street, SPC 44 Phoenix, AZ 85003-2151 Telephone No. (602) 364-7880 Fax No. (602) 364-7885</p>	<p>Salt Lake City Field Office Office of the Field Solicitor 6201 Federal Bldg. 125 S. State St. Salt Lake City, UT 84138 Telephone No. (801) 524-5677 Fax No. (801) 524-4506</p>	<p>San Francisco Field Office Office of the Field Solicitor 1111 Jackson Street, Suite 735 Oakland, CA 94607 Telephone No. (510) 817-1460 Fax No. (510) 419-0143</p>
<p>Southeast Region Office of the Regional Solicitor 75 Spring St., SW., Suite 304 Atlanta, GA 30303 Telephone No. (404) 331-3441 Fax No. (404) 730-2682</p>	<p>Knoxville Field Office Office of the Field Solicitor 530 Gay St., Rm 308 Knoxville, TN 37902 Telephone No. (865) 545-4294 Fax No. (865) 545-5314</p>	<p>Southwest Region Office Office of the Regional Solicitor 2400 Louisiana Blvd., NE Bldg. 1, Suite 200 Albuquerque, NM 87110-4316 Telephone No. (505) 346-2700 Fax No. (505) 346-2711</p>
<p>Santa Fe Field Office Office of the Field Solicitor Paisano Building 2968 Rodeo Park Drive West Room 2070 Santa Fe, NM 87505 Telephone No. (505) 988-6200 Fax No. (505) 988-6217</p>	<p>Tulsa Field Office Office of the Field Solicitor 7906 E. 33rd Street, Suite 100 Tulsa, OK 74145 Telephone No. (918) 669-7730 Fax No. (918) 669-7736</p>	<p>Rocky Mountain Region Office of the Regional Solicitor 755 Parfet St., Suite 151 Lakewood, CO 80215 Telephone No. (303) 231-5353 Fax No. (303) 231-5363</p>

FISH & WILDLIFE SERVICE (FWS)
HEADQUARTERS

<p>FOIA Officer Arlington Square, Room 222 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-2504 Fax No. (703) 358-2269</p>	<p>Public Affairs Office MS-3447, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5634 Fax No. (202) 208-5850</p>	<p>Reading Room Arlington Square, Room 224 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-1730 Fax No. (703) 358-2269</p>
---	--	---

FWS REGIONAL/FIELD OFFICES

<p>Region 1 (CA, HI, ID, NV, OR, WA) Eastside Federal Complex 911 Northeast 11th Ave. Portland, OR 97232-4181 Telephone No. (503) 231-6188 Fax No. (503) 231-6259</p>	<p>Region 2 (AZ, NM, OK, TX) P.O. Box 1306 500 Gold Ave., SW Albuquerque, NM 87103 Telephone No. (505) 248-6925 Fax No. (505) 248-6459</p>	<p>Region 3 (IA, IL, IN, MN, MO, MI, OH, WI) BHW Federal Building 1 Federal Dr. Fort Snelling, MN 55111-4056 Telephone No. (612) 713-5269 Fax No. (612) 713-5280</p>
<p>Region 4 (AZ, FL, GA, KY, LA, MS, NC, SC, TN, VI, PR) 1875 Century Blvd. Atlanta, GA 30345 Telephone No. (404) 679-4096 Fax No. (404) 679-4093</p>	<p>Region 5 (CT, DC, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VA, VT, WV) 300 West Gate Center Dr. Hadley, MA 01035 Telephone No. (413) 253-8313 Fax No. (413) 253-8461</p>	<p>Region 6 (CO, KS, MT, ND, NE, SD, UT, WY) Asst. Regional Director P.O. Box 25486 Denver Federal Center Denver, CO 80225 Telephone No. (303) 236-8116 Fax No. (303) 236-6958</p>
<p>Region 7 Alaska State Office 1011 East Tudor Rd. Anchorage, AK 99503 Telephone No. (907) 786-3455 Fax No. (907) 786-3847</p>		

NATIONAL PARK SERVICE (NPS)
HEADQUARTERS

<p>FOIA Officer Administrative Program Center Org Code 2605 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 354-1925 Fax No. (202) 371-6741</p>	<p>Public Affairs Office P.O. Box 37127 Washington, DC 20013-7127 Telephone No. (202) 208-6843 Fax No. (202) 219-0910</p>	<p>Reading Room Administrative Program Center 1201 Eye St., NW. 12th Floor Washington, DC 20005 Telephone No. (202) 354-1925 Fax No. (202) 371-6741</p>
--	---	--

NPS REGIONAL/FIELD OFFICES

<p>Alaska Region 2525 Gambell St. Anchorage, AK 99503-2892 Telephone No. (907) 257-2548 Fax No. (907) 257-2533</p>	<p>National Capital Region 1100 Ohio Dr., SW. Washington, DC 20242 Telephone No. (202) 619-7177 Fax No. (202) 619-7062</p>	<p>Pacific West Region 1111 Jackson St., Suite 700 Oakland, CA 94607 Telephone No. (510) 817-1320 Fax No. (510) 817-1325</p>
<p>Intermountain Region P.O. Box 25287 Denver, CO 80225 Telephone No. (303) 969-2062 Fax No. (303) 969-2002</p>	<p>Midwest Region 1709 Jackson St. Omaha, NE 68102 Telephone No. (402) 221-3448 Fax No. (402) 341-2039</p>	<p>Northeast Region U.S. Customs House, 3rd Floor 200 Chestnut St. Philadelphia, PA 19106 Telephone No. (215) 597-7384 Fax No. (215) 597-0065</p>
<p>Southeast Region 100 Alabama St., SW 1924 Building Atlanta, GA 30303 Telephone No. (404) 562-3182 Fax No. (404) 562-3263</p>	<p>Denver Service Center 12795 West Alameda Pkwy. Denver, CO 80225-0187 Telephone No. (303) 969-2131 Fax No. (303) 987-6658</p>	<p>Harpers Ferry Center P.O. Box 50 Harpers Ferry, WV 25425 Telephone No. (304) 535-6276 Fax No. (304) 535-2929</p>

**BUREAU OF LAND MANAGEMENT (BLM)
HEADQUARTERS**

FOIA Officer MS-WO-560 1620 L St., NW., Room 725 Washington, DC 20240 Telephone No. (202) 452-5086 Fax No. (202) 452-5002	Public Affairs Office MS-WO-610 1620 L St., NW., Room 406 Washington, DC 20240 Telephone No. (202) 452-5125 Fax No. (202) 452-5124	Reading Room 1620 L St., NW. - Room 750 Washington, DC 20240 Telephone No. (202) 452-5193 Fax No. (202) 452-0395
--	---	--

BLM REGIONAL/FIELD OFFICES

Alaska State Office 222 West 7 th Ave., # 13 Anchorage, AK 99513-5076 Telephone No. (907) 271-5054 Fax No. (907) 271-3624	Arizona State Office 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9364 Fax No. (602) 417-9556	California State Office Federal Building 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4409 Fax No. (916) 978-4416
Colorado State Office 2850 Youngfield St. Lakewood, CO 80215-7076 Telephone No. (303) 239-3600 Fax No. (303) 239-3933	Eastern States Office 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1634 Fax No. (703) 440-1687	Idaho State Office 1387 South Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3947 Fax No. (208) 373-3904
Montana State Office P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5069 Fax No. (406) 896-5298	Nevada State Office 1340 Financial Blvd. P.O. Box 1200 Reno, NV 89520 Telephone No. (775) 861-6632 Fax No. (775) 861-6411	New Mexico State Office 1474 Rodeo Rd. P.O. Box 27115 Santa Fe, NM 87502-0115 Telephone No. (505) 438-7636 Fax No. (505) 438-7435
Oregon State Office P.O. Box 2965 Portland, OR 97208 Telephone No. (503) 952-6276 Fax No. (503) 952-6308	Utah State Office Box 45155 Salt Lake City, UT 84145-0155 Telephone No. (801) 539-4161 Fax No. (801) 539-4183	Wyoming State Office 5353 Yellowstone Rd. Cheyenne, WY 82009 Telephone No. (307) 775-6066 Fax No. (307) 775-6082
National Interagency Fire Center 3833 South Development Ave. Boise, ID 83705-5354 Telephone No. (208) 387-5360 Fax No. (208) 387-5359	Denver Area Service Center Denver Federal Center Building 50, HR-250 Denver, CO 80225-0047 Telephone No. (303) 236-6362 Fax No. (303) 236-0711	National Training Center 9828 N. 31 st Ave. Phoenix, AZ 85051 Telephone No. (602) 906-5572 Fax No. (602) 906-5619

BLM READING ROOMS

Information Access Center 222 West 7th Ave. #13 Anchorage, AK 99513 Telephone No. (907) 271-5960 Fax No. (907) 271-3624	Information Access Center 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9200 Fax No. (602) 417-9556	Information Access Center 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4401 Fax No. (916) 978-4416
Information Access Center 2850 Youngfield St. Lakewood, CO 80215 Telephone No. (303) 239-3600 Fax No. (303) 239-3933	Information Access Center 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1600 Fax No. (703) 440-1609	Information Access Center 1387 S. Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3889 Fax No. (208) 373-3899
Information Access Center P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5069 Fax No. (406) 896-5298	Information Access Center P.O. Box 12000 1340 Financial Blvd. Reno, NV 89520 Telephone No. (702) 861-6500 Fax No. (702) 861-6606	Information Access Center 1474 Rodeo Rd. Santa Fe, NM 87505 Telephone No. (505) 438-7400 Fax No. (505) 438-7435
Information Access Center P.O. Box 2965 1515 SW Fifth Ave. Portland, OR 97208 Telephone No. (503) 952-6001 Fax No. (503) 952-6422	Information Access Center 324 South State St. Fourth Floor Salt Lake City, UT 84145 Telephone No. (801) 539-4001 Fax No. (801) 539-4230	Information Access Center 5353 Yellowstone Road Cheyenne, WY 82009 Telephone No. (307) 775-6256 Fax No. (307) 775-6129

MINERALS MANAGEMENT SERVICE (MMS)
HEADQUARTERS

FOIA Officer 381 Elden St. MS-2200 Herndon, VA 20170-4817 Telephone No. (703) 787-1132 Fax No. (703) 787-1207	Public Affairs Office Office of Communications 1849 C St., NW MS-0200 Washington, DC 20240 Telephone No. (202) 208-3985 Fax No. (202) 208-3968
---	---

MMS REGIONAL/FIELD OFFICES

Minerals Revenue Management P.O. Box 25165, MS-320B2 Denver, CO 80225-0165 Telephone No. (303) 231-3316 Fax No. (303) 231-3781	Offshore Minerals Management 381 Elden St. MS-4063 Herndon, VA 20170-4817 Telephone No. (703) 787-1689 Fax No. (703) 787-1922	Gulf Of Mexico 1201 Elmwood Park Blvd., MS-5030 New Orleans, LA 70123-2394 Telephone No. (504) 736-2513 Fax No. (504) 736-2977
Alaska 949 East 36 th Ave., Rm 300, MS-800 Anchorage, AK 99508-4302 Telephone No. (907) 271-6621 Fax No. (907) 271-6805	Pacific 770 Paseo Camarillo, MS-7001 Camarillo, CA 93010-6064 Telephone No. (805) 389-7621 Fax No. (805) 389-7689	Southern Administrative Service Center 1201 Elmwood Park Blvd., MS-2620 New Orleans, LA 70123-2394 Telephone No. (504) 736-2878 Fax No. (504) 736-2478
Western Administrative Service Center P.O. Box 25165, MS-2700 Denver, CO 80225-0165 Telephone No. (303) 275-7305 Fax No. (303) 275-7347	Reading Room Public Information Office 1201 Elmwood Park Blvd. New Orleans, LA 70123-2394 Telephone No. (800) 200-GULF Fax No. (504) 736-2602	

**OFFICE OF SURFACE MINING (OSM)
HEADQUARTERS**

FOIA Officer MS-326, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 219-3100	Public Affairs Office MS-262, SIB 1951 Constitution Ave., , NW. Washington, DC 20240 Telephone No. (202) 208-2534 Fax No. (202) 501-0549	Reading Room Contact: OSM FOIA Officer Room 263, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 501-4734
--	---	---

OSM REGIONAL/FIELD OFFICES

Appalachian Region

FOIA Coordinator 3 Parkway Center Pittsburgh, PA 15220 Telephone No. (412) 937-2146 Fax No. (412) 937-2177	Virginia State Office Big Stone Gap Field Office 1941 Neeley Rd., Suite 201 Compartment 116 Big Stone Gap, VA 24219 Telephone No. (540) 523-0000 Fax No. (540) 523-5053	West Virginia State Office Charleston Field Office 1027 Virginia St., East Charleston, WV 25301 Telephone No. (304) 347-7162 Fax No. (304) 347-7170
Ohio, Maryland, Michigan State Office 4480 Refugee Rd., Suite 201 Columbus, OH 43232 Telephone No. (614) 866-0578 Fax No. (614) 469-2506	Massachusetts, Pennsylvania, Rhode Island State Office 415 Market St., Suite 3C Harrisburg, PA 17101 Telephone No. (717) 782-4036 Fax No. (717) 782-3771	Georgia, North Carolina, Tennessee State Office Knoxville Field Office 530 Gay St., Suite 500 Knoxville, TN 37902 Telephone No. (423) 545-4103 Fax No. (423) 545-4111
Kentucky State Office Lexington Field Office 2675 Regency Rd. Lexington, KY 40503 Telephone No. (606) 233-2896 Fax No. (606) 233-2895		

Mid-Continent Region

Iowa, Kansas, Missouri State Office Alton Federal Building 501 Belle St. Alton, IL 62002 Telephone No. (618) 463-6463 Fax No. (618) 463-6470	Alabama, Mississippi State Office Birmingham Field Office 135 Gemini Circle, Suite 215 Homewood, AL 35209 Telephone No. (205) 290-7286 Fax No. (205) 290-7280	Indiana, Illinois State Office Indianapolis Field Office 575 North Pennsylvania St., Room 301 Indianapolis, IN 46204 Telephone No. (317) 226-6700 Fax No. (317) 226-6182
Arizona, Louisiana, Oklahoma, Texas State Office Tulsa Field Office 5100 East Skelly Dr., Suite 470 Tulsa, OK 74135 Telephone No. (918) 581-6430 Fax No. (918) 581-6419		

Western Region

Western Regional Office 1999 Broadway, Suite 3320 Denver, CO 80202 Telephone No (303) 844-1435 Fax No. (303) 844-1522	Arizona, California, New Mexico State Office Albuquerque Field Office 505 Marquette NW., Suite 1200 Albuquerque, NM 87102 Telephone No. (505) 248-5070 Fax No. (505) 248-5081	Idaho, Montana, North Dakota, South Dakota, Wyoming State Office Casper Field Office 100 East B St., Room 2128 Casper, WY 82601-1918 Telephone No. (307) 261-6542 Fax No. (307) 261-6552
FIELD READING ROOMS Contact: OSM FOIA Coordinators at the region/field locations		

U.S. GEOLOGICAL SURVEY (USGS)
HEADQUARTERS

FOIA Officer 12201 Sunrise Valley, Dr., MS-807 Reston, VA 20192 Telephone No. (703) 648-7313 Fax No. (703) 648-7198	Public Affairs Office Office of Communications 12201 Sunrise Valley Dr., MS-119 Reston, VA 20192 Telephone No. (703) 648-4460 Fax No. (703) 648-4466	Reading Room USGS Library 12201 Sunrise Valley Dr. Reston, VA 20192 Telephone No. (703) 648-4302 Fax No. (703) 648-6373
---	---	--

USGS REGIONAL/FIELD OFFICES

Eastern Regional Office 12201 Sunrise Valley Dr., MS-151 Reston, VA 20192 Telephone No. (703) 648-7209 Fax No. (703) 648-4588	Central Regional Office Denver Federal Center Building 53, MS- 201 Room H1927 P.O. Box 25046 Denver, CO 80225 Telephone No. (303) 236-9201 Fax No. (303) 236-5882	Western Regional Office 345 Middlefield Rd., MS-211 Menlo Park, CA 94025-3591 Telephone No. (650) 329-4458 Fax No. (650) 329-5095
---	--	---

BUREAU OF RECLAMATION (BOR)
HEADQUARTERS

FOIA Officer P.O. Box 25007, D-7924 Denver, CO 80225-0007 Telephone No. (303) 445-2048 Fax No. (303) 445-6575	Public Affairs Office P.O. Box 25007, D-1540 Denver, CO 80225-0007 Telephone No. (303) 236-7000 Fax No. (303) 236-9235	Reading Room Reclamation Library P.O. Box 25007, D-7925 Denver, CO 80225-0007 Telephone No. (303) 445-2072 Fax No. (303) 445-6303
---	--	--

BOR REGIONAL/FIELD OFFICES

Great Plains Region P.O. Box 36900, GP-3100 Billings, MT 59107-6900 Telephone No. (406) 247-7620 Fax No. (406) 247-7622	Lower Colorado Region P.O. Box 61470, LC-5301 Boulder City, NV 89006-1470 Telephone No. (702) 293-8071 Fax No. (702) 293-8615	Mid-Pacific Region 2800 Cottage Way, MP-3000 Sacramento, CA 95825-1898 Telephone No. (916) 978-5552 Fax No. (916) 978-5176
Pacific Northwest Region 1150 North Curtis Rd., PN-7600 Boise, ID 83706-1234 Telephone No. (208) 378-5120 Fax No. (208) 378-5129	Upper Colorado Region 125 South State St., Room 6107, UC482 Salt Lake City, UT 84138-1102 Telephone No. (801) 524-3655 Fax No. (801) 524-5499	

BUREAU OF INDIAN AFFAIRS (BIA)
HEADQUARTERS

FOIA Officer MS-4140, MIB, Code 100F 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-2977 Fax No. (202) 208-4807	Public Affairs Office MS-4542, MIB, Code 105 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 219-3710 Fax No. (202) 501-1516	Reading Room Room 2618, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-2977 Fax No. (202) 208-4807
--	--	---

BIA REGIONAL/FIELD OFFICES

Pacific Region (California) 2800 Cottage Way Sacramento, CA 95825 Telephone No. (916) 978-6067 Fax No. (916) 978-6099	Great Plains Region (Nebraska, North Dakota, South Dakota) 115 4 th Ave., SE. Aberdeen, SD 57401 Telephone No. (605) 226-7343 Fax No. (605) 226-7446	Southwest Region (Colorado, New Mexico) 615 First St., NW. Albuquerque, NM 87125 Telephone No. (505) 346-7592 Fax No. (505) 346-7151
Southern Plains Region (Kansas, Western Oklahoma, Texas) WCD Office Complex P.O. Box 368 Anadarko, OK 73005 Telephone No. (405) 247-5059, ext. 221 Fax No. (405) 247-6989	Rocky Mountain Region (Montana, Wyoming) 316 North 26 th St. Billings, MT 59101 Telephone No. (406) 247-7988 Fax No. (406) 247-7566	Eastern Region (Florida, Louisiana, Alabama, Maine, Connecticut, Massachusetts, Rhode Island, Tennessee, Mississippi, New York, North Carolina, South Carolina) 711 Stewarts Ferry Pike Nashville, TN 37214 Telephone No. (615) 467-2931 Fax No. (615) 467-2964
Alaska Region (Alaska) P.O. Box 25520 Juneau, AK 99802-5520 Telephone No. (907) 586-7454 Fax No. (907) 586-7064	Midwest Region (Iowa, Michigan, Minnesota, Wisconsin) One Federal Dr., Room 550 Ft. Snelling, MN 55111 Telephone No. (612) 713-4400, ext. 1182 Fax No. (612) 713-4453	Eastern Oklahoma Region (Oklahoma State Office) 101 North 5 th St. Muskogee, OK 74401 Telephone No. (918) 687-2414 Fax No. (918) 687-2285
Navajo Region (Navajo Reservation only: Arizona, New Mexico, Utah) P.O. Box 1060 Gallup, NM 87305 Telephone No. (505) 863-8240 Fax No. (505) 863-8324	Western Region (Arizona, California, Nevada, Utah) Two Arizona Center 400 N. 5 th St. Phoenix, AZ 85001 Telephone No. (602) 379-6761 Fax No. (602) 379-4057	Northwest Region (Idaho, Oregon, Washington, Metlakatla Alaska) 911 NE 11 th Ave. Portland, OR 97232 Telephone No. (503) 231-2229 Fax No. (503) 231-6731

BILLING CODE 4310-RK-C

Note: For more information on FOIA, including the most current listing of FOIA Contacts, visit DOI's FOIA home page at <http://www.doi.gov/foia/>.

Appendix B to Part 2—Internet Addresses

1. Department of the Interior (DOI) Home Page: <http://www.doi.gov>
2. DOI FOIA Home Page: <http://www.doi.gov/foia/>

3. DOI Reference Guide for Obtaining Information: <http://www.doi.gov/foia/foitabl.htm>
4. List of DOI Public Affairs Offices: <http://www.doi.gov/foia/list.html>
5. DOI FOIA Contacts: <http://www.doi.gov/foia/contacts.html>
6. DOI FOIA Regulations (43 CFR, Part 2, Subparts A and B): <http://www.doi.gov/foia/foiaregs.html>
7. DOI FOIA Policy and Guidance: <http://www.doi.gov/foia/policy.html>
8. Electronic Reading Room: <http://www.doi.gov/foia/readroom.html>

9. Index of Frequently Requested Documents: <http://www.doi.gov/foia/freq.html>
10. DOI's Frequently Requested Documents: <http://www.doi.gov/foia/frindex.html>
11. FOIA Annual Reports to Congress: <http://www.doi.gov/foia/report.html>
12. DOI's Library: <http://library.doi.gov>
13. General Records Schedule 14, Information Services Records: <http://ardor.nara.gov/grs/grs14.html>
14. DOI Records Management Program: <http://www.doi.gov/ocio/records/>

- 15. DOI Privacy Act Program: <http://www.doi.gov/ocio/privacy/>
- 16. DOI Privacy Act Officers: http://www.doi.gov/ocio/privacy/doi_privacy_act_officers.htm
- 17. DOI Privacy Act Regulations: <http://www.doi.gov/foia/43cfrsub.html>
- 18. DOI Privacy Act Systems of Records Notices: http://www.access.gpo.gov/su_docs/aces/1999_pa.html
- 19. FirstGov Portal: <http://www.firstgov.gov>

Note: See DOI's FOIA home page at <http://www.doi.gov/foia/> for the most current listing of FOIA-related website addresses.

Appendix C to Part 2—Fee Schedule

If you submit a FOIA request, the bureau will charge you to search for, review, and duplicate the requested records according to your fee category (see §§ 2.16 and 2.17) and the following fee schedule. In addition, the

bureau will charge you for any special handling or services performed in connection with processing your request and/or appeal under Subparts C and D of this part. The following fees will be used by all bureaus of the Department; these fees apply to services performed in making documents available for public inspection and copying under Subpart B of this part as well. The duplicating fees also are applicable to records provided in response to requests made under the Privacy Act. Fees will not be charged under either the FOIA or the Privacy Act where the total amount of fees for processing the request is \$30 or less (see § 2.16(b)(2)), where the requester has met the requirements for a statutory fee waiver, or where the bureau has granted a discretionary fee waiver (see §§ 2.19 and 2.20).

(1) *Search and review (review applies to commercial-use requesters only).* Fees are based on: the average hourly salary (base

salary plus DC locality payment), plus 16 percent for benefits, of employees in the following three categories. The average grade was established by surveying the bureaus to obtain the average grade of employees conducting FOIA searches and reviews. Fees will be increased annually consistent with Congressionally approved pay increases. Fees are charged in quarter hour increments.

(a) Clerical—Based on GS–6, Step 5, pay (all employees at GS–7 and below)

(b) Professional—Based on GS–11, Step 7, pay (all employees at GS–8 through GS–12)

(c) Managerial—Based on GS–14, Step 2, pay (all employees at GS–13 and above)

Note: Fees for the current fiscal year are posted on DOI's FOIA home page (see Appendix B). If you do not have access to the Internet, please call the Departmental FOIA Officer (see Appendix A) for a copy of the fee schedule.

	Fee
(2) Duplication: Pages no larger than 8.5 × 14 inches, when reproduced by standard office copying machines.	\$.13 per page (\$.26 for double-sided copying)
Color copies of pages no larger than 8.5 × 11 inches	\$.90 per page
Pages larger than 8.5 × 14 inches	Direct cost to DOI
Color copies of pages no larger than 11 × 17 inches	\$1.50 per page
Photographs and records requiring special handling (e.g., because of age, size, or format).	Direct cost to DOI
(3) Electronic records: Charges for services related to processing requests for electronic records	Direct cost to DOI
(4) Certification	Fee
Each certificate of verification attached to authenticate copies of records	\$.25
(5) Postage/Mailing: Charges that exceed the cost of first class postage. Examples of such charges are express mail or overnight delivery.	Postage or Delivery charge
(6) Other Services: Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them.	Direct cost to DOI

Appendix D to Part 2—Fee Waiver Criteria

If you are seeking a fee waiver, it is your responsibility to provide detailed information to support your request. You must submit this information with your FOIA request. You should explain the significance of the release of the information to the public's understanding of the Government's operations and activities based on your understanding of the type of information that you are requesting. Each fee waiver request is judged on its own merit—we do not grant "blanket" fee waivers, *i.e.*, obtaining a fee waiver once does not mean you will obtain a subsequent fee waiver. Please note that inability to pay is not sufficient to justify a fee waiver.

(a) The statutory requirement for granting a fee waiver is that release of the information must be in the public interest because it—

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

(2) Is not primarily in your commercial interest.

(b) In deciding whether you are entitled to a fee waiver, the bureau will consider the criteria in paragraphs (1) through (4), below.

Your request for a fee waiver must address each of these criteria.

(1) How do the records concern the operations or activities of the Government?

(2) If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?

(i) How are the contents of the records you are seeking meaningfully informative on the Department's or a bureau's operations and activities? Is there a logical connection between the content of the records and the operations or activities you are interested in?

(ii) Other than enhancing your knowledge, how will disclosure of the requested records contribute to the understanding of the public at large or a reasonably broad audience of persons interested in the subject?

(iii) Your identity, vocation, qualifications, and expertise regarding the requested information (whether you are affiliated with a newspaper, college or university, have previously published articles, books, etc.) may be relevant factors. However, merely stating that you are going to write a book, research a particular subject, or perform doctoral dissertation work, is insufficient, without demonstrating how you plan to

disclose the information in a manner which will be informative to a reasonably broad audience of persons interested in the subject.

(iv) Do you have the ability and intention to disseminate the information to the general public or a reasonably broad audience of persons interested in the subject?

(A) How and to whom do you intend to disseminate the information?

(B) How do you plan to use the information to contribute to public understanding of the Government's operations or activities?

(3) If there is likely to be a contribution to public understanding, will release of the requested records contribute significantly to public understanding?

(i) Is the information being disclosed new?

(ii) Does the information being disclosed confirm or clarify data which has been released previously?

(iii) How will disclosure increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure?

(iv) Is the information already publicly available? If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a

particular issue (e.g., the listing of the spotted owl as an endangered species), it is less likely that there will be a significant contribution from release.

(4) Would disclosure be primarily in your commercial interest?

(i) Do you have a commercial interest that would be furthered by disclosure? A commercial interest is a commercial, trade, or profit interest as these terms are commonly understood. Your status as "profitmaking" or "non-profitmaking" is not the deciding factor. Not only profitmaking entities, but other organizations or individuals may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(ii) If you do have a commercial interest that would be furthered by disclosure, would disclosure be primarily in that interest?

Would the public interest in disclosure be greater than any commercial interest you or your organization may have in the documents? If so, how would it be greater?

(iii) Your identity, vocation, and the circumstances surrounding your request are all factors to be considered in determining whether disclosure would be primarily in your commercial interest. For example:

(A) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(B) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

(C) If the bureau cannot make a determination based on the information you have provided, it may ask you for additional justification regarding your request.

Appendix E to Part 2—FOIA Exemptions

Under the FOIA (5 U.S.C. 552(b)), there are *nine exemptions* which may be used to protect information from disclosure. The Department has paraphrased the exemptions, below, for your information. The paraphrases are not intended to be interpretations of the exemptions.

(1) National security information concerning national defense or foreign policy, provided that such information has been properly classified, in accordance with an Executive Order;

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

(3) Information specifically exempted from disclosure by statute (other than the Privacy Act or the Trade Secrets Act), provided that such 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;

(4) Trade secrets and commercial or financial information which is obtained from a person and is 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, the release of which:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source;

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

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

(8) Information contained in or related to examination, operating, or condition reports, prepared by, or on behalf of, or for the use of an agency responsible for regulating or supervising financial institutions; and

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

Appendix F to Part 2—Mineral Leasing Act and Mineral Leasing Act for Acquired Lands—Special Rules

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

(1) *Exploration license* means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Mineral Leasing Act, under 30 U.S.C. 201(b), or subject to the Mineral Leasing Act for Acquired Lands, under 30 U.S.C. 351–360.

(2) *Fair-market value of coal to be leased* means the minimum amount of a bid the Secretary is willing to accept in leasing coal within leasing tracts offered in general lease sales or reserved and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of such entities, under 30 U.S.C. 201(a)(1) or 30 U.S.C. 351–360.

(3) *Information* means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources.

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

(1) *Category A.* Information provided to or obtained by a bureau under 30 U.S.C. 201(b)(3) (and corresponding information under 30 U.S.C. 351–360) from the holder of an exploration license;

(2) *Category B.* Information acquired from commercial or other sources under service contract with United States Geological Survey (USGS) under 30 U.S.C. 208–1(b) (and corresponding information under 30 U.S.C. 351–360), and information developed by USGS under an exploratory program authorized by 30 U.S.C. 208–1 (and corresponding information under 30 U.S.C. 351–360);

(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 under 30 U.S.C. 208–1(e) (and corresponding information under 30 U.S.C. 351–360); 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 must 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 must not be withheld from the public; it will be made available by means of and at the time of open filing or publication by USGS.

(3) *Category C—Information.* To the extent Category C information is proprietary, such information must 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.* To the extent Category D information is proprietary, the Department will withhold the information from the public for the length of time the department or agency providing the information agreed to when it obtained the information.

(5) *Category E—Information.* Category E information must 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.

[FR Doc. 02–25970 Filed 10–18–02; 8:45 am]

BILLING CODE 4310-RK-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2228]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on

SAMPLE LETTERS AND OTHER ILLUSTRATIONS

TABLE OF CONTENTS

<u>SAMPLE</u>		<u>PAGE</u>
Illustration 1	Records Do Not Exist (Agency Not Obligated to Create a Record)	1
Illustration 2	Examples of Personal versus Agency Records	2
Illustration 3	10-Workday Time Extension	4
Illustration 4	Clarifying a Vague or Overly Broad Request	5
Illustration 5	Records Cannot Be Located	6
Illustration 6	Interim Response – Delay in Processing Request (Unable to respond to a request within 20-workday period or 10-workday extension)	7
Illustration 7	Referring Requester to Another Agency	9
Illustration 8	Referral of Records to Another Agency for Review and Direct Response (Letter to Agency)	10
Illustration 9	Referral of Records to Another Agency For Review And Direct Response (Letter to Requester)	11
Illustration 10	Referral to Another Bureau	13
Illustration 11	Release of All Documents	14
Illustration 12	Steps for Responding to a FOIA Request	15
Illustration 13	Denial of Records	18
Illustration 14	Consultation with the Submitter	20

TABLE OF CONTENTS

Illustration 15	Notifying Submitter of Agency’s Intent to Release Documents	22
Illustration 16	Response to Requester – Release Over Objections of Submitter (Release of Documents Delayed)	24
Illustration 17	Records Not Yet in Existence	27
Illustration 18	Denial of Expedited Processing	29
Illustration 19	Assurance of Payment	31
Illustration 20	Advance Payment—Delinquent Requester	32
Illustration 21	Advance Payment—Fees over \$250	33
Illustration 22	Determining Category of Requester	34
Illustration 23	Fee Waiver Clarification	35
Illustration 24	Fee Waiver Denial	37

SAMPLE LETTER

RECORDS DO NOT EXIST

(Agency Not Obligated to Create a Record)

(ADDRESS)

Dear _____:

This is in response to your Freedom of Information Act (FOIA) request dated _____ and received in this office on _____. You requested an inventory of Government commercial activities under OMB Circular A-76 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 2.7(d), a bureau is not required to create or compile a record to respond to a FOIA request. The Act applies only to records in the bureau's possession and control as of the date the bureau begins its search for responsive records.

If you consider this response to be a denial of your request, you may file an appeal by writing to the Freedom of Information Act Appeals Officer, U.S. Department of the Interior, 1849 C Street, N.W., MS-5312, MIB, Washington, D.C. 20240. Your appeal must be received no later than 30 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.

If you have any questions concerning your request, please contact (name, and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

EXAMPLES OF PERSONAL VERSUS AGENCY RECORDS

1. A supervisor maintains his/her own personal notes to use as a memory jogger for performance evaluations. They are maintained privately and not circulated to or verbally shared with any other employees. The notes are not required to be kept in official agency files, so that 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 FOIA or Privacy Act. The supervisor created the notes solely for his/her own convenience and he/she is the only one privy to them. If they are passed on to another supervisor, verbally shared, or used wholly or in part to support a performance rating or any personnel action, they will become agency records. Otherwise, the notes are considered personal records and not subject to the provisions of the FOIA or the Privacy Act.

Note: If personal records, e.g., supervisor's notes, are removed from the immediate custody of the supervisor and placed in the official Personnel Files that the Supervisor maintains on employees, they will be subject to the provisions of the FOIA. Once a FOIA request is received, the files cannot be altered.

2. An employee attends a meeting at the Department and takes personal notes to refresh his/her memory on the issues discussed as he/she works on a long-term project. The notes are maintained in a file folder in the employee's desk and are not disseminated to or verbally shared with any other employees or used to conduct agency business. The employee uses the notes solely as a memory jogger. The employee's notes, in this case, are not agency records subject to the provisions of the FOIA or the Privacy Act. The notes would not be considered agency records unless the employee treats them as such by sharing them with others, uses them to support an agency action or conduct business or places them within the bureau's official file on this subject.

3. Every week the Director's secretary prepares a calendar listing the activities for each day of the upcoming week. The calendar is provided to the staff either on paper or via e-mail to inform them of the director's availability.

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

4. A supervisor keeps an appointment calendar on her desk to note upcoming business meetings as well as personal appointments, e.g., lunch with an old schoolmate, doctor's appointment, etc. The secretary may note appointments that have been scheduled for him/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. Exception: Certain calendars are controlled by agency disposition schedules, i.e., those of high-level officials, which would make them agency records.

Note: Those individuals whose calendars are considered agency records may wish to maintain two calendars, one for business and another for personal use.

(NOTE: These are only examples. Records must be considered on a case-by-case basis depending on the circumstances of a particular request.)

SAMPLE LETTER
10-WORKDAY TIME EXTENSION

(ADDRESS)

Dear _____:

This acknowledges your Freedom of Information Act request dated _____ and received in our office on _____. Your request concerns _____. For your information, your request has been assigned FOIA control number: _____. Please refer to this number in future communications with the bureau regarding your request.

(Insert one of the reasons below as appropriate), we are taking a 10-workday extension under the Department of the Interior's FOIA regulations (43 CFR 2.13(a)) in order to properly process your request.

Reason for Time Extension:

1. Due to the need to search for, collect, and examine a voluminous amount of records
2. Due to the need to search for and collect the requested records from multiple offices
3. Due to the need to consult with another agency or other components in the Department

We will send a final reply to you on or before (give the 10-workday projected date). If you have any questions concerning your request, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER

CLARIFYING A VAGUE OR OVERLY BROAD REQUEST

(ADDRESS)

Dear _____:

This letter is in response to your Freedom of Information Act request dated _____ and received in our office on _____. Your request concerns _____.

In accordance with the Department's FOIA regulations (43 CFR 2.8(a)), a FOIA requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate the responsive records with a reasonable amount of effort. Your request does not meet this requirement. Because of the broad and general nature of your request, we are unable to identify which records are being sought.

Please be as specific as possible concerning the type of documents you are requesting. If you know, please include the date, title or name, author, recipient, and subject matter of the records you are seeking. Additionally, please identify the geographical location and timeframe for which you are seeking records. It is unclear whether your request covers only records in the bureau's headquarters or in its field offices as well.

We will not proceed further with your request until we receive additional clarification from you. In accordance with our regulations (43 CFR 2.8(a)(3)), if we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request. If you have any questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
RECORDS CANNOT BE LOCATED

(ADDRESS)

Dear _____:

This is in response to your Freedom of Information Act (FOIA) request dated _____ and received in this office on _____. In your request you sought _____. We have conducted a thorough search of our files and were unable to locate any records responsive to your request. (*Explain to the requester why there are no responsive records if appropriate.*)

If you consider this response to be a denial of your request under 43 CFR 2.28(a)(2), you may file an appeal by writing to:

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior
1849 C Street, NW
MS-5312, MIB,
Washington, D.C. 20240.

Your appeal must be received no later than 30 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 words "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 that responsive records do in fact exist, including where they might be found, if the location is known to you.

If you have any questions concerning your request, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER

INTERIM RESPONSE - DELAY IN PROCESSING REQUEST
(Unable to respond to a request within 20-workday period or 10-workday extension)

(ADDRESS)

Dear _____:

This letter is in response to your Freedom of Information Act (FOIA) request dated _____ and received in our office on _____. Your request concerns _____.

Examples of a possible explanation follow below:

- (1) 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. We expect to complete our response to you by (SPECIFIC DATE).
- (2) 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.
- (3) 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 that can be released will be made available at the earliest possible date.
- (4) The records you requested are located in our field offices 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.

- (5) In accordance with 43 CFR 2.23(a), when the Department of the Interior receives a FOIA request that seeks commercial or financial information submitted to the Government by an outside party, the Department is required to consult with the submitter of the information. The submitter we contacted regarding your request has taken longer than anticipated to review the material. We expect to hear from the submitter 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:

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior,
1849 C Street, NW
MS-5312, MIB,
Washington, D.C. 20240.

Your appeal must be received no later than 30 workdays after the date of this letter. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the 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, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
REFERRING REQUESTER TO ANOTHER AGENCY

(ADDRESS)

Dear _____:

This letter is in response to your Freedom of Information Act (FOIA) request dated _____ and received in our office on _____. In your request you sought records regarding _____.

The records you are seeking are not within the Department of the Interior's possession and control. Therefore, we are unable to provide you with these records (43 CFR 2.7(d)(1)). It is possible that they may be located at (name of agency). You may wish to contact (name of agency) if you have not done so already. Any FOIA requests to that agency should be directed to the following address:

(Name of FOIA Officer, Agency, Address, and Phone Number)

If you consider this response to be a denial of your request, you may file an appeal by writing to:

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior
1849 C Street, NW
MS-5312, MIB,
Washington, D.C. 20240.

Your appeal must be received no later than 30 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.

Should you have further questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
REFERRAL OF RECORDS TO ANOTHER AGENCY
FOR REVIEW AND DIRECT RESPONSE
(Letter to Agency)

(ADDRESS)

Dear _____:

While processing a Freedom of Information Act request from (Name of Requester), dated _____, the (Name of Bureau) located (number) documents that originated in your agency. The documents are listed below:

(Description of Documents)

Enclosed are copies of those documents. We have advised (Name of Requester) that he/she will receive a direct response from your office.

If you have any questions concerning this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosures

cc: (Name and Address of Requester)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER

REFERRAL OF RECORDS TO ANOTHER AGENCY
FOR REVIEW AND DIRECT RESPONSE
(Letter to Requester)

(ADDRESS)

Dear _____:

This letter is in response to your Freedom of Information Act (FOIA) request dated _____ and received in our office on _____. In your request you sought records regarding _____.

While processing your request, the (Name of Bureau), located (number) documents that originated with the (Name of Agency). In accordance with the Department of the Interior's FOIA regulations (43 CFR 2.22(b)(2)), we are referring the documents to (Name of Agency) for a direct response. If you wish to contact that agency concerning your request, the mailing address is:

(Name of FOIA Officer, Agency, Address, and Telephone Number)

If you consider this response to be a denial of your request, you may file an appeal by writing to the:

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior
1849 C Street, NW
MS-5312, MIB,
Washington, D.C. 20240.

Your appeal must be received no later than 30 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 a brief statement of the reasons why you believe this initial decision to be in error

Should you have further questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosure (Letter to Agency)

cc: (Name and Address of FOIA Officer at the Other Agency)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
REFERRAL TO ANOTHER BUREAU

(ADDRESS)

Dear _____:

This letter is in response to your Freedom of Information Act (FOIA) request dated _____ and received in our office on _____. In your request you sought records regarding _____.

We have determined that the records described in your letter may be located at (Name of Bureau), Department of the Interior. Therefore, we have forwarded your request to that bureau which will provide you with a direct response. If you wish to contact the bureau, the mailing address is:

(Name of FOIA Officer, Bureau, Address, and Telephone Number)

Should you have further questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
RELEASE OF ALL DOCUMENTS

(ADDRESS)

Dear _____:

This is in response to your Freedom of Information Act (FOIA) request dated _____ and received in this office on _____. In your request you sought documents regarding _____.

In response to your request, the (Name of Bureau) located (number of) documents which we are providing to you in their entirety (see documents and list enclosed). The fee for providing these documents is less than \$30 and is not being charged in accordance with 43 CFR 2.16(b)(2) and 2.18(a).

If you have any questions concerning your request, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosures

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

STEPS FOR RESPONDING TO A FOIA REQUEST

1. Know and follow the Department's regulations; apply them fairly.
2. Read the request.
 - A. Is it a request for records (i.e., a FOIA request) or a request for information (i.e., a public inquiry)? Questions can be considered a request for records when the bureau possesses records that contain answers to those questions.
 - 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, taking into account 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. Resolve questions about fees with the requester. Fee issues should be resolved before the bureau begins to search for responsive records.
 - A. Has the requester indicated a willingness to pay the cost of searching for, reviewing (this applies only to commercial-use requesters), and copying the records? If not, advise the requester of the estimated fees associated with processing the request (itemize the costs) (43 CFR 2.18(b)(i)). Notify the requester that the time limits for processing the request will not begin until written assurance is received.
 - B. Has the requester asked for a fee waiver? Does he/she qualify for a fee waiver under 43 CFR 2.19? If the fee waiver request is denied, notify the requester of the procedures and time limits for appealing the fee waiver denial to the FOIA Appeals Officer. If the requester did not indicate his/her willingness to pay the fees, advise the requester of the estimated fees and that the time limits for processing the request will not begin until written assurance is received or the Department grants the fee waiver on appeal.

(NOTE: When you work on a 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.)

C. Are the fees to process the request \$30 or less? If the fees are \$30 or less, the bureau normally will not charge the requester (43 CFR 2.16(b)(2)).

5. 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 the bureau's search for the records adequate and sufficient to ensure that all records within the scope of the request were identified and located?

6. Decide whether expedited processing is appropriate. Has the requester asked for expedited processing of his/her request and provided adequate justification (including the required certification statement) to qualify for it (43 CFR 2.14(c))? If expedited processing is denied, notify the requester of the basis for the denial and the procedures and time limits for appealing the denial of expedited processing to the FOIA Appeals Officer.

7. Decide whether a 10-workday time extension is appropriate to properly process the request.

8. Review the records.

A. 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? Has the bureau carefully considered the institutional (the Government), commercial (business entities) and personal privacy (individuals) interests that might be impacted by disclosure?

9. Consult with the designated FOIA attorney before denying a requested record, making a discretionary release of an exempt record, or denying a fee waiver.

10. Prepare the records for disclosure/nondisclosure, segregating exempt records or portions of records from nonexempt records or portions.

A. Redact (delete) any exempt information. Indicate in the area of the deletion, the exemption used to withhold the information or if all deletions on a document

are covered by one or more exemptions, annotate them on the document (e.g., all deletions are covered by exemptions 5, 6 and 7(C)).

B. Duplicate--one readable redacted copy to be released, one readable redacted copy to be retained for file purposes and in case of an appeal.

11. Prepare letter to requester:

A. Enclose the records, or notifying the requester when and where records will be available for inspection or when and how copies will be provided if they are not enclosed;

B. Estimate the volume of records or portions withheld, explaining the reasons for the denial and citing the applicable exemption(s) authorizing the withholding (43 CFR 2.21(d)(2));

C. Include the names and titles or positions of each person responsible for the denial and the name and title of the SOL attorney consulted (43 CFR 2.21(d)(5)) (the names of any other individuals consulted in the review process also may be included); and

D. Provide the procedures and time limits for appealing the denial to the FOIA Appeals Officer and the mailing address (the name of the FOIA Appeals Officer, and his/her fax and e-mail address also may be included).

12. Prepare the Bill for Collection Form if appropriate (when a fee has been assessed).

13. Issue the response, enclosing records to be disclosed and the Bill for Collection Form (if appropriate).

A. Maintain one copy of the response, records released, 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 that identifies the records to be made available to the SOL in the event of an appeal or litigation.

SAMPLE LETTER
DENIAL OF RECORDS

(ADDRESS)

Dear _____:

This responds to your Freedom of Information Act (FOIA) request dated (1) , in which you requested copies of certain documents relating to (2) . Your request was received in this office on (3) . The (Name of Bureau/Office) located (number of) documents responsive to your request which we are enclosing with the following exceptions:

Select one of the paragraphs below:

- Certain documents (identify specific material or records withheld) are being withheld (33 pages) 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 decision making process. Therefore, we are 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." **(4), (5) & (6)**
- The names, home addresses and telephone numbers, and social security numbers of the individuals have been deleted (item 1 on each page – 10 pages of material). The Department maintains that the individuals identified in the records have privacy interests in withholding 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 interests of the subject individuals. The release of the individuals' names, addresses, and social security numbers would be a violation of their privacy. Therefore, we are withholding this information under 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." **(4), (5) & (6)**

In addition to myself, the official(s) responsible for this partial denial are (name(s), title(s), and organization(s) of official(s)). This decision was made in consultation with (Name of the Attorney and Division, Region or Field Office), Office of the Solicitor. In accordance with 43 CFR 2.28(a)(1), you may appeal this partial denial to: **(7) & (8)**

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior
1849 C Street, NW
MS-5312, MIB
Washington, D.C. 20240.

Your appeal must be in writing and received no later than 30 workdays after the date of this letter or 30 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. **(9)**

The fee incurred in responding to your request is less than \$30 and is not being charged in accordance with 43 CFR 2.16(b)(2). **(10)**

If you have any questions, please call (name and telephone number of someone familiar with the request). **(11)**

Sincerely,

(Name, Title, and Bureau)

Enclosures

Elements of the Letter

- (1) Date of request
- (2) Description of requested records
- (3) Date letter received (include if delayed)
- (4) Justification for denial
- (5) Volume of information withheld
- (6) Denial authority - exemption
- (7) Denial officials
- (8) Name & title of attorney consulted
- (9) Appeal procedures
- (10) Fees
- (11) Contact

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER

CONSULTATION WITH THE SUBMITTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(ADDRESS)

Dear _____:

This is in regard to a Freedom of Information Act (FOIA) request from _____, dated _____, and received in this office on _____. The request is for documents concerning _____(see enclosed FOIA request). In response to (Name of Requester's) request, the bureau located several documents (see enclosed) that contain information that your company submitted to the Government.

To assist us in determining whether this information should be released, we need your firm's views on which of these documents, if any, are protected (in whole or in part) from disclosure under the FOIA (5 U.S.C 552(b)). If you recommend that any of this information be withheld, please provide us with the following:

- (1) The data to be withheld and the justification for withholding any portion of the information under the FOIA. In the case of exemption 4, you must provide a specific and detailed discussion of:
 - Whether the Government required the information in question to be submitted and, if so, how substantial competitive or other business harm would likely result from release of this information; or
 - Whether you provided the information voluntarily and, if so, a statement that you customarily do not release this type of information to the public.
- (2) A certification that the information is confidential, has not been disclosed to the public by your company, and is essentially non-public because it is not routinely available to the public from other sources.

- (3) A telephone number where you can be reached during normal business hours, an email address, and a fax number, if not already provided, in the event the bureau needs to contact you.

Please review the enclosed materials and submit any recommendations you may have concerning disclosure of the information within 10 business days from the date of receipt of this letter. If we do not hear from you within 10 business days, we will presume that you have no objection to disclosure of the information (43 CFR 2.23(f)). Please note that your comments may be subject to disclosure under the FOIA if the bureau receives a FOIA request for them. In the event your comments contain commercial or financial information and a requester asks for the comments under the FOIA, you will be notified and given the same opportunity to comment that you have been given in this instance. If you have any questions regarding this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosures

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER

NOTIFYING SUBMITTER OF AGENCY'S INTENT TO RELEASE DOCUMENTS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(ADDRESS)

Dear _____:

Thank you for your letter dated _____, in which you objected to the bureau's disclosure of (Name of Company's) contract proposal and related correspondence for Contract No. _____.

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 (explain why the information is being released)–Examples:

1. Contract Award Amount. The total amount of the contract awarded to (Name of Company) and the total amount of the two modifications subsequently issued to the contract are a matter of public record and thus releasable under the FOIA. The public has a right to know the cost of doing business with the Government.

2. Name of the President/CEO of the Company - (Name of Company) is a publicly-owned company, therefore, this information is published in the company's annual report. Because 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 (Name of Company) substantial competitive harm. The

bureau plans to release this information (copies enclosed) to the requester 10 workdays from the date of receipt of this letter. If you have any questions regarding this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosures

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER

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

(ADDRESS)

Dear _____:

This letter is in response to your Freedom of Information Act (FOIA) request dated _____, in which you seek access to records concerning (Subject of Request). The records that are responsive to your request contain information that was submitted to the Government by (Name of Company). (Name of Company) has advised the bureau that it considers all of its information in the documents to be confidential commercial information that is protected from disclosure by exemption (4), which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)).

After considering (Name of Company's) objections and reviewing the material, we disagree with (Name of Company) in part, and have concluded that some of the information is not protected from disclosure. We intend to release this information to you 10 workdays after (Name of Company's) receipt of our (date of) letter notifying the company of our intent to disclose the information (see 43 CFR 2.23(g)). This 10-workday timeframe offers (Name of Company) an opportunity to initiate legal action to prevent disclosure of the information.

(Name of Bureau) agrees with (Name of Company) in part, and concludes that disclosure of the following confidential commercial information will cause substantial competitive harm to the company, and are withholding it under exemption 4 of the FOIA. (List items to be withheld and explain why the information is protected.) Examples:

1. Information concerning the qualifications, skills, educational background and past experience of the company's executive officers. Release of this data could encourage corporate raiding and would be detrimental to the internal operations and productivity of the company (Items 1-10) - 25 pages withheld.

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 offerers become reluctant to furnish such information for fear of disclosure by the Government (Items 20-30) - 10 pages withheld.

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) – 5 pages withheld.

Since it has been determined that you are a commercial-use requester, the fee for processing your request is calculated as follows - Example:

	Total # of Units	Unit Charges	Amount
Document Search/Review:			
Managerial			
Professional	8 hours	(Insert rate from	
Clerical		fee chart)	
Duplication:	55 pages	\$.13	\$7.15
		TOTAL	_____

You will be billed accordingly.

This decision was made in consultation with (Name of the Attorney and Division), Office of the Solicitor.

In accordance with 43 CFR 2.28(a)(1), you may appeal this partial denial of your request by writing to:

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior
1849 C Street, NW
MS-5312, MIB,
Washington, D.C. 20240.

Your appeal must be received no later than 30 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 a brief statement of the reasons why you believe this initial decision to be in error.

If you have any additional questions regarding this matter, contact (name and telephone number)

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
RECORDS NOT YET IN EXISTENCE

(ADDRESS)

Dear _____:

This is in response to your Freedom of Information Act (FOIA) request dated _____, regarding _____. Your request was received in this office on _____.

In accordance with the Department of the Interior's regulations (43 CFR 2.7(d)(1)), in order for a record to be considered subject to a FOIA request, it must be in the possession and control of the Department at the time it begins its search for records. This regulation imposes no obligation on the Department to place a FOIA requester's name on a mailing list for automatic receipt of any kind of records as they become available.

The documents you requested do not exist at the present time (*Explain why*). However, we anticipate that the records may be created after (specify a date). You may wish to resubmit your request at that time.

If you interpret this response to be a denial of your request, you may file an appeal by writing to:

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior
1849 C Street, NW
MS-5312, MIB,
Washington, D.C. 20240.

Your appeal must be received no later than 30 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 are available, including where they might be found, if the location is known to you.

If you have any questions regarding this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
DENIAL OF EXPEDITED PROCESSING

(ADDRESS)

Dear _____:

This is in response to your Freedom of Information Act (FOIA) request dated _____, and received in this office on _____. In your request, you sought records regarding _____.

In your letter you also requested expedited treatment of your request. In accordance with the FOIA (5 U.S.C. 552) and the Department of the Interior's FOIA regulations (43 CFR 2.14), it is the policy of the Department to grant requests for expedited processing whenever it is determined that they involve:

- (1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (2) Circumstances in which there is an urgency to inform the public about an actual or alleged Federal Government activity (if the FOIA request is made by a person primarily engaged in disseminating information). This refers to information that has particular value that will be lost if not disseminated quickly, and ordinarily refers to a breaking news story of general public interest. Information of historical interest only, or information sought for litigation or commercial activities, would not qualify, nor would a news media deadline unrelated to breaking news; or
- (3) The loss of substantial due process rights.

You state that you are requesting expedited treatment (Explain why) (*Sample - in order to protect the due process rights of the public in connection with the Department's proposal to list the Atlantic salmon in certain Maine rivers.*) However, your letter did

not provide adequate justification to support your argument. Therefore, consistent with the Department's FOIA regulations (43 CFR 2.14), the bureau is denying your request for expedited processing.

Since we process requests in the order they are received, we will begin processing your request as soon as it comes up in the queue.

Under 43 CFR 2.28(a)(7), you may appeal the denial of your request for expedited processing by writing to:

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior
1849 C Street, NW
MS-5312, MIB,
Washington, D.C. 20240.

Your appeal must be received as soon as possible 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 a brief statement of the reasons why you believe this initial decision to be in error.

If you have any questions concerning this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
ASSURANCE OF PAYMENT

(ADDRESS)

Dear _____:

This responds to your Freedom of Information Act (FOIA) request dated _____, and received in our office on _____. In your request, you sought _____.

The estimated fee for processing your request is [insert \$ amount], calculated as follows: [insert # of pages] pages of duplication at \$.13 per page and [insert # of hours] hours of [search / review--if applicable] time at [insert rate – see fee chart] 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/fax/email 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. If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request. If you have any questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER

ADVANCE PAYMENT – DELINQUENT REQUESTER

(ADDRESS)

Dear _____:

This responds to your Freedom of Information Act (FOIA) request dated _____, and received in this office on _____. In your request, you sought _____.

The estimated fee for processing your request is [insert \$ amount], calculated as follows: [insert # of pages] pages of duplication at \$.13 per page and [insert # of hours] hours of [search / review—if applicable] time at [insert rate – see fee chart] per hour. Moreover, our records show that you owe a balance of [insert amount], including interest penalties, on a previous request dated _____ to (name of office). Under the Department of the Interior’s regulations (43 CFR 2.18(c)(2)), you must pay your delinquent fees or prove you have paid them and make an advance payment of the fees for this request before we will start processing it. If you wish, you may modify your current request to reduce the fees and amount owed. The total amount owed is [insert amount].

Please send a check or money order made payable to the Department of the Interior [or insert the name of your Bureau] to [insert address where payment is to be mailed] or let us know if the [insert amount] has been paid. We will not start processing your request until this issue is resolved. If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request.

If you have any questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER

ADVANCE PAYMENT – FEES OVER \$250

(ADDRESS)

Dear _____:

This is in response to your Freedom of Information Act (FOIA) request dated _____, and received in this office on _____. In your request, you sought _____.

Our initial estimate of the cost for the bureau to process your request is [insert \$ amount], calculated as follows: [insert # of pages] pages of duplication at \$.13 per page and [insert # of hours] hours of [search/review--if applicable] time at [insert rate – see fee chart] per hour. Because this exceeds \$250, and we [do not have a record that you have paid fees in the past] [or] [you did not pay a previous fee promptly], you must make an advance payment of the full amount of the estimated fee for this request (43 CFR 2.18(c)).

If you are still interested in obtaining these documents, please send a check or money order made payable to the Department of the Interior [or insert the name of your Bureau] to [insert address where payment is to be mailed]. Please note that it is possible that the cost to process your request could exceed the total estimated above. If this occurs, we will stop processing your request. We then will notify you of the higher amount and ask that you provide written assurance of payment of the higher amount before we resume processing your request. It also is possible that the cost could be less than our estimate. In that event, we will provide you a refund after completing our response.

In accordance with the Department's FOIA regulations (43 CFR 2.18(c), 2.18(d), and 2.12(b)), we will not begin processing your request until payment is received. If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request. Please note that you have the option of modifying your request to reduce the fee.

If you have any questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
DETERMINING CATEGORY OF REQUESTER

(ADDRESS)

Dear _____:

This responds to your Freedom of Information Act (FOIA) request dated _____, and received in our office on _____. In your request you sought _____.

In your letter you stated that you [insert information from letter about the requester's vocation or category and explain why you need more information and what type of information you need]. *Example: In your letter, you stated that you are a freelance journalist. However, you did not provide sufficient evidence for the bureau to make a determination as to whether you qualify as a "freelance journalist" for the purpose of assessing fees. Explain your affiliation with a news organization(s). You also should explain any history of publication in the news media that may indicate a solid basis for expecting publication.*

In accordance with our regulations (43 CFR 2.17(b)), we will not proceed further with your request until we hear from you. If we do not receive a response from you within 20 workdays of the date of this letter, we will close the file on your request. If you have any questions regarding this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
FEE WAIVER CLARIFICATION

(ADDRESS)

Dear _____:

This responds to your Freedom of Information Act (FOIA) request dated _____, and received in this office on _____. In your request, you sought records regarding _____.

In your letter, you also requested a fee waiver. However, you did not provide sufficient justification to qualify for a fee waiver under the Department's FOIA regulations (43 CFR Part 2, Appendix D). The statutory requirement for granting a fee waiver is that release of the information must be in the public interest because it—

- (1) Is likely to contribute significantly to public understanding of the operations and activities of the Government; and
- (2) Is not primarily in your commercial interest.

To assist us in making a decision on your request for a fee waiver, we ask that you address the following as applicable. You must be specific in addressing the Department's fee waiver criteria for each request you submit, regardless of whether you may have been granted a fee waiver previously.

- (1) Explain how the records you are seeking will be meaningfully informative with respect to the bureau's operations and activities. Your identity, vocation, qualifications, and expertise regarding the requested information may be relevant factors.
- (2) Explain how disclosure of the records will contribute to the understanding of the public at large or a reasonably broad audience as opposed to only enhancing your knowledge.
- (3) Explain how and to whom you intend to disseminate the information and how you intend to use the information to contribute to public understanding.
- (4) Explain how release of the requested records will contribute significantly to public understanding. For example, is the information being disclosed new, does the information confirm or clarify data released previously, and is the

information publicly available? Explain how disclosure will increase the level of public understanding that existed prior to disclosure.

- (5) Explain whether you have a commercial interest that would be furthered by disclosure and if so, whether the public interest in disclosure would be greater than any commercial interest you or your organization would have in the documents.

If you are still interested in obtaining these documents, please provide additional information to justify your fee waiver request or written assurance of your willingness to pay all fees or specify the maximum amount that you are willing to pay for the bureau to process your request. This will allow us to begin processing your request for records while considering your fee waiver request. If the bureau grants your fee waiver request, we will not charge fees to the extent that it grants the waiver. If you have agreed to pay fees up to a particular amount, we will contact you when we have processed your request up to that amount before proceeding further. If we do not hear from you by [insert date – 5/10 workdays after bureau’s receipt of request and, in any event, within a timeframe that will allow the bureau to respond to the fee waiver request within the statutory time limit],* we will deny your fee waiver request since it does not meet DOI’s fee waiver criteria. We will then close the file on your FOIA request.

If you have any questions concerning this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

***Please note--The bureau must make a determination on the fee waiver request within the statutory time limit, i.e., 20 workdays after receipt of the request by the appropriate FOIA contact. If the requester has not submitted any additional justification by the date specified in the letter, the bureau must deny the fee waiver request within the statutory time limit.**

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

SAMPLE LETTER
FEE WAIVER DENIAL

(ADDRESS)

Dear _____:

This responds to your Freedom of Information Act (FOIA) request dated _____, and received in this office on _____. In your request, you sought records regarding _____.

In your letter, you also requested a fee waiver. The FOIA permits documents to be furnished without charge or at a reduced charge if disclosure of the information--

- (1) Is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the Government, and
- (2) Is not primarily in your commercial interest.

The Department considers the following factors (see 43 CFR Part 2, Appendix D) in deciding whether you are entitled to a fee waiver:

- (1) How do the records concern the operations or activities of the Government?
- (2) If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?
- (3) If there is likely to be a contribution to public understanding, will release of the requested records contribute significantly to public understanding?
- (4) Would disclosure be primarily in your commercial interest?

Your request does not contain sufficient justification to support a fee waiver. Although your request fulfills the requirements of the first factor, i.e., it concerns the operations of the (Name of Bureau), it does not meet the second factor. Based on the information you provided in your letter, (Explain reason why it does not meet the factor] - *Example - We are unable to determine how disclosure of the requested records will contribute to the general public's understanding of the bureau's employment practices, as opposed to the understanding of a narrow segment of interested persons, in particular, applicants for employment with the bureau. Also, you have not demonstrated how you intend to disseminate the information to the general public or how you intend to use it to increase*

the level of public understanding of the bureau's operations that existed prior to disclosure.) Therefore, we are denying your request for a fee waiver under 43 CFR 2.19.

We have determined that you are a [insert category of requester] for the purpose of assessing fees (see 43 CFR 2.17). Based on that category, we estimate that the fee for the bureau to process your request is [insert \$ amount], calculated as follows: [insert # of pages] pages of duplication at \$.13 per page and [insert # of hours] hours of [search / review--if applicable] time at [insert rate – see fee chart] per hour. If you want us to continue processing your request, please furnish written assurance of your willingness to pay the full amount of the estimated fee to [insert name of individual and address/fax/email where assurance is to be sent].

You may wish to modify your request to reduce the fee at this time [Insert information on how it might be narrowed.] *Example - We would be happy to provide a random sampling of consultation communications from all the regions as well as any logs that exist showing informal and formal consultations. You may also consider narrowing your request to a more recent time frame than the last six years or to communications from specific companies.* Please feel free to call us if you need assistance in narrowing the scope of your request.

This decision was made in consultation with (Name of the Attorney and Division), Office of the Solicitor. Under 43 CFR 2.28(a)(2), you may appeal the denial of your fee waiver request by writing to:

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior
1849 C Street, NW
MS-5312, MIB,
Washington, D.C. 20240.

Your appeal must be received no later than 30 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. You also should include in as much detail as possible the reason(s) why you believe the bureau's response is in error.

We will not begin processing your request until we receive written notification from you in response to this letter. If we do not hear from you within 20 workdays of the date of

this letter, we will assume you are no longer interested in this matter and will close the file on your request. If you have any questions concerning this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)

PRIVACY ACT SYSTEM OF RECORDS NOTICE DOI-71
ELECTRONIC FOIA TRACKING SYSTEM AND FOIA CASE FILES – INTERIOR

4/22/04 #383A-2
Replaces 3/28/91 #383A-1

[Federal Register: September 18, 2002 (Volume 67, Number 181)]

[Notices]

[Page 58817-58819]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr18se02-106]

=====

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Amendment of an Existing System
of Records

AGENCY: Department of the Interior.

ACTION: Proposed amendment of an existing system of records.

SUMMARY: The Department of Interior (DOI) is issuing public notice of its intent to amend a Departmentwide Privacy Act (PA) system of records in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). DOI-71, ``Freedom of Information Request Files System--Interior, is being amended due to the fact that the Department is consolidating data from systems (both paper and electronic) maintained by individual bureaus and offices within DOI into a centralized electronic database. The new electronic Freedom of Information Act tracking system (EFTS) will contain information on Freedom of Information Act (FOIA) and PA requesters and their requests for records or information, appeals, and related litigation. All of the fields in the PA system of records notice, DOI-71, have been revised. This includes changing the name of the system to ``DOI-71: Electronic FOIA Tracking System and FOIA Case Files--Interior,' ' DOI-71.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended

use of the information in the system of records. The Office of Management and Budget, in its Circular A-130, requires an additional 10-day period (for a total of 40 days) in which to make these comments.

Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Departmental Privacy Act Officer, U.S. Department of the Interior, Office of the Chief Information Officer, Mail Stop (MS)-5312-Main Interior Building (MIB), 1849 C Street NW., Washington, DC 20240, or by e-mail to Marilyn--Legnini@ios.doi.gov. Comments received within 40 days of publication in the Federal Register will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: Alexandra Mallus, Office of the Chief Information Officer, Office of the Secretary, by phone at 202-208-5342, by email at Alexandra--Mallus@ios.doi.gov or by

[[Page 58818]]

mail at MS-5312-MIB, 1849 C. St. NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: SUPPLEMENTARY INFORMATION AND PURPOSE: The Interior EFTS will contain information on individuals for the purposes of managing and processing FOIA and PA requests. This system will: (1) Enable the Department to administer the program more efficiently while ensuring requests are responded to in a more timely fashion; (2) support action on FOIA requests, appeals, and litigation; (3) ensure documents are released in a more consistent manner; (4) assist in eliminating the duplication of effort that currently exists; (5) gather information for management and reporting purposes, improving the Department's reporting capability and providing for more efficient use of manpower; and (6) improve customer service.

A copy of the system notice for DOI-71, Electronic FOIA Tracking System and FOIA Case Files--Interior, follows:

Dated: September 13, 2002.

Marilyn A. Legnini,

Privacy Act Officer, Department of Interior.
INTERIOR/DOI-71

System name:

Electronic FOIA Tracking System and FOIA Case Files--Interior, DOI-71.

Security classification:

Not classified.

System location:

(1) The electronic Freedom of Information Act tracking system (EFTS) database data and the application for the EFTS are maintained on hardware by the National Business Center (NBC), U.S. Department of the Interior (DOI), Washington, DC 20240.

(2) Records in this system (paper or electronic) are located in the offices of Bureau and Office Freedom of Information Act (FOIA) Officers and Coordinators. (For a list of DOI addresses, see the Appendix or DOI's FOIA web site at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.doi.gov/foia/contacts.html>.)

Categories of individuals covered by the system:

Individuals or their representatives who have submitted FOIA/Privacy Act (PA) requests for records or information and administrative appeals, or have litigation pending with DOI or another Federal agency; individuals whose requests or records have been referred to the Department by other agencies; individuals who are the subject of such requests, appeals, and litigation; and/or the DOI personnel assigned to handle such requests, appeals, and litigation.

Categories of records in the system:

This system consists of records created or compiled in response to FOIA or PA requests for records or information, administrative appeals, and related litigation and includes: the original requests and administrative appeals; responses to such requests and appeals; all

related memoranda, correspondence, notes, and other related or supported documentation, and in some instances copies of requested records and records under appeal.

Authority for maintenance of the system:

5 U.S.C. 552 and 5 U.S.C. 552a.

Routine uses of records maintained in the system including categories of users and the purposes of such uses:

The primary purpose of the EFTS and FOIA case files, which are maintained both electronically and in paper format, is to more efficiently manage DOI's FOIA program. This system:

(1) Enables the Department to administer the program more efficiently while ensuring requests are responded to in a more timely fashion;

(2) Supports action on FOIA requests, appeals, and litigation;

(3) Ensures documents are released in a more consistent manner;

(4) Assists in eliminating the duplication of effort that currently exists;

(5) Gathers information for management and reporting purposes, improving the Department's reporting capability and providing for more efficient use of manpower; and

(6) Improves customer service.

Disclosures outside the DOI may be made:

(1) To an expert, consultant, or contractor (including employees of the contractor) of the Department that performs, on the Department's behalf, services requiring access to these records.

(2) To other Federal, State, and local agencies having a subject matter interest in a request or an appeal or a decision thereon.

(3) To another Federal agency to assist that agency in responding to an inquiry by the individual to whom that record pertains.

(4)(a) To any of the following entities or individuals:

(i) The Department of Justice (DOJ);

(ii) A court, adjudicative or other administrative body;

(iii) A party in litigation before a court or adjudicative or administrative body;

(iv) The Department or any component of the Department;

(v) Any Department employee acting in his or her official capacity;

or

(vi) Any Departmental employee acting in his or her individual

capacity if the Department or the DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) The Department or any component of the Department;

(B) Any Department employee acting in his or her official capacity;

(C) Any Departmental employee acting in his or her individual capacity if the Department or the DOJ has agreed to represent that employee or pay for private representation of the employee;

(D) the United States, when the DOJ determines that the Department is likely to be affected by the proceeding; and

(ii) The Department deems the disclosure to be:

(A) relevant and necessary to the proceeding; and

(B) Compatible with the purposes for which the records were compiled.

(5) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when the Department becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(6) To a congressional office in response to an inquiry an individual covered by the system has made to the congressional office about him or herself.

(7) To a debt collection agency for the purpose of collecting outstanding debts owed to the Department for fees associated with processing FOIA/PA requests.

(8) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

Disclosure to consumer reporting agencies:

Pursuant to 5 U.S.C. 552a(b)12, records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in electronic media and in paper files.

[[Page 58819]]

Retrievability:

Information can be retrieved by specific data elements in the system including: the FOIA number; the name of the requester and/or his/her organizational affiliation; subject; etc. Paper records are normally retrieved by case number or by the name of the person making the request.

Safeguards:

Access to records in the system is limited to authorized personnel whose official duties require such access. Paper records are maintained in locked metal file cabinets and/or in secured rooms. Electronic records are maintained in accordance with the Office of Management and Budget and Departmental guidelines reflecting the implementation of the Computer Security Act of 1987 (40 U.S.C. 759). Electronic data is protected through user identification, passwords, database permissions and software controls. Such security measures establish different access levels for different types of users.

Retention and disposal:

Records in this system are covered by General Records Schedules 14 and 20. Bureaus and offices also follow guidance on permanent and temporary records disposition issued by the National Archives and Records Administration.

System manager(s) and addresses:

(1) The Departmental FOIA Officer, Office of the Chief Information Officer, U.S. Department of the Interior, 1849 C Street, NW., MS-5312 MIB, Washington, DC 20240 has overall responsibility for the policies and procedures used to operate the system.

(2) DOI FOIA Officers and Coordinators in headquarters and in field offices have responsibility for the data input into and maintained on the EFTS for their respective organizations along with any paper records. To obtain a current list of the FOIA Officers and Coordinators and their addresses, see <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.doi.gov/foia/>

[contacts.html](#) or the Appendix.

Notification procedures:

Inquiries regarding the existence of records in the EFTS or inquiries regarding the existence of paper records should be sent to the FOIA Officer or Coordinator of the Bureau or Office that maintains the FOIA records (see <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.doi.gov/foia/contacts.html> or the Appendix). All inquiries must be in writing, signed by the requester, and meet the criteria of 43 CFR 2.60.

Record access procedures:

To request access to records, follow the procedures in the ``Notification procedures'' section, above. The request must meet the requirements of 43 CFR 2.63. The request envelope and letter should be clearly marked either ``FREEDOM OF INFORMATION ACT REQUEST FOR ACCESS'' or ``PRIVACY ACT REQUEST FOR ACCESS.''

Contesting record procedures:

To request an amendment of a record, follow the procedures in the ``Notification procedures'' section, above. The request must meet the requirements of 43 CFR 2.71.

Record Source Categories:

Information gathered in this system is submitted by individuals, agencies, or corporate entities filing FOIA/PA requests and agency employees processing these requests. Information also is taken from the following PA system of records: Freedom of Information Act Appeal Files--Interior, DOI-69; and Privacy Act Files--Interior, DOI-57.

Exemptions claimed for the system:

None.

[FR Doc. **02-23705 Filed** 9-17-02; 8:45 am]

BILLING CODE 4310-RK-P