



Smithsonian
Institution

SMITHSONIAN DIRECTIVE 807

February 4, 2009

REQUESTS FOR SMITHSONIAN INSTITUTION INFORMATION

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Policy

It is the policy of the Smithsonian Institution (“Smithsonian” or “SI”) to respond timely to written requests for Smithsonian information consistent with the principles of disclosure under the Freedom of Information Act (FOIA) and in a manner that fosters openness and accountability and supports the Smithsonian’s mission.

When considering requests for Smithsonian information, the Smithsonian will apply a presumption of disclosure. It will be the policy of the Smithsonian to disclose information unless this directive clearly provides otherwise, except where disclosure would be harmful to an interest protected by an exemption. Where release would not be harmful to the Smithsonian or to an interest protected by an exemption, the Smithsonian may choose to release information that falls within an existing exemption. Procedures for processing requests for information and for appeals are set forth in a separate “Procedures” document attached to this directive as Attachment A.

**Definition
of Information**

This directive applies to all Smithsonian information embodied in a Smithsonian record, regardless of the format in which the information is maintained and whether the information is maintained directly by the Smithsonian or by a private entity under contract.

This directive is not intended to affect the way in which material about Smithsonian collections and programs is ordinarily made available through the Smithsonian Institution Archives, the Visitor Information and Associates' Reception Center, the Smithsonian Institution Libraries, and the Research Information System. These offices will continue to provide a wealth of materials directly to the public.

**Information which
May Be Exempt
from Disclosure**

In determining whether to disclose a Smithsonian record, the Smithsonian applies the exemptions from disclosure that are included in FOIA (attached to this directive as Attachment B) and interprets those exemptions in a manner consistent with their interpretation by the Executive Branch agencies to which FOIA applies. However, because of the unique nature of the Smithsonian outside the Executive Branch, its charitable and educational activities, and its need to raise funds from private-sector sources, the Smithsonian must evaluate records not regularly kept by Executive Branch agencies, some of which may not be exempt under existing interpretations of FOIA.

To assist requesters, this directive lists examples of such categories of information that are exempt from disclosure under this directive, and identifies the FOIA exemption that the Smithsonian has determined will apply to such information.

The Smithsonian will not withhold under this directive any information contained in its publicly available Internal Revenue Service (IRS) Form 990 (*Return of Organization Exempt From Income Tax*) and 990-T (*Exempt Organization Business Income Tax Return*) or its audited financial statements.

**Information which
May Be Exempt
from Disclosure**
(continued)

The following is a partial list of FOIA exemptions and specific information the Smithsonian might withhold under these exemptions.

FOIA Exemption (b)(2). The Smithsonian will interpret Exemption 2 as including information the disclosure of which would risk circumvention of a Smithsonian directive, policy, or procedure, where the Smithsonian reasonably foresees that disclosure would be harmful to the Smithsonian, such as information related to the value of Smithsonian collections.

FOIA Exemption (b)(4). The Smithsonian will interpret Exemption 4 as including:

- (1) Information about those aspects of Smithsonian financial investments involving Smithsonian trust funds that are subject to the confidentiality provisions contained in agreements with investment firms; and
- (2) Smithsonian trade secrets and Smithsonian commercial or financial information directly related to the Smithsonian's revenue-generating activities, including fund-raising and development activities, and where release of the information would be likely to cause the Smithsonian substantial competitive harm or impair its ability to carry out its charitable and educational mission by raising private funds. Unless directly related to the Smithsonian's revenue-generating activities, the Smithsonian will not apply this exemption to Smithsonian information contained in contracts or agreements which commit federal appropriations or federal assets.

FOIA Exemption (b)(5). The Smithsonian will interpret Exemption 5 to include information that is part of ongoing research and other current projects (e.g., exhibitions, educational materials, etc.), where the Smithsonian reasonably foresees that disclosure of the information prior to the information being made publicly available would be harmful to the Smithsonian or its employees.

**Information which
May Be Exempt
from Disclosure**
(continued)

In response to requests, the Smithsonian will inform the requester of the estimated completion date of the research or project so that the requester may ask for the information at that time. The information then will be released unless otherwise exempt from disclosure. This exemption also includes information provided to the Smithsonian by an outside research, scientific or zoological organization for the purpose of research, consultation or advice that is held confidential by the outside organization.

FOIA Exemption (b)(6). The Smithsonian will interpret Exemption 6 to permit withholding of donor files and information, including donor-identifying information. The Smithsonian will also interpret Exemption 6 to permit withholding of files compiled to conduct employee conflict of interest reviews and financial disclosure forms.

FOIA Exemption (b)(9). The Smithsonian will interpret Exemption 9 as including information and data concerning collecting localities of species and artifacts, if necessary to protect them from being endangered or commercially traded, or to protect cultural and religious sites.

**Effective Date
for Certain
Contracts/
Agreements**

This directive does not apply to contracts/agreements directly related to the Smithsonian's revenue-generating activities entered into prior to November 30, 2007, in which parties contracting with the Smithsonian entered into a contractual relationship with an expectation that the terms of the agreement would not be disclosed to the public.

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

Although the Smithsonian Institution is not subject to the Privacy Act or the Ethics in Government Act, the Institution responds to requests for information in a manner consistent with these Acts and applicable Smithsonian Directives. Smithsonian 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 information under this directive.

**Electronic Access
to Information**

The Smithsonian will establish a link from the homepage of its public website (www.smithsonian.org) to a Request for Smithsonian Information site. This site will serve as an Electronic Reading Room and will provide information related to this directive, such as how to request Smithsonian information, how to contact relevant staff, and how to determine the status of a request. The Institution will post to this site documents that have been or are likely to be requested by multiple parties.

Amendments

This directive may only be amended with the approval of the Board of Regents, except with respect to Attachment B which may be amended without such approval to reflect changes in the law.

CANCELLATION:
INQUIRIES:
RETENTION:

SD 807, November 30, 2007
Office of General Counsel (OGC)
Indefinite. Subject to review for currency 24 months from date of issue