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Description of documents: Three (3) Bureau of Industry and Security (BIS) documents:

- Freedom of Information Act (FOIA) Procedures, 2004
- Electronic Freedom of Information Act (E-FOIA) Procedures, 2004
- Policy Directive No. 1018: Government Accountability Office (GAO) and Department of Commerce (DOC) Office of Inspector General (OIG) Reports and Inquiries Policy, 2008

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Source of document: Freedom of Information Officer
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UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

Via electronic mail

FOIAonline Tracking Number: DOC-BIS-2019-002056
BIS FOIA Number: BIS 19-228

Re: Freedom of Information Act Request (FOIA)

This is in response to your August 26, 2019, Freedom of Information Act (FOIA), 5 U.S.C. § 552, request to the Bureau of Industry and Security (BIS) for “a copy of the following documents posted on the BIS internal (employees only) intranet pages: FOIA Procedures, E-FOIA Procedures for BIS, OIG & GAO Inquiry Policy.”

BIS has completed its review and located 3 documents responsive to your request. All 3 documents are being released to you in full.

I trust that this information fully satisfies your request. If you have questions regarding this request, please contact Jennifer Kuo at 202-718-4715 or via e-mail at jennifer.kuo@bis.doc.gov.

Sincerely,

Carol M. Rose
Chief Financial Officer and
Director of Administration

Attachments



Bureau of Industry and Security
Freedom of Information Act (FOIA) Procedures



May 2004

This document was prepared by the Office of Planning, Evaluation and Management (OPEM) in the Office of Administration, Bureau of Industry and Security (BIS).

These procedures are consistent with applicable statutes and regulations which apply to all employees of BIS. Procedures involving the Office of Chief Counsel for Industry and Security (OCC/IS) were discussed and cleared by them.

Jeannette Chiari, Director
Office of Planning, Evaluation and Management

Any questions regarding the contents of this document should be referred to the BIS FOIA Officer, Office of Planning, Evaluation and Management, at (202) 482-2165.

Bureau of Industry and Security
Freedom of Information Act (FOIA) Procedures

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1. Introduction.

This document sets forth the procedures to be followed in the Bureau of Industry and Security (BIS) for Freedom of Information Act (FOIA) requests, appeals, and litigation. These procedures are intended to facilitate implementation of the FOIA (5 U.S.C. 552) and the DOC FOIA regulations (15 C.F.R. Part 4).

2. Legal Requirements, Exemptions, and Exclusions.

As noted in the Department of Justice Freedom of Information Act Guide & Privacy Act Overview (FOIA Guide), the FOIA, enacted in 1966, “established for the first time an effective statutory right of access to Federal Government information.” Under the FOIA, any person generally has a right of access to federal agency records, except when such records (or portions thereof) are subject to the exemptions or exclusions listed in the FOIA. This right is enforceable in court.

a. Exemptions. In summary, these exemptions are:

- **(b)(1)** -- classified information.
- **(b)(2)** -- internal personnel rules and practices of an agency.
- **(b)(3)** -- information subject to a statutory confidentiality provision. The most common application of this exemption for BIS is for information subject to section 12(c) of the Export Administration Act of 1979, as amended. This exemption also typically applies to information collected pursuant to section 705 of the Defense Production Act.
- **(b)(4)** -- confidential commercial information.
- **(b)(5)** -- predecisional deliberative information, attorney-client information, and attorney work product privileges.
- **(b)(6)** -- personal privacy information.
- **(b)(7)** -- law enforcement information.

For additional information about the scope of these exemptions, please refer to Attachment A of these procedures. For examples of information that may be withheld, see Attachment B.

b. Exclusions. In addition to exemptions, there are three categories of law enforcement information so sensitive that they may be treated as if they do not exist if responsive to a FOIA request. For additional information about the scope of these exclusions, please refer to Attachment C.

c. Waivers of Withholding. Previous disclosure of information outside the Federal Government may waive the authority to later withhold that information under FOIA. For additional information, refer to Attachment D.

3. General Guidance.

Only records which are in the control and custody of BIS at the time a FOIA request is received are responsive. BIS may have the Department of Commerce (DOC) lead for responding to a FOIA request in which case there may be responsive documents outside of BIS. Existing records include records that are stored in temporary holding facilities such as the Washington National Records Center (WNRC) at Suitland, Maryland. BIS is not required to create documents in response to a FOIA request. If a document is in the possession of BIS, the document is responsive whether or not it was created by BIS. Personal records are, however, not subject to the FOIA. The determination of whether a document is a BIS record or a personal record must be made on a case-by-case basis. Some factors to consider are:

- content of the document (substantive information);
- whether it was created to facilitate Federal Government business or solely for personal convenience (e.g., whether it was created by a BIS employee on office time, with office materials, at BIS expense);
- distribution of the document;
- use of the document to conduct BIS business;
- location of the document (e.g., in BIS files, in an employee's pocket);
- does BIS exercise any control over the document;
- is the employee free to dispose of the document;
- can information be segregated? (i.e., personal information redacted, official information retained);
- was the document updated or revised for record-keeping purposes? Personal records may refer to BIS activity, but they are kept purely as personal memory aids or "memory joggers" and are intended only for use and reference by the individual employee.

4. Receipt of FOIA Request.

All FOIA requests must be made in writing (and may be sent by mail, facsimile, or email). If a request is improperly addressed by the requester, it will not be deemed received until it is received by the BIS FOIA Officer.

a. Accepting the FOIA Request. A request must reasonably describe the records sought, including the time period the search is to cover. If the time period is not provided, the BIS FOIA Officer will contact the requester to request that a time period be specified. If the request specifies a start date for the search and not the end date, BIS will consider the date of the request as the end date for the search. A request for information about an individual other than the requester must include a notarized statement from the individual about whom information is sought authorizing the requester to request the information. Typically, such requests are forwarded by law firms. If the request is unclear or ambiguous to the offices tasked, the point of contact for each division shall contact the BIS FOIA Officer who will contact the requester and

ask for clarification or reformulation of the request. If clarification is obtained by telephone, the BIS FOIA Officer will send a letter to the requester to confirm the conversation.

- If the request is addressed directly to BIS and it asks for information not under BIS control, the BIS FOIA Officer will send a response to the requester as soon as possible indicating this.
- If a request is addressed to the DOC FOIA Officer and the lead was transferred to BIS, but the requested information is not under BIS control and BIS thinks that another DOC bureau may have responsive records, the BIS FOIA Officer will return the request to the DOC FOIA Officer for retasking.
- If the request is exclusively for records of another agency, the BIS FOIA Officer will notify the requester that BIS has no responsive documents.
- If BIS has the lead for a request, the BIS FOIA Officer will send an acknowledgment letter to the requester.

Once the responsive office(s) is determined, the BIS FOIA Officer will enter the FOIA request into BIS's tracking system (WebCIMS). The BIS FOIA Officer will prepare and attach a BIS FOIA Action Record (Attachment E) and a Checkbox Form (Attachment F). An Index (Attachment G) will be requested from the office(s) that locate responsive material. Additionally, a Non-Search Certification (Attachment H), Search Certification (Attachment I), and Search Checklist (Attachment J) will be scanned into WebCIMS. These certifications are needed in case the requester appeals the decision.

b. Fee Determination. Consistent with the DOC's FOIA regulations, it is necessary to determine if a fee estimate is needed before the search is conducted. If the fee estimate is \$20.00 or less, no fee shall be charged. If the estimated search or duplication charges exceed \$20.00, then the requester must be notified. If the estimated cost is more than \$250.00, advance payment of the entire anticipated fee is required before the search is conducted. If the estimated cost is less than \$250.00, the BIS FOIA Officer will ask the requester to provide satisfactory assurance of full payment before the search is conducted. If a requester owes money for a previous request, no new request may be processed until those fees and all fees estimated for the new request are paid. Payment of fees must be sent to the BIS FOIA Officer, in the form of a check or money order, made payable to "Treasury of the United States." BIS does not retain the fees; the fees are transferred to the general fund of the Department of the Treasury. If there is good reason to believe that a requester, or a group of requesters, acting in concert, is attempting to break a request into a series of requests for the purpose of evading or reducing fees, the BIS FOIA Officer may, and in most cases will, aggregate the requests and charge fees accordingly. The first step in estimating fees is to assign the requester to a fee category:

<u>Category of requester</u>	<u>Charges are to be imposed for</u>
• Commercial use	search, review, duplication
• Educational or non-commercial scientific institutions	duplication (excluding first 100 pages)
• Representatives of the news media	duplication (excluding first 100 pages)
• All others	search and duplication (excluding first two hours of search and first 100 pages)

A *commercial use* request is a request made by or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests, which can include furthering those interests through litigation, of the requester or the person on whose behalf the request is made. To determine whether a request is for commercial use, it is necessary to ascertain the use to which the requested records will be put. If there is doubt about the use to which the records will be put, or if there is ambiguity about the use, the BIS FOIA Officer will seek additional clarification from the requester. It should be noted that law firms often make commercial use requests on behalf of their clients.

An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of undergraduate/graduate higher learning, or an institution of professional/vocational education, which operates a program of scholarly research.

A *non-commercial scientific institution* is an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research on a non-profit basis, the results of which are not intended to promote any particular product or industry.

A *representative of the news media* is a person who is engaged in actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

Allowable charges include:

- Search: for a manual search, the actual salary rate of the employee or employees conducting the search plus an additional 16% of the salary (to cover benefits); for a computerized search, actual direct cost including operator time.
- Review: actual salary rate of the employee or employees conducting the review plus an additional 16% of the salary (review time includes time spent redacting documents).
- Duplication:
 - for paper copy reproduction, \$.16 per page;

- ▶ for other reproduction (including computer disk or printout, microfilm, microfiche, microform), actual cost, including operator time.

If a requester is in a category requiring BIS to charge a fee, BIS can consider a requester's request for a fee waiver. Documents shall be furnished without charge, or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government, and is not primarily in the commercial interest of the requester. The BIS FOIA Officer, in consultation with BIS offices, shall make a collective determination as to whether the criteria for a fee waiver, as described in 15 C.F.R. §4.11(k), has been met using the following factors:

- The subject of the request (whether it concerns the operations or activities of the Federal Government);
- The informative value of the information to be disclosed (whether disclosure is likely to contribute to increased public understanding of Federal Government operations or activities);
- The contribution to an understanding of the subject by the public likely to result from disclosure (whether disclosure will contribute to the understanding of a broad audience interested in the subject);
- The significance of the contribution to public understanding (whether disclosure is likely to contribute "significantly" to public understanding of Federal Government operations or activities);
- The existence and magnitude of a commercial interest (whether the requester has a commercial interest that would be furthered by disclosure);
- The primary interest in disclosure (whether any identified commercial interest of the requester is sufficiently large, compared with the public interest in disclosure, that the disclosure is primarily in the commercial interest of the requester).

If such determination cannot be made, the BIS FOIA Officer shall consult with OGC/GLD. The BIS FOIA Officer's determination will then be distributed to the BIS office(s).

The BIS FOIA Officer will calculate the total fee estimate based on information provided by the BIS office(s) on the BIS FOIA Action Record and advise the requester that payment is required within 30 calendar days. The BIS FOIA Officer will close the FOIA request if the fee has not been received within this time frame, and then send final notification of the action to the requester. If payment is sent by the requester, the BIS FOIA Officer will make a copy of the check and put it in the FOIA file and give the check to the BIS Office of Comptroller for deposit in the appropriate Treasury account. The office(s) tasked to provide the fee estimate will be notified to begin the search. BIS will have twenty working days, from the date payment is received, to provide a response to the requester.

5. Conducting Proper Searches and Documenting Searches.

Each new FOIA request will be reviewed and a determination made on which BIS office(s) should conduct a search for responsive documents. The request will be tasked to all offices in which responsive documents may reasonably be expected to be found. Offices that conduct a search must complete and sign a Checkbox Form and provide an Index of the documents. Because a requester can appeal the adequacy of a search, it is important that office representatives be cautious in determining who will conduct a search. If there is uncertainty about which employees need to conduct a search, any employee who may have one or more responsive documents must be instructed to conduct a search. A search of an office or a storage facility must be conducted if there is a reasonable belief that the search could produce responsive documents. It is reasonable to believe that an office or storage facility might have records responsive to a request if:

- Records on the subject have been located there before;
- The office deals with or has dealt with issues related to the subject;
- The office has responsibilities related to the subject;
- The office maintains records created or compiled by others who may satisfy this criteria.

When a FOIA request is tasked to an office, an individual in that office shall be assigned the responsibility for coordinating the search. This individual must ensure that all employees in the office who may have responsive documents search all their files that may contain responsive documents, and that all parts of the office that may contain responsive documents are searched. Employees cannot assume that someone else with a copy of a responsive document will produce it. If an office-wide search is requested, only employees who could potentially produce responsive documents must conduct a search.

a. Identifying Responsive Documents. In determining records responsive to a request, BIS will consider only those records within BIS's custody and control at the time of receipt of the request. Responsive records can include pictures, audiotapes, videotapes, and electronic records (including E-mail), as well as paper copies (including drafts). The requester may specify that the records be provided in a specific format (e.g., computer disc). If the records can be readily converted to the requested format, BIS must do so.

Documents associated with litigation. If a request is for documents that are connected with, or may be connected with, any litigation (either in DOC or another agency), the BIS FOIA Officer will notify OGC/GLD and OCC/IS immediately. If OGC/GLD is notified first of a FOIA litigation affecting BIS, that office will inform the BIS FOIA Officer immediately. The BIS FOIA Officer and/or OCC/IS will coordinate the response with the requester and obtain clearance by the DOC attorney handling the litigation. If another

agency is handling the litigation, OGC/GLD will consult with the attorneys in that agency.

Other agency documents. Third agency documents require special handling. The agency that is best able to determine a document's sensitivity, and the applicability of exemptions, is the originating agency. It should be noted that for classified documents, declassification authority is limited to the classifying agency. If responsive records are found in BIS but were originated by another agency, the documents must be forwarded to the BIS FOIA Officer who will refer these records to the other agency, ensuring that the forwarded documents identify any exemptions BIS wishes the receiving agency to assert. BIS must consult with the appropriate agency when a request is for a DOC document that contains information that was furnished by—or is of concern to—the other agency. The consultation should be in writing. If the documents are referred to another federal agency, at BIS's discretion the other federal agency can be asked to respond directly to the requester. Any responsive documents originated by or sent to the White House must be forwarded to OGC/GLD for direct coordination with the White House (which includes the National Security Council, National Economic Council, Office of the President, and Office of the Vice President). OGC/GLD will transmit the recommendations or comments from the White House to the BIS FOIA Officer who will in turn respond to the requester.

Company documents. Documents in BIS's possession that were provided by companies or third parties outside the Federal Government (including corporations; state, local and tribal agencies; and foreign governments) also require special handling. These documents (this does not include license applications) must be returned to the submitting company or third party for review of information that may contain material exempt from release under exemption (b)(4). As part of their search for and review of responsive documents, BIS offices shall refer all such documents to the submitting company or third party for their release recommendation. BIS cannot assert the (b)(4) exemption unless requested by the company or third party. [Note: OGC/GLD advises that this is the DOC's policy notwithstanding 15 C.F.R. §4.9(h), which states the instances in which such documents shall not be referred]

Once a recommendation has been made by the submitting company or third party and the response has been received by the BIS office, the BIS office shall include such documents and the company or third party recommendations in its final FOIA package (see #6).

b. Using Checkbox Form. BIS offices are required to complete and sign a Checkbox Form for each FOIA request in which the office conducts a search for responsive documents. The Checkbox Form, along with the documents, must be provided in the package to the BIS FOIA Officer. See Attachment F.

c. Index. An Index of all responsive documents (to include the Date, To/From, Subject, Number of pages, Release determination, Exemptions applied, and Office), must be provided in the package to the BIS FOIA Officer. See Attachment G.

d. Using Search Checklists. Individuals required to conduct a search are to use the Search Checklists when conducting searches. Search Checklists provide a record that an adequate search was conducted, and it can be useful if the case is appealed or litigated. It should be noted that searches may require a review of documents stored in temporary holding facilities, the Search Checklist must state if the search included such records. If certain office areas were not searched because responsive documents are not expected to be found there, the office shall enter "N/A" on the Search Checklist where appropriate. See Attachments H - J.

e. Certifying Searches. Every employee tasked to conduct a search shall complete either:

- A Non-Search Certification (Attachment H), if it is reasonable to assume that the individual has no records that are responsive to the request, or
- A Search Certification and Checklist (Attachments I and J), if a search is conducted, whether or not responsive documents were found. In this case, the following information is to be provided in the Search Certification:
 - ▶ the number of responsive documents, and
 - ▶ a statement indicating that exemptions and brackets have been added to the responsive documents.

6. Preparing Materials for Release.

a. Compiling and Eliminating Duplicate Copies of Responsive Documents. Only one copy of identical responsive documents should be processed (i.e., either released or withheld) but different versions of the same document, including those with handwritten notes, must be treated as separate documents. It is very important to carefully compile all responsive documents so that exact duplicates can be identified. Parts of documents sometimes are separated from their source document. For example, a single page that is part of a larger document or presentation may be found as a separate document. When duplicates are identified, it is important to pay particular attention to possible discrepancies in classification and markings. The BIS FOIA Officer is responsible for collecting the responsive documents from all BIS offices and eliminating any additional duplicate copies found.

b. Marking Exemptions and Redacting. Offices with responsive documents are to make a copy of the original, write the exemptions (in pencil) along the right margin of the document, and mark with brackets, the text to be redacted. The BIS FOIA Officer will redact the documents based on the exemptions and brackets indicated and make the necessary copies for release and filing. Redactions can be done with either a black

magic marker or using a piece of paper to block the text to be redacted. If a black magic marker is used, the original "blacked out" page is not to be submitted. Instead, a copy must be made to submit because it is sometimes possible to see through the marker on the original document. The BIS FOIA Officer is to sequentially number each responsive document, placing the number in pencil in the top right hand margin of each responsive document. In case the FOIA request is appealed, and additional copies are made, numbering will ensure all responsive documents are available for review by OGC/GLD. BIS offices should call upon OCC/IS to provide advice before the package is sent forward for formal clearance. This consultation also helps facilitate the clearance process once OCC/IS receives the package for their review.

c. Reviewing Classified Documents. Offices must review classified documents for possible declassification. If the documents can be declassified, the documents should be properly marked and declassified by either the Under Secretary for Industry and Security; the Assistant Secretary for Export Administration; or the Assistant Secretary for Export Enforcement, dependent upon who classified the document. A declassification review must be done regardless of whether the documents are to be withheld under any FOIA exemptions.

d. Preparing Sound Legal Basis. Under the Attorney General's guidance issued October 12, 2001, agencies should reach the judgement that their use of a FOIA exemption is on sound footing, both factually and legally, whenever they withhold requested information. Consequently, a Sound Legal Basis (Attachment K) must be written by the office that found responsive documents but that is withholding them from release in whole or in part. The analysis should refer to documents responsive to the request and explain the basis of denial, the exemptions being asserted, the name of the denying official¹, and the specific foreseeable harm that would result from disclosure of the material. The Sound Legal Basis is to be prepared at the time the responsive documents are identified because the information needed to prepare this document is readily available from the exemption markings made on the redacted documents. The Sound Legal Basis must be included in the FOIA package and sent through the clearance process.

¹ The term used to describe those delegated to initially deny requests for records of their respective units for which they are responsible: includes the Under Secretary (US), Deputy Under Secretary (DUS), Assistant Secretary (AS) and Deputy Assistant Secretary (DAS) for Export Administration and Export Enforcement and their Office Directors, Director of Administration, and the Director, Office of Planning, Evaluation and Management. (Note: Additional denial authority is being requested for the Chief Information Officer, the Director for the Office of Congressional and Public Affairs, and the Director for the Office of International Programs)

e. Preparing Package for Final Response to Requester. All BIS offices tasked with conducting a search are to submit their findings to the BIS FOIA Officer. If other DOC offices were also tasked by BIS, their findings will be sent to the BIS FOIA Officer who will make a determination if their documents need to be referred to BIS offices. After all responsive documents are identified, Checkbox forms are completed, Indices are completed, Search and Non-Search Certifications and Search Checklists are completed, duplicate documents are eliminated (within a BIS unit), exemptions are marked, redactions are indicated with brackets, documents are numbered (in pencil), the Sound Legal Basis is written, and each tasked office completes the BIS FOIA Action Record, the preliminary packages are delivered to the BIS FOIA Officer. The BIS FOIA Officer will review the packages, combine and consolidate them, and prepare the letter to the requester. The letter will include the following:

- the BIS WebCIMS number;
- a statement quoting or paraphrasing the request and any modifications to the request;
- the number of responsive documents found;
- the number of documents being withheld and exemptions used;
- the number of documents being referred to other agencies;
- the number of documents being released in part or in full and exemptions used for withheld sections;
- the name of the denying official; and
- if documents are withheld, a statement of the right to administratively appeal the withholding of documents using the FOIA number to ensure prompt processing; or
- if no responsive documents were identified, a statement of the right to administratively appeal the outcome of the search.

The BIS FOIA Officer will then send the package for clearance to OCC/IS.

Exception for the Office of Export Enforcement (OEE). Per ODM 99-01, the Director of the Office of Export Enforcement has provided specific directions for OEE personnel to follow when responding to FOIA requests. Each OEE field office is responsible for its documents, including: search, retention (six years), and redaction of responsive documents. To ensure that law enforcement sources and methods are protected, each OEE FOIA point of contact will coordinate initially with OEE's FOIA Coordinator.

OEE may choose to bypass review by the BIS FOIA Officer of responsive records that are withheld and that require special handling because of their sensitivity, and take them directly to OCC/IS. In this case, OEE will need to prepare an index of documents withheld, containing a brief description of each document, the number of pages in each document, exemptions claimed, the storage location of the documents, and include the index with the FOIA package for review and processing. The BIS FOIA Officer will require this information to prepare the letter to the requester and for easy retrieval in case the FOIA request is appealed or litigated.

OCC/IS Processing. If OCC/IS is tasked by OGC/GLD to respond to a FOIA request, OCC/IS will conduct its own search. If OCC/IS has no responsive documents, OCC/IS will respond directly to OGC/GLD. If OCC/IS is tasked by OGC/GLD and has responsive documents, OCC/IS will coordinate its response with BIS to ensure elimination of duplicates and consistent treatment of responsive documents. If OCC/IS is not tasked by OGC/GLD, OCC/IS will determine whether it has responsive documents, conduct a search if needed, and coordinate its response with BIS to ensure consistent treatment of responsive documents.

7. Responding to the Requester.

A response to the requester must be issued within twenty working days (excluding Saturdays, Sundays, and Federal holidays) of receipt of the FOIA request or receipt of payment. The twenty working day count is temporarily suspended when: 1) preparing a fee estimate for the requester, 2) requesting clarification from the requester, and 3) awaiting payment or response from the requester. If the requested information is for material that is for sale by the DOC or it falls under the Privacy Act, the requester must be notified promptly in writing that the request is not being handled under FOIA.

If it is not possible to respond to the requester within the statutory twenty working day period, the BIS FOIA Officer, after being informed by the responsible BIS office FOIA point of contact, will contact the requester and offer the opportunity to arrange an alternative time frame for processing the request or to modify the request by limiting the scope. The BIS FOIA Officer will confirm any agreements in writing. Refusal by the requester to modify the request or to arrange such an alternative time frame shall be considered a factor in determining whether exceptional circumstances exist. In this case, the appropriate official authorized to make initial denials (denying official of the responsible BIS office) of requests may extend the time for initial determination for up to ten days (excluding Saturdays, Sundays and days on which federal offices are closed). As stated in 15 C.F.R. § 4.6(c)(2), the denying official (responsible BIS office) can extend the time frame for unusual circumstances using the following criteria:

- The need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request; or
- The need for consultation, which shall be conducted with all practical speed, with another agency or third party having a substantial interest in the determination of the request.

The BIS office FOIA point of contact shall inform the BIS FOIA Officer of this extension, who must then notify the requester, by written notice, the reason(s) for the extension and the date on which a determination is expected to be sent. Refusal to reasonably modify the scope of a request or arrange an alternate time frame may affect a requester's ability to obtain judicial review.

The BIS FOIA Officer will provide written interim responses to the requester, particularly if there is going to be a voluminous amount of responsive documents that require extensive review or if documents have been referred to other agencies.

Notice of any delays must be provided to the requester in writing. If the request is not answered in a timely fashion (at the end of the twenty working day period or the extension date), the request may be considered constructively denied and the requester may file an administrative appeal or sue DOC. However, if an appeal or lawsuit is filed, BIS must continue to search for documents responsive to the request and must coordinate with OGC/GLD all future communication with the requester.

Upon completion of the search, the BIS FOIA Officer will inform the requester of the actual cost (based on information provided in the BIS FOIA Action Record) of the search and photocopying, and indicate whether a refund will be sent. If a refund is due, the BIS FOIA Officer will process the request for refund through the BIS Office of the Comptroller.

8. Closing the File.

A complete copy of the Checkbox Form, Index, Search and Non-Search Certifications, Search Checklists, redacted and unredacted copies of withheld, released, and referred documents, Sound Legal Basis, the transmittal letters, and the BIS FOIA Action Record will be filed by the BIS FOIA Officer. After all BIS offices have completed their action on a FOIA request, they are to close their taskers in WebCIMS. (See OEE exception in 6.d.)

9. Processing FOIA Appeals and Complaints.

a. Notification of FOIA Appeals and Complaints. When a FOIA appeal or complaint is filed on a FOIA request where BIS had the lead or provided responsive documents, OGC/GLD will notify the BIS FOIA Officer and request copies of all withheld documents and the corresponding Sound Legal Basis. At that time, the BIS FOIA Officer will obtain a copy of the appeal or complaint from OGC/GLD as well as appeal or litigation schedules or deadlines. All further communication about the appeal or complaint will be channeled through the BIS FOIA Officer. This procedure provides efficiency in the delivery of documents needed by OGC/GLD because in many cases the information requested by OGC/GLD is available through the BIS FOIA Officer without burden to the operating unit. There may be an occasion when OGC/GLD requests to meet with the BIS official who denied the release of responsive records. In these instances, the BIS FOIA Officer will facilitate the meeting and remain involved to ensure that OGC/GLD obtains the information needed in a timely manner while remaining informed on the progress of the appeal or complaint. This will become critical for the BIS FOIA Officer if additional certifications are needed or a briefing is required on the status of the appeal or complaint for the Under Secretary, Director of Administration, or other interested parties.

b. Providing Background Materials for FOIA Appeals and Complaints. When they are needed for a FOIA appeal or complaint, OGC/GLD will ask the BIS FOIA Officer for copies of responsive documents, transmittal letters, and information about the particular offices that had responsive documents. The copies must be provided in a timely basis because there may be court-ordered deadlines.

If classified documents were withheld, OGC/GLD will require a declassification review of those documents. Documents that originated in other federal agencies must be referred for the declassification review. The BIS FOIA Officer will coordinate the referral of such documents.

c. National Interest Determination (NID). If a FOIA response is being appealed due to 12(c) withheld information, OGC/GLD will ask the Under Secretary to provide a National Interest Determination (NID). The request will be tasked to the BIS office which claimed the 12(c) information. The BIS office will prepare the NID, route it through OCC/IS for clearance, obtain the Under Secretary's signature, send a signed copy to OPEM, and forward the original to OGC/GLD.

d. Providing Additional Search Certifications. Depending on the nature of the appeal or complaint, OGC/GLD may ask the BIS FOIA Officer for copies of the Search and Non-Search Certifications and Search Checklist; or, OGC/GLD may request a sworn affidavit (declaration) certifying that an adequate search was conducted. Depending on the circumstances, OGC/GLD may request that the affidavit be prepared for the signature of the Director of OPEM or another authority.

10. Step-by-Step Process of a FOIA Request. Attachment L outlines the step-by-step process of a FOIA request, appeal, and complaint.

EXEMPTIONS - ATTACHMENT A

5 U.S.C. 552(b)(1) exempts from disclosure information that is properly classified under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy. The current applicable Executive Order is Executive Order 12958.

5 U.S.C. 552 (b)(2) exempts from disclosure information related solely to the internal personnel rules and practices of an agency.

5 U.S.C. 552 (b)(3) protects information specifically exempted from disclosure by statute, provided that such statute: A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue: or B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. Section 12(c) of the Export Administration Act, which applies to information obtained for the purpose of consideration, or concerning, license applications is a statutory provision under (b)(3)(B). Other exemption (b)(3) statutes that may be relevant to BIS documents include:

Section 8(b)(2) of the Export Administration Act	50 U.S.C. app. 2407(b)(2)
Section 309 of the Defense Production Act	50 U.S.C. § 2099
Section 705 of the Defense Production Act	50 U.S.C. § 2155
13 U.S.C. Section 301(g) (Shipper's Export Declarations)	
Section 38(e) of the Arms Export Control Act	22 U.S.C. § 2778(e)

5 U.S.C. 552 (b)(4) protects trade secrets and commercial or financial information obtained from a person which is privileged or confidential. The term "person" includes corporations, state, local, and foreign governments, and a wide range of entities. Commercial or financial information is generally any information in which the submitter has a commercial interest, including but not limited to research data, sales information, customer and supplier lists, overhead and operating costs, profit and loss data, and financial review information. Section 4.9 of the DOC's FOIA regulations set forth procedural requirements related to treatment of documents that may be covered by this exemption.

5 U.S.C. 552 (b)(5) protects inter-agency or intra-agency memoranda or other documents or communications which would not be available by law to a party other than an agency in litigation with the agency. The threshold requirement for (b)(5) protection (internal Federal Government material) is satisfied by information provided by outside consultants and outside reviewers, as well as by communications from outside the Federal Government which form part of an agency's deliberative process.

The most commonly asserted (b)(5) privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. The deliberative

process privilege applies to documents that are both predecisional and deliberative (i.e., part of the deliberative process) when created. It protects the integrity of the agency decision making process to ensure the candid exchange of ideas and that decision makers have available to them a wide variety of ideas and viewpoints to arrive at the best possible decisions.

The privilege also protects against premature disclosure of proposed actions, policies, or procedures, and prevents public misunderstanding and confusion by withholding information which was not the basis for an agency action. Documents frequently withheld pursuant to the deliberative process privilege include: advisory opinions; recommendations; briefing material; drafts. Purely factual information generally does not qualify for protection. However, if the factual material is inextricably intertwined with exempt material or if disclosure of the factual material would reveal the deliberative process, it may be withheld.

5 U.S.C. 552 (b)(6) protects information about individuals in personnel and medical files and similar files where disclosure would constitute a clearly unwarranted invasion of personal privacy. The term "similar files" is interpreted broadly to apply to all information about a particular individual. This protection of privacy is limited to individuals. A company or other organization has no personal privacy right cognizable under FOIA.

Privacy interests which are generally held to be protected include: social security numbers; marital status; home addresses and telephone numbers; medical information; religious affiliation; citizenship; sexual preference; and financial status. Certain information about past and present federal employees is considered public and must be disclosed. This includes: name; present and past position titles and occupational series; past and present grades; present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowance differentials); present and past duty stations (including room numbers, shop designations or other identifying information regarding buildings or places of employment); position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) the release of which would not interfere with law enforcement or severely inhibit agency effectiveness.

5 U.S.C. 552 (b)(7) protects records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

- A) could reasonably be expected to interfere with enforcement proceedings;
- B) would deprive a person of a right to a fair trial or an impartial adjudication;
- C) could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- D) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that

furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

F) could reasonably be expected to endanger the life or physical safety of any individual.

To qualify for protection, it is not necessary for the information to have been created for law enforcement purposes, just as long as it was compiled for (criminal, civil, or administrative) law enforcement purposes.

The final two FOIA exemptions (5 U.S.C. §552(b)(8) (records related to regulation of financial institutions) and (9)(geological information)) are very unlikely to apply to any BIS documents.

For additional information on the applicability of these exemptions, offices should consult with the BIS FOIA Officer.

EXEMPTION EXAMPLES - ATTACHMENT B

For reference only, the following are the types of information previously withheld and upheld by courts:

- Information related to export licenses (b)(3)
- Federal Government and personal credit card numbers and expiration dates (b)(6)
- CIA names and information (b)(3)
- Information submitted by companies (b)(4)
- Recommendations concerning companies to go on missions (b)(5)
 - Memoranda
 - Comment sections of lists
- Memoranda that contain sensitive recommendations (like reports to the President on policy decisions in national relations with the foreign country visited) (b)(5)
- Briefing papers on sensitive policy issues (b)(1), (b)(5)
- Attorney-client memoranda and information (b)(5)
- Attorney-client vetting documents (b)(5)
- Social security numbers and other personal information on travel orders (b)(6)
- Home phone numbers on schedules (b)(6)
- Passport and visa numbers and other personal information on the passports and visas (b)(6)
- Personal information on applications, including dates and places of birth and ages (b)(6)

EXCLUSIONS - ATTACHMENT C

Three categories of sensitive law enforcement information that may be maintained by the DOC are excluded from coverage under FOIA. They are:

(1) whenever a request is made which involves access to records described in (b)(7)(A) (could reasonably be expected to interfere with enforcement proceedings) and:

- the investigation or proceeding involves a possible violation of criminal law; and
- there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings;

(2) whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier and requested by a third party by such name or identifier.

(3) whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism.

If an exclusion is applied to information, a FOIA requester will be informed by the BIS FOIA Officer that there are no records responsive to the request for that information.

WAIVERS OF WITHHOLDING - ATTACHMENT D

Disclosure of information (other than to the submitter of the information or the subject of the information) may constitute a waiver of the right to later withhold that information under FOIA.

Certain kinds of disclosure do not constitute waiver: unauthorized "leaks" of information; disclosure in decision making meetings, even if non-federal personnel are present; disclosure to other agencies or to advisory committees; disclosure under protective order in an administrative proceeding.

Disclosure of protected information to a Congressional committee does not constitute waiver.

Disclosure in limited "obscure" circumstances may not constitute waiver. It is necessary to review individually each case in which this "practical obscurity" test may apply.

The BIS FOIA Officer should be consulted if an office is contemplating using a waiver.

BIS FOIA ACTION RECORD - ATTACHMENT E

BIS FOIA ACTION RECORD																	
BIS WebCIMS #									CRRIF#								
Name and Address of Requester			Date of Request			Date Tasked by BIS FOIA Officer			Description of Records Requested and Date Parameters for Search								
FOIA TASKED TO THE FOLLOWING BIS OFFICES:									FOIA TASKED TO THE FOLLOWING DOC OFFICES:								
BIS Office	Date Tasked	Due to OPEM	No. of Responsive Documents	Exemptions Claimed	Denying Official				DOC Office	Date Tasked	Due to OPEM	No. of Responsive Documents	Exemptions Claimed	Denying Official			
COSTS:																	
Estimated Costs									Actual Costs								
Search Costs			Reviewer Costs			Copying		Total Cost	Search Costs			Reviewer Costs			Copying		Total Cost
Grade/ Step	No. Hrs	Cost	Grade/ Step	No. Hrs	Cost	No. of Pages	x .16		Grade/ Step	No. Hrs	Cost	Grade/ Step	No. Hrs	Cost	No. of Pages	x .16	

INSTRUCTIONS FOR COMPLETING THE BIS FOIA ACTION RECORD

The BIS FOIA Officer will complete the top part of the form. To facilitate tracking, the BIS FOIA Officer will enter the control numbers. However, all correspondence related to FOIA requests will indicate the BIS WebCIMS number. The BIS FOIA Officer will also complete the tasking information in the columns headed, "BIS/DOC Office," "Date Tasked," and "Due to OPEM." The tasked offices will complete the following three columns: "No. Of Responsive Documents," "Exemptions Claimed," and "Denying Official."

The tasked offices will complete the bottom half of the form, beginning with "COSTS". If a determination is made that a fee estimate should be prepared, then the section titled "Estimated Costs" will be completed by each tasked office, and the information will be transmitted to the BIS FOIA Officer by either making a copy of the partially completed form or by sending an E-mail with the information. When the FOIA request has been completed, the "Actual Costs" section will be completed by the tasked offices and the form will be sent to the BIS FOIA Officer with the rest of the package.

For search costs, a list of each employee's grade and step must be entered by each tasked office as well as the number of hours spent by each employee who conducted a search. The same information must be provided for reviewing and redacting documents under "Reviewer Costs." Under copying costs, only the number of releasable pages is to be indicated, even if parts of the page have been redacted. The BIS FOIA Officer will complete the "Cost" and "Total Cost" columns after verifying all the information.

CHECKBOX FORM - ATTACHMENT F

SUBJECT: FOIA Request from XXXX XXXXXX (WebCIMS xxxx; CRRIF xx-xxx)

Please check the appropriate box, sign and date this sheet and return to me in room 6883.

- Transmitted herewith are all documents within the possession of my office which are responsive and can be released in entirety.
- Transmitted herewith are all documents within the possession of my office which are responsive and we have found reason to partially withhold, copies were made and exemptions were noted.
- Transmitted herewith 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.
- Transmitted herewith are all documents within the possession of my office which are responsive and we have found reason to release, partially withhold, and withhold entirely. Copies were made and exemptions were noted.
- My office has found no responsive documents.

Signature

Date

Office

INDEX - ATTACHMENT G

Office: _____

SUBJECT: FOIA Request from XXXXX XXXXX (WebCIMS xxxx; CRRIF xx-xxx)

DATE OF DOCUMENT	TO/FROM	SUBJECT	NUMBER OF PAGES	RELEASE DETERMINATION	EXEMPTIONS APPLIED	OFFICE
7/4/1999		Federal Register EO 13129 Blocking Property and Prohibiting Transactions With the Taliban	3	Release		STFPC
1/19/2001		Treasury document XXXX (subject)	2	Release		STFPC
4/8/2001	To: XXXX, XXXX; From: XXXX	E-Mail on Draft XXXX (subject)	1	Withhold in full	(b)(5)	STFPC
2/20/2001	To: XXXX, XXXX, XXXX; From: XXX	E-Mail Re: XXXX (subject)	2	Withhold in full	(b)(5)	STFPC

NON-SEARCH CERTIFICATION - ATTACHMENT H

Office: _____ FOIA #: _____

The undersigned certifies that no search was conducted for the office indicated. Given the subject matter of the request and the nature of records of this office, it is unlikely that this office has files and records containing responsive records.

Signature

Date

SEARCH CERTIFICATION - ATTACHMENT I

Office: _____ FOIA #: _____

The undersigned certifies that a thorough and complete search of files and records that could contain responsive information was conducted for the office indicated.

Attached is a Search Checklist(s) showing where the search was conducted.

I certify that (check one):

_____ Responsive documents (how many: _____) were found. Responsive documents that are withheld in full or in part have exemptions written and brackets drawn on the right hand margin identifying the text to be exempted.

The denying official is: _____
Name and Title

or

_____ My office found no documents responsive to the request.

Signature

Date

SEARCH CHECKLIST - ATTACHMENT J

Office: _____ FOIA #: _____

Office Space (check each item searched because of the reasonable likelihood that it could contain responsive documents)

- _____ (1) files - including file cabinets for the office, personal file cabinets, files in desks and in/out boxes
- _____ (2) desks - including those of support staff professionals, and those that are not occupied
- _____ (3) boxes used for storage
- _____ (4) safes in the office
- _____ (5) other furniture used for storage such as bookcases and credenzas

Archives/Storage (check each item as appropriate)

- _____ (1) official archived records
- _____ (2) storage collocated with office
- _____ (3) storage areas not collocated with office

Electronic Storage (check each item as appropriate)

- _____ (1) computers
- _____ (2) computer discs
- _____ (3) network computer system files, both shared and individual employee files
- _____ (4) employee E-mail files
- _____ (5) archived files

Types of Records Examined (check each item as appropriate)

- _____ (1) calendars - computer and hard copies
- _____ (2) telephone message slips - including disposable slips, carbon copies, and computer-generated messages
- _____ (3) handwritten notes (e.g., notes taken at meetings; edited copies of documents, notes taken while on the phone)
- _____ (4) draft and final documents (hard copies and computer versions)
- _____ (5) audiotapes
- _____ (6) videotapes
- _____ (7) photographs
- _____ (8) transmittal slips (including fax cover sheets)
- _____ (9) E-mail
- _____ (10) correspondence files
- _____ (11) subject matter files
- _____ (12) microfilm, microfiche

_____ ANY OTHER PLACE THAT MIGHT CONTAIN RESPONSIVE MATERIAL (e.g., temporary storage)

Signature

Date

NOTE: Enter N/A for areas not searched because responsive materials are not expected to be found.

SAMPLE SOUND LEGAL BASIS - ATTACHMENT K

January 4, 2002

MEMORANDUM FOR FOIA - WebCIMS #3686

FROM: Jane Doe
 Office of the Assistant Secretary for
 Export Administration

SUBJECT: Sound Legal Basis

XXXX (name of requester), on behalf of the XXXX (company or organization name) requested under the Freedom of Information Act (FOIA) to the Bureau of Industry and Security, dated November 26, 2001, all documents relating to Pakistan entities of proliferation concern listed in Part 744 of the EAR and or listed in <http://www.bxa.doc.gov/Entities/IndianPakistanCombinedListing.html>.

Export Administration (EA) has located 86 responsive documents. 75 are being released in full, two are being released in part (remaining part is not responsive), one document is being withheld entirely under FOIA exemption (b)(3) and five documents are being withheld entirely under FOIA exemption (b)(5). 5 U.S.C.A. §§ 552(b)(3) and (b)(5) (1996 & Supp. 2001). Three documents are being referred to other agencies for decision on release.

5 U.S.C.A. § 552(b)(3)(1996 & Supp. 2001). FOIA subsection (b)(3) exempts from disclosure documents which are:

specifically exempted from disclosure by statute..., provided that such statute . . . (B) establishes particular criteria for withholding or refers to particular types of information to be withheld.

5 U.S.C.A. § 552(b)(3)(1996 & Supp. 2001).

The statutory provision which specifically exempts this information from disclosure by establishing particular criteria for withholding is section 12(c) of the Export Administration Act of 1979, as amended (the Act) (50 U.S.C.A. app. § 2411(c)(1991 & Supp. 2001))². Section 12(c) states, in pertinent part, that:

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (2000) (IEEPA). On November 13, 2000, the Act was reinstated by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. The Act expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which

. . . information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest.

50 U.S.C.A. app. § 2411(c). This section does not merely authorize maintaining the confidentiality of information obtained under the Act, but requires such information not be disclosed unless its release is determined to be in the national interest. Consistent with the criteria of section 12(c), in the absence of a national interest determination authorizing release of information responsive to your request, any such information cannot be released. There is one document responsive to this request that is subject to section 12(c) of the Act. There has been no determination that release of the requested document covered by section 12(c) is in the national interest.

5 U.S.C.A. § 552 (b)(5)(1996 & Supp. 2001). Documents that concern or relate to procedures or processes relied upon in completing reviews of license applications, as well as other issues relating to export licensing policy which would not be available by law to a party other than an agency in litigation with BIS. They are predecisional and deliberative documents that contain the opinions and recommendations of Federal Government officials. Release of withheld information would harm the agency's ability to conduct business, i.e., to properly evaluate export transactions. In addition, failure to protect the procedures and information exchanges thereunder would pose a risk to an intra-and inter departmental process and discourage frank, more open exchanges. Disclosure of the documents would adversely affect the quality of agency decisions and the decision making process. Failure to protect such information would inhibit referral of information needed for license review and candid exchanges of opinions between departments and agencies. The (b)(5) exemption in this instance also protects against premature disclosure of proposed actions made in this document, and prevents public misunderstanding and confusion of DOC/BIS licensing policies or procedures by withholding information which was not the basis for BIS's final action.

The denying authority for this decision is (proper authority), (title).

has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003), continues the Regulations in effect under the IEEPA (50 U.S.C. §§ 1701-1706 (2000)).

STEP-BY-STEP PROCESS OF A ROUTINE FOIA REQUEST - ATTACHMENT L

Step	Activity	Responsibility
1	FOIA request is received.	BIS FOIA Officer.
2	FOIA request is tasked and entered in the tracking system; BIS FOIA Action Record prepared; fee estimates are prepared.	BIS FOIA Officer, BIS offices.
3	Acknowledgment letter, letter requesting clarification, and/or fee estimate letter is sent to the requester.	BIS FOIA Officer.
4	Payment is received from requester; search begins using Checkbox Form; Index developed, Search, Non-Search Certifications and Search Checklists are completed.	BIS offices.
5	Responsive documents are collected and organized, and duplicates are eliminated. Documents have been reviewed for declassification and marked accordingly.	BIS offices at the OUS, EA, EE, NEC, OCPA, and Admin level.
6	Documents are properly marked; transmittal letters to outside agencies are forwarded; responsive documents are sent to the BIS FOIA Officer; BIS FOIA Action Records are completed; and taskers are closed in the tracking system.	BIS offices at the OUS, EA, EE, NEC, OCPA, and Admin level.
7	Sound Legal Basis is prepared.	BIS offices.
8	BIS FOIA Action Record is completed and tasker closed in the tracking system.	BIS offices.
9	FOIA package is sent to the BIS FOIA Officer for final processing.	BIS offices.
10	Responsive documents are reviewed for further elimination of duplicates and documents are numbered in pencil.	BIS FOIA Officer.
11	FOIA package, with proposed letters, is forwarded to OCC/IS for legal review.	BIS FOIA Officer.
12	FOIA package is reviewed and returned to the BIS FOIA Officer.	OCC/IS.
13	FOIA package is reviewed for changes indicated by OCC/IS and letter is finalized and sent.	BIS FOIA Officer.
14	FOIA request is closed in the tracking system and official file is closed in OPEM.	BIS FOIA Officer

FOIA Appeals and Complaints		
1	FOIA request is appealed.	Requester.
2	BIS FOIA Officer is notified of appeal.	OGC/GLD.
3	BIS management and OCC/IS are notified.	BIS FOIA Officer.
4	Copies of transmittal letters, responsive documents to include withheld documents, Sound Legal Basis, Search and Non-Search Certifications, and Search Checklists (if adequacy of search is challenged) are provided to OGC/GLD.	BIS FOIA Officer.
5	Declarations are signed by BIS officials (if necessary); and a NID is prepared by the BIS lead office and is signed by the US.	BIS officials, OCC/IS, and OGC/GLD.
6	DOC is sued.	Requester.
7	BIS FOIA Officer is notified of lawsuit.	OGC/GLD.
8	BIS management and OCC/IS are notified.	BIS FOIA Officer.

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March 22, 2004

ACTION MEMORANDUM

TO: Mark Foulon
Deputy Under Secretary for Industry and Security

FROM: Jeannette Chiari
Acting Director of Administration

SUBJECT: BIS Procedures for Handling Freedom of Information Act Requests

Action Requested:

- That you approve the attached BIS Freedom of Information Act (FOIA) Procedures

Background:

- This document sets forth the procedures to be followed in BIS for handling FOIA requests and appeals.
- The Office of Planning, Evaluation and Management serves as the repository for these types of requests, documents produced, and responses. This process will ensure that the appropriate BIS offices are tasked to search for responsive material in a timely and coordinated manner.

Recommendation:

- That you approve the attached procedures.

Approve _____ Disapprove _____ Discuss _____

Date _____

Attachment

Drafted By:

- Elaine Farrow, Office of Planning, Evaluation and Management, x2165

Cleared By:

- Judith Means, Office of General Counsel, General Litigation Division

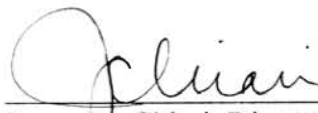
Bureau of Industry and Security
Electronic Freedom of Information Act (E-FOIA) Procedures



January 2004

This document was prepared by the Office of Planning, Evaluation and Management (OPEM) in the Office of Administration, Bureau of Industry and Security (BIS).

The following procedures were cleared by the Office of the Assistant Secretary for Export Administration, the Office of the Assistant Secretary for Export Enforcement, and the Office of Chief Counsel for Industry and Security (OCC/IS).



Jeannette Chiari, Director

Office of Planning, Evaluation and Management

Any questions regarding the contents of this document should be referred to the BIS E-FOIA Administrator, Office of Planning, Evaluation and Management, at (202) 482-6785.

. **Introduction**

These procedures are consistent with the Electronic Freedom of Information Act Amendments of 1996 (5 U.S.C. §552) (E-FOIA) which requires agencies to provide the public with electronic access to any of their “Reading Room” records that have been created since November 1, 1996. The Office of Planning, Evaluation and Management is currently responsible for uploading documents onto the BIS’s website.

. **Background**

The E-FOIA requires federal agencies to set up electronic reading rooms stocked with frequently requested documents and reference materials to help the public locate government record information.

The E-FOIA requires that agencies make electronically available the following types of reading room records:

- Final opinions, which includes orders rendered in the adjudication of administrative cases;
- Specific agency policy statements and interpretations;
- Administrative staff manuals that affect the public; and
- Any records processed and disclosed that the agency determines have or are likely to become the subject of subsequent requests for substantially the same records.

. **Procedures**

In order to have your documents uploaded correctly and in a timely manner, the E-FOIA checklist and the following list of procedures should be submitted and completed with the documents.

1. Document submissions for Export Control Violations

Document submissions for Export Control Violations should be submitted along with the E-FOIA checklist. The table of contents below shows the order in which Export Control Violations appear on the E-FOIA website. The cases uploaded are in descending order with the most recent case listed at the top.

Table of Contents Export Violations

Case ID	Case Name	Order Date
E788	Metal & Mineral Trade	11/17/03
E787	Ahwaz Steel Commercial & Technical Service GMBH	11/17/03
E786	Ralph Michel	11/12/03
E785	Omega Engineering Incorporated	11/12/03
E784	Future Metals, Inc.	11/12/03
E783	Minequip Corporation	11/04/03
E782	John Clements	11/04/03
E781	Sigma Enterprises Limited	11/04/03
E780	World Control International Inc.	10/16/03
E779	Trane Export, Inc.	10/06/03
E778	Trane Taiwan	10/06/03
E777	Dosmatic U.S.A. Inc.	09/30/03
E776	Reza Moghadam Pirasteh	09/30/03
E775	Abdulmir Mahdi, OTS Refining Equipment Corporation	09/29/03
E774	Astro-Med, Inc.	09/26/03

2. [Document submissions for Alleged Antiboycott Violations](#)

Document submissions for Alleged Antiboycott Violations should be submitted along with the E-FOIA checklist. The table of contents below shows the order in which Alleged Antiboycott Violations appear on the E-FOIA website. The cases uploaded are in descending order with the most recent case listed at the top.

Table of Contents of Alleged Antiboycott Violations

Case ID	Case Name	Order Date
A659	McMaster-Carr Supply Company	07/28/03
A658	Jagro Customs Brokers and International Freight Forwarders, Inc.	06/24/03
A657	Cook Composites and Polymers Company	06/17/03
A656	Dodge International	05/23/03
A655	Reliance Electric, GmbH	05/23/03
A654	Reliance Electric, AG	05/23/03
A653	Serfilco, Ltd.	03/13/03
A652	Mercator, Inc.	08/14/02
A651	John Hopkins System Health Corporation	08/06/02
A650	Koch Petroleum Group and Subsidiary	02/20/02
A649	Sunbeam Europe and Coleman Benelux	10/29/01
A648	G.M. Marketing Company	07/13/01
A647	Perry Equipment Corporation	12/29/00
A646	Kenclair (West) Electrical Agencies	06/15/00
A645	Design Direction, Inc.	04/24/00

3. Document submissions for Antiboycott Warning Letters

Document submissions for Antiboycott Warning Letters should be submitted along with the E-FOIA checklist indicating the corresponding year in which the documents should be uploaded; and the order in which they are to appear on the website.

4. Document submissions for Antiboycott Reports

Document submissions for Antiboycott Reports should be submitted along with the E-FOIA checklist indicating the corresponding year in which the documents should be uploaded; and the order in which they are to appear on the website.

5. Document submissions for Public Comments

Document submissions for Public Comments should be submitted along with the E-FOIA checklist. To ensure proper uploading the following is needed:

- An electronic copy of the table of contents (sample shown below); to include the official record of comments title, the Federal Register number, due date, source name, signer(s) of letter, date, and number of pages for each comment submitted; and
- A hard copy of the Federal Register Notice.

Comments should be submitted in the order in which they are to appear on the website.

RECORD OF COMMENTS: EFFECTS OF FOREIGN POLICY BASED EXPORT CONTROLS

Published in the Federal Register

68 FR 60050
(DUE NOVEMBER 21, 2003)

COMMENT	SOURCE	SIGNER(S) OF LETTER	DATE	NUMBER OF PAGES
1	National Chamber of Industries & Commerce, U.P., India	P.K. Varshneya	Oct. 27, 2003	4
2	Industry Coalition on Technology Transfer	Eric L. Hirschhorn	Nov. 17, 2003	3

6. Document submissions for Section 232 Investigations

Document submissions for Section 232 Investigations should be submitted along with the E-FOIA checklist. To ensure proper uploading of Public Comments a hard copy of the Federal Register Notice needs to be provided (e.g. the documents should be labeled as either comments, hearings, and/or transcripts).

Comments should be submitted in the order in which they are to appear on the website.

IV. E-FOIA Records Retention

There is not yet a records retention schedule from the National Archives pertaining to electronic records. However, an internal policy was established by the Office of Planning, Evaluation and Management on May 30, 2001 to dispose of reading room documents that are 5 years old after upload. Once OPEM uploads a document onto the E-FOIA reading room, the hard copy version is destroyed. The respective office which submitted the document will be the record keeper and will also be responsible for the disposition of the documents through their appropriate records retention schedule.

E-FOIA Document Submission Checklist

Type of Document (please check)

Antiboycott Report
Year: _____ Pages: _____

Antiboycott Violation
Case Name: _____
Order Date: _____ Pages: _____

Antiboycott Warning Letters
Year: _____ Pages: _____

Export Violations
Case Name: _____
Order Date: _____ Pages: _____

Public Comments
 Hard copy of Federal Register Notice
 Electronic Copy of Table of Contents
Pages: _____

Section 232 Investigations
_____ Comments _____ Hearings _____ Transcripts

Hard copy of the Federal Register Notice
Pages: _____

Other: _____

Contact Name: _____ Phone: _____

Office: _____ Date Submitted: _____

Date Received: _____ Date Posted: _____



BUREAU OF INDUSTRY AND SECURITY

POLICY DIRECTIVE

NUMBER: 1018

DATE: 09/17/08

Supersedes Policy
Memorandum Dated
December 30, 2004

U.S. Department of Commerce

GOVERNMENT ACCOUNTABILITY OFFICE AND DEPARTMENT OF COMMERCE OFFICE OF INSPECTOR GENERAL REPORTS AND INQUIRIES POLICY

PURPOSE

This policy supersedes the Bureau of Industry and Security (BIS) Government Accountability and the Office of Inspector General Policy dated December 2004 and becomes effective September 17, 2008.

This document describes BIS's policy for dealing with financial audits, operational inspections, and program evaluations conducted by the Government Accountability Office (GAO) and the Department of Commerce Office of Inspector General (OIG). It does not apply to investigations performed by the OIG of alleged or suspected wrongdoing by Commerce employees and contractors.

POLICY

BIS's policy is to cooperate with all GAO and OIG reviews of BIS programs. To do so, BIS management must be informed of GAO's and OIG's interest in our programs. The Office of Administration, Office of Planning, Evaluation and Management (OPEM) tracks all reviews and informs the Under Secretary and other managers of BIS's progress in meeting the GAO's and OIG's requests. The designated BIS Audit Liaison is Julissa Hurtado (202-482-8093).

Responding to GAO and OIG Reports and Inquiries

Draft Reports:

- The Office of the Under Secretary (OUS) will task the draft report in WebCIMS to the appropriate office for comments. Comments on draft reports are due to auditing agencies no later than 30 days after the draft report date, unless otherwise stated.
- The action office will draft the initial response indicating BIS's agreement or disagreement, if any, with the contents of the draft report and include any comments on its recommendation(s). It is important that BIS clarify any disagreements with the auditing agency before the final report is issued in order to maximize the clarity, actionability, and practicality of recommendations.
 - For GAO draft reports: Since all GAO reports are addressed to the Secretary of Commerce, the Under Secretary will sign the response memorandum for the Secretary after clearance by the relevant Assistant Secretary (A/S), Office of Chief Counsel (OCC), Director of Administration (DOA), and Deputy Under Secretary (DUS).
 - For OIG draft reports: The DUS will sign the response memorandum for the OIG after clearance by the relevant A/S, OCC, and DOA.
- All action plans and responses to reports will be cleared and signed by the DUS.

Final Reports:

- The OUS will task the final report in WebCIMS to the appropriate office for response. Responses to final reports are due to auditing agencies no later than 60 days after the final report date.
 - For GAO reports: Similar to draft reports, the Under Secretary will sign the response memorandum for the Secretary after clearance by the relevant A/S, OCC, DOA, and DUS.
 - For OIG reports: The action office will develop an action plan that addresses each recommendation by stating: (i) whether the recommendation is accepted or not and, if not, why not; (ii) that action will be taken on each accepted recommendation; and (iii) the date by when the action will be taken. The DUS will sign the memorandum transmitting the action plan to the OIG after clearance by the relevant A/S, OCC, and DOA.
- The GAO or OIG may respond to recommendations rejected by BIS. In this situation, OPEM will receive the correspondence, compile the input provided by the

BIS office rejecting the recommendation, and forward the package to the DUS for resolution. OPEM will prepare the response for the auditing agency and send it to the DUS for signature after obtaining clearance from the relevant A/S, OCC, and DOA.

- The OUS will task all accepted recommendations in WebCIMS using the due dates obtained from the memorandum to the Secretary (GAO reports) or action plan (OIG reports). When an action is completed, the BIS office will report the action taken to OPEM and provide supporting documentation (as appropriate). OPEM will keep the DUS informed on the status of all recommendations.
- OPEM will maintain a record consisting of: (i) every final GAO or OIG recommendation made to BIS; (ii) BIS's decision to implement or reject that recommendation; (iii) in the case of those recommendations rejected, the date of the memorandum conveying the rejection; and (iv) in the case of those implemented, the WebCIMS number assigned to the tasker to implement the recommendation and the completion date.
- The completion date for the implementation of recommendations will be monitored by OUS in the context of its normal monitoring of WebCIMS assignments to ensure that BIS fulfills its obligations.

GAO Inquires:


- GAO typically makes requests that include, but are not limited to, the following: (i) licensing or enforcement data; (ii) BIS documents; and (iii) meetings with BIS officials.
- To ensure that GAO requests for information are addressed completely and in a timely manner, the BIS Audit Liaison will:
 - Receive all requests from GAO in writing.
 - Task the requests in WebCIMS to the appropriate office(s).
 - Submit for clearance and signature as follows:
 - Audit Liaison: Verify that BIS has answered the request completely and ensure that interested parties had an opportunity to provide input and agree with the coordinated response.
 - OCC: Ensure response is consistent with laws and regulations.
 - A/S: Review for policy and sign the transmittal memorandum. (The A/S or DUS, depending on the action office, will sign the response memorandum for a data request. If a policy decision needs to be addressed, the A/S will defer the response for clearance through the DUS.)
 - Please also note:
 - It is BIS's practice to provide licensing data on closed cases only.

- Release of information relating to an open enforcement investigation must be cleared by the Assistant Secretary for Export Enforcement.
- In accordance with the May 9, 2002, guidance issued by Deputy Assistant Secretary for Export Administration Matthew Borman, Export Administration Office Directors must attend all GAO meetings with their staff.

OIG Inquires:

- Although not required, the OIG is encouraged to submit its information requests through the BIS Audit Liaison to ensure that requests are received, tasked, and answered in a timely manner. If requests and responses are routed through the BIS Audit Liaison, the Liaison will:
 - Task the requests in WebCIMS to the appropriate office(s).
 - Submit for clearance and signature as follows:
 - Audit Liaison: Verify that BIS has answered the request completely and ensure that interested parties had an opportunity to provide input and agree with the coordinated response.
 - OCC: Ensure response is consistent with laws and regulations.
 - A/S: Review for policy and sign the transmittal memorandum. (The A/S or DUS, depending on the action office, will sign the response memorandum for a data request. If a policy decision needs to be addressed, the A/S will defer the response for clearance through the DUS.)
- OIG requests sent directly to BIS personnel should:
 - Be made in writing (including e-mail).
 - Be answered promptly. A copy of the response should be provided to the relevant Office Director. (Each Office Director should maintain a central file of all materials provided to the OIG).

The OIG may request that the BIS Audit Liaison not be present during their meetings with BIS employees. If this happens, employees should inform the relevant Office Director, agree to meet directly with the OIG, and offer a report of the meeting to the relevant Office Director for assessment by management.


Daniel O. Hill
Deputy Under Secretary for
Industry and Security