UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

November 16, 2017

MEMORANDUM FOR:

Bobbie Parsons, IOS
Pam Moulder, ESA
Grace Agyekum, BIS
Josephine Arnold, MBDA
Wayne Strickland, NTIS
Mark Graff, NOAA
Jamie Boston, PTO
Joselyn Bingham, OCIO
Vernon E. Curry, CEN
Stephen Kong, EDA
Victor Powers, ITA
Catherine Fletcher, NIST
Stacy Cheney, NTIA
Jennifer Piel, OIG
Dondi Staunton, BEA

FROM: Michael J. Toland, Ph.D.
Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT: FOIA Requests for Older FOIA Logs
Clay Keys_DOC-OS-2018-000208

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government ("OPOG") is issuing this memorandum in response to a FOIA request seeking the agency's FOIA logs from 1999-2002.

Pursuant to the disposition instructions proffered in the General Records Schedule § 4.2, FOIA logs are to be maintained as follows: "Temporary. Destroy or delete 5 years after date of last entry, final adjudication by courts, or final action by agency, (such as downgrading, transfer, or destruction of related classified documents, release of information from controlled unclassified status), as may apply, whichever is later; but longer retention is authorized if required for business use."[1]

The OPOG has received similar requests in the past seeking access to older FOIA logs that have most likely been destroyed pursuant to a records retention schedule. To increase our efficiency in processing requests for older FOIA Logs, OPOG is requesting that all Agency components submit a brief written statement detailing your bureau's retention practices for FOIA logs. If your practice differs from that proffered in the General Records Schedule, please cite to your policy or procedure governing FOIA log retention. If your bureau does not have such a policy, you may cite to the GSR, as outlined above. Although these statements cannot be used to process the present request for old FOIA logs, we intend to use these statements to support our "no record" responses for future requests seeking older FOIA logs.

In order to continue processing the present request, please conduct a search for the following:

> "Copies of FOIA Logs from 1999-2002."

[1] GRS 4.2: Accounting for and control of access to classified and controlled unclassified records and records requested under the FOIA, PA and MDR (DAA-GRS-2016-000200004). (available at: https://www.archives.gov/files/records-mgmt/grs/grs04-2.pdf)

I am sending this FOIA request to you for your attention, since your office has been identified as an office that may have responsive records. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
    - You must search every place that could reasonably be expected to have responsive documents.
    - The date range for records that may be responsive to this request is FOIA logs from **1999-2002.**
    - Please provide a response within 10 business days from the date of this letter, on December 1, 2017.
- If you identify any records:
    - Please provide electronic copies of the records to me as soon as possible.
        - Upload documents in FOIAonline following the instructions in the attachment entitled "Instructions for uploading documents into FOIAonline."
    - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
        - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
        - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at skhalid@doc.gov.
    - Sign and date the attached Certification of Search.
    - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
    - Check the box "My Office has found no responsive document" on the attached Certification of Search.
    - Sign and date the Certification of Search.
    - Return the completed Certification of Search to my office.

Attachments
1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

Instructions for uploading documents into FOIAonline

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releasable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for "Title" of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleasable; and RU-Redacted-Unreleasable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for "Title:" 15 documents refer to NTIA.

Certification of Search for FOIA Request No. DOC-OS-2018-000208

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

☐ Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.

☐ Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.

☐ My office has found no responsive documents.

☐ All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

☐ A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____.

☐ Interim response ☐ Final response

_____ _____

Signature (Senior Official) Date

FOIA Exemptions

Exemption 1: classified national defense and foreign relations information;

Exemption 2: internal agency personnel rules and practices;

Exemption 3: information that is prohibited from disclosure by another federal law;

Exemption 4: trade secrets and other confidential or privileged commercial or financial information;

Exemption 5: inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

Exemption 6: information involving matters of personal privacy;

Exemption 7: records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

Exemption 8: information relating to the supervision of financial institutions; and

Exemption 9: geological information on wells.