



Smithsonian
Institution

SMITHSONIAN DIRECTIVE 807

November 30, 2007

REQUESTS FOR SMITHSONIAN INSTITUTION RECORDS

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Purpose

This directive establishes and implements the policies and procedures for responding to requests for Smithsonian Institution (SI) records. Records include paper documents, electronic data, email, contracts, and other information stored or maintained by the Institution.

Records do *not* include the Smithsonian collections, defined in Smithsonian Directive 600, *Collections Management*, which is available on PRISM, objects on loan to the Smithsonian, or materials ordinarily made available through the Smithsonian Institution Archives (SIA), the Visitor Information and Associates' Reception Center (VIARC), the Smithsonian Institution Libraries (SIL), and the Research Information System.

Background

The Smithsonian Institution is not subject to the Freedom of Information Act (FOIA), 5 *United States Code* (U.S.C.), § 552, which governs access to federal agency records. See *Dong v. Smithsonian Institution*, 125 F.3d 877 (D.C. Cir. 1998), *cert. denied*, 524 U.S. 922 (1998). In keeping with its mandate for the increase and diffusion of knowledge, and in recognition of its public nature, the Institution has long responded

Background
(continued)

to public requests for SI records in a manner consistent with the principles of the FOIA. This directive formalizes the Institution's policy.

Policy

It is the policy of the Smithsonian Institution to respond to all written requests for SI records in a manner consistent with principles of disclosure under the FOIA. The Institution recognizes, however, that the Smithsonian's unique nature and activities as a trust instrumentality can necessitate withholding some records in order to further the Institution's mission. The following types of records will not ordinarily be provided to the public:

- Commercial and financial information which, if released, could cause substantial competitive harm to the Smithsonian's business activities;
- Information about Smithsonian financial investments subject to the confidentiality provisions required by investment firms;
- Records created during Board of Regents' meetings for the purpose of preparing the Board of Regents minutes. The official minutes from the meetings will be distributed to the public;
- Certain information about collections and exhibits, such as purchase price and value;
- Unpublished research and scientific data collected by or on behalf of the Institution and that is intended to be shared within a reasonable time through publication(s). A *reasonable time* will be determined in the context of the researcher's professional development plan;
- Certain information about species and artifacts, such as the collection locality, if withholding the information is necessary to protect the species or artifact from being endangered or commercially traded, or if withholding the information is necessary to protect its cultural or religious nature;

Policy (continued)

- Personal information about donors, without the donor's permission; and
- Communications between the Republic of Panama and the Smithsonian Tropical Research Institute (STRI), to the extent that the diplomatic immunity provided by the agreement between the parties creates an expectation of diplomatic privacy.

The Institution may make other written exceptions to the disclosure of records only with the written approval of the Secretary as necessary to further the Institution's mission and best interests.

This directive does not apply to contracts/agreements entered into prior to the directive's effective date, in which parties contracting with Smithsonian Business Ventures (SBV) entered into a contractual relationship with an expectation that the terms of the agreement would not be disclosed to the public.

Except as required by law, the financial disclosure forms filed by Smithsonian employees will be kept confidential, regardless of the employee's rank or classification.

No Right of Action

This directive is not intended to create any right or benefit, substantive or procedural, enforceable at law.

**The Privacy Act/
Ethics in
Government Act**

The Institution is not subject to the Privacy Act (5 U.S.C., § 552a) or to the Ethics in Government Act (5 U.S.C., § 101 *et seq.*). Nevertheless, it has been and continues to be the policy of the Institution to respond to requests for records in a manner consistent with both of these Acts and applicable Smithsonian Directives. SI records or information that would be protected from disclosure under the Privacy Act or the Ethics in Government Act will not be provided through requests for records.

Responsibilities

- 1. The Office of General Counsel (OGC)** — The General Counsel shall have the authority to effectuate this directive. The General Counsel shall appoint a member of his or her staff to serve as the equivalent of a FOIA Officer, who shall be referred to as the Director of Information Requests (DIR). The DIR, under the supervision of the General Counsel, will review, redact, and provide records to the public in a manner consistent with this directive, the FOIA, and with federal regulations, Executive Orders, judicial decisions, and other federal laws relevant to the FOIA. The DIR also will prepare reports and provide information to the public about how to request SI records. The OGC will consult with the Office of the Secretary as needed.
- 2. The Office of Public Affairs (OPA)** — The OPA, in consultation with the DIR, is responsible for serving as the Institution's liaison when a requester is a member of the media or press, or asks for records that involve the media, press, or public relations. The OPA, in consultation with the DIR and the Office of the Chief Information Officer (OCIO), is responsible for posting information on the home page of the Smithsonian website (www.si.edu) that explains the policies and procedures for obtaining SI records.
- 3. The Office of the Chief Information Officer (OCIO)** — The OCIO is responsible for providing technical support to locate and retrieve electronic records. The OCIO, in consultation with the DIR and OPA, is responsible for posting information on the Smithsonian website (www.si.edu) that explains the policies and procedures for obtaining SI records.
- 4. The Office of Human Resources (OHR)** — The OHR will respond to requests from current and former employees for copies of their personnel records in a manner consistent with the FOIA and the Privacy Act. The OHR will refer other requests for OHR records to the DIR.

Responsibilities
(continued)

- 5. Directors** — Smithsonian office and unit directors are responsible for:
- a. referring to the DIR requests for records or requests that cite the FOIA
 - b. designating a contact person within the office to coordinate the search for documents and provide documents to the DIR
 - c. ensuring that staff make reasonable efforts to search for relevant records
 - d. providing responsive records to the DIR within a reasonable time
 - e. tracking the amount of time spent and cost of searching for relevant records
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Submitting Requests

A request for Smithsonian records must be in writing and of sufficient detail to enable Smithsonian staff to identify and locate specific records using a reasonable amount of time and effort.

**Procedures
for Responding
to Requests**

- 1. Timing** — Records will be provided within a reasonable time, taking account of the scope and depth of each request. When reasonable, the Institution will provide records in the format requested. Requesters will be given the opportunity to narrow the scope of complex requests in order to obtain documents faster. The DIR will evaluate requests for expedited processing on a case-by-case basis and only after the requester demonstrates a compelling public interest in accordance with the FOIA.
- 2. Acknowledgement of Requests** — Requests will be acknowledged in writing within 20 business days of being received by the OGC. If the DIR has determined that no records exist or the General Counsel has determined that records exist but no portion can be released under this directive, the letter will say so and explain how to seek an appeal.

**Procedures
for Responding
to Requests**
(continued)

- 3. Search for Records** — Searches will be diligent and reasonably tailored to locate the documents requested. The DIR shall determine if responsive records are likely to exist and, if so, will contact the office(s) best able to conduct a search. The contact person at that office shall estimate a time frame for providing responsive records to the DIR and estimate the number of pages that may be generated. The contact person shall conduct the search or assign staff to do so. If, in consultation with the DIR, the contact person cannot reasonably ascertain what records are being requested, then the DIR will notify the requester that his or her request cannot be processed as written.
- 4. Review and Redaction of Records** — Records will be reviewed and redacted in accordance with this directive. Documents created by another governmental entity will either be processed in consultation with that entity or be referred to that entity for processing. Documents authored by a private party or containing information that may be protected from disclosure under Exemption 4 of the FOIA may be forwarded to the party for consultation and an opportunity to object to disclosure.
- 5. Response Letters and Delivery of Records** — Responsive records will be provided unless they should be withheld under this directive. The DIR will include a response letter that explains what documents are provided, the reasons for redactions or withholdings, and instructions on how to appeal the decision. When a contact person notifies the DIR that a search will yield a voluminous amount of records, the DIR may, in consultation with the contact person, ask the requester to inspect the records on site, in lieu of delivering copies to the requester.
- 6. Fees** — Requesters will be charged fees consistent with the FOIA and other regulations relevant to the disclosure of agency records. The Institution's current fee policy is attached to this directive as

**Procedures
for Responding
to Requests**
(continued)

Appendix A. The Institution may occasionally change fees in accordance with changes to the FOIA and other relevant regulations.

7. File Management — The OGC will preserve files created in response to a request for records until their destruction is authorized by the SIA and Records Management.

Appeals

A request for an appeal must be in writing, addressed to the Smithsonian Institution, Office of the General Counsel, and made within 60 days from the date of the response letter. The request must explain the reason for appeal. The Under Secretary for Finance and Administration shall have the authority to decide appeals. The requester will receive an answer in writing that specifies the reason(s) for granting or denying the appeal.

**The Office of the
Inspector General
(OIG)**

Because the OIG is an independent unit within the Smithsonian, it will make its own determinations as to the release of its records. The OIG will respond to requests in accordance with the Inspector General Act of 1978, as amended, and in accordance with the principles of the FOIA, the Privacy Act, and the Ethics in Government Act. The OIG will also generally follow the procedures set forth in this directive. The Counsel to the Inspector General will serve as the DIR within the OIG, and the Inspector General shall have the authority to decide appeals of decisions made by the DIR.

**CANCELLATION:
INQUIRIES:
RETENTION:**

Not applicable.
Office of General Counsel (OGC)
Indefinite. Subject to review for currency 24 months from date of issue.