

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE MANUAL

TRANSMITTAL SHEET

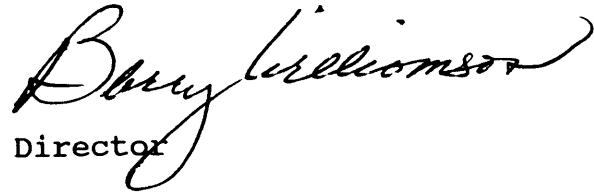
Release No. 175

June 5, 1990

SUBJECT: Administrative Series
Part 316 Freedom of Information Act
Chapter 1 Policy and Responsibilities

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter is revised to reflect revisions to the Freedom of Information Act. The procedures for preparing and processing responses to Freedom of Information Act requests are contained in a separate handbook, MMSM 316.1-H.


Director

FILING INSTRUCTIONS:

REMOVE:

<u>Part</u>	<u>Chapter</u>	<u>Pages</u>	<u>Release</u>
316	1	1-9 12-14 16-18 10-11 15	51 76

INSERT:

<u>Part</u>	<u>Chapter</u>	<u>Pages</u>	<u>Release</u>
316	1	1-6	175
<u>Handbook:</u>			
316	1-H		

OPR: Records Management Section
Administrative Management and Analysis Branch
Financial and Administrative Management Division
Office of Administration
Office of Management and Budget

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE MANUAL

Administrative Series Part 316 Freedom of Information Act

Chapter 1 Policy and Responsibilities 316.1.1

1. Purpose. This chapter provides Minerals Management Service (MMS) policy on carrying out the provisions of the Freedom of Information Act (FOIA), as amended. It also identifies responsibilities for administering the Act within the MMS. Procedures are contained in the Handbook on Preparing and Processing Responses to Freedom of Information Act Requests (MMSM 316.1-H).

2. Objectives.

A. To provide an orderly method by which to direct, control, and coordinate FOIA activities.

B. To provide an authoritative source of MMS policy and instructions for carrying out FOIA actions.

3. Authority.

A. 43 CFR 2, Subpart B.

B. Freedom of Information Act (5 U.S.C. 552).

C. Departmental Manual (316 DM 1, Freedom of Information Act).

4. Definitions. The following definitions apply to this manual chapter and MMSM 316.1-H.

A. Denial - the withholding of records, in whole or in part, based on one of the nine FOIA exemptions. The following processing delays are also treated as a denial, and are subject to appeal: failure by a requester to reasonably describe requested records; other procedural deficiencies; or inability to locate requested records.

B. Document Review - the examination of requested records to determine whether they are exempt from disclosure and to delete any reasonably segregable exempt material.

C. Document Search - the effort expended to locate a requested document.

D. Freedom of Information Request - a written request for records from any person made in accordance with published rules.

OPR: Records Management Section
Office of Administration

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Chapter 1 Policy and Responsibilities 316.1.4D

The words "Freedom of Information Act Request" should be written on the envelope and/or the letter; however, written requests which are not marked but are subsequently identified by the receiving office as an FOIA request are also accepted. These requests are processed under the procedures of this chapter, but are not considered to be received for purposes of the time limit until they are identified as FOIA requests and marked appropriately.

E. Minerals Management Service Records - tangible recordings of information which have been either created or obtained by MMS and include written records, information in such forms as computer files, films, video tapes, pictures, etc. Employee notes which are kept voluntarily, not circulated to anyone, retained for the author's individual purposes in his or her own personal files and discarded or retained at his or her discretion are not considered Agency records.

F. Submitter - a person, corporation, or government which provides information to the MMS.

5. Relationship to Privacy Act.

A. The FOIA protects the right of the public to have access to Government information such as Agency rules, opinions, orders, records, and proceedings. It encourages disclosure, requires adequate justification for withholding, and provides judicial remedies for those wrongfully denied information.

B. The Privacy Act grants individuals, subject to certain exceptions, the right to know whether information is maintained on them, to see the information, and to petition for changes in the information. It also protects against indiscriminate disclosure of such information to a third party requester.

C. Requests for information on an individual by a third party cannot be withheld under the Privacy Act unless it is determined that disclosure is not required by the FOIA.

6. Policy.

A. It is the policy of the MMS to make its records available to the public to the greatest extent possible in keeping with the spirit of the Act.

B. Information falling within an exemption, as shown in Chapter 2, Appendix 2, of the Handbook on Preparing and

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Processing Responses to Freedom of Information Act Requests (MMSM 316.1-H), may be withheld only if:

(1) disclosure is prohibited by statute or Executive order, or

(2) sound grounds exist for invoking the exemption.

C. Confidential and privileged information concerning a restricted Indian lease will be available only to the Tribe or allotted Indian lessor, their designated agent, or authorized MMS officials but to no other party without the express authorization of the Tribe or allotted Indian lessor.

D. Audit reports conducted by the MMS concerning Indian leases will not be released until the MMS has contacted the Indian minerals owner and the Bureau of Indian Affairs to inform them of its intention to release the audit upon request.

7. Responsibilities.

A. The Director is responsible for:

(1) Managing the FOIA within the MMS, and

(2) Approving the denial of records which pertain to the

activities of his immediate office or the Offices of Congressional and Legislative Affairs, Public Affairs, and Equal Employment Opportunity.

B. The Associate and Regional Directors; Chiefs of the Offices of Congressional and Legislative Affairs, Public Affairs, and Equal Employment Opportunity; and the Administrative Service Center (ASC) Managers are responsible for:

(1) Ensuring that all responses to FOIA requests comply with the time limits specified in the Act;

(2) Preparing and approving disclosures in response to requests made under the FOIA;

(3) Approving extensions of time required to determine whether a request will be granted or denied;

(4) Determining any fees to be charged to the requester, and preparing the subsequent billing document; and

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(4) Review denials and partial denials prepared at headquarters to ensure proper language, format, and coordination;

(5) Keep a record of denials and releases and fees charged; and

(6) Prepare an annual report to the Department concerning FOIA activities.

G. The FOIA Coordinators will:

(1) Serve as the program point of contact for the MMS FOIA Officer;

(2) Process or assist in processing responses to FOIA requests;

(3) Receive, log in, track, and control all requests in order to ensure that all time limits are met;

(4) Forward any misdirected or misaddressed requests to the appropriate office. If necessary because of the time elapsed, prepare a response to the requester giving the name and address of the office where the request is being forwarded;

(5) Ensure proper coordination and copy distribution; and

(6) Review responses to ensure that appropriate fees have been determined and the subsequent billing document prepared.

H. The Chief, Financial and Administrative Management Division will:

(1) Ensure that appropriate procedures are in place for billing and collection of fees for FOIA requests;

(2) Process and deposit collected fees; and

(3) Keep appropriate records of receipts from FOIA requests.

8. Procedures. See the Handbook on Preparing and Processing Responses to Freedom of Information Act Requests (MMSM 316.1-H).

**Preparing and Processing
Responses to
Freedom of Information Act Requests**

(MMS 315-1)

Handbook

FOREWORD

This Minerals Management Service (MMS) handbook has been developed to provide procedures for preparing and processing responses to Freedom of Information Act requests. Questions regarding the instructions in this handbook or in the basic manual (MMSM 316.1) may be directed to the Freedom of Information Act Officer, Records Management Section, Office of Administration.


Director

Date: June 5, 1990

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CHAPTER 1. GENERAL INFORMATION

1. Scope. This handbook contains procedures for submission to and consideration by the Minerals Management Service (MMS) of requests for records under the Freedom of Information Act (FOIA). These procedures do not apply to:

A. Records published in the Federal Register, opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under Subpart A of 43 CFR Part 2.

B. Records or information compiled for law enforcement purposes and covered by exemption 7 (see Chapter 2, Appendix 2) if:

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

C. Informant records maintained by a criminal law enforcement component 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.

2. Records.

A. Records which exist up to and including the date of receipt of an FOIA request will be considered in preparing a response.

B. If it is determined that creating a new record would be less burdensome than disclosing large volumes of unassembled material, the responding office may do so by combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends, or comparisons.

3. General Requirements.

A. Upon receipt of a request from a member of the public to inspect or copy records made in accordance with procedures

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established under the FOIA, the responsible employee will promptly make the records available.

B. A copy of all requests from and responses to the news media will be sent to the MMS Public Affairs Officer.

C. If a request includes records of another Bureau or Agency, the receiving office will refer the requester to the appropriate Bureau or Agency.

D. All allowable costs incurred in responding to FOIA requests will be charged to the requester.

E. Certain information, such as rules, opinions, administrative manuals, organization, functions, etc., will routinely be made available for public inspection and copying.

4. Time Limits.

A. The time limit begins when a request is date/time stamped and logged in by the Correspondence Control Liaison (CCL), located in the Director's office, or at an appropriate point in offices not located at MMS Headquarters.

B. A determination to grant or deny a request must be made and communicated in writing to the requester within 10 working days of receipt.

C. An extension of time may be granted by the authorized official shown in paragraph 5C as reasonably necessary to make a determination concerning a request, but in no case may it be extended for more than 10 working days. Extensions may be granted for the following reasons:

(1) The need to search for or collect records from facilities separate from the office processing the request;

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

(3) The need for consultation with another Agency having a substantial interest in the determination of the request or among two or more components of the MMS.

D. Failure to respond at the end of the 10-day period or an extension is a violation of the Act and can be considered a denial. On expiration of the time limit, the responsible official, as shown in paragraph 5C, will inform the requester of the reason for the delay, of the date on which a determination is expected, and of the right to treat the delay as a denial for

purposes of appeal. The requester may be asked to consider delaying appeal until the date the determination is expected to be made.

E. The time for responding to requests may be delayed without violating the Act if:

(1) The requester has not described the requested records to the extent necessary to locate them;

(2) It cannot be readily determined which fee category is applicable to the requester;

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

(4) A fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated.

5. Signature Authority.

A. Disclosure of Records. The Associate and Regional Directors; Chiefs of the Offices of Congressional and Legislative Affairs, Public Affairs, and Equal Employment Opportunity; and the Administrative Service Center (ASC) Managers may sign correspondence within their respective areas which discloses information requested under the FOIA. This authority may be redelegated.

B. Denial or Disclosure of Exempt Material.

(1) The Director will sign correspondence prepared by his immediate office and the Offices of Congressional and Legislative Affairs, Public Affairs, and Equal Employment Opportunity which denies a request for records made under the FOIA or which transmits records which are exempt under that Act but which are disclosed as a matter of Agency discretion.

(2) The Associate and Regional Directors, and the ASC Managers will sign correspondence prepared in their respective program areas which denies a request for records made under the FOIA or which transmits records which are exempt under that Act but which are disclosed as a matter of Agency discretion. This authority may not be redelegated.

(3) The Deputy Associate Director for Administration will sign correspondence which denies a request for routine administrative records. This authority may not be redelegated.

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C. Extension of Time. The Associate and Regional Directors; the Chiefs of the Offices of Congressional and Legislative Affairs, Public Affairs, and Equal Employment Opportunity; and the ASC Managers may sign correspondence prepared in their respective program areas which extends the period of time required to determine whether a request will be granted or denied. This authority may not be redelegated.

D. Denial of Request for Fee Waiver. The Associate and Regional Directors; the Chiefs of the Offices of Congressional and Legislative Affairs, Public Affairs, and Equal Employment Opportunity, and the ASC Managers may sign correspondence prepared in their respective program areas which denies a request to waive or reduce the fees assessed for processing an FOIA request.

6. Control.

A. All FOIA requests received by the CCL will be ticketed and forwarded to the appropriate program office for response. A copy will be sent to the FOIA Officer.

B. Requests received directly by an employee at headquarters should immediately be sent to the CCL.

C. The FOIA Coordinator will log in the request received from the CCL, determine the appropriate action office, and immediately forward the request to that office.

D. The FOIA Coordinators will provide a copy of the response (final and interim) to the CCL and the FOIA Officer after signature.

E. Field locations will develop a control system which will be appropriate for their size, location, and volume of requests.

CHAPTER 2. PROCEDURES

1. Contact with Requesters. The MMS employee responsible for an FOIA action is encouraged to communicate with the requester, by telephone or in writing, when a request is very broad or vague. Requests can often be clarified and/or modified and may allow release of specific material rather than denial of the more general request. Such a contact may reduce the time required to respond as well as reduce the fee charged.

2. Consultation with Submitters.

A. If a requester seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal Government, and the responding office has reason to believe disclosure may result in commercial or financial injury to the submitter, the office will:

- (1) Provide the submitter with prompt, written notice of the request. Illustration 1 is an example of a notice to the submitter;
- (2) Notify the requester of the reason for delay;
- (3) Allow the submitter at least 10 working days in which to object to the disclosure and to state all grounds upon which the objection is based;
- (4) Carefully consider all such specified grounds for withholding prior to making a determination. If the determination is to disclose the record, provide the submitter with a detailed statement of the reasons why the objections were not upheld;
- (5) Provide the submitter with written notice of any final disclosure determination not less than 10 working days prior to a specified disclosure date in order to allow for possible judicial intervention. Illustration 2 is an example of a final disclosure determination; and
- (6) Notify the submitter promptly of all instances in which FOIA requesters bring suit to compel disclosure of their information.

B. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably determined to accomplish this purpose (e.g., trade journals, Federal Register).

C. Consultation is not required when:

(1) Disclosure is required or prohibited by statute or regulation, or

(2) The responding office has determined that the records will be withheld under the FOIA.

3. Disclosure of Records.

A. When a requested record is determined to be available, the official processing the request will immediately provide the material or notify the requester as to where and when the record will be available for inspection or where and when copies will be available.

B. All information that has been previously published or otherwise made available to the public will be treated as available for release.

C. If fees are due, a Bill for Collection, Form MMS-1040, will be sent to the requester (see Chapter 3, Illustration 1). If fees are not assessed, a statement should be made in the response that the material is being provided free of charge.

D. A copy of all correspondence which discloses records will be sent to the MMS FOIA Officer.

4. Denial of Records.

A. The official processing a request will review the requested records to determine whether the information should be released or denied; delete exempt material from records to be released; determine appropriate fees to be charged; and prepare an appropriate response to the requester. Illustration 3 is an example of an FOIA denial letter.

B. The determination to deny a request, in whole or in part, must be coordinated with the appropriate Associate, regional, or field Solicitor (see Appendix 1 for field locations).

C. If only a portion of the information within a document is eligible for withholding, that information must be segregated and the remainder of the document released.

D. A reply denying a request, in whole or in part, must be in writing and must include the following:

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(1) A reference to the specific exemption(s) under the FOIA which authorizes the withholding of a record or portion of a record.

(2) The basis for withholding. If a statute or Executive order specifically authorizes withholding of a record, either Exemption 1 or 3, as described in Appendix 2, will be cited, and a description of the pertinent statute and/or Executive order provided. If any other exemptions are used to deny records, the sound grounds (reason) for invoking each exemption must be provided.

(3) The names and titles or positions of each person responsible for the denial.

(4) A statement that the denial may be appealed within 20 working days after denial (see Paragraph 7).

E. Denials based on failure by a requester to reasonably describe requested records, for other procedural deficiencies, or because the requested records cannot be located, will be in writing and will include an explanation of the decision, a list of names and titles of each person responsible, and a statement that the matter may be appealed as described in paragraph 7.

F. Denials prepared at headquarters will be reviewed by the MMS FOIA Officer and surnamed by the Associate Director for Management and Budget before signature.

G. Copies of all replies denying requests must be sent to the MMS FOIA Officer.

5. Denial of Request for Fee Waiver. The determination to deny a request for fee waiver or reduction must be coordinated with the appropriate Associate, Regional, or Field Solicitor (see Appendix 1 for field locations). Notice to the requester will be in writing and will include a statement of the basis of the denial, a list of names and titles of each person responsible, and a statement that the denial may be appealed as described in paragraph 7. See Chapter 3, paragraph 4, for criteria for determining whether a request should be denied. Copies of all replies denying requests for fee waivers must be sent to the MMS FOIA Officer.

6. Extension of Time.

A. The time to respond to an FOIA request may be extended (not to exceed 10 working days) as reasonably necessary to make a determination of whether to grant or deny a request.

B. A written notice will be sent to the requester which states the reason for the extension and the date on which a determination on the request is expected. If a determination is not made by the end of the extension period, the requester has a right to consider the request denied and to begin the appeal process.

C. An extension of time will be approved by the appropriate official as shown in Chapter 1, paragraph 5C, of this handbook.

D. A copy of the written notice will be forwarded to the MMS FOIA Officer.

7. Appeals.

A. A requester may appeal a decision under the following circumstances:

- (1) records have been withheld;
- (2) a request has been denied for failure to describe the requested records or for other procedural deficiencies;
- (3) the requested records cannot be located;
- (4) a fee waiver has been denied; or
- (5) a request has not been decided within the time limits.

B. Responses to the requester must provide the following guidance to assist him or her in filing an appeal. Illustration 3 is an example of a denial letter.

(1) Appeals must be addressed to the FOIA Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, Washington, D.C. 20240, and must be received no later than 20 working days after the date of the initial denial.

(2) The notice of appeal must be accompanied by copies of the original request and the initial denial and should contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(3) Both the envelope and the face of the notice should be marked "Freedom of Information Appeal." Failure to include such marking will not disqualify an appeal from processing;

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however, such an appeal will not be deemed to have been received for purposes of the time limit until it has been identified and properly marked as an FOIA appeal.

(4) The MMS official who prepares a denial which is appealed will work with the FOIA Appeals Officer and the Office of the Solicitor in resolving the appeal.

OFFICE OF THE SOLICITOR - FIELD OFFICES

Knoxville Field Office

Field Solicitor
Department of the Interior
P.O. Box 15006
Knoxville, TN 37901
FTS 8-854-4216
Commercial 615-673-4216

Pittsburgh Field Office

Field Solicitor
Department of the Interior
Ten Parkway Center, Room 385
Pittsburgh, PA 15220
FTS 8-727-4000
Commercial 412-937-4000

Denver Field Office

Field Solicitor
Department of the Interior
P.O. Box 25007
Denver Federal Center
Denver, CO 80225
FTS 8-776-3546
Commercial 303-236-3546

Alaska Region

Regional Solicitor
Department of the Interior
222 West 8th Ave., #34
Anchorage, AK 99513-7584
FTS 8-907-271-4131
Commercial 907-271-4131

Southeast Region

Regional Solicitor
Department of the Interior
Suite 1328, Richard B. Russell
Federal Building
75 Spring Street, S.W.
Atlanta, GA 30303
FTS 8-331-4447
Commercial 404-331-4447

Northeast Region

Regional Solicitor
Department of the Interior
Suite 612, One Gateway Center
Newton, MA 02158
FTS 8-829-9258
Commercial 617-965-5100 ext. 258

Rocky Mountain Region

Regional Solicitor
Department of the Interior
P.O. Box 25007
Denver Federal Center
Denver, CO 80225
FTS 8-776-8452
Commercial 303-236-8452

Pacific Northwest Region

Regional Solicitor
Department of the Interior
Lloyd 500 Building, Suite 607
500 N.E. Multnomah Street
Portland, OR 97232
FTS 8-429-2125
Commercial 503-231-2125

Field Solicitor
Department of the Interior
Room 3004, Federal Building
316 N. 26th Street
Billings, MT 59101
FTS 8-585-6331
Commercial 406-657-6331

Field Solicitor
Department of the Interior
686 Federal Building
Twin Cities, MN 55111
FTS 8-725-3540
Commercial 612-725-3540

Pacific Southwest Region

Regional Solicitor
Department of the Interior
Room E-2753, 2800 Cottage Way
Sacramento, CA 95825
FTS 8-460-4821
Commercial 916-978-4821

Field Solicitor
Department of the Interior
Box 36064
Room 14126
450 Golden Gate Avenue
San Francisco, CA 94102
FTS 8-556-8807
Commercial 415-556-8807

Intermountain Region

Regional Solicitor
Department of the Interior
Federal Building, Suite 6201
125 South State Street
Salt Lake City, UT 84138
FTS 8-588-5677
Commercial 801-524-5677

Field Solicitor
Department of the Interior
Box 020, Federal Building
U.S. Courthouse
550 West Fort Street
Boise, ID 83724
FTS 8-554-1911
Commercial 208-334-1911

Field Solicitor
Department of the Interior
2 Central Avenue
Suite 500
Phoenix, AZ 85004
FTS 8-261-4756
Commercial 602-379-4756

Southwest Region

Regional Solicitor
Department of the Interior
Room 3068, Page Belcher
Federal Building
333 West 4th Street
Tulsa, OK 74103
FTS 8-745-7502
Commercial 918-581-7502

Field Solicitor
Department of the Interior
Osage Agency
Grandview Avenue
Pawhuska, OK 74056
No FTS
Commercial 918-287-2495 ext. 246

Field Solicitor
Department of the Interior
P.O. Box 1042
Santa Fe, NM 87504-1042
FTS 8-476-6200
Commercial 505-988-6200

Field Solicitor
Department of the Interior
P.O. Box M
Window Rock, AZ 86515
FTS 8-479-5116
Commercial 602-871-5151 ext. 5116

FREEDOM OF INFORMATION ACT EXEMPTIONS

The Act provides that disclosure is not required of records that are:

1. Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;
2. Related solely to the internal personnel rules and practices of an Agency;
3. Specifically exempted from disclosure by statute (other than the Privacy Act) provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;
4. Trade secrets and commercial or financial information obtained from a person and 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, but only to the extent that the production of such law enforcement records or information:
 - A. Could reasonably be expected to interfere with enforcement proceedings;
 - B. Would deprive a person of a right to a fair 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, 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;

E. Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose 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. Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an Agency responsible for the regulation or supervision of financial institutions; or

9. Geological and geophysical information and data, including maps, concerning wells.

EXAMPLE OF A CONSULTATION LETTER



United States Department of the Interior



MINERALS MANAGEMENT SERVICE
WASHINGTON, DC 20240

May 14, 19XX

Mr. Joseph T. Brown
Mountain Coal Company
P.O. Box 123
Hometown, Utah 88888

Dear Mr. Brown:

We have received a Freedom of Information Act (FOIA) request from Ms. Mary Doe of Ajax Consultants, Inc., for the total tonnages, Federal royalties paid, and value of product for the years 19XX through 19XX, inclusive, for solid mineral lease number 12-345678. Our records show that this lease is currently held by the Mountain Coal Company.

It is the policy of the Minerals Management Service (MMS): (1) to make its records available to the public to the greatest extent possible in keeping with the spirit of the FOIA; (2) to make the information available at the earliest possible date while, at the same time, protecting the rights of individuals involved and the administrative processes surrounding such rights; and (3) to withhold information falling within one of the FOIA exemptions only if disclosure is prohibited by statute or Executive order, or if sound grounds exist for invoking the exemption.

The MMS considers payor information to be privileged and financially confidential and does not release such information without first consulting with the submitters of the information to obtain their views. We would like to receive your comments as to the possible effects of releasing the requested data.

Commercial or financial information is exempt from disclosure only if its release is likely to impair the Government's ability to obtain necessary information in the future, or to cause substantial harm to the competitive position of the person from whom the information was obtained.

We are requesting that you provide your opinions to this office within 10 working days of the date of this letter. We will advise you of our final determination on this matter. If you have any questions concerning this matter, please contact Mr. John Jones at (222) 333-4444.

Sincerely,

A. B. Smith
Associate Director for
Royalty Management

EXAMPLE OF FINAL DETERMINATION



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
WASHINGTON, DC 20240



June 7, 19XX

Mr. Joseph T. Brown
Mountain Coal Company
P.O. Box 123
Hometown, Utah 88888

Dear Mr. Brown:

This is in further reference to our letter of May 14, 19XX, and your subsequent reply. In our letter we informed you that we received a Freedom of Information Act (FOIA) request from Ajax Consultants, Inc., seeking the release of production volumes and product and royalty values for the years 19XX through 19XX, inclusive, for solid mineral lease 12-345678. We solicited your comments as to whether any of the requested information is privileged and confidential and therefore should be withheld from release under the provisions of the FOIA.



We have completed our review of your comments on this matter. Based on these comments and our independent review, we have determined that the production and royalty value amounts may be released; however, the respective product value statistics will be withheld pursuant to Exemption 4 of the FOIA which exempts from disclosure ". . . trade secrets and commercial or financial information obtained from a person and privileged or confidential."

We plan to release this information by June 23, 19XX. If you have any questions on this matter you may address them to Mr. John Jones, FOIA Coordinator, at (222) 333-4444.

Sincerely,

A. B. Smith
Associate Director for
Royalty Management

EXAMPLE OF A FOIA DENIAL LETTER

	United States Department of the Interior	
<p>MINERALS MANAGEMENT SERVICE WASHINGTON, DC 20240</p>		
<p>August 25, 19XX</p>		
<p>Mr. John Doe 123 Main Street Anytown, Virginia 20000</p>		
<p>Dear Mr. Doe:</p>		
<p>This is in response to your Freedom of Information Act (FOIA) request dated August 12, 19XX, for documents concerning royalties paid for gas production from the Brown Unit. Enclosed are 64 photocopied pages relating to your request.</p>		
<p>It has been determined that some portions of these documents are exempt from release under the provisions of the FOIA (5 U.S.C., Section 552(b)(4)) which concerns release of ". . . commercial or financial information obtained from a person and privileged or confidential."</p>	}	<p>Reference to Exemption</p>
<p>It is our policy to employ exemption number 4 by withholding financial information that could jeopardize a company's financial standing and/or competitive position. Information specifying the pricing, production quantities, sales agreements, and marketing conditions has been deleted from these documents and the notation "X-4," representing exemption 4 has been inserted. Sound grounds exist for invoking this exemption.</p>	}	<p>Sound ground for withholding</p>
<p>The official denying portions of your request is Mr. J. A. Smith, Associate Director for Royalty Management. If you disagree with this determination, you have the right to appeal this decision to:</p>	}	<p>Name/title of responsible person</p>
<p>FOIA Appeals Officer Office of the Assistant Secretary Policy, Management and Budget U.S. Department of the Interior Washington, D.C. 20240</p>	}	<p>Statement of appeal rights</p>
<p>Your appeal must be made in writing and must be received no later than 20 working days from the date of this letter. Please include copies of your original request, the initial denial, and a brief statement of why you believe this initial decision is in error. Both the envelope and the face of the letter should bear the legend "FREEDOM OF INFORMATION APPEAL."</p>		
<p>We hope that the enclosed information is helpful.</p>		
<p>Sincerely,</p>		
<p>John A. Smith Associate Director for Royalty Management</p>		

CHAPTER 3. FEES

1. Fee Charges. Fees will not be charged if the total amount chargeable does not exceed \$15.00. Appendix 1 shows the fees to be charged for various services involved in responding to an FOIA request. In determining the appropriate fee to be charged, the FOIA recognizes four categories into which a request may fall:

A. Commercial use requests are 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.

(1) Fees may be charged for costs incurred in document search, review, and duplication.

(2) Fees may not be charged for time spent resolving legal and policy issues affecting access to requested records.

B. Educational and noncommercial scientific institution requests. Educational requests are from a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. Noncommercial scientific institution requests are from an institution that is not operated for commerce, trade, or profit but solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(1) Fees may be charged for duplication, except that the first 100 pages of paper copies (or the equivalent if the records are in some other form) will be provided without charge.

(2) Fees may not be charged for search, review, deleting segregable exempt matter, monitoring the requester's inspection of records, or resolving legal and policy issues affecting access to requested records.

C. News Media requests are from any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Freelance journalists may be considered representatives of the news media if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it.

(1) Fees may be charged for duplication, except that the first 100 pages of paper copies (or the equivalent if the records are in some other form) will be provided without charge.

(2) Fees may not be charged for search, review, deleting segregable exempt matter, monitoring the requester's inspection of records, or resolving legal and policy issues affecting access to requested records.

D. Other requests include any request not covered by the categories described above.

(1) Fees may be charged for search and duplication, except that the first 2 hours of search time and the first 100 pages of paper copies (or the equivalent if the records are in some other form) will be provided without charge.

(2) Fees may not be charged for review, deleting segregable exempt matter, monitoring the requester's inspection of records, or resolving legal and policy issues affecting access to requested records.

2. Billing. When fees are due, the first sheet (yellow copy) of the Bill for Collection, Form MMS-1040, will be sent to the requester. The second sheet (white copy) of the form will be sent to the Financial and Administrative Management Division. The last sheet (blue copy) will be retained by the originating office. Payment will be made by check or money order payable to "Department of the Interior--MMS." The term United States or the initials "U.S." should not be included on the check or money order. Illustration 1 is an example of a Bill for Collection Form.

3. Notice of Anticipated Fees and Prepayment.

A. When it is anticipated that fees are likely to exceed \$250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing the request.

B. When a requester has previously failed to pay a fee within 30 calendar days of the date of billing, processing of any new request from that requester will be suspended until he or she has paid the amount owed including applicable interest and made advance payment of fees for the new request. The responding office may determine if a requester has paid fees for previous requests by contacting the Financial and Administrative Management Division.

C. A notice of anticipated fees or request for advance payment will extend an offer to the requester to confer with

appropriate personnel in an attempt to reformulate the request in a manner which would reduce the anticipated fees and meet the needs of the requester.

4. Waiver or Reduction of Fees. Fees may be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and it is not primarily in the commercial interest of the requester. The criteria for making this determination are as follows:

A. There must be a genuine public interest in the subject matter of the request. An interest which is merely personal to the requester is not considered to be a public interest.

B. The records themselves must be informative on the issue found to be of public interest. The information must meaningfully contribute to the public development or understanding of the subject.

C. Records containing information already in the public domain do not warrant a fee waiver, even if the subject is of public interest.

D. The identity and qualifications of the requester should be evaluated to determine whether the general public would benefit from disclosure to that requester. Established journalists and scholars and many public interest organizations generally meet this criterion. Other requesters should be required to specifically describe their expertise in the subject area and their ability and intention to disseminate the information.

E. The benefit to the general public must be primary. Where it is outweighed by any commercial or personal benefit, a fee waiver is not appropriate.

5. Discretionary waivers. Fees otherwise chargeable may be waived at the discretion of the responding official if:

A. The cost of collecting the fee would exceed the amount of the fee.

B. The request involves furnishing unauthenticated copies of any documents reproduced for distribution at no cost, 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 MMS, or furnishing one copy of the transcript of a hearing in a grievance or similar proceeding to the employee for whom the hearing was held.

C. The request involves furnishing records:

- (1) To donors with respect to their gifts;
- (2) To individuals or private nonprofit organizations having an official voluntary or cooperative relationship with the MMS to assist the individual or organization in its work with the MMS;
- (3) To State, local, and foreign governments and public international organizations when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the MMS and to do so will help to accomplish the work of the MMS;
- (4) When to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the fee for providing the service would be included in a billing against the MMS);
- (5) When to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former MMS employees); or
- (6) In order to assist the requester in obtaining financial benefits to which he or she is entitled (e.g., employees with employee compensation claims, persons insured by the Government, etc.).

6. Denial of Request for Fee Waiver. Procedures for denying a request for fee waiver are shown in Chapter 2, paragraph 5.

FEE SCHEDULE FOR FREEDOM OF INFORMATION ACT (FOIA) REQUESTS

The following uniform fee schedule is applicable when processing FOIA requests. See Chapter 3, paragraph 1, for further guidance on appropriate fees to be charged.

1. Copies -- Basic Fee. For copies of documents reproduced on a standard office copying machine in sizes up to 8 1/2" x 14" (other than documents requiring special handling because of their age or unusual dimensions): \$0.13 for each page.

Examples: For one copy of a three-page document, the fee would be \$0.39. For two copies of a three-page document, the fee would be \$0.78. For one copy of a 60-page document, the fee would be \$7.80.

2. Copies -- Documents Requiring Special Handling. For copies of documents which require special handling because of their age, size, etc., costs will be based on direct costs of reproducing the material.

3. Clerical Search or Review. For each quarter hour, or portion thereof, spent by clerical personnel in locating a requested record or records or in reviewing records: \$2.30.

4. Nonclerical Search or Review. For each quarter hour, or portion thereof, spent by professional or managerial personnel in locating a requested record or records or in reviewing records where such action cannot be performed by clerical personnel: \$4.65.

5. Certification. For each certificate of verification attached to authenticated copies of records furnished to the public: \$0.25.

6. Computerized Records. Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

A. Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.

B. An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output, remote terminal, storage, plotters, printing,

tape/disc mounting, etc.) with related associated costs applicable to each operation.

C. Material costs (i.e., paper, cards, tape, etc.) will be calculated using the latest acquisition price paid by the facility.

D. ADP facility managers must assure that all cost estimates are accurate and, if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, itemized listings of operations and associated costs for processing the job may be furnished to members of the public.

E. Requesters entitled to 2 hours of free search time, as stated in Chapter 3, paragraph 1D(1), shall not be charged for that portion of a computer search that equals 2 hours of the salary of the operator performing the search.

7. Postage, Mailing Costs. Postage/ mailing charges may be added for services (such as express mail) that exceed the cost of first class postage.

8. Other Services. When a response to a request requires services or materials other than those described above, the direct cost of such services or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

EXAMPLE OF A BILL FOR COLLECTION

U.S. DEPARTMENT OF THE INTERIOR MINERALS MANAGEMENT SERVICE BILL FOR COLLECTION				Bill No. <u>0001-0002</u>	
CUSTOMER*		REMIT TO:			
Ms. Mary Smith Gazorp Computer Services 234 D. Street, NW Washington, DC 20001		DEPARTMENT of the INTERIOR -- MMS Financial and Administrative Management Division, MS 632 381 Elden St., Herndon, VA 22070			
*see reverse for additional DOI collection information.					
DATE OF BILL	DUE DATE	DOI CONTACT/PHONE NO.	Amount of Payment		
8/29/XX	9/29/XX	John Doe 787-1000	29.90		
DESCRIPTION and DATES OF SERVICE		QUANTITY	COST	PER	AMOUNT
Fees Charged for Freedom of Information request dated August 7, 19XX:					
Contract documents as modified 150 pages @\$.13 per page		150	\$.13	page	19.50
Clerical search, 1/4 hour @2.30 per 1/4 hour					2.30
Non-clerical review, 1/4 hour @4.65 per 1/4 hour					4.65
Postage (special handling)					3.45
Agency contact: _____		Phone: _____			
NOTE: Federal regulations require that an annual interest rate of <u>.58%</u> assessed for each 30 day period, or portion thereof, that payment is delayed beyond the Due Date.					TOTAL AMOUNT \$ 29.90
BILLING OFFICE INFORMATION			ACCOUNTING CLASSIFICATION		
			APPROPRIATION: <u>142419.1</u>		
			PROJECT ACCT: _____		
Yellow copy -- Party billed White copy -- Financial Management Division Blue copy -- Originating office					
Form MMS - 1040 (May 1987)					