



U · S · DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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Date:

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Subject: Freedom of Information Act (FOIA)

Approval:

Title: Acting Director

1. **Purpose.** The purpose of this directive is to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, in accordance with the procedures established in the Department of the Interior regulations contained in 43 CFR Part 2, Subpart B-Requests for Records. It also provides internal guidelines and procedures for routing requests, reviewing documents for FOIA allowed exemptions, and responding to requests made to the Office of Surface Mining Reclamation and Enforcement (OSM) under the FOIA, in keeping with the spirit of the FOIA (43 CFR 2.13(a)(b).)

2. **Summary of Changes.** This directive revises and supersedes Directive INF-3, Title Transmittal Number 721, dated May 14, 1992. The significant revisions are as follows:

a. Section 3.e., Agency Record, has been expanded to refer reader to INF-1, Records Management Manual, for guidance on filing procedures and records disposition.

b. Sections 4.b.(11), 4.b.(16), and 4.b.(22) have been revised to add the requirement that responses that quote the appeal rights must be mailed by Certified Mail, Return Receipt Requested.

c. Section 4.b.(20), Billing for Collection of Fees, has been expanded to address non-payment of fees by the requester and subsequent action.

d. Appendix C, Illustration 5. A new sample letter has been added which should be sent to the requester of commercial (b)(4) information when the company that provided the information must be contacted for clearance to release the information.

e. Appendix C, Illustration 6. A new sample letter has been added to be sent to the requester asking for the assurance of payment of fees.

f. Appendix C, Illustration 16. A new sample letter has been added which should be sent to the requester when all records are being released.

g. Appendix D, page D-4. Sample listing of computer costs has been expanded.

h. Appendix D, page D-5. A new form for calculating fees has been substituted for action offices to complete and forward for every FOIA request.

3. Definitions.

a. Act and "FOIA" mean the Freedom of Information Act, 5 U.S.C. 552.

b. Action Office is the office within OSM that has been assigned the lead responsibility for collecting documents, reviewing documents for FOIA exemptions, and preparing the FOIA response. It is the office within OSM which is in possession of the records requested by the FOIA and whose staff can best provide a review of records for FOIA exemptions.

c. Advance Fee Payments are payments which may be required from a FOIA requester by the action office when it is anticipated that allowable fees are likely to exceed \$250 and that the requester does not have a history of prompt payment of FOIA fees. (See Section 4.b.(21) and Appendix C, Illustration 10.)

d. Agency is OSM.

e. Agency Record is any form (paper, video cassette tape, or computer data tape, etc.) of information already maintained by the Agency that was created by the Agency or received from other sources in connection with the transaction of public business. Refer to INF-1, Records Management Manual, for guidance on filing procedures and records disposition.

Note: The FOIA does not apply to Personal Records of individual employees, as long as these documents are created and maintained primarily for the convenience of the employee not on Agency time, not at the Agency's expense, not concerning Agency business, and not distributed to other employees for Agency purposes.

f. **Appeals** are written notices (see 4.b.(16) of this directive) prepared by the FOIA requester and sent to the Department of the Interior, Assistant Secretary for Policy, Management and Budget in cases when:

- (1) Records have been withheld in a FOIA response;
- (2) A request has been denied because of failure to describe requested records or because of other procedural deficiencies, or when it has been determined that the requested records do not exist or cannot be located;
- (3) A fee waiver has been denied; or
- (4) A request has not been provided within the time limits stated in 43 CFR 2.17.

g. **Commercial Information Notification** is a written notice prepared by the action office that, in accordance with 43 CFR 2.15(d) and Executive Order (EO) 12600, allows the submitters of commercial and financial information the opportunity to provide the Agency with a detailed statement of any objection to disclosure of such documents. (See Appendix C, Illustration 4.)

h. **Denial Of A Document** is a written decision prepared by the action office to withhold a requested record. (See Appendix C, Illustration 12, and 4.b.(16).)

i. **Denial Of A Request** is a determination made by the action office familiar with the files, that a request does not reasonably describe the requested records. A denial of a request includes the same written appeal language as a denial of a document.

j. **Due Date** is the date 10 working days after the date that the initial request has been received by the Agency or a later date, where action is deferred pursuant to paragraph 4.b.(4).

k. **Exemptions** are the nine categories of criteria for exempting documents or portions of documents from the Act's statutory disclosure requirements. A list of the exemptions and explanations can be found in 43 CFR 2.13(c)(1) through (c)(9), and Appendix B.

l. **Extension Of Time** is an additional (one-time) 10-working-day period for providing a FOIA response, pursuant to 43 CFR 2.17(c).

m. **Fees** are the costs OSM may charge for search, review, and reproduction of records according to the appropriate requester category, as indicated in 43 CFR 2.20 (Appendix D of this directive), unless fees are waived pursuant to 43 CFR 2.21. (See sample form for assessing fees, Appendix D, pg. D-5.)

n. **Fee Waiver** is an OSM determination to provide documents without charge or at a reduced amount pursuant to 43 CFR 2.21(a) (Appendix C, Illustration 6.)

o. **FOIA Request** is a written request for Agency records made by any person that:

- (1) States that the request is made under FOIA;
- (2) Reasonably describes the records sought, or is sufficient to enable an Agency employee familiar with the subject area to locate the record with a "reasonable amount of effort" (see 43 CFR 2.14(b)); and
- (3) States whether they are willing to pay fees and states the maximum amount of fees that they are willing to pay, and the fee category into which they claim to fall; or requests consideration for a fee waiver.

See Section 4.b.(2) for information on treating an incoming as a FOIA request. See Section 4.b.(3) for information on requests not covered under FOIA.

p. **FOIA Response** is the Agency's written notification to the FOIA requester that is prepared by the action office and sets forth the Agency's determination whether to grant or deny a FOIA request. Ordinarily the FOIA response will include the following materials:

- (1) A list of documents being released, and a list of documents being withheld (if any), with the exemptions for withholding each document (or part of a document);
- (2) All records responsive to the request in the format most convenient for the Agency to provide;
- (3) Records that are already in existence at the time of receipt of the request, not documents created after receipt of the request;
- (4) A determination of fee charges or fee waiver.

q. **Interim Response** is a letter provided (usually by the action office) to apprise the requester of the status of his or her request. For example, an interim letter could be sent to:

(1) Notify the requester of a delayed response exceeding 20 working days including the extension;

(2) Notify the requester that OSM is providing an opportunity for review of possible confidential commercial or financial documents by the submitter of the documents;

(3) Request information to clarify a FOIA request;

(4) Request responses to questions to justify a fee waiver; or

(5) Notify a requester of the estimated charges for preparing a response, and request a commitment to pay the charges or to provide advance payment if fees exceed \$250.

r. **Transfer of a FOIA Request** is the action office referral of documents that were prepared or classified by another Federal agency, to that agency for review. The action office should also notify the FOIA requester that the originating agency will be communicating with the requester directly regarding those documents.

s. **Working Day** is a regular Federal workday (not Saturdays, Sundays or legal holidays).

4. **Policy/Procedures.**

a. **Responsibility.**

(1) **The Director** oversees compliance with the requirements of the FOIA and institutes a program which ensures impartial administration of FOIA by OSM. The Director also ensures protection of the rights accorded to the public by the Act.

(2) **OSM's Freedom of Information Act Officer** duties are delegated to the Chief, Correspondence and Issues Management Staff (CIMS). The FOIA Officer signs all interim and final responses to FOIAs prepared at Headquarters, and any FOIA prepared within OSM that withholds information under one of the FOIA exemptions; develops policies, guidelines, procedures, standards, and training for the OSM FOIA program; and monitors and evaluates

the program's effectiveness. The Chief of CIMS also coordinates all OSM FOIA actions with the Assistant Solicitor, Branch of Regulatory Programs, Division of Surface Mining; coordinates all FOIA requests directed to the Secretary that involve documents in files maintained by OSM; provides authoritative guidance on which documents can be released or are exempt under the Act; advises the Director on policy matters involving FOIA; and prepares the Annual Report on FOIA activities for the Agency.

(3) Field Office Directors and Assistant Directors of the Western and Eastern Support Centers are responsible for signing any interim, or final response to a FOIA request when such a response releases all information requested, but only after review by CIMS and as necessary, the Solicitor's Office. Each Field Office Director (FOD) and Assistant Director (AD) is responsible for designating a FOIA Coordinator, who is trained or will be trained in the area of the FOIA; providing the name and title of the individual designated as FOIA Coordinator to the Chief, CIMS; developing guidelines and operating procedures consistent with this directive; and acting as a responsible official for documents, within the jurisdictions of the FOD or AD in question, which are released or withheld. The FOD or AD is accountable for these responsibilities.

(4) Field FOIA Coordinators assist the action office responding to a FOIA request by answering questions concerning the application of the FOIA guidelines and reviewing documents for FOIA exemptions; providing training, if necessary, concerning the above FOIA guidelines; controlling and tracking FOIA requests as the responses are being prepared; ensuring that the action office responding to the FOIA follows the procedures in this directive (see the FOIA Checklist, Appendix A); assisting the Headquarters FOIA Coordinator in preparing the Annual Report; and reviewing FOIA responses to ensure their consistency with the FOIA directive prior to sending responses to CIMS. Each Field FOIA Coordinator is the main contact, with the FOIA Officer and the Headquarters FOIA Coordinator, for his or her office.

(5) Headquarters FOIA Coordinator assists the Field Coordinators and Headquarters action offices responding to the FOIA request by answering questions concerning the application of the FOIA guidelines and reviewing for exemptions; developing and providing training to Agency personnel; controlling and tracking the FOIA request as the response is being prepared in Headquarters; and reviewing all Agency FOIA responses, for completeness and decisions to withhold or release documents, before forwarding them to the Assistant Solicitor, Branch of Regulatory Programs,

Division of Surface Mining. The Headquarters FOIA Coordinator also maintains records necessary for the preparation of the Annual Report to Congress. The Headquarters FOIA Coordinator is the contact between the Department of the Interior FOIA Officer and OSM for FOIA activities and policies.

b. Procedures/Preparation.

As a quick guide for preparing a FOIA response, see the FOIA Checklist, Appendix A, in addition to the following.

(1) Controlling Incoming FOIAs. OSM field or Headquarters offices receiving a FOIA request should immediately date-stamp it, and send a copy of the request to the FOIA Coordinator at Headquarters for correspondence control. CIMS will place a control number and assign a due date on the control sheet for each FOIA request. It will also send the incoming and control sheet to the action office either at Headquarters or to the FOIA Coordinator in the field.

When the field installation has the action, the Field FOIA Coordinator should copy the action office and track the response. When a Headquarters office has action, the Headquarters FOIA Coordinator will copy the action office and track the response.

(2) Treating A Request As A FOIA Request: OSM may decide to treat an incoming letter as a FOIA request when:

(a) A third party asks to view Agency documents concerning another party (such as personnel records); or

(b) A request is made for a specific document which is known to be protected by one of the FOIA exemptions (such as audit files or draft documents).

If an OSM office has decided to treat an incoming as a FOIA, it should copy the OSM FOIA Officer. The letter will then be handled according to FOIA procedures. The due date will be 10 working days from the date it was decided the letter should be treated as a FOIA.

(3) Requests Not Covered Under FOIA: A request is not covered under FOIA when:

- (a) It is from an employee of a Federal agency acting in an official capacity;
- (b) It is from a congressional committee or subcommittee;
- (c) It is by an individual for records about himself/herself which are subject to the Department's Privacy Act regulations; and
- (d) It asks for information that OSM would need to create in response to the request, and not for records that already exist.

In these cases, FOIA procedures and review are not required.

(4) Due Dates. According to the FOIA and 43 CFR 2.17, a response to a request for records should be made no more than 10 working days after receipt of the request by the Agency. For tracking purposes, the due date is assigned by CIMS and appears on the CIMS control sheet.

The running of the 10 working days may be deferred if:

- (a) The requester has to be contacted by the action office for information to clarify his/her request;
- (b) The requester must agree to pay fees because the request did not state a willingness to pay fees, and no fee waiver has been sought or granted; or
- (c) The requester must make advance payment because costs for processing the request exceed \$250.

The first 10-day time period will begin when these questions are resolved.

(5) Coordinating Responses With Other Offices. If a field or Headquarters office receives a request for which some responsive documents are located in other OSM offices, the action office should take the lead in coordinating a response with the other offices and should contact the FOIA Coordinator concerning this. The action office has the responsibility to inform all relevant offices of the FOIA request.

When a FOIA request that needs coordination within OSM is received, and more than one office maintains a large number of documents responsive to it, the Headquarters FOIA Coordinator will take the lead in coordinating a response. In either case, the action office should identify the need for coordination to the FOIA Officer and follow through with the other offices.

(6) Requests That Are Not Clear. If the action office determines that the request is so general that a reasonable determination of the nature and location of the requested documents cannot be made, the action office should contact the Headquarters FOIA Coordinator. The action office should then contact the requester by letter or phone to clarify the request. (See Appendix C, Illustration 1.)

(7) Willingness to Pay Fees. The initial FOIA request should include the amount of fees the requester is willing to pay, unless he or she requests a fee waiver. (See Appendix C, Illustration 7.) If a willingness to pay fees has not been indicated, then the action office should prepare a letter inquiring whether the FOIA requester is willing to pay fees, and estimating fee charges (based on fee categories explained in Appendix D). Letters should be cleared through the Headquarters FOIA Coordinator.

(8) Transferring a Request. If the FOIA request seeks records that were originated or maintained by another Federal agency, the action office should notify the Headquarters FOIA Coordinator of the situation. The action office will then prepare a transmittal letter for the FOIA Officer's signature transferring a copy of the request (with the agency documents if applicable) to the appropriate Federal agency, with a request that the agency directly reply to the requester concerning the documents in question. (See Appendix C, Illustration 3 and Illustration 11.) The action office will also notify the requester by letter that action on the request has been transferred to the other agency. (See Appendix C, Illustration 2.)

The procedure does not apply if documents requested were originated by a State agency. The State should however be notified by the action office of the FOIA request for State records.

(9) Fee Waivers. When a fee waiver is requested in the incoming FOIA, the action office should determine if the requester has addressed the statutory requirements identified in 43 CFR 2.21 or in Appendix C, Illustration 7. If further information is needed concerning the justification for a fee waiver, the action office should send an interim response to the FOIA requester before the first 10-day due period has expired. The interim response will include the estimated costs (based on fee categories explained in Appendix D) to be paid if the fee waiver is not approved. If a fee

waiver is approved, the approval should be noted in the final response. OSM may charge fees for copying and search costs for documents in the administrative record, when they are in a location easily available to the requester.

All correspondence should be cleared through the Headquarters FOIA Officer.

(10) 10-Day Extension of Time. Under three circumstances FOIA provides for an additional (one-time) 10 working days for sending a FOIA response. The additional 10 days starts on the next working day after the first 10-day period. See Appendix C, Illustration 8 for the cases in which an extension is permitted, and a sample extension notice. The action office should prepare and send the extension notice before the end of the first 10-day period. The Headquarters FOIA Officer should be contacted and copied.

(11) Responses Exceeding 20 Days. OSM is required to send a "delay" letter if OSM cannot send the FOIA response within the 10-day time period and the additional 10-day extension period. The requester may deem the request denied and may exercise a right of appeal in accordance with 43 CFR 2.18. (See Appendix C, Illustration 9 for a sample letter.) The action office will prepare the delay letter before the 20th day. The Headquarters FOIA Officer should be contacted and copied.

NOTE: Any FOIA response quoting the requester his/her appeal rights must be sent Certified Mail, Return Receipt Requested.

(12) Notifying Submitters of Commercial or Financial Information. Under 43 CFR 2.15(d) and EO 12600 (see Appendix H), if a requester seeks a record containing trade secrets or commercial or financial information that may be confidential and was submitted by a person outside of the Federal Government, the action office shall provide the outside submitter with a notice of the FOIA request and copies of the documents in question. The action office should prepare this notice as indicated in Appendix C, Illustration 4. If the period for the submitter to comment exceeds the time limit for processing the request, the action office will notify the requester of the delay. (See Appendix C, Illustration 5.)

Notifications are not necessary if OSM determines prior to giving notice that the request for the record should be denied, or the information has previously been lawfully published or released, or is readily available to the public from another source.

(13) Collecting Responsive Documents. The FOIA requires that OSM only provide those responsive documents which exist, and are in the possession or control of the Agency at the time the Agency receives a request; not those prepared or acquired after the date of receipt of the FOIA request: Such later documents are not responsive to the request. If a document responsive to the request does not exist, the Agency is not required to produce a document that incorporates the requested information.

All responsive documents that have been located then must be identified on either the release list or withheld list. See Appendix C, Illustration 13, for a sample of the required formats for the lists.

(14) Review of Documents for FOIA Exemptions. Under the FOIA, there are nine exemptions on the basis of which a document (or portion of a document) may be withheld from disclosure to the public. OSM will withhold information falling within an exemption category only if (a) release of the information is prohibited by statute or Executive Order (EO 12600 and SMCRA for example) or (b) sound grounds exist for invoking one of the FOIA exemptions.

Each document should be reviewed for applicability of one or more FOIA exemptions. If information within a given document does not fall under any of the exemption categories, there is no basis for withholding that document.

The program person in the action office should be the first to review and identify documents that may be withheld. The program person and officials identified in the appeal language may be required to explain the rationale for withholding documents if there are questions raised by CIMS; by the Staff Attorney, Branch of Regulatory Programs; or by a staff attorney in General Law upon appeal of the FOIA response.

(15) FOIA Exemptions. Appendix B lists the nine FOIA exemptions and provides a detailed explanation of the exemptions most often used by this Agency.

Please consult with the Headquarters FOIA Coordinator or the OSM FOIA Officer, if it is unclear as to whether or not specific records or documents fall under any of the exemptions. CIMS will coordinate the review of the final response, including these records, with the Office of the Solicitor, Division of Surface Mining.

NOTE: How documents have been filed and/or released prior to the receipt of the FOIA request may have an effect on the applicability of a FOIA exemption, and in some cases might require release of a document that might otherwise have been withheld. OSM's recordkeeping policy is found in the Records Management Manual, INF-1.

(16) Withholding (Denying) Documents (or Portions of Documents) A denial of a document includes a reference to the specific FOIA exemption authorizing the withholding (e.g., 5 U.S.C. 552(b)(5)), the sound grounds for withholding the record (e.g., pre-decisional), a listing of the names and titles or positions of each person responsible for the denial, and a statement that the denial may be appealed to the Department of the Interior, Assistant Secretary for Policy, Management and Budget. (See Appendix C, Illustration 12). Each document being released and each document being withheld should be listed in the appropriate enclosure, as the illustration shows.

If OSM plans to withhold a portion of a document and release the remainder, on a copy of the document, the words, paragraphs, or numbers to be withheld should be blackened out completely (excised or taped over), to provide an excised copy for release. A document of this type should be listed on both the release and withheld lists. The FOIA Officer should receive for review and filing a complete set of documents being released, and a complete set of documents being withheld including copies of both excised and not excised versions of each document being partially withheld.

NOTE: Attorneys in Field Offices of the Solicitor will not be routinely involved in preparation or review of FOIA responses. In the relatively rare instances in which, because of the volume of documents being reviewed, it is appropriate to obtain the assistance of a Field Office attorney on a FOIA response, the referral to a Field Office attorney will be made through the Headquarters Office of the Solicitor. The action office will notify the Headquarters FOIA Coordinator of this situation.

As indicated in Appendix C, Illustration 12, a denial letter should include:

- (a) The FOIA citation for withholding each document on the withheld list item;
- (b) Justification of the denial for each withheld list item;

- and
- (c) The appeal language in the body of the response;
 - (d) The name and title of the person(s) responsible for the denial.

A denial of a request (not being able to locate any responsive records after a reasonable search) includes the same written appeal language as a denial of a document. (See Appendix C, Illustration 13.)

NOTE: Any FOIA response quoting the requester his/her appeal rights must be sent by Certified Mail, Return Receipt Requested.

(17) **Computer Data:** It is the Agency's policy to provide computer data (following review for exempt information), unless major reprogramming would be required and the Agency has no use for resulting data that would justify the cost of the reprogramming. (See Appendix C, Illustration 14.) The Agency may provide the information to the requester in whatever format is most convenient to the Agency.

(18) **Administrative Records or Public Files:** If the requester desires to come into an Agency installation to review and possibly copy documents from the Agency files, he or she may do so if documents have already been deemed releasable because they are required to be released by law -- and so are placed in a public or administrative file -- or because they have already been reviewed for FOIA exemptions. If a fee waiver does not apply and documents need to be reviewed, any search and/or review time for documents will be charged as appropriate for the fee category in Appendix D into which the requester falls. There will be a charge of \$.13/page for copying the documents. See below for billing and fee collecting instructions.

(19) **Estimating Fee Charges.** Upon receipt of a FOIA request, the action office should identify the fee category into which the requester falls (see Appendix D), and should maintain a log of costs (see D-5 of Appendix D) to substantiate charges. Appendix F also provides information on costs that are allowable under the law. The Agency may charge fees (\$.13/page) for providing copies of requested documents that are in the administrative record when they are at a location easily available to the requester.

Fee Categories:

- (a) Commercial use,
- (b) Educational and Noncommercial Scientific Institutions,
- (c) Representatives of the News Media, and
- (d) All Others.

(20) Billing for Collection of Fees. Once a FOIA response (that charges fees) has been signed, a copy of it should be transmitted via memorandum to: Chief, Programmatic Accounting, Division of Financial Management, P.O. Box 25065, Room D-2125, Denver, Colorado 80225.

Programmatic Accounting will then send the bill for collection to the FOIA requester and provide a copy of the bill to the FOIA Officer. In accordance with 43 CFR 2.20(j), a bill for collection, Form DI-1040, shall be used for collection of fees. Refer to Appendix D for sample language. If a FOIA request charge has not been paid by the requester after 30 days, Programmatic Accounting should provide that information to the Headquarters FOIA Coordinator, who will record that fact in the requester's file. The Headquarters FOIA Coordinator will notify the action office preparing a later FOIA response that the requester has not paid fees. The Headquarters FOIA Coordinator will then notify the requester that he/she has outstanding fees and that the action on his/her request will not occur until the fees are paid.

(21) Fees Exceeding \$250. Where it is anticipated that allowable fees are likely to exceed \$250 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 the Agency processes the request. (43 CFR 2.20(h)(1).) (See Appendix C, Illustration 10.) The Agency will notify the requester that prepayment is due and at the same time provide him/her with an opportunity to modify the request to reduce the fee.

Where 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 shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees (43 CFR 2.20(h)(2)). In accordance with the Debt Collection Act of 1982, interest can be assessed after the 31st day following the day on which the bill was sent.

The office of the Chief, Programmatic Accounting should immediately contact the Headquarters FOIA Coordinator when advance payment is received, and the Coordinator will contact the action office regarding the payment.

(22) Format of a Response.

(a) Affirmative Responses: After the action office has reviewed the responsive documents for FOIA exemptions, and if all documents are deemed releasable, the action office will prepare a response similar to that in Appendix C, Illustration 15, when fees are less than \$15; use the language in Appendix C, Illustration 10, when fees exceed \$250; and include fee waiver approval, when answers to fee waiver questions justify the Agency's granting a fee waiver.

The proper listing of documents being released is an important element in the FOIA response; the action office should use the Appendix C illustration format.

(b) Responses denying records: After the action office has reviewed the responsive documents for FOIA exemptions, and if some or parts of documents are withholdable under a FOIA exemption, the action office will prepare a response similar to that in Appendix C, Illustration 12. Enclosure A will list documents being released, as well as the portions of documents being released (those that have excised material). Enclosure B will list documents and portions of documents being withheld with the statutory reason cited.

NOTE: Any FOIA response quoting the requester his/her appeal rights should be sent Certified Mail, Return Receipt Requested.

(23) Copies of the Final Response. In the case where all documents are being released, the action office should send the response in final format to the FOIA Officer for review in CIMS (bcc copies will not have to be provided until after the final review and any revisions have been made). The response should include two copies of the responsive documents and a copy of the letter and Enclosure A, Release List; as well as a Wordperfect diskette containing the letter and enclosures. CIMS will send the response and documents for further review to the Solicitor's office as necessary. The second copy of the documents will be maintained in CIMS files by the FOIA Officer.

In the case where the action office determines that part or all of some documents should properly be withheld under applicable FOIA exemptions, the action office should provide to the FOIA Officer a response package which includes: the response letter; Enclosure A, Release List; and Enclosure B, Withheld List; a copy of the letter and enclosures on a Wordperfect diskette; two complete copies of the documents being released (one for CIMS file); and one set of documents being withheld. If a portion of a document is to be withheld, the complete document should be sent to be reviewed in CIMS and the SOL office.

After the FOIA response has been reviewed and revised as appropriate, the action office should send the following offices, in general, a copy of the response letter with the enclosure list(s):

bcc:
OSM Subject
OSM Reading
CIMS
CIMS-FOIA Coordinator (Complete Copy)
SOL/DSM/Regulatory Programs
Action Office
FOD or AD

5. **Reporting Requirements. Annual Report.** The OSM FOIA Officer is required to provide by February 1 to the Department of the Interior FOIA Officer information as requested by the Department of the Interior FOIA Officer (such as data on requests, affirmative responses and denials). This information is collected by the Department of the Interior to be submitted to Congress.
6. **References.** 43 CFR Part 2, Subpart B; 383 DM 15, Department of the Interior, Freedom of Information Handbook; and 5 USC 552 et seq.
7. **Effect on Other Documents.** Supersedes directive INF-3, Freedom of Information Act, dated May 14, 1992.
8. **Effective Date.** Date of issuance.
9. **Contact.** Chief, Correspondence and Issues Management, (202) 208-2562 or FAX at 1-202-219-3107.
10. **Keywords.** Freedom of Information Act (FOIA) and FOIA Exemptions.
11. **Appendices.**
 - Appendix A - Checklist for Preparing a FOIA Response
 - Appendix B - FOIA Exemptions
 - Appendix C - Samples of Letters
 - Appendix D - Calculating Fee Charges
 - Appendix E - 43 CFR Part 2: Departmental Guidelines on FOIA
 - Appendix F - 43 CFR Part 2, Appendix A: Fees
 - Appendix G - 5 U.S.C. 552: The Freedom of Information Act
 - Appendix H - Notification Procedures for Commercial Confidential Information

CHECKLIST FOR PREPARING A FOIA RESPONSE
(With Cites)

HFC = Headquarters FOIA Coordinator
FFC = Field FOIA Coordinator
ACTION OFFICE = Office assigned responsibility for collecting and reviewing documents, and preparing the FOIA response

1. Any OSM office receiving a FOIA request should promptly date stamp the letter and send a copy to the **HFC** and/or **FFC**. A response is due within 10 days from OSM's receipt of the FOIA.
2. **HFC** in CIMS will control the FOIA and send it to the **ACTION OFFICE**. Due dates are assigned by CIMS.
3. The **ACTION OFFICE** coordinates response with other Field or Headquarters office(s) if more documents are located in other offices. Notify **HFC** and/or **FFC** regarding this.
4. The **ACTION OFFICE** determines what fee category group the requester is in (43 CFR 2.20). The **ACTION OFFICE** and other offices involved with responding should keep track of search time and copying costs for the appropriate fee category. (See Appendix D - Fee Charges.)
5. **INTERIM RESPONSES**
 - a. If request is unclear, or too broad to determine what information is responsive, then after consultation with the FOIA Coordinator, the **ACTION OFFICE** contacts the requester by letter or phone to clarify request. (See Appendix C, Illustration 1)
 - b. If the FOIA requester asks for a fee waiver, the **ACTION OFFICE** reviews the justification for fee waiver with regard to questions listed in 43 CFR 2.21(a) and Appendix C, Illustration 7, of the FOIA Directive. If a justification is not clear from the information the requester has already provided, then the **ACTION OFFICE** will send a letter requesting necessary information, after consultation with the **HFC** and the **SOL**.

- c. The **ACTION OFFICE** should prepare a letter requesting a 10-day extension, if the first 10-day due date can't be met (43 CFR 2.17(c)). FOD or Assistant Director may sign. (See Appendix C, Illustration 8.)
 - d. The **ACTION OFFICE** should identify exempt documents according to Appendix B - FOIA Exemptions, and provide CIMS with reasons for using the exemption. (e.g., the document to be withheld is a draft, the claimant requested confidentiality, or this is not final agency policy, etc.)
 - e. The **ACTION OFFICE** contacts by letter the person or organization that provided OSM with documents which are responsive to the incoming FOIA and which may contain confidential commercial or financial information. The submitter of those documents has 10 days to review the documents in question and provide sufficient reason why the information is confidential. The FOIA requester should be notified by letter that a review by the submitter is pending. (See 43 CFR 2.15(d) and Appendix C, Illustration 4.)
6. For documents responsive to a FOIA request that were originated by another Federal agency, the **ACTION OFFICE** will forward a copy of the FOIA response, together with the other agency's documents, to the other Federal agency for review, and direct response to the requester. (See 43 CFR 2.15(b) and Appendix C, Illustration 11.) If documents are provided by a state agency, the state may be contacted concerning the request as a courtesy but not necessarily for review of their documents.
 7. The **ACTION OFFICE** chronologically lists documents (or portions of documents) to be released in Enclosure A. Enclosure B lists chronologically documents (or portions of documents) being withheld under one or more of the FOIA exemptions. All documents should be marked with corresponding identifiers. (See Appendix C, Illustration 1.)
 8. The **ACTION OFFICE** prepares response in accordance with the FOIA Directive. (See Appendix C.)
 9. The **ACTION OFFICE** sends two copies of the proposed response letter and two sets of enclosures to CIMS with an enclosed diskette on a Wordperfect file, and one set of withheld documents (without deletions) for review. Following review by HQ, if there are major changes, retyping will be done by the **ACTION OFFICE**.

10. For FOIA requests being responded to in the field, if all documents are being released, the Field Office Director or Assistant Director for WSC or ESC will sign the response after CIMS and (if necessary) SOL review. All affirmative responses prepared in Headquarters will be signed by the Freedom of Information Act Officer. If documents are being withheld, the responses will be prepared for the signature of the Freedom of Information Act Officer. Copies of responses denying documents will be sent from CIMS.

11. If a letter is not responded to within 20 working days (which includes the 10-day extension), then the **ACTION OFFICE** sends a letter of delay. (See Appendix C, Illustration 9.)

APPENDIX B

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FOIA EXEMPTIONS

Under the Freedom of Information Act (5 U.S.C. 552) there are nine exemptions which serve as a basis for withholding information from the public. Records (or portions of records) that meet the following exemption criteria may be withheld from public disclosure, but must be listed on a withheld list that gives the statutory citation and the reason for withholding each item. The nine exemptions are listed below:

- | | | |
|---------------------------|-----------|---|
| (b)(1) EXEMPTION 1 | | CLASSIFIED SECRET MATTERS OF NATIONAL DEFENSE OR FOREIGN POLICY |
| (b)(2) EXEMPTION 2 | | INTERNAL PERSONNEL RULES AND PRACTICES |
| (b)(3) EXEMPTION 3 | | INFORMATION SPECIFICALLY EXEMPTED BY OTHER STATUTES |
| (b)(4) EXEMPTION 4 | ** | TRADE SECRETS, COMMERCIAL OR FINANCIAL INFORMATION
"Trade secrets and commercial or financial information obtained from a person and privileged or confidential." |
| (b)(5) EXEMPTION 5 | ** | PRIVILEGED INTER-AGENCY OR INTRA-AGENCY MEMORANDA OR LETTERS
(Predecisional, attorney-client privilege and attorney work-product privilege fall under this exemption.) "Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency." |
| (b)(6) EXEMPTION 6 | ** | PERSONAL INFORMATION AFFECTING AN INDIVIDUAL'S PRIVACY
"Personnel and medical files and similar files disclosure of which would constitute a clearly unwarranted invasion of personal privacy." |

- (b)(7) EXEMPTION 7 ** INVESTIGATORY RECORDS COMPILED
FOR LAW ENFORCEMENT PURPOSES
(See page B-9 for a list of the six criteria for
invoking this exemption)**
- (b)(8) EXEMPTION 8 RECORDS OF FINANCIAL INSTITUTIONS**
- (b)(9) EXEMPTION 9 GEOGRAPHICAL AND GEOPHYSICAL
INFORMATION CONCERNING WELLS**

**** Exemptions most often cited by OSM**

See following FOIA Exemption Checklist for additional guidance on reviewing documents.

FOIA EXEMPTION CHECKLIST

Very often background information on documents that would justify withholding them is not provided when Headquarters receives the draft letter and enclosures. Please provide information to CIMS when documents being reviewed fall under one or more of the categories below.

1. **ATTORNEY-CLIENT PRIVILEGED** - Was the information provided to the Department's attorney with the intent that it would be held confidential? Has the information been kept confidential within OSM?
2. **ATTORNEY WORK-PRODUCT** - Was the information prepared by or on behalf of the Department, in anticipation of future litigation? If prepared by OSM staff, was it prepared at the request of the Office of the Solicitor or Department of Justice?
3. **COMMERCIAL INFORMATION** - Does the information relate to business or trade in which the submitter has a commercial interest?
4. **FINANCIAL INFORMATION** - Is this information taken directly from the company's ledger? Is this a final audit summary or auditor's working papers?
5. **CONFIDENTIAL INFORMATION** - Will release of the information cause harm to the competitive position of the company from whom the information was obtained, or impair the Government's ability to obtain similar information in the future?
6. **PERSONAL INFORMATION** - Would release of the information be an unwarranted invasion of personal privacy? For example is there a social security number, home address or phone number? In documentation of complaints (letters and telephone logs), has the complainant requested confidentiality? If it is not clear whether the complainant has requested confidentiality, the complainant should be asked if he or she objects to their name being released.
7. **PHONE CONVERSATION RECORDS** - Only information that is otherwise eligible to be withheld under a FOIA exemption may be withheld; e.g., identifiers of confidential complainants, privileged attorney-client communications, etc. Phone conversation records are not per se withheld, if they have been circulated within the Agency, filed in Agency files, or otherwise used for official purposes.

8. **PREDECISIONAL DOCUMENTS** - (1) Has this document ever been released outside OSM to a non-Federal Government entity? If it has, in most cases, it should be released. (2) Is this document or section of document a final policy, or an opinion or recommendation? (3) If this document is not signed or dated, is it a final or draft document?

9. **PUBLIC FILES** - If a document has been stored in files routinely and readily available to the public, such as reading-room files, in most cases the document should be released.

10. **PERSONAL FILES VS AGENCY FILES** - Notes created solely for the convenience of the writer that are not required to be made by the writer as an official duty, and are not (a) shared with anyone, (b) kept in Agency files, or (c) used in an adverse action against the employee are not considered Agency records under the FOIA and are not subject to a FOIA response.

**DOCUMENTS IN THE FOLLOWING CATEGORIES ARE EXEMPT FROM
FOIA DISCLOSURE REQUIREMENTS:**

Source: 5 U.S.C 552(b) or 43 CFR 2.13(c).

Note: (FOIA exemptions (1),(8), and (9) are not normally applicable to OSM documents and are not included in this Appendix)

Exemption (b)(2) - (5 U.S.C 552(b)(2))

"...related solely to the internal personnel rules and practices of an agency."

NOTE: The courts have interpreted the exemption to encompass two distinct categories of information:

- a. Internal matters of a relatively trivial nature, and in which the public has no vested interest.
- b. More substantial internal matters the disclosure of which would allow circumvention of a statute or agency regulation, such as certain administrative manuals, performance ratings and lists of awards.

Exemption (b)(3) - (5 U.S.C 552(b)(3))

"...specifically exempted from disclosure by statute."

Its intent is to allow statutes which required or authorized the withholding of confidential information to remain unaffected by the disclosure mandate of the FOIA.

This exemption applies to items such as:

- a. Information on archeological resources on public land and Indian land (pursuant to the Archeological Resources Protection Act of 1979, 16 U.S.C 470).
- b. Information protected under sections 508(a)(12) and 508(b) of SMCRA.

- c. Federal income tax return information protected under the I.R.S. Code, 26 U.S.C. 6103.

Exemption (b)(4) - (5 U.S.C 552(b)(4))

"...trade secrets and commercial or financial information obtained from a person and privileged or confidential."

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.

Executive Order No. 12600 mandates that all agencies notify the submitter of commercial or financial information that may be confidential when their data is requested under FOIA, in order to obtain their position on disclosure. (43 CFR 2.15(d)) (See illustration 4 of Appendix C).

The exemption covers two broad categories of information in Federal agency records:

- a. **Trade secrets** which are considered to be: "A secret, commercially valuable plan, formula, process or device that is issued for the making, preparing, compounding or processing of trade commodities that can be said to be the end product of either innovation or substantial effort" (Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983)), and
- b. Information which is:
 - (1) **Commercial or financial**: (Relating to business or trade, in which the submitter has a commercial interest),
 - (2) **Obtained from a person** (not generated by the Federal Government), and
 - (3) **Privileged or confidential** (disclosure of the information is likely to have either of the following effects:
 - (a) impair the Government's ability to obtain similar information in the future; or

(b) cause substantial harm to the competitive position of the person from whom the information was obtained).

Some Records That Are Releasable

Best and final offer of the successful bidder (Without the unit costs).

Total prices charged the Government -- What the Government pays for goods and services.

Information already made available outside the Executive Branch of Government. (List of directors and officers of a company)

**Some Records That Should Be Withheld Under (b)(4)
(Unless the Submitter Was Previously Informed That
Release of the Information Is a Condition of Submitting It)**

Work force data
Technical designs
Overhead and operating costs
Information on financial
condition

Business sales information
Direct or indirect ledger
information
Government contract information of
unsuccessful bidders

Exemption (b)(5) - (5 U.S.C. 552(b)(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"; e.g., pre-decisional, confidential attorney-client communications, or attorney work-product.

This is the exemption most frequently invoked by OSM. The three primary, most frequently invoked privileges which have been held to be incorporated into Exemption (b)(5) are:

a. The pre-decisional privilege, also known as the "executive privilege" on documents generated within the Executive Branch. These documents include advice, opinions, or recommendations (not strictly factual data) which are antecedent to the adoption of an official Agency policy. Pre-decisional documents may include drafts, discussions of proposed policy, requests for analysis, advisory opinions, notes commenting on a pre-decisional document, and consultant reports that interpret technical data and have not been adopted by the Agency.

Documents not generally considered pre-decisional are: (1) A pre-decisional document (or portions of the document) adopted or incorporated verbatim into a final decision, (2) factual portions of otherwise deliberative documents and (3) documents available or previously released outside the Executive Branch.

b. Attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of actual litigation; or by staff at the request of an attorney in contemplation of litigation.

c. Attorney-client privilege is not limited to the context of litigation as is the work-product privilege. It applies to confidential facts divulged by OSM or the Department as client to Office of the Solicitor or Department of Justice as attorney; and it also encompasses opinions given by the Office of the Solicitor or Department of Justice to OSM for the Department based upon those facts.

NOTE: The D.C. Court of Appeals has held that in order for an attorney-client communication to be withheld from disclosure under FOIA, not only must the advice be sought and given with the expectation that it would be kept confidential, but the agency must thereafter protect its confidentiality by giving it only to those who are authorized to speak or act for the agency with respect to the subject matter. (Coastal States Gas Corporation. v. Department of Energy, 617 F. 2d854 (D.C. Cir. 1980); Mead Data Central, Inc. v. Dept. of Air Force, 566 F.2d242 (D.C. Cir. 1977).

Exemption (b)(6) - (5 U.S.C 552(b)(6))

"...personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

To warrant protection, the information (1) must fall within the category of personnel, medical, and similar files (applies to any file or document which pertains to a specifically identifiable individual and contains information that is personal) ; and (2) must involve a privacy interest. Also to be considered is the degree of public interest involved (vs. the requester's personal interest in the matter). The benefit to the public by revealing information about Government programs and activities must be weighed against the potential harm to the individual about whom information is sought.

A third party request for information on another individual should alert the reviewer to a possible (b)(6) exemption. Exemption (b)(6) information can be released with the prior written consent of the individual (who is the subject of the record).

SEE FOLLOWING PAGES FOR MORE INFORMATION ON PRIVACY PROTECTION AND LISTS OF WITHHELD DOCUMENTS.

Exemption (b)(7) - (5 U.S.C 552(b)(7))

"...Investigatory records compiled for law enforcement purposes, but only to the extent that production of such records would..." cause one of the following six harms:

(b)(7)(A) Could reasonably be expected to interfere with enforcement proceedings (Cite 5 U.S.C 552(b)(7)(A)).

(b)(7)(B) Would deprive a person of a right to a fair trial or an impartial adjudication (Cite 5 U.S.C 552(b)(7)(B)).

(b)(7)(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy (Cite 5 U.S.C 552(b)(7)(C)).

(b)(7)(D) Could reasonably be expected to disclose the identity of a confidential source (Cite 5 U.S.C 552(b)(7)(D)).

(b)(7)(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions (Cite 5 U.S.C 552(b)(7)(E)).

(b)(7)(F) Could reasonably be expected to endanger the life or physical safety of any individual (Cite 5 U.S.C 552(b)(7)(F)).

Use the appropriate citation above for whichever situation (or situations) apply.

NOTE: Investigatory documents originated by another agency or Department (for example, the Office of the Inspector General) should be sent to that agency for appropriate review, as well as a copy of the response to the requester, and the FOIA requester should be notified of that action and what office will be contacting him following that review.

PRIVACY PROTECTED INFORMATION

5 U.S.C. 552(b)(6) and 5 U.S.C. 552(b)(7)(C) are the FOIA exemptions most often used to withhold documents for privacy considerations.

The Balancing Test:

- Some privacy interest must be found.
- Determine if there is a qualifying public interest.
(How does release shed light on the Agency's performance of its statutory duties?)
- Balance the privacy interest against the public interest.
- What adverse effects would there be from release or withholding?
- Was there permission given by the individual to allow another to review his files?

Some Privacy Protected Information

Age	Experience <u>not</u> directly related to the position held
Administrative actions	Financial statements
Allegations of misconduct	Health/insurance benefits
Background investigations	Home addresses & phone numbers
Censured employees	Letters of reprimand & suspensions
Citizen complaints under SMCRA when complainant requests it	Mailing lists of employees
Credit card numbers	Marital status
Educational background (not related to current job position)	Medical files
Employee complaints against supervisors	Payroll information (deductions, etc.)
	Performance evaluations
	Personal misconduct (not job related)
	Place & date of birth
	School grades
	Social security number

Information Typically Releasable

Annual salary rates	Position descriptions
Award amounts	Present and past grades
Factors for ranking job applicants	Present and past position titles
Federal employees involved in union activities during work hours	Present and past duty stations
FOIA requesters' identities	Professional awards & honors
Names of present & former employees	Sanitized travel vouchers & invoices ("sanitized" meaning that home addresses, phone numbers & other privacy protected information is removed)
Performance standards	Successful candidates (with "sanitized" SF 171's)

**COMPARISON OF THE
FOIA AND PRIVACY ACT**

FOIA

PRIVACY ACT

The FOIA is an access statute.

The Privacy Act is a records management statute.

Scope

Federal records and documents including some information subject to the Privacy Act.

Information about individuals contained in records that are retrieved by personal identifiers from systems of records.

Purpose

To open most Government records to public scrutiny.

To protect sensitive Government records about individuals from public scrutiny;

To enable people to know what information about them exists and to correct it, if in error;

To restrict collection and disclosure of personal information;

To prevent the existence of secret Government record systems and secret use of Government records about people;

To maintain Government records about people in a secure and accurate manner.

Agency Response

Information is required to be released unless it falls within one of nine discretionary exemptions (see pg. B-1 of directive).

To withhold a document in response to a person's request for his own records, both a Privacy Act exemption and a FOIA exemption have to be cited.

Subject individuals have the right to see and amend their own records; some systems are exempt from access by the subject individual; access to medical records may be conditional; disclosure to third parties is prohibited except under 12 exemptions. One is when required under FOIA to be made public.

When a third party submits a FOIA request for information subject to the Privacy Act and the information is not required to be released under the FOIA, the material may not be disclosed without the prior written approval of the individual on whom the record is maintained.

See the Privacy Act directive (ADS-1) for more information on the Privacy Act.

APPENDIX C

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**APPENDIX C
Illustration 1**

**SAMPLE LETTER
CLARIFICATION OF A VAGUE OR OVERLY BROAD REQUEST**

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act request of _____ (date of request) _____. You requested information concerning _____ (subject) _____.

Because of the broad and general nature of the description of requested information, we are unable to identify which records are being sought. Under Departmental regulations, 43 CFR 2.14(b)(2), the requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate them with a reasonable amount of effort. Your request does not meet this requirement.

Please be more specific concerning the type of documents you are requesting. In addition, if such information is available, please state the date, title or name, author, recipient, and subject matter of the record. Moreover, the geographical location and time frame for which you are seeking records have not been defined. It is unclear whether your request covers only records in this field installation or other Agency offices.

We will not proceed further with your request until we receive additional clarification from you. If you have any questions, please contact _____ (name & telephone number) _____.

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

(THE 10-DAY RESPONSE PERIOD WILL NOT BEGIN UNTIL OSM RECEIVES THE FOIA REQUESTER'S REPLY TO THESE QUESTIONS).

**APPENDIX C
Illustration 2**

**SAMPLE LETTER
REFERRAL OF A FOIA REQUEST TO ANOTHER AGENCY OR BUREAU
(Letter to the Requester)**

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act request of (date of request) . You requested documents concerning (subject) .

We have determined that the records described in your letter may be located at (name office) in the Department of the Interior. Therefore, we have forwarded your request to that office, which will provide you with a direct response. If you wish to contact them, the mailing address is:

(Name)
FOIA Coordinator
(Office)
(Address)
(Telephone Number)

Should you have any further questions, please contact me at (telephone #) .

Sincerely,

(NAME)
Freedom of Information
Act Officer

**APPENDIX C
Illustration 3**

**SAMPLE LETTER
REFERRAL OF A FOIA REQUEST TO ANOTHER AGENCY OR BUREAU
(Letter to the Bureau)**

(NAME)
FOIA Coordinator
(ADDRESS)

Dear _____:

Enclosed is a Freedom of Information Act request from (name) that your agency may be able to answer. We have advised (name) that a response will be provided directly from your office.

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosure

SAMPLE LETTER
REQUEST TO SUBMITTER OF COMMERCIAL (b)(4) INFORMATION

(ADDRESS)

Dear _____:

This is in regard to a Freedom of Information Act (FOIA) request from _____ (name of requester) dated _____ (date of request), requesting documents concerning _____ (subject) (letter enclosed).

To assist us in determining whether data should be released, we request your firm's views on which items if any, are protected from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4). Enclosure A lists the documents which are responsive to _____ (name of requester) FOIA request for your review. If you recommend that items or portions of items be withheld, please provide us with the following:

- (1) The data to be withheld and the basis on which the information is exempt under the FOIA;
- (2) A detailed explanation of how disclosure would be competitively harmful to your company; and
- (3) A statement that the information is confidential, has not been disclosed to the public by your company, and is not routinely available to the public from other sources.

Please provide us with your comments within 10 business days from the date of receipt of this letter. If you have any questions, please contact _____ (name & telephone #).

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosures

**(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF THE
FIELD OFFICE OR SUPPORT CENTER HAS ACTION)**

APPENDIX C
Illustration 4
Page 2 of 2

(A LETTER NOTIFYING THE FOIA REQUESTER OF A DELAY BECAUSE OF THE SUBMITTER'S PENDING REVIEW SHOULD ALSO BE SENT. (SEE ILLUSTRATION 5)

(RESPONSE SHOULD BE SENT CERTIFIED MAIL, RETURN RECEIPT REQUESTED)

**APPENDIX C
Illustration 5**

**SAMPLE LETTER
LETTER TO REQUESTER OF COMMERCIAL (b)(4) INFORMATION**

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request of _____ (date of request) _____. You requested _____ (subject) _____.

In accordance with 43 CFR 2.15(d), we are allowing _____ (name of company) _____ 10 business days to provide comments as to whether the documents you requested should be considered as confidential commercial and financial information.

We expect to complete our response to you by _____ (date) _____.

You have the right to treat this delay as a denial of your request. You may appeal this matter by writing to: The Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-5412, MIB, Washington, D.C. 20240. A copy of your initial request should accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter and it must be received no later than 20 workdays after the date of this 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, you can contact me on (202) 208-2562.

Sincerely,

(NAME)
Freedom of Information
Act Officer

**(RESPONSE SHOULD BE SENT CERTIFIED MAIL, RETURN RECEIPT
REQUESTED)**

SAMPLE LETTER
ASSURANCE OF PAYMENT
(Letter to Requester)

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request of
_____ (date of request) _____, concerning _____ (subject) _____.

In your request, you did not indicate that you were willing to pay fees for the information you requested. The following is an estimate of costs for producing the information you requested in your FOIA request:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND APPLICABLE CHARGES)

	<u>Total No. of Units</u>	<u>Unit Charges</u>	<u>Amount</u>
Document Search Time:			
Clerical	2	\$ 9.20/hr.	\$ 18.40
Professional	10	\$18.60/hr.	148.80
		(The first 2 hrs. are not charged)	
Duplication:	20 pages	\$.13/page	0
		(The first 100 pgs. are not charged)	
		Total	<hr/> \$167.20

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 where assurance should 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.

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

(THE FIRST 10 DAYS REQUIRED FOR RESPONSE WILL BEGIN ONCE THE FEE ISSUE IS RESOLVED)

SAMPLE LETTER
FEE WAIVER CLARIFICATION

(ADDRESS)

Dear _____:

This is in response to your Freedom of Information Act request of

(date of request) _____. You requested information concerning

(subject) _____.

In your letter you also sought a fee waiver. Before we grant a waiver, we must determine whether your request meets the twofold objectives for fee waivers established by the Department of Justice; that is, whether disclosure of the information is in the public interest because it:

- (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 (43 CFR 2.21(a)).

Before we make a decision on your request for a fee waiver, we ask that you provide information in response to the following questions so that we can determine if granting the waiver or a reduction in fees is in the public interest:

- (1) In what way does the record requested concern the operations or activities of the Government?
 - ** (2) Is disclosure likely to contribute to public understanding of these operations and activities, and in what way do you have the knowledge and ability to disseminate the information to the public effectively?
 - (3) Is the requested information already available to the public? [Waiver is inappropriate for information already publicly available], and
 - (4) Is there a commercial interest that would be furthered if the information were disclosed?
- ** Typically, OSM already knows the answer to this question and does not ask it.

Our initial estimate of fees for processing your request will be the following:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND APPLICABLE CHARGES)

	<u>Total No. of Units</u>	<u>Unit Charges</u>	<u>Amount</u>
Document Search Time:			
Clerical	10 hrs.	@ \$ 9.20 hr.	\$ 92.00
Professional or Managerial	12 hrs. (The first 2 hrs. are not charged)	@ \$18.60 hr.	186.00
Duplication:	600 pages (The first 100 pgs. are not charged)	@ \$.13/page	65.00
		Total	<u>\$343.00</u>

If we determine from your response that a fee waiver is not justifiable, we will request that you prepay 80 percent of the above estimated costs before we continue with your response (43 CFR 2.20(h)), and by separate letter, we will send you a confirming invoice formally billing you for the amount and indicating where your payment should be forwarded.

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

THE FIRST 10 DAYS REQUIRED FOR RESPONSE WILL BEGIN ONCE THE FEE WAIVER ISSUE IS RESOLVED

SAMPLE LETTER
EXTENSION OF 10-DAY TIME LIMIT

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request dated _____
(date of request). You requested documents concerning

(subject).

(USE THE FOLLOWING LANGUAGE FOR THE CIRCUMSTANCE THAT APPLIES):

- I. "Since we must search for and collect documents from offices other than the office processing the request, we are availing ourselves of the 10 working day extension of response time provided in the Department of the Interior FOIA regulations (43 CFR 2.17(c)(1))."
- II. "Since we must search for and collect voluminous documents, we are availing ourselves of the 10 working day extension of response time provided in the Department of the Interior FOIA regulations (43 CFR 2.17(c)(2))."
- III. "Since we must coordinate and consult with our Field Office personnel [or Solicitor's Office] [or Agency heads], we are availing ourselves of the 10 working day extension of response time provided in the Department of the Interior FOIA regulations (43 CFR 2.17(c)(3))."

We will send a final reply to you on or before **(10 WORKING DAYS FOLLOWING THE FIRST DUE DATE)**.

Sincerely,

(NAME)
Freedom of Information
Act Officer

- (OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD WILL SIGN IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)
- (THE NEW DUE DATE WILL BE COUNTED FROM THE LAST DAY OF THE FIRST DUE DATE PERIOD)
- (ONLY ONE 10-DAY EXTENSION IS ALLOWED UNDER THE FOIA – ACTION OFFICES WILL HAVE TO PREPARE A DELAY LETTER IF A RESPONSE CANNOT BE MADE WITHIN 20 DAYS OF THE RECEIPT OF THE FOIA REQUEST)

SAMPLE LETTER
DELAY IN PROCESSING REQUEST
(When response exceeds the 20-day limit)

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request of (date of request) . You requested (subject) .

(SELECT ONE OF THE APPROPRIATE PARAGRAPH(S) BELOW):

- I Because of the voluminous records that may be responsive to your request, additional time is necessary to enable us to determine which records or portions thereof should be provided. Accordingly, we anticipate a delay in providing you with our final response.

- II 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.

- III The records you requested are located at a number of our field offices and at headquarters. The (name of responsible office) will be coordinating the response since that office has jurisdiction over these records. As a result, we will need additional time to search for, collect, and review the material.

- IV In accordance with 43 CFR 2.15(d), we are required to notify the submitter of material containing commercial and financial information when we receive a FOIA request for that material. The submitter has taken longer than anticipated to review the material. We expect to hear from them by (estimated date) and our response to your request will be forthcoming.

We expect to complete our response to you by (specify date) .

APPENDIX C
Illustration 9
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You have the right to treat this delay as a denial of your request. You may appeal this matter by writing to: The Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-5412, MIB, Washington, D.C. 20240. A copy of your initial request should accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter and it must be received no later than 20 workdays after the date of this 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)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

(RESPONSE SHOULD BE SENT CERTIFIED MAIL, RETURN RESPONSE REQUESTED)