

**DEPARTMENT OF THE INTERIOR**  
**FREEDOM OF INFORMATION ACT (FOIA)**  
**HANDBOOK**  
**(383 DM 15)**



Photo: Apostle Islands National Lakeshore, National Park



July 15, 2014

## FOREWORD

The handbook supplements, but does not alter, the requirements and guidance of the [Freedom of Information Act](#) (FOIA), the [Department's FOIA regulations](#), and the [Departmental Manual](#). The handbook is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Although the handbook will primarily assist Departmental employees, it may also be informative for FOIA requesters. The handbook is therefore available (along with other FOIA guidance) at: <http://www.doi.gov/foia/news/guidance/index.cfm>.

*The handbook will evolve as new questions and issues arise. Therefore, please note the date on your copy of the handbook and, before using it, check the website above to make sure your version is still the most current.*

The handbook has greatly benefited from excellent examples and suggestions provided by the Department's FOIA & Privacy Act Appeals Officer, the Division of General Law's Branch of General Legal Services, the Department's Senior Regulatory Analyst specializing in Plain Language, the Department of Justice, the Department of the Treasury, and the U.S. Forest Service. Their contributions are gratefully acknowledged.

Please direct any questions about the handbook to [the Departmental FOIA Officer](#).

Approved

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Date: July 15, 2014

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## **Chapter 1: Introduction to the FOIA Handbook**

### **1.1 What is the Freedom of Information Act?**

The Freedom of Information Act (FOIA), [5 U.S.C. § 552](#), is a statute that establishes a right of public access (with certain exemptions and exclusions) to agency records.

### **1.2 What are my FOIA responsibilities as an employee of the Department?**

A. [Section 5](#) of Chapter 15 in the FOIA Departmental Manual (DM) Chapter ([383 DM 15](#)) explicitly outlines your specific FOIA responsibilities (see also [section 1.3\(A\)](#), below).

B. Generally, strive to:

1. Respond promptly;
2. Use clear, plain language; and
3. Be courteous and helpful.

### **1.3 What is the purpose of the handbook?**

A. The handbook provides supplemental procedures, guidance, and models for administering and implementing the FOIA. It explains, but does not alter, the requirements and guidance of the [FOIA](#), the Department's FOIA regulations ([43 C.F.R. Part 2](#)) (the Regulations), and the [DM](#).

B. For definitions of terms used in the handbook, see [43 C.F.R. § 2.70](#).

C. If any portion of the handbook is (or becomes) inconsistent with any of these authorities, that portion of the handbook is (or will be) void. See [43 C.F.R. § 2.1\(d\)](#).

## Chapter 2: Overview of the Department's FOIA Program

### 2.1 How is the Department's FOIA program organized?

A. The Department manages America's vast natural and cultural resources through the efforts of tens of thousands of people. It has nine bureaus:

1. [Bureau of Indian Affairs](#);
2. [Bureau of Land Management](#);
3. [Bureau of Ocean Energy Management](#);
4. [Bureau of Reclamation](#);
5. [Bureau of Safety and Environmental Enforcement](#);
6. [National Park Service](#);
7. [Office of Surface Mining, Reclamation, and Enforcement](#);
8. [U.S. Fish and Wildlife Service](#); and
9. [U.S. Geological Survey](#).

Each of these bureaus has its own FOIA Officer and typically processes its own records in response to FOIA requests (hereinafter referred to as "requests").

B. In addition to the nine bureaus:

1. The [Office of the Solicitor](#) (which includes the [Ethics Office](#)) has its own FOIA Officer.
2. The [Office of Inspector General](#) has its own FOIA Officer.



3. The [Office of the Special Trustee for American Indians](#) has its own FOIA Officer.
4. The [Office of Hearings and Appeals](#) has its own FOIA Officer.
5. The Office of the Secretary's (OS) FOIA Officer responds to requests for all of the OS, including the subparts listed [here](#), as well as requests to:
  - a. The [Office of Natural Resources Revenue](#);
  - b. The Office of Policy, Management, and Budget, and its subparts listed [here](#) (with the exception of the [Office of Hearings and Appeals](#), which has its own FOIA Officer as noted above);
  - c. The Office of the Deputy Secretary;
  - d. The [Office of Insular Affairs](#) (U.S. Territories and Freely Associated States); and
  - e. The [Office of the Chief Information Officer](#).

C. As discussed in [section 1.2](#), above, [Section 5 of the DM](#) explicitly outlines the FOIA responsibilities of Department's various employees.

D. Contact information for Bureau FOIA Officers is available at:  
<http://www.doi.gov/foia/contacts.cfm>.

## **2.2 What types of records does the Department maintain?**

The bureaus and offices of the Department, discussed above in [section 2.1](#), maintain numerous types of records, ranging from records outlining general personnel rules and practices to highly specific case files and research materials. The functions of each bureau or office greatly influence the kinds of records it maintains. These functions are described on the Department's website at: <http://www.doi.gov/bureaus/index.cfm> and

<http://www.doi.gov/bureaus/offices.cfm>.

### **2.3 How does the Federal Records Act affect the Department's FOIA program?**

A. Employees' understanding of, and compliance with, the Federal Records Act (FRA) is crucial for a well-functioning FOIA program. For guidance regarding the FRA, refer to [44 U.S.C. §§ 3101 to 3107](#) and the reference materials available at:

[http://www.doi.gov/ocio/information\\_management/records-management-policies-guidance.cfm](http://www.doi.gov/ocio/information_management/records-management-policies-guidance.cfm). You may also consult the [Departmental Records Officer](#) and the Office of the Solicitor (SOL).

B. Records schedules are not always determinative. For example, records that are related or responsive to a request, appeal, or lawsuit cannot be disposed of (regardless of the terms of any otherwise applicable records schedules) while the request, appeal, or lawsuit is ongoing (see [43 C.F.R. § 2.68\(b\)](#)).

C. Files created in response to FOIA requests must be maintained by the [Action Office](#) or the Bureau FOIA Officer under the appropriate records schedule (see [43 C.F.R. § 2.68\(a\)](#) and [section 6.2](#), below). For example, files created in response to a FOIA request may be covered under [General Records Schedule \(GRS\) 14, items 11 through 15](#) (which describe the FOIA Requests Files that must be created when carrying out the provisions of FOIA); [GRS 14, item 36](#) (which deals with files related to erroneous releases); and/or [GRS 20](#) (which deals with electronic records).

D. The Department's FOIA & Privacy Act (PA) Appeals Officer maintains official files for all FOIA appeals under [GRS 14, item 12](#).

### **2.4 What is the Electronic FOIA Tracking System used for, and how do I use it?**

A. The Electronic FOIA Tracking System (EFTS) is used for tracking, managing, and reporting on FOIA processing. It also helps compile:

1. An annual FOIA report to the Department of Justice (DOJ);

2. Search and statistical reports;
3. A Department-wide log of all received requests; and
4. A public [request tracking tool](#) on the Department's FOIA website.

B. Depending on your responsibilities under [Section 5 of the DM](#), you may have access to and responsibilities relating to the maintenance and use of EFTS. But most Department employees do not.

## **2.5 How do I obtain access to the EFTS?**

A. Because the EFTS constitutes a PA system of records (SOR), only those employees with the "[need to know](#)" the information in the EFTS to perform their official duties are allowed to have access to the EFTS.

B. If you require EFTS access to carry out your FOIA responsibilities:

1. Contact your Bureau FOIA Officer to receive a copy of the EFTS Rules of Behavior (ROB) form;
2. Complete EFTS training via the Introduction to the EFTS interactive module;
3. Complete the ROB form and forward it to your Bureau FOIA Officer;
4. Have your Bureau FOIA Officer sign and forward your completed ROB form to the Department FOIA Policy Staff;
5. Await notification from the Department FOIA Policy Staff of your EFTS account information.

## **2.6 What are FOIA Public Liaisons?**

A. FOIA Public Liaisons are required by law to be supervisory officials who are available for requesters to contact about the service they have received, see [5 U.S.C.](#)

[§ 552\(I\)](#).

B. FOIA Public Liaisons' contact information is available at:

<http://www.doi.gov/foia/servicecenters.cfm>.

C. If a person considering making a request believes the Department maintains the types of records he/she is seeking, but does not know where to send his/her request or how to phrase it, he/she should contact one of the FOIA Public Liaisons.

D. For more information on Public Liaisons, see [43 C.F.R. § 2.66](#).

## **2.7 What are FOIA Libraries?**

A. Historically, agencies made records proactively available in physical "Reading Rooms." After the E-FOIA Amendments of 1996, agencies created online "electronic Reading Rooms," now called "FOIA Libraries."

B. The Department's FOIA Library is available at: <http://www.doi.gov/foia/DOI-FOIA-Library.cfm>. Links to the bureaus' FOIA Libraries are available at: <http://www.doi.gov/foia/libraries.cfm>.

C. FOIA Libraries must comply with Federal and Departmental website standards (for example, the requirements of Section 508, see [29 U.S.C. § 794d](#)).

D. FOIA Libraries contain records that:

1. Must be made available under [5 U.S.C. § 552\(a\)\(2\)\(A\) to \(C\)](#) before a request is even received;

2. Are "frequently requested records" that bureaus are required to post because they have been released in response to a FOIA request and are, or are likely to become, the subject of two or more additional requests for substantially the same records, see [5 U.S.C. § 552\(a\)\(2\)\(D\)](#);

3. The bureau proactively chooses to make available before a request is received;  
or

4. Have been released in response to a request and are likely to be of interest to the public, although they are not “frequently requested records.”

E. More information on where records are made available can be found at [43 C.F.R. § 2.65](#). More information on proactive disclosures can be found in [Chapter 3](#), below.

F. If the electronic records are in a FOIA library, you generally do not have to produce the records in response to a request. The exception is that you will have to produce the records in response to a request if:

1. The bureau proactively chose to make the records available before a request was received for them; or

2. The records are not “frequently requested records,” as discussed in paragraph D(2) of this section.

G. You may voluntarily produce records you are not required to provide under paragraph F of this section (for example, if the requester does not have access to electronic records, you may produce hard copies).

## **2.8 What is the FOIA Merit Award?**

A. Under [370 DM 451.5](#), non-monetary awards may be granted to Federal employees to recognize their contributions to the Department. The Department FOIA Policy Staff may occasionally choose to issue a FOIA Merit Award (the Award) to recognize:

1. Superior accomplishment of regularly assigned duties;

2. Exceptional achievements of project goals;

3. Noteworthy accomplishments over a sustained period; or

4. Specific contributions to an organization’s mission.

B. The Award will:

1. Not exceed a nominal value;
2. Take an appropriate form; and
3. Contain the Department's name, logo, award title, and/or mission.

C. Nominations for the Award may be:

1. Solicited by the Department FOIA Policy Staff; or
2. Proactively submitted to the Department FOIA Policy Staff, in writing, by any person aware of an achievement that may deserve recognition.

## **Chapter 3: Proactive Disclosures**

### **3.1 What are proactive disclosures?**

When a bureau makes records publicly available without waiting for a request, the bureau has made a proactive disclosure (see [43 C.F.R. § 2.67](#)).

### **3.2 Does the FOIA require proactive disclosures?**

Yes. A number of categories of information and materials are required to be made proactively available; other proactive disclosures are discretionary (see [5 U.S.C. § 552\(a\)](#) and [section 2.7](#), above).

### **3.3 Do I have to create an index of proactively disclosed records?**

Depending on your FOIA responsibilities, you may have to create this kind of index because “frequently requested records” that are proactively released must be indexed (see [5 U.S.C. § 552\(a\)\(2\)\(E\)](#) and [sections 1.2](#) and [2.7](#), above).

## **Chapter 4: FOIA's Scope and Applicability**

### **4.1 What kinds of records does the FOIA apply to?**

A. The FOIA applies to agency records, which are records the bureau has created or obtained and that are under the bureau's possession and control at the time a request is received. (For more information on the meaning of agency records, see the definition of "record" at [43 C.F.R. § 2.70.](#))

B. The physical form, format, or characteristics of the record will not be determinative. Agency records can be maintained in any format, including:

1. Books, papers, maps, charts, plats, plans, architectural drawings, photographs, and microfilm;
2. Machine-readable materials such as magnetic tape and disks;
3. Electronic records (for example, e-mail messages); and
4. Audiovisual material such as still pictures, sound and video recordings.

### **4.2 How can I tell if a record is an agency record?**

A. When you are evaluating whether a record is an agency record, consider the:

1. Intent of the record's creator to retain or relinquish control over the record (for example, did the record's creator stamp the record "confidential, do not distribute" before handing it over or did he or she simply hand the bureau a copy);

2. Nature of the record (for example, was it created to document the business of the agency or was it created for its creator's personal convenience);

3. Ability of the bureau to use and dispose of the record as it sees fit (for example, does a contract or confidentiality agreement restrict the bureau from using or disposing of the document in particular ways);



4. Extent to which bureau personnel, other than the record's creator, have read or relied upon the document (for example, was it circulated as support for a proposed policy or is it a draft that never left its author's desk); and

5. Degree to which the record was integrated into the bureau's record systems or files (for example, was it found in an employee's personal notebook or in a bureau filing cabinet).

B. This analysis is very fact specific and you must consider all of the five factors above. For example:

1. If an employee stamps a document "Personal" and places it in his/her desk drawer, it is not automatically a personal record. But the record very likely is a personal record if the employee also created the document only for her personal convenience, never shared it with anyone, and did not use it to conduct agency business; but

2. If a record is located in an agency file, the presumption may be that the record is an agency record. For example, otherwise personal notes placed in an agency file may be considered responsive agency records if a request is received for that file.

#### **4.3 How can I tell if a query is a FOIA request?**

A. Written requests for agency records are FOIA requests regardless of their form/format. Requests may be submitted in hard-copy form or electronically (including through <http://www.doi.gov/foia/foia-request-form.cfm>, email, and/or facsimile). For information about what a requester should include in his/her request, see [\*43 C.F.R. §§ 2.5 to .8, .11.\*](#)

B. A query is not a FOIA request (even if it is styled as such) if, rather than seeking agency records, it asks you to:

1. Answer questions seeking specific pieces of information rather than records;
2. Analyze or interpret records;

3. Reorganize a filing system;
4. Certify records;
5. Create records;
6. Update records;
7. Provide personal (rather than agency) records;
8. Conduct research;
9. Initiate investigations; or
10. Write a new program.

C. There may be times, however, when providing information rather than agency records is more efficient for you and more useful for the requester (see [section 4.4](#), below).

D. For information on what to do when you receive a query that is not seeking agency records, see [section 4.5](#), below.

#### **4.4 Do I have to create a record to respond to a request?**

No. You do not have to create or compile a record to respond to a request—for example, by preparing a new computer program or creating maps. But note that:

A. Extracting information from an existing computer database may not count as creating a new record; and

B. You may offer to create a new record for the requester if you decide that doing so:

1. Provides the requester with responsive information;

2. Is less burdensome than providing the existing agency records; and
3. Would not lead to a more expensive fee.

C. For example, if the criteria in the above paragraph are met, you may ask a requester who wants records documenting how many times park rangers have responded to a type of incident whether creating and providing a spreadsheet containing that number (rather than processing the existing agency records for each incident) would satisfy his/her request.

#### **4.5 If a query does not seek agency records, what should I do?**

A. Generally, a query that does not seek agency records is not a FOIA request, regardless of how it is labeled. (For information on requests for Federally-funded research data, see [section 9.3\(C\)](#), below.)

B. If only a portion of a query seeks agency records, log it into the EFTS (see [section 2.4](#), above); acknowledge it (see [sections 8.1\(B\)](#) and [11.1](#), below); note what portion of the query will not be part of your FOIA response because it does not seek agency records; and respond under the FOIA to the portion of the query that seeks agency records. If you know of a Departmental office that may be able to respond to the remainder of the query outside of the FOIA process, you may reach out to that office to see if referring that portion of the query would be appropriate.

C. If no portion of a query seeks agency records, let the person who made the query know that you will not be responding to it under the FOIA. If you know of a Departmental office that may be able to respond to the query outside of the FOIA process, you may reach out to that office to see if referring the query would be appropriate. Do not log the query into the EFTS.

#### **4.6 Is there a cut-off date after which agency records are not responsive to a request?**

A. Yes. Agency records that are created, obtained, and/or do not come within the bureau's control until after the date the bureau begins its search for responsive records are

not responsive to the request (see [43 C.F.R. § 2.12\(b\)](#)).

B. Interpret a request for records “to the present” (or similar language) as seeking agency records up to the date you begin the search.

C. You are not required to undertake an ongoing production of records.

#### **4.7 What form/format can responsive records take?**

Responsive records can be physical (such as a handwritten paper, a printout, or a photograph) or electronic (such as a video or audio recording, an unprinted email, or a database). For information on whether you have to disclose responsive records in a particular form/format, see [section 11.3](#), below

## Chapter 5: Initial Evaluation of Requests

### 5.1 Who can submit a request?

Almost anyone can submit a request. Most individuals, corporations, and government entities can. Federal agencies and, under certain circumstances, fugitives from justice cannot. (If you receive a request from a Federal agency or a fugitive from justice, contact your Bureau FOIA Officer.)

### 5.2 If I am a Department employee, may I submit a request?

You may submit a request as private individual, but not in your official capacity. Use your personal contact information (for example, your personal email address) and do not mention your official position or title during the processing of your request. To do otherwise would risk: confusion; the incorrect inference that the Department is making the request; and the rejection of your request or, if applicable, appeal.

### 5.3 When I receive a request, what should I do first?

A. The [Appendix](#), below, gives a more detailed guide. Most importantly, read the request carefully and ask yourself:

1. Was it sent to the correct bureau contact? (See [43 C.F.R. §§ 2.3 to .4.](#))
2. Does it reasonably describe the agency records sought? (In other words, could a bureau employee familiar with the subject area reasonably determine which records are being requested and locate the records with a reasonable amount of effort?) (See [43 C.F.R. § 2.5](#) and [section 5.4](#), below.)
3. Does it resolve all issues regarding the payment of processing fees? (See [43 C.F.R. § 2.6](#) and [section 5.5](#), below.)

B. If the answer to all three of the above questions is yes, the request is a “perfected” request. Begin processing it.

C. If the answer to the first question is no (for example, the request was addressed to

the Bureau of Reclamation's FOIA Officer and seeks Bureau of Reclamation records but was delivered to the Bureau of Land Management's FOIA Officer), send the misdirected request to the right bureau as quickly as you can (otherwise, the time period for responding to the request may start to run before the proper office even receives the request).

D. If the answer to the second or third question is no, the request is "unperfected" and not yet ready for processing.

#### **5.4 What should I do if the request does not reasonably describe the records sought?**

A. If a request is overly broad in scope, unfocused, or involves an extremely voluminous amount of records or a burdensome search (for example, "Send me any and all documents the Department has that reference or mention the XYZ Co. or any of its officers, employees, or consultants"), contact the requester to try to identify and clarify the records sought and to reformulate the request.

B. When trying to clarify the records sought and reformulate the request:

1. Consider explaining how your bureau's records that may be related to the request are filed, indexed, and grouped;

2. Try to help the requester limit the scope of the request to a specific geographical location (for example, the office that created the records, the present custodian of the records, or the office most likely to have or locate responsive records);

3. Try to identify the date/timeframe, title/name, author, recipient, and the subject of the records;

4. Try to identify the timeframe when the records were created; and

5. Clarify any ambiguous terms related to the request.

C. You can temporarily suspend the basic time limit to make a determination one time to ask for clarifying information regarding the scope of the request. See [43 C.F.R. § 2.18\(a\)](#)

and [section 8.2](#), below.

D. Ask any questions that you may have about the payment of processing fees (see [section 5.5](#), below), but do not make a fee waiver decision, as it would be premature to decide whether a fee waiver is justified before knowing what records would be responsive to the request.

E. If the requester does not supply a written response to your request for clarification within 20 workdays, close the file on the request. See [43 C.F.R. § 2.5\(d\)](#).

### **5.5 What should I do if the request does not resolve all issues regarding the payment of processing fees?**

A. For general information on contacting the requester on fee-related issues, see [43 C.F.R. § 2.51](#).

B. You may temporarily suspend the basic time limit to make a determination repeatedly to clarify reasonable issues regarding fee assessments (see [43 C.F.R. § 2.18\(b\)](#) and [section 8.2](#), below).

C. If the requester does not supply a written response to your request for clarification within 20 workdays, close the file on the request. See [43 C.F.R. § 2.5\(d\)](#).

### **5.6 What should I do if the request is a perfected request?**

A. If the request is perfected, carefully evaluate which processing track it should be placed in (see [43 C.F.R. § 2.15](#) and [section 8.5](#), below). Be precise and thoughtful; the requester's expectations and your time frame for response are set by this placement.

B. For requests in the Complex or Exceptional/Voluminous processing tracks, consider reaching out to the requester to discuss ways he/she could get the records more quickly and/or cost-effectively if he/she modified and/or narrowed the scope of his/her request. Follow up any conversations that result in changes to the scope of the request with a

written confirmation.

C. Before responding or seeking modification:

1. Check the EFTS for similar requests and, if they exist, consider coordinating with the FOIA Officers and FOIA Contacts working on them (for example, to see if the scope of the request has already been discussed by another bureau who also received it, so you can talk to the requester with that background rather than forcing them to reinvent the wheel);

2. Talk to bureau subject matter experts to see where and if responsive material is likely to exist; and

3. Conduct a search of the Internet and the [Department's FOIA Libraries](#) to see if responsive material is already public.

D. For more information on responding to a perfected request, see [43 C.F.R. §§ 2.12, .21 to .25](#).

## **5.7 How should I interpret the scope of the request?**

A. You do not have to provide records outside the scope of the request (if a requester says he/she wants X, you are not required to provide Y and Z), but you must reasonably interpret the scope of the request.

B. The DOJ has given explicit guidance on how to interpret the scope of requests. *See* FOIA Update, Vol. XVI, No. 3 (1994), *available at* [http://www.justice.gov/oip/foia\\_updates/Vol\\_XVI\\_3/page3.htm](http://www.justice.gov/oip/foia_updates/Vol_XVI_3/page3.htm) (“In all instances, the key consideration is the need for full and open communication with the requester, so that the requester can make a fully informed decision about any document ‘scoping’ as part of the agency’s administrative process.”).

C. Remember that requesters need not use the precise language or jargon used by you and your colleagues.



## **5.8 Where should requesters send their requests?**

A. Requesters should address requests to a bureau's FOIA Contact rather than the bureau generally. ([Section 2.1](#), above, contains an organizational list; <http://www.doi.gov/foia/contacts.cfm> lists the Department's FOIA Contacts along with their contact information; and <http://www.doi.gov/foia/foia-request-form.cfm> contains a form requesters can use to file FOIA requests with bureaus.)

B. For further discussion on where requests should be sent and how their processing will be affected, see [43 C.F.R. §§ 2.3 to .4](#).

## **5.9 Do requesters have to verify their identity?**

A. The requester's identity will rarely be relevant outside the context of fee issues, Exemption 6, Exemption 7(C), and the PA.

B. To ensure that protected information is not improperly released:

1. A requester who seeks records about himself/herself must verify his/her identity (for example, by providing a notarized original signature); and

2. A requester who seeks records about a person he/she claims to represent must provide a proper authorization allowing release of the information (for example, by providing a notarized original signature of the person with a statement that the requester is authorized to receive records on their behalf).

C. A requester who does not verify his/her identity/representation as discussed above will receive the information that any member of the public would be entitled to receive, but it will likely be less information than he/she would have received if his/her identity/representation had been verified.

D. Additional identifying information may be required in some instances involving the PA (see [sections 6.4](#) and [6.5](#), below). If the PA is involved, be sure to consult with the

SOL and the relevant PA Officer or system manager.

## Chapter 6: Initial Considerations

### 6.1 How will I make determinations and what will I do after making a determination?

A. To make a determination, you must at least:

1. Search for any responsive records (see [section 9.1](#), below for information on how to search for responsive records and [section 11.8](#), below, if you don't have or locate any responsive records), and review them for applicable FOIA exemptions (see [section 10.1](#), below);

2. Decide if you plan to withhold any responsive records (or portions of responsive records, see [section 10.6](#), below) that you have or locate. If you do, after consulting with the SOL (see [43 C.F.R. § 2.23\(c\)](#)), communicate the anticipated reasons for the withholdings to the requester in writing (including the approximate volume of records that you plan to withhold and/or redact, and the specific FOIA exemptions that you expect will apply to the records); and

3. Comply with the requirements found at [43 C.F.R. §§ 2.22](#) and [.24](#), including informing the requester that he/she will be able to appeal whatever portion of the determination is adverse.

B. After making your determination under paragraph A of this section, unless you will be issuing a Glomar response (see [section 10.5](#), below), promptly prepare the responsive records for release by physically redacting, duplicating, and/or assembling them for production. If responsive records include trade secrets or commercial or financial information that may be protected under Exemption 4 (see [section 10.9](#), below), preparing the responsive records for release includes promptly consulting with submitter of the information.

C. If something changes after you make your determination under paragraph A of this section but before your final response (for example, you realize you will use a FOIA exemption you had not planned to use), notify the requester promptly in writing.

D. After preparing the records, you may either promptly request the payment of applicable processing fees before making your release (which is not the same as requiring the advanced payment of fees under [43 C.F.R. § 2.50](#)) or promptly send any releasable portions of the records to the requester.

## **6.2 What files will I need to create and maintain when responding to a request?**

A. Although you do not have to create records to respond to a request, under [GRS 14](#) the Action Office or Bureau FOIA Officer must create and maintain an official file on each request received (in addition to an EFTS entry), including:

1. A copy of the incoming request and the bureau's response;
2. A clean copy of all the responsive records, along with a detailed account of every record or part of it disclosed to a requester (or a copy of the records disclosed, with any redactions marked);
3. A copy of any request to waive fees or expedite processing and the bureau's response;
4. Records concerning the status of the request, follow-up correspondence with the requester, and any time extensions taken;
5. Communications inside the Department or with other federal agencies concerning the request; and
6. A copy of the bill for collection and any related records.

B. As applicable, maintain these files in accordance with the [Department's PA regulations](#), [383 DM 1-13](#), and the appropriate PA SOR notice (see [section 6.4](#), below).

### **6.3 How will I handle a request for records about me or for records that I personally created?**

A. If you are a FOIA Contact, search for responsive records, but give them to your bureau's FOIA Officer for processing (for example, applying redactions and responding to the requester).

B. If you are your bureau's FOIA Officer, search for responsive records, but give them to the OS FOIA Officer for processing.

C. Other Department employees should follow their FOIA Officer's or FOIA Contact's search instructions as with any other request.

### **6.4 Where can I find guidance on the Privacy Act?**

A. For guidance regarding the PA generally, refer to [5 U.S.C. § 552a](#) and the reference materials available at: [http://www.doi.gov/ocio/information\\_assurance/privacy/index.cfm](http://www.doi.gov/ocio/information_assurance/privacy/index.cfm). You may also consult the [Departmental Privacy Officer](#) and/or the SOL.

B. For guidance regarding particular PA requests, refer to the appropriate SOR notice (for example, Departmental SOR Notices [57](#), [69](#), and [71](#)), the Department's PA regulations ([43 C.F.R. Part 2, Subpart K](#)), and the DM ([383 DM 1 to 13](#)). You may also consult the Department's Privacy Officer and/or the SOL.

C. For guidance regarding the interface between the PA and the FOIA, see the reference materials available at: [http://www.whitehouse.gov/omb/privacy\\_general](http://www.whitehouse.gov/omb/privacy_general), <http://www.justice.gov/opcl/privacyactoverview2012/1974indrigacc.htm>, and [section 6.5](#), below.

### **6.5 What do I need to know about the Privacy Act when processing requests?**

A. When any requester seeks records that are not contained in a SOR, process the request entirely under the FOIA, as you normally would.

B. When an individual requests records that pertain to himself/herself (see [section 5.9](#), above, regarding verifying identities) and are contained in a SOR, process the request under both the PA and the FOIA if the individual is a citizen of the United States or an alien lawfully admitted for permanent residence (if he/she is not, process it entirely under the FOIA). When processing this type of request:

1. Both a FOIA exemption and a PA exemption must apply in order to withhold a record (see [5 U.S.C. § 552a\(t\)\(1\) to \(2\)](#)) and your response to the requester must specifically cite any FOIA and PA exemption(s) invoked.

2. If releasing the records would invade a third party's privacy, consult the Department FOIA Policy Staff, the Departmental Privacy Officer, and the SOL before issuing your response.

3. Adhere to the time limitations that are required by the FOIA.

4. Special fee issues may arise (see [section 7.5](#), below).

C. When an individual requests records that are about another individual and that are contained in a SOR, you cannot disclose the records without prior written approval by that individual the records pertain to unless:

1. The release is permitted under one of twelve exceptions to the PA's "no disclosure without consent" rule found at [5 U.S.C. § 552a\(b\)](#) (for example, [5 U.S.C. § 552a\(b\)\(2\)](#) allows for the release of information *required* to be released under the FOIA because the information is contained in agency records that have been requested under the FOIA and no FOIA exemption allows its withholding);

2. The release is specifically required by another statute (for example, [25 U.S.C. § 2216\(e\)](#) requires the release of certain landownership information "[n]otwithstanding any other provision of law"); or

3. The requester submits proof that the individual has died (see [43 C.F.R. § 2.9](#)).

D. Both the EFTS and the FOIA Requests Files are groups of records under the control of the Department from which information is indexed and/or retrieved by the name of an individual or by some personal identifier (in other words, they both are maintained in a SOR).

**6.6 What if responsive records are part of a decision file created under the National Environmental Policy Act (or another similar process) and would become part of the administrative record if the decision was challenged?**

A. Before an administrative record has been assembled, if a request arrives for material in this sort of decision file, assert whatever FOIA exemption(s) you *reasonably* believe applies to the records.

1. To reasonably believe a FOIA exemption applies to the records in this context, a subject matter expert for the records must inform you (in writing) that, to the best of his/her knowledge, the requested records would be properly withheld from the non-privileged administrative record.

2. If the records include trade secrets or commercial or financial information that may be protected under Exemption 4, see [section 10.9](#), below.

B. If the request is received after the Department assembled the administrative record, you cannot assert any FOIA exemptions to protect information that is included in the non-privileged portion of that administrative record.

C. If you receive a request when you know that an administrative record is being created or litigation is pending, consult the SOL.

## Chapter 7: Fees

### 7.1 Will the requester have to pay fees?

A. The FOIA authorizes you to assess reasonable standard charges for document search, duplication, and review. (For the definition of “search,” “duplication,” and “review,” see [43 C.F.R. § 2.70](#).) The Department’s FOIA search and review fee schedule is located at <http://www.doi.gov/foia/fees-waivers.cfm> and its duplication fee schedule is located at [Appendix A to 43 C.F.R. Part 2](#).

B. Consider the requester’s identity and how he/she intends to use the records sought, because the FOIA identifies categories of requesters and specifies the types of fees they may be charged. See [43 C.F.R. §§ 2.38 to .39](#). For example:

1. An “other use” requester is not charged for the first two hours of searching, first 100 pages of duplication, or any review time. If it is unclear which two hours of the search were the first two hours discussed above, waive the most expensive time incurred first (for example, when there is uncertainty, waive two hours of professional time before waiving two hours of clerical time); and

2. A commercial-use requester will be charged for review time (time spent by bureau staff and attorneys in reviewing responsive records to determine whether they may be withheld in whole or in part and time spent in redacting exempt information from responsive records).

C. If you will be placing the requester in a different fee category than he/she had requested, include that information, and an explanation, in your response letter.

D. Unless you are aggregating requests (see [43 C.F.R. § 2.54](#)), you may not charge the requester if the fee for processing his/her request (after taking into consideration his/her [fee category entitlements](#)) is less than \$50 (see [43 C.F.R. § 2.49\(a\)\(1\)](#)).

E. If you fail to comply with any of the FOIA’s statutory time limits, refer to [43 C.F.R. § 2.37\(f\)](#) to determine whether you can still assess processing fees for the request.



F. Ensure that you search, review, and duplicate as efficiently and inexpensively as possible so as to minimize costs for both you and the requester. See [43 C.F.R. § 2.37](#).

G. For more detailed information on fee issues, see [43 C.F.R. §§ 2.7, .37 to .56](#).

## **7.2 Can I waive fees?**

A. You must provide documents to a requester without charge or at a reduced charge if the requester establishes that disclosing the information is:

1. In the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government; and

2. Not primarily in the commercial interest of the requester.

See [43 C.F.R. §§ 2.45 and .48](#) for the criteria you should use when evaluating whether a requester has demonstrated that he/she is entitled to a fee waiver.

B. Consult with the SOL before denying a request for a statutory fee waiver. See [43 C.F.R. § 2.23\(c\)](#).

C. Under certain limited circumstances, you may discretionarily choose to waive or reduce the requester's fees, even if disclosing the information would not be in the public interest under paragraph A of this section. See [43 C.F.R. § 2.56](#).

D. If you are denying a fee waiver request, comply with the requirements in [43 C.F.R. § 2.47](#).

E. For more detailed information on fee waivers, see [43 C.F.R. §§ 2.45 to .48](#).

**7.3 If I know the requester will not be paying fees, do I need to keep track of my costs?**

You always must keep track of your costs (for example, search time, review time, and duplication costs) and these costs must always be provided to the person responsible for recording them in the EFTS regardless of whether the requester will actually be charged fees. This is mandatory for reporting and budgeting reasons.

**7.4 What is a delinquent requester and why does it matter?**

A. A delinquent requester has failed to pay FOIA fees on time (or at all) to the Department or any other Executive Branch entity and is a:

1. Requester;
2. Individual, organization, firm, or company representing the requester; and/or
3. Individual, organization, firm, or company filing the request on the requester's behalf.

B. Delinquent requesters should be noted as such in the EFTS and you should check to see if a requester is delinquent before processing a new request.

C. Before processing a new request from a delinquent requester, estimate the fee for the request.

1. If the estimated processing fee for the request is under \$250, substantiate that the full payment of any remaining past due fees for older requests, including interest, has been made or require the payment of any unpaid amount before processing any new request.

2. If the estimated processing fee for the request is over \$250:
  - a. Require the full payment of the estimated processing fee for the new request; and

- b. Substantiate that the full payment of any remaining past due fees for older requests, including interest, has been made or require payment of any unpaid amount before

processing the new request (see [43 C.F.R. § 2.50](#)).

F. Once the requester has paid off all of his/her past due fees and penalties, and paid the fee in advance for one new request for which the estimated processing fee is over \$250, the requester should no longer be considered a delinquent requester and should be removed from the delinquent requester list in the EFTS (unless, of course, the requester fails again to pay a FOIA fee on time or at all).

#### **7.5 If a requester seeks copies of records pertaining to himself/herself that are contained in a System of Records, should I charge him/her processing fees?**

If the requester has agreed to pay copying fees in his/her request, you may charge him/her duplication costs for the records pertaining to him/her that are contained in a SOR up to the amount he/she has agreed to pay. You may not charge search or review costs for those records. See [5 U.S.C. § 552a\(f\)\(5\)](#) and [43 C.F.R. § 2.238\(b\)\(4\)](#).

#### **7.6 How does fee collection work?**

The mechanics of fee collection (for example, whether checks or credit cards are appropriate and who can be paid and keep the fees collected) depends on the guidance documents issued by the bureau-specific collections office where the collections are sent. You should check with your bureau's FOIA Officer to determine the collection method that your bureau uses.

## Chapter 8: Timing

### 8.1 What is the first thing I must do when processing a request?

- A. Log it into the EFTS within one workday of receipt (see [section 2.4](#), above).
  
- B. If you determine the request will take longer than 10 workdays to process, send the requester a written acknowledgment.
  
- C. See [43 C.F.R. § 2.21](#).

### 8.2 How much time do I have to make a determination on the request?

- A. The typical 20-workday period for responding to a request begins the same day a perfected request is received by the appropriate bureau (but no later than 10 days after the perfected request is first received by any component within the Department that is designated by the Regulations to receive requests).
  
- B. See [43 C.F.R. §§ 2.16 to .19](#) and [sections 5.4](#) and [5.5](#), above.

### 8.3 What is the Expedited processing track?

The processing track for a request when the requester has demonstrated that there is a compelling need for the records. To determine if a requester has demonstrated a compelling need, consider the factors found at [43 C.F.R. § 2.20](#).

### 8.4 When may the time to make a determination be extended?

A. In unusual circumstances, an extension of a total of 10 workdays (or occasionally longer) may be taken to make a determination on requests or appeals. (“Unusual circumstances” is one of the FOIA-related definitions found at [43 C.F.R. § 2.70](#).)

1. Consultations regarding policy or with the SOL about legal parameters are not unusual circumstances in this context, so they are not a basis for extension.

2. You may negotiate additional or different extensions of time with a requester. If you do so, confirm any agreement in writing, including the specific time agreed upon (for

example, by sending a follow up email stating your understanding of the agreement).

B. Determining whether unusual circumstances are present is a different, separate analysis from determining what processing track a request belongs in (see [section 8.5](#), below).

C. See [43 C.F.R. § 2.19](#) for the information to include in your written notification to the requester when you are taking an extension.

### **8.5 What is multitrack processing?**

Processing tracks are defined and explained in [43 C.F.R. §§ 2.14 to .15](#). When you receive a request, you will evaluate which processing track to place it in, based on the estimated number of workdays you will need to process the request.

A. Simple requests, requiring relatively minimal review, are placed in one processing track. Requests that are more voluminous and complex or that will be expedited are placed in other processing tracks (the Exceptional/Voluminous processing track is discussed in more detail in [section 8.6](#), below).

B. Requests in each processing track are ordinarily processed and responded to, on a first-in/first-out basis.

C. Requests in the Complex or Exceptional/Voluminous processing track may present especially good opportunities for rolling releases (see [section 11.6](#), below).

D. You must inform the requester of which processing track you have placed his/her request. You also may, as appropriate, offer the requester an opportunity to narrow his/her request so it can be placed in a different processing track.

E. Determining what processing track a request belongs in is a different, separate analysis from determining whether unusual circumstances are present (see [section 8.4](#), above).

F. If you realize that your original decision to place a FOIA request in a particular processing track was erroneous (for example, you thought that around one hundred pages would be responsive to the request, but three thousand pages are responsive), you may place the FOIA request in the correct processing track if:

1. You have not previously changed the request's processing track;
2. You have received the written approval of your bureau FOIA Officer; and
3. You notify the requester (in writing) of the change, along with an explanation of why the change was made, as soon as possible.

### **8.6 What is the Exceptional/Voluminous processing track?**

A. As the Regulations note (see [43 C.F.R. § 2.15\(c\)\(4\)](#)): “requests in this track involve very complex processing challenges, which may include a large number of potentially responsive records, and will take over sixty workdays to process.” *This processing track is meant to be the exception, rather than the rule.* You cannot place a request in the Exceptional/Voluminous processing track because of routine administrative problems (for example, because you have a backlog of pending requests).

B. You cannot routinely place any particular type of request in the Exceptional/Voluminous processing track (for example, all requests relating to law enforcement investigations). Instead, review each request to consider whether it will present very complex processing challenges (for example, the requester has refused to narrow the scope of the request and the responsive material consists of seven file cabinets containing files from a criminal investigation that have scattered within them: extensive, highly-sensitive information about child victims and witnesses, items marked “draft” and/or “attorney-client privileged” that sometimes have already been publically released by other agency employees, and the records of other tribal and federal law enforcement agencies).

## **Chapter 9: Searches, Referrals, Consultations, and Coordination**

### **9.1 What must I do to search for responsive records?**

Once a request has been perfected, you must:

A. Conduct (or supervise) a search that is reasonably calculated to find any documents that might be responsive to the request (for example, by carefully considering what offices and files to search, people to contact, and appropriate key words and phrases to use);

B. Consider the language of the request and your own knowledge of bureau records;

C. Keep a record of what files, offices, and systems you searched and when and how you searched (the Department may not be able to establish the adequacy of its FOIA search if you do not record the search terms you use);

D. Record, for electronic searches, how you combine search terms, whether you searched the full text of documents, and whether you used a de-duping program (one that removes duplicate records in a set); and

E. Record all of your search and review time for tracking (and, sometimes, fee) purposes.

### **9.2 How do I evaluate whether a record is responsive to a request?**

A. To assist in determining whether a record contains information that is responsive to the request, ask yourself:

1. Is the information in the timeframe specified in the request?

2. Is any of the information on the correct topic?

3. Does the information conform to the requester's description?

B. If you have any questions regarding what information will be responsive to a given request, contact a program specialist and/or the requester promptly.

### **9.3 What if responsive records are not physically present in the Department?**

A. Federal records in the physical (but not legal) custody of the National Archives and Records Administration (NARA) or a contractor for storage or records management purposes remain the responsibility of the originating bureau (even though the records are no longer located within the bureau) and must be retrieved and processed. (In this context, legal custody refers to who is responsible for making legal decisions about a record and physical custody refers to where the record is located. Physical custody may be, but is not always, paired with legal custody.)

B. Federal records that the NARA has accepted into its legal custody under its regulations are considered the property of the NARA and you do not have to retrieve and process them.

C. If the request is for federally-funded research data, you may need to retrieve the data from the recipient of the funds and process it (see [43 C.F.R. § 2.69](#)).

D. If the request is for records not in your bureau's possession, but you believe they may be in the possession of a Federal agency outside the Department, you may suggest the requester submit the request directly to that agency (see [43 C.F.R. § 2.13\(h\)](#) for more details on this process).

### **9.4 How do referrals and consultations usually work?**

A. Unless you work for the Office of Inspector General, the Regulations may sometimes require you to make an internal (within the Department) or external (outside of the Department) referral or consultation, as discussed in [43 C.F.R. § 2.13](#).

B. Referrals and consultations are *only* appropriate after you have searched for records in your own bureau and have found responsive records that another bureau or agency created or is substantially concerned with.

1. After you have found such records, if you send the records to the bureau or agency that created or is substantially concerned with them and ask that bureau or agency to



respond directly to the requester about whether the records will be released or withheld, that is a *referral*.

2. After you have found such records, if you send the records to the bureau or agency that created or is substantially concerned with them and ask that bureau or agency to let you know whether the records should be released or withheld so you can respond directly to the requester, that is a *consultation*.

C. If a referral or consultation is appropriate, send it to the other bureau or agency in a way that you can track (for example, via email) and enter it into the EFTS.

D. If you make a referral, you generally must notify the requester (see [43 C.F.R. § 2.13\(c\) and \(e\)](#)) and you may recommend that the other bureau or agency process the responsive records in a particular way (for example, that they consider making a discretionary release of, or applying an exemption to, a particular portion of a record).

E. If you receive a referral from another bureau or agency, handle it on a “first-in, first-out” basis (in the appropriate processing track) according to the date of the request’s initial receipt at the referring bureau or agency and enter it into the EFTS.

F. If you receive a consultation request from another bureau or agency, promptly respond to the bureau or agency that sent you the consultation request and enter the consultation request into the EFTS.

G. Referrals are not appropriate (so consultation is the only appropriate option) if:

1. The criteria for [43 C.F.R. § 2.13\(f\)](#) are met; or
2. The request in question involves unacknowledged law enforcement or national security records; or
3. The referral would be to an entity that is not itself subject to the FOIA.

## **9.5 How does forwarding requests usually work?**

A. If you think forwarding a request to another bureau that the requester did not specify may be appropriate under [43 C.F.R. 2.4\(f\)](#) (because the request states that it seeks records from other unspecified bureaus and you think you might know which bureau the requester meant), you must contact your Bureau FOIA Officer *before* forwarding the request. He/she will contact the other Bureau FOIA Officer(s) to determine whether this would be appropriate.

B. The other bureau's FOIA Officer(s) will, in turn, inform your FOIA Officer that his/her bureau is:

1. Not likely to have or locate responsive records and your FOIA Officer therefore should not forward the request; or

2. Likely to have or locate responsive records and your FOIA Officer should either:

(a) Forward the request; or

(b) Notify the requester that he/she may wish to consider making a request to the other bureau.

C. If your Bureau FOIA Officer is told forwarding the request is appropriate, he or she should forward it to the other bureau in a way that he or she can track (for example, via email), note the forwarding in the comment field of the request's EFTS entry, and notify the requester of the forwarding, as required under [43 C.F.R. 2.4\(f\)](#).

D. If you receive a request forwarded from another bureau, handle it on a "first-in, first-out" basis (in the appropriate processing track) according to the date you received the request from the forwarding bureau and enter it into the EFTS as new request.

## **9.6 What additional types of coordination may I need to conduct within the Department?**

A. Coordinate with the SOL when a legal review is required under [43 C.F.R. § 2.23\(c\)](#)

because you plan to deny a fee waiver request or withhold all or part of a requested record.

B. Coordinate with the Department FOIA Policy Staff when a policy issue is unclear or disputed.

C. Coordinate with the Office of Congressional and Legislative Affairs when you receive a request for records from a Member of Congress and when you receive a request for records that may be Congressional, rather than agency, records.

D. Coordinate with the National Park Service (NPS) in accordance with [16 U.S.C. § 5937](#) (an Exemption 3 statute) before you decide whether to release records concerning the nature and specific location of:

1. A National Park System resource that is endangered, threatened, rare, or commercially valuable;
2. Mineral or paleontological objects within units of the National Park System; or
3. Objects of cultural patrimony within units of the National Park System.

E. If you coordinate under paragraph D of this section, notify the requester that you will be consulting with or referring this portion of the request to the NPS's FOIA Officer, clearly identify the information that may be protected when you forward the request to the NPS's FOIA Officer, and remember that the NPS will instruct you to withhold this information unless the NPS determines that the release would:

1. Further the purposes of the unit of the National Park System in which the resource is located;
2. Not lead to an unreasonable risk of harm, theft, or destruction of the resource;  
and
3. Not be inconsistent with other applicable laws.

## **9.7 How do coordinated responses by a lead bureau work?**

A. A lead bureau may coordinate the Department's response to requests in certain limited situations. See [383 DM 15.5.H](#).

B. The lead bureau will usually be the bureau that has the primary interest in the records at issue and will be considered the Action Office under [383 DM 15.5.G](#). The lead bureau will prepare a consolidated response, on behalf of the Department, after consulting with all affected bureaus.

C. The other bureaus involved in responding to the request will:

1. Cooperate fully with the lead bureau (for example, the lead bureau may request the other bureaus review their own documents and provide the lead bureau with their determinations or the lead bureau may request that the other bureaus send forward their responsive records without reviewing them) to ensure that FOIA responses are complete, consistent, and timely;

2. Maintain official files relating to their involvement with the request (see [section 6.2](#), above); and

3. After consulting with the lead bureau, close any EFTS entry they created for the request.

D. Advise your Bureau FOIA Officer (who will in turn advise the OS FOIA Officer) if you receive a request that you suspect requires coordination.

E. If a consensus cannot be reached between the bureaus regarding the release or withholding of records, the SOL's Division of General Law (DGL) or the Departmental FOIA Officer may, as appropriate, make the final determination.

## **9.8 Who else may I need to contact outside the Department?**

A. Contacting the DOJ is sometimes required (for example, when FOIA litigation is in progress). At other times, contacting the DOJ can be very useful (for example, when the

DOJ's cross-cutting perspective and knowledge on emerging FOIA issues could be helpful). *Calling the FOIA Counselor service offered by the DOJ's Office of Information Policy (OIP) is considered contacting the DOJ.* If you are considering contacting the DOJ, note that:

1. Before contacting the DOJ about a legal question, you must confer with the SOL;
2. Before contacting the DOJ on a policy matter, you must confer with the Department FOIA Policy Staff; and
3. If a matter is in litigation, you cannot contact the DOJ directly—you must go through the SOL.

B. Consultations with the White House (WH).

1. The intersection of FOIA and the WH can lead to situations of varying complexity, ranging from simple consultations to the invocation of the presidential communications privilege or even executive privilege. This paragraph is not a comprehensive review of these situations. Instead, it offers direction on how to identify and handle materials that may have White House equities (WHE).

2. Like any front office of a large organization, the WH has an interest in being aware of upcoming record releases/withholdings. It also has an interest in ensuring cross-cutting issues (for example, requests that are sent to multiple Departments) are handled consistently.

3. Although the FOIA applies to “the Executive Office of the President,” [5 U.S.C. § 552\(f\)](#), this term includes neither the President's immediate personal staff nor any part of the Executive Office of the President whose sole function is to advise and assist the President.

4. Identifying materials that may have WHE is not always obvious. As the DOJ's OIP has noted:

Records originating with any part of the “White House Office” should be

forwarded to the [WH] for any recommendation or comment it may wish to make, including any assertion of privilege, prior to your response to the requester. Advise the [WH] of any sensitivity that these records have from the perspective of your agency and whether you believe any FOIA exemption applies.

FOIA Update, Vol. XIV, No. 3 (1993), *available at*

[http://www.justice.gov/oip/foia\\_updates/Vol\\_XIV\\_3/page4.htm](http://www.justice.gov/oip/foia_updates/Vol_XIV_3/page4.htm) (footnote omitted).

5. A document that was sent to or from the WH typically should be flagged as potentially having WHE (but see [paragraph 11](#), below). (If the WH has been carbon copied on a document, the document has been sent to the WH.) A document that refers to the WH or members, inhabitants, or employees of the WH also typically should be flagged as potentially having WHE.

6. Review documents carefully and be aware of standard WH abbreviations. (For example, “EOP” stands for Executive Office of the President and “POTUS” stands for President of the United States.)

7. Records created by presidential transition teams are not subject to the FOIA. However, records prepared by bureaus and provided to presidential transition teams normally are considered agency records.

8. If the document (physical or electronic) you are reviewing may contain WHE, refer it to the DGL by providing:

(a) A copy of the request letter;

(b) A clean copy of the document;

(c) A copy of the document with any proposed redactions noted, along with applicable rationales for redactions (for example, a particular FOIA exemption); and

(d) A paragraph summarizing the context of the request and document.

9. If consultation with the WH is needed, the SOL will initiate it and inform you of the outcome and any necessary next steps.

10. In all instances involving WH records or information, the bureau who received the request will be responsible for responding directly to the requester once the process of consultation with the WH is completed.

11. Records that are already publicly available (for example, final published press releases) or that are over twelve years old do not have WHE.

C. Contacting submitters of possibly confidential information is required. See [section 10.9](#), below.

## **Chapter 10: Considering Withholding Responsive Records**

### **10.1 What information is exempt from disclosure under the FOIA?**

- A. Congress exempted nine types of information from FOIA's release requirements.
  
- B. These nine FOIA exemptions are listed at [5 U.S.C. § 552\(b\)](#). Consult the SOL before invoking a FOIA exemption to withhold all or part of a requested record, as required under [43 C.F.R. § 2.23\(c\)](#).
  
- C. Multiple FOIA exemptions may apply to the same information (for example, a draft document compiled for law enforcement purposes whose release would reasonably be expected to interfere with enforcement proceedings may be withheld under Exemption 5 and Exemption 7(A)).

### **10.2 Can the right to use FOIA exemptions be lost?**

- A. Yes. The Department may have lost the right to invoke a FOIA exemption if the responsive records in question have already been shared outside the Federal government or made public (for example, if a record has been attached to a Departmental press release, it is too late to assert that Exemption 5 applies).
  
- B. If you suspect the Department has lost the right to invoke a FOIA exemption, contact the SOL.

### **10.3 What are FOIA exclusions?**

- A. Congress excluded three discrete categories of law enforcement and national security records from all FOIA requirements. See [5 U.S.C. § 552\(c\)\(1\) to \(3\)](#).
  
- B. If your bureau maintains criminal law enforcement records it could possibly invoke a FOIA exclusion. Include individual notification about the existence of exclusions in all of your partial and/or final FOIA responses.
  
- C. The following bureaus, and their components, maintain criminal law enforcement



records:

1. National Park Service;
2. Office of Inspector General;
3. Fish and Wildlife Service;
4. Office of the Solicitor;
5. Office of the Secretary;
6. Bureau of Reclamation;
7. Bureau of Safety and Environmental Enforcement;
8. Office of Surface Mining, Reclamation, and Enforcement;
9. Bureau of Land Management; and
10. Bureau of Indian Affairs.

D. In practice, exclusions are invoked very rarely (if at all).

E. Consult the DGL before invoking an exclusion. (The DGL will consult with the Department FOIA Policy Staff and the DOJ's OIP before approving your use of an exclusion.)

F. Note your use of an exclusion in the EFTS.

G. For more information on the use of exclusions, see [43 C.F.R. § 2.2](#).

#### **10.4 Where can I find guidance on FOIA exemptions and exclusions?**

For guidance on the appropriate application of FOIA exemptions and exclusions, you may:

A. Refer to the OIP's most recent edition of its *Guide to the Freedom of Information Act*, which is only available [online](#); and

B. Seek guidance from the Department FOIA Policy Staff and the SOL.

#### **10.5 What is a “Glomar” response and when is it used?**

A. A Glomar response is when you tell the requester that you can neither confirm nor deny the existence of requested records and that if any responsive records did happen to exist, they would be protected by one or more specific FOIA exemptions.

B. A Glomar response can only be justified if the fact of the existence or nonexistence of agency records itself falls within a FOIA exemption (in other words, the request is formulated in such a way that the mere acknowledgment of the existence or nonexistence of responsive records would itself be a disclosure causing the harm meant to be prevented by a particular FOIA exemption).

1. For example, if a drug dealer suspects Ms. X has informed on him and asked for any files the United States Park Police (USPP) has on Ms. X that mention him, merely responding that the responsive files will be withheld under Exemption 7(D) would cause the very harm meant to be prevented by Exemption 7(D).

2. In the example above, if your bureau has already officially acknowledged that it has the requested records (for example, if the USPP has issued a press release praising Ms. X for her work as an informant against the drug dealer and Ms. X posted it on her personal blog), a Glomar response would, of course, not be appropriate.

C. Glomar responses must be used either consistently or not at all. For example, you should not issue a Glomar response when a drug dealer inquires about Ms. X but then assert Exemption 7(D) when he inquires about Mr. Y, or issue a no records response when he asks about Ms. Z.

D. Before issuing a Glomar response, contact the Department FOIA Policy Staff and the DGL.

#### **10.6 What is the “reasonably segregable” obligation?**

A. If, when responding to a request, you have or locate a responsive record that contains both exempt and nonexempt material, you generally must separate and release the nonexempt information. (You will need to conduct a page-by-page, line-by-line review to meet this obligation.) See [43 C.F.R. § 2.25](#).

B. However, where nonexempt material is so intertwined with exempt material that the disclosure of the nonexempt material would reveal only meaningless words and phrases, you may withhold that portion of the record in full.

#### **10.7 What if responsive records contain nonresponsive information?**

A. If a page of a record contains information that is responsive to a request, release the entire page (even the portions of it that are nonresponsive) unless:

1. A FOIA exemption protects some or all of the information from disclosure; or
2. The FOIA Policy Office has issued, in writing, a specific exception to this general rule (if so, advise the requester that you are not processing a portion of the page as it is outside the scope of his/her request).

B. If a record contains some responsive information, but a page of the record contains no responsive information (for example, a nine page email string where the ninth page is entirely nonresponsive), advise the requester that you are not processing this page as it is outside the scope of his/her request.

#### **10.8 What if responsive records are marked as classified?**

*Do not read them.* Immediately place them in a sealed envelope or folder and contact your designated Personnel Security Officer. If he/she is not available, immediately call the Office of Law Enforcement and Security.

**10.9 What if responsive records include possibly confidential information?**

A. Records obtained by the Department from outside the federal government (for example, from a state, Indian tribe, company, or individual) may include possibly confidential information (and may be protected under Exemption 4) if they:

1. May include trade secrets or commercial or financial information; and
2. May be privileged or confidential.

B. Handle these sorts of records very carefully under the procedures set forth in [43 C.F.R. §§ 2.26 to .36](#). Remember that (unless one of the exceptions in [43 C.F.R. § 2.29](#) apply) you must promptly notify the submitter of the information if:

1. The submitter designated the requested information as confidential at the time of submission; or
2. You believe the records may fit the criteria identified in paragraph A of this section.

## Chapter 11: Additional Considerations when Responding to Requests

### 11.1 Are there examples of how to respond to requests?

Sample provisions and letters can be found on the Department's FOIA website at:

<http://www.doi.gov/foia/news/templates.cfm>. For further information, see [43 C.F.R. §§ 2.21 to .25](#).

### 11.2 Can I make a discretionary release?

A. You may sometimes choose to release records that a FOIA exemption would protect. The Department's policy on this subject is linked to the policy that the Attorney General traditionally issues for each Administration.

B. Before making a discretionary release:

1. Review the current Administration's policy on the subject;
2. Consider whether a discretionary release would be appropriate (for example, if the PA or Trade Secrets Act would apply, a discretionary release would be inappropriate).
3. Consult with the SOL; and
4. Note in the FOIA Request File both the interests that could be impacted (positively and negatively) by disclosure and the reasons why a discretionary release is appropriate.

C. If you make a discretionary release, advise the requester in your response letter that, although the requested information is exempt from disclosure under the FOIA, the bureau has exercised its discretion to release the information.

D. A discretionary release of information does not mean that other related information must be disclosed.

### **11.3 Do I have to make my disclosure in a particular form/format?**

A. You must provide the records in the form/format the requester seeks if you can readily reproduce the records in that form/format.

B. If providing the information in the requested form/format would damage or destroy an original document (for example, in the case of a very old and brittle paper document), you do not have to provide it in that format. Contact the requester to discuss alternative arrangements and, if alternative arrangements are agreed to, follow up with a written confirmation.

C. Bureaus must make reasonable efforts to maintain records in forms/formats that are reproducible.

D. You may charge the requester the direct costs involved in converting the information to the requested form/format (for example, the time it takes to scan paper records into an electronic format) if your bureau does not normally maintain the information in that form/format and you receive written assurance from the requester (before the fees accrue) that he/she will pay such fees. See [43 C.F.R. §§ 2.8, .44](#), and [Appendix A to 43 C.F.R. Part 2](#).

### **11.4 What if I am disclosing only part of a record?**

A. If you disclose only part of a record, mark all redactions clearly on the copy of the record you will be giving the requester.

1. If technically possible (and it usually will be), indicate the amount of the information withheld, and the FOIA exemption used to withhold the information, where the redaction is made.

2. Review the records to ensure that any redacted information is not visible.

B. In your response letter, tell the requester what FOIA exemption(s) you used to withhold it and approximately how much information has been denied.

1. For physical records, the estimate may take the form of number of pages,

boxes, file drawers, inches, or linear feet.

2. For electronic records, the estimate may be in terms of kilobytes, megabytes, an electronic “word count” or a conventional record equivalent (standard document pages), whichever would be most effective in communicating the estimated volume withheld.

### **11.5 What if I am withholding an entire record?**

If you withhold an entire record, tell the requester in your response letter what FOIA exemption(s) you used to withhold it and approximately how much information it contains.

A. For physical records, the estimate may take the form of number of pages, boxes, file drawers, inches, or linear feet, whichever would be most effective in communicating the estimated volume withheld.

B. For electronic records, the estimate may be in terms of kilobytes, megabytes, an electronic “word count” or a conventional record equivalent (standard document pages), whichever would be most effective in communicating the estimated volume withheld.

### **11.6 Can I make rolling releases?**

Yes. You are strongly encouraged to provide responsive records to requesters before all of the responsive records have been processed. This is sometimes referred to as a “rolling” or “interim” release and it is particularly useful when dealing with a large amount of records or a lengthy search/review/duplication process.

A. Rolling releases help ensure releasable records are being provided promptly and reassure the requester that you are not ignoring the request.

B. If you make a rolling release, you must:

1. Report it in the EFTS;

2. Inform the requester, in writing, that the release is an interim response; and

3. In your final response to the requester, note that this is your final response and (if you have not already done so) provide an estimate under [section 11.5](#), above of any

materials that have been withheld in full, cite to any FOIA exemptions used to withhold materials, and provide appeal rights for withheld materials.

**11.7 What if I only have or locate responsive records for part of a multi-part request?**

If a requester submits a multi-part request and you do not have or cannot locate responsive records for all of the parts, you must:

A. Note this in your response letter (for example, “You requested six categories of information, but we did not locate any materials responsive to categories three and six. The enclosed materials are responsive to categories one, two, four, and five.”); and

B. Provide the requester with appeal rights.

**11.8 What if I don’t find any responsive records?**

If you do not have or cannot locate any responsive records, tell the requester in writing and advise him/her of the right to appeal the determination. (Refer to [section 11.7](#), above, if you only have or locate responsive records for part of a multi-part request.)



## **Chapter 12: Mediation, appeals, and litigation**

### **12.1 Can I enter into mediation with a requester?**

A. Yes. In fact, when you inform a requester that you will grant, partially grant, or deny his/her request you must include a written statement on the services offered by the [Office of Government Information Services \(OGIS\)](#) (a part of the [NARA](#)). See [43 C.F.R. § 2.21\(a\)](#). The OGIS specializes in providing mediation services to resolve disputes between requesters and agencies. The Department also has some mediation services.

B. Before initiating mediation with a requester, coordinate with your Bureau FOIA Officer and the Department FOIA Policy Staff.

### **12.2 May the requester appeal my response?**

Under the FOIA's administrative appeal provision, a requester has the right to administratively appeal any adverse determination an agency makes on his/her request (see [43 C.F.R. §§ 2.57 to .64](#)).

### **12.3 What should I do if my response is appealed?**

A. If your response is appealed, provide any materials the FOIA & PA Appeals Officer requests and answer any questions the FOIA & PA Appeals Officer may have asked.

B. If the request is remanded to you for further action or your decision is not upheld, promptly comply with the FOIA & PA Appeals Officer's instructions and enter the relevant information into the EFTS.

### **12.4 What should I do if I receive information regarding a FOIA-related lawsuit?**

If you receive information regarding a FOIA-related lawsuit (particularly a copy of a FOIA Complaint):

A. Notify any affected Bureau FOIA Officer(s) and the DGL;

B. Notify any other SOL headquarters divisions and regional or field offices involved in responding to the request that is now in litigation; and

C. Cooperate with the SOL in responding to the litigation and before engaging in future communications with the plaintiff (who will usually be the requester or his/her attorney, but may sometimes be the submitter or the person that the information in question concerns).

### **12.5 What is a *Vaughn* index and when is it used?**

A. A *Vaughn* index is an itemized list correlating each record that has been withheld in full or in part with one or more specific FOIA exemptions and setting out the reason the FOIA exemption(s) applies.

B. The *Vaughn* index makes a trial court's job more manageable when reviewing records that are the subject of litigation.

C. If records are not the subject of litigation, you are not obligated to prepare a *Vaughn* index.

### **12.6 What is an *Open America* stay of proceedings?**

A court may give you additional time to process a request when [exceptional circumstances](#) exist. Delays that result from a predictable workload usually will not qualify.

### **12.7 If attorney fees are granted to the plaintiff in a FOIA case, who pays them?**

If your bureau is the defendant in a FOIA case and attorney fees are granted to the plaintiff, the attorney fees will come directly from your bureau's annual budget. Your bureau will decide exactly where in its budget the funds will come from.

### **12.8 What if I receive requests or subpoenas for testimony, official records, or certification of such records for use in Federal, State, territorial, or Tribal judicial, legislative, or administrative proceedings?**

These types of requests are not covered by the FOIA, so the handbook does not cover them. If you receive a request for any of these materials, consult with the SOL. For further information, see [43 C.F.R. §§ 2.280 to .290](#).

## Appendix

### Basic Steps for Responding to FOIA Requests<sup>1</sup>

I. Remind yourself of the requirements of the [FOIA](#), the [Department's FOIA regulations](#), the [Departmental Manual](#), and the handbook, above.

II. *Within one workday of having received a written request for agency records:*

A. Read the request and consider:

1. Status.

a. Is it only seeking agency records or is it also seeking information? (See [section 4.3.](#)) Be skeptical of labels. Labeling a query a FOIA request does not automatically make it a FOIA request. (See [section 4.5.](#))

b. Is the request in the right place or was it mistakenly delivered to the wrong office? (If it was misdirected, you must reroute it.) (See [section 5.3.](#))

c. Does it state that it seeks records from other unspecified bureaus? (If so, forwarding may be appropriate.) (See [section 9.5.](#))

2. Clarity.

a. Does it reasonably describe the record(s) sought? (That is, do you know what the requester wants and do you know where to get the records?) (See [section 5.4.](#))

b. How broadly or narrowly should you interpret the request? (See [section 5.7.](#))

c. Would discussion (followed by a written confirmation) with the requester help to define or clarify the scope of the request?

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<sup>1</sup> This list is a general roadmap only. It should be used in concert with, not separate from, the requirements of the FOIA, the Department's FOIA regulations, the Departmental Manual, and the handbook.

3. Fees. (See [section 5.5.](#))
  - a. What fee category does the requester belong in? (See [section 7.1.](#))
  - b. Has the requester agreed to pay for processing the request?
    - i. Has the requester explicitly agreed to pay all applicable fees?
    - ii. Has the requester agreed to pay fees up to a specified amount?
    - iii. If the requester limits the circumstances under which he/she is willing to pay fees, do the fees he/she is willing to pay align with the fees he/she will be charged under his/her fee category? (For example, a commercial use requester cannot limit himself/herself to the payment of duplication fees.)
  - c. Has the requester asked for a fee waiver? (See [section 7.2.](#))
  - d. Are the fees to process the request likely to be \$50 or less? (See [section 7.1\(D\).](#))
  - e. Has the requester paid (or failed to pay) fees before? (See [section 7.4.](#))
4. Expedited processing. (See [section 8.3.](#))
  - a. Has the requester asked for expedited processing?
  - b. If so, has the requester provided adequate justification?
5. Which processing track the request should be placed in? (See [section 8.5.](#))
6. Taking an extension of time to make a determination. (See [section 8.4.](#))

B. Enter the request into EFTS. (See [section 8.1\(A\).](#))

III. *Within ten workdays of having received the request:*

A. Establish your administrative FOIA Request File (see [section 6.2](#)); and either

B. Fully respond to the request; or

C. Send the requester an acknowledgement letter (which can be in the form of a traditional letter or an email) (see [sections 8.1\(B\)](#) and [11.1](#)). This letter should contain your clarifying questions about the scope of the request and/or fees, if the request is not yet a perfected request.

IV. Once the request has been perfected (see [sections 5.3](#) and [5.6](#)), undertake a search that is reasonably calculated to uncover all relevant records. (See [section 9.1](#).) In order to do this:

A. Reasonably establish the scope of your search;

B. Consider where responsive records are likely to be found (for example, search for electronic and hard copy records, if responsive records would be reasonably likely to be found in both types of media); and

C. Contact the bureau employee(s) familiar with the subject area who are likely to possess responsive records or may know where they are likely to be found and instruct them to:

1. Perform the search; and
2. Provide the responsive records to you for processing. (See [section 4.1](#).)

V. Once you have located the responsive records, note where the request falls in your processing queue, based on its processing track. (See [section 8.5](#).)

VI. Make a determination promptly, considering the steps set forth in [section 6.1](#).

VII. Once the request has reached the top of your processing queue, review the located records.

A. Are they agency records? (See [section 4.2.](#))

B. Are they truly responsive? (See [section 9.2.](#)) Keep in mind that responsiveness refers to both the subject matter and the date of the record. For example, records created after the date a particular FOIA search begins are not responsive to that request. (See [section 4.6.](#))

C. Are portions of the records protected under a FOIA exemption? (See [section 10.1.](#)) If Exemption 4 may apply, special notification will be necessary. (See [section 6.1\(B\).](#))

D. Would it be appropriate to make a discretionary release of the protected information? (See [section 11.2.](#))

E. Should you consult with another bureau or agency about these records or refer records to them? (See [section 9.4.](#))

VIII. Prepare for disclosure/nondisclosure of the records.

A. Consider whether information is protected by a FOIA exemption; redact (see [sections 11.4](#) and [11.5](#)); segregate out nonexempt records or portions of records for release (see [section 10.6](#)); and consider whether a discretionary release of information protected by a FOIA exemption is appropriate (see [section 11.2](#)).

B. Prepare a response letter (or letters, as necessary, see [sections 11.1](#) and [11.6](#)) to the requester.

C. Coordinate within the Department as required under [section 9.6](#). For example, when coordination with SOL is required, provide your draft response letter and, if you are proposing to redact information, both what you plan to redact and the underlying, unredacted information. (Your attorney cannot coordinate with you if

he/she cannot see what you plan to withhold.)

- D. Coordinate outside the Department as required under [section 9.8](#).
  
- IX. Prepare the Bill for Collection Form, if a fee has been assessed. (See [section 7.6](#).)
  
- X. Make an unredacted copy of the records for your files and two copies of the processed records (one for the requester, one for your files). (See [section 2.3](#).) Maintain these, along with a copy of the response, records released, and bill (if a fee was charged) for the Action Office file.
  
- XI. Issue the response letter, enclosing the records to be disclosed and the Bill for Collection Form (if appropriate), and update the EFTS within one workday.
  
- XII. Consider placing the released records in your FOIA library. (See [section 2.7](#).)
  
- XIII. Send a copy of the bill to your bureau's finance office.
  
- XIV. When the bill has been paid, if applicable, enter that into the EFTS. If you do forget to do this, the requester will be wrongly marked as delinquent. (See [section 7.4](#).)

(NOTE: When you work on a request, assume that it may result in an appeal or litigation. Keep good records—for example, a telephone log or a written record of all conversations. Communicate with the requester—keep him/her advised of the status of the request. Finally, don't be afraid to ask for advice. Your Bureau FOIA Officer, the SOL, and the Departmental FOIA Policy Staff are here to help you.)