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Description of document: Federal Aviation Administration (FAA) Freedom of Information Act (FOIA) Standard Operating Procedures (SOP) 2015

Requested date: 23-May-2022

Release date: 26-April-2024

Posted date: 24-June-2024

Source of document: National Freedom of Information Act Office, AFN-400  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, DC 20591  
Fax: (202) 267-6514  
Make an electronic request: [Washington, DC FOIA](#)

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U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

FOIA Program Management Division

800 Independence Avenue, SW  
Washington, DC 20591

April 26, 2024

Re: Freedom of Information Act (FOIA) Request 2024-03091

This responds to your May 22, 2022 Freedom of Information Act (FOIA) request, seeking *a copy of each (internal) FOIA Standard Operating Procedure (SOP) at the FAA FOIA Office. Please apply the foreseeable harm test, and discretionary release of what might otherwise be considered records exempt under b(5), and the presumption of openness.*

Your request was assigned to the Federal Aviation Administration's (FAA's) FOIA Program Management Division for processing and response.

A records search was initiated and returned 6 records (22pgs). All records are being released to you in full.

If you owe fees for the processing of this request, an invoice containing the amount due and payment instructions will be enclosed.

The undersigned is responsible for this full release. If you have any additional questions or need assistance, you may contact the FAA FOIA Public Liaison directly at (202) 267-7799 or by email to [9-afn-foia-public-liaison@faa.gov](mailto:9-afn-foia-public-liaison@faa.gov) with "Public Liaison" in the subject line. If you believe the outcome of this determination is incorrect, you must request reconsideration by email at [FOIA-Appeals@faa.gov](mailto:FOIA-Appeals@faa.gov) or by writing to:

Assistant Administrator for Finance and Management (AFN-1)  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, DC 20591

Additionally, you may contact the National Archives and Records Administration's Office of Government Information Services (OGIS) to inquire about their FOIA mediation services. The contact information for OGIS is as follows:

National Archives and Records Administration  
Office of Government Information Services  
8601 Adelphi Road, Room 2510  
College Park, Maryland 20740-6001  
Phone: 202-741-5770, Toll-free: 1-877-684-6448  
Facsimile: 202-741-5769  
E-Mail: [ogis@nara.gov](mailto:ogis@nara.gov)

Sincerely,

*Sherlita Hawkins*

Sherlita Hawkins  
Manager, Freedom of Information Act  
Program Management Division

Enclosures

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## FOIA Procedures Manual

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Last updated: Friday, August 7, 2015





## FOIA Responsibilities

**The FAA FOIA Management Program Branch (AFN-140)** administers the FOIA program throughout the agency. AFN-140 develops national policies, guidance, and procedures to conduct the FAA FOIA program. It provides FOIA training, assigns and tracks FOIA requests and appeals, monitors and reviews responses to FOIA requests involving unique or complex issues, determines whether responses to a FOIA request will be consolidated and reviews partial no record and no record determinations. AFN-140 identifies responsive organizations and assigns a lead organization to coordinate the process when responding to a FOIA request that crosses organizational lines of business as appropriate. It coordinates and monitors responses to FOIA requests received at FAA Washington headquarters and determines the fee category of a requester for requests when the category is not provided in the FOIA request and more than one program has responsive records.

AFN-140 processes appeals including no records and fee issue appeals, gathering all information necessary to process appeals of initial determinations, remanding to the service or office appeals deemed to warrant review and reconsideration by those organizations, and determining whether requests to expedite appeals should be granted. It documents and analyzes the operation of the FOIA program within the agency and authorizes FOIA coordinators in organizational units to perform the above duties as appropriate.

**The Assistant Administrator for Finance and Management (AFN-1)** authorizes final agency determinations regarding FOIA appeals, unless AFN-1 made the initial determination, in which case the final agency determination shall be made by the Administrator or an official designated by the Administrator.

**The Freedom of Information Act and Privacy Act staff in the Office of the Chief Counsel (AGC-400)** provides legal advice and counsel on issues relating to the FOIA. AGC-400 provides legal review and concurrence for partial denials, full denials, partial no records, and no records determinations for headquarters FOIA requests. It also provides legal review and concurrence, as necessary, for all appeal determinations. AGC's role is strictly advisory on an as needed or as requested basis. AGC is not routinely involved in the processing of initial FOIA responses, but remains available to the responding program or staff office to consult on specific legal issues.

**The regional and center counsels** provide legal assistance to division managers, reviewing officials, FOIA coordinators, and other employees and officers within their respective geographic or organizational jurisdictions. They also provide legal review and concurrence for partial denials, full denials, partial no records and no records determinations for FOIA requests as requested. The regional or center counsel is not routinely involved in the processing of initial FOIA responses, but remains available to the responding program or staff office to consult on specific legal issues.

**The Office of Security and Hazardous Materials Safety (ASH)** provides security consultation/advice regarding sensitivity of information subject to FOIA and other applicable statutes /regulation (such as SSI, investigative, homeland security and law enforcement related information).



## FOIA Responsibilities

**The heads of offices and services, and ATO Vice Presidents** are responsible for disclosure for records under their purview and for withholding pursuant to properly applied exemptions or exclusions. Additionally, they are responsible for designating a FOIA coordinator who has technical or subject matter knowledge about the organization, and for notifying AFN-140 of that designation. These officials are accountable for ensuring that employees at all levels responsible for FOIA processing, including the FOIA coordinator, receive appropriate FOIA training.

The **FOIA coordinators** act as the focal point between their organization and AFN-140 and perform any duties as authorized by AFN-140. This may include assigning, controlling, and monitoring FOIA elements within their organization possessing records responsive to the requests, designating the lead organization or element for coordinating and processing FOIA requests when the requested records reside in more than one organizational element and consolidated approval is warranted, and advising program offices regarding the FOIA process.

FOIA coordinators are to review the FOIA response, checklist, and fee worksheet and coordinate on FOIA responses prior to signature, ensure adequate documentation for materials released and withheld and adequate search documentation for no records or partial no record responses and ensure requests are appropriately documented as closed. They provide AFN-140, upon notification of an appeal of a determination, with the withheld materials for denial/partial denial responses or search documentation for no records responses within 5 working days. They gather and submit FOIA processing information to AFN-140 as requested, provide copies of no records, denials, and partial denial determination letters to AGC-400 and AFN-140, and provide copies of news media FOIA requests as directed by AFN-140.

**FOIA respondents (program offices)** are responsible for answering and processing FOIA requests under established FOIA policies, procedures, and timelines. When more than one program office has responsive records, responding organizations are to coordinate their efforts to ensure consistency in the agency response.



## Decision Letters

**Full Disclosure Letter:** Issue a full disclosure letter when the agency withholds no part of a requested record. Fees assessed in processing the request should be included. When fees are \$20 or less, indicate that there is no charge for the request because the cost to process was under \$20. This letter may be signed by the heads of offices and services, and in ATO, Vice Presidents. When appropriate, redelegate this authority to heads of divisions or ATO [Managers of Administration or Equivalent] and Service Center Managers. Legal review is optional.

**Denial/Partial Denial Letter:** Issue a denial or partial denial letter when some or all of a requested record is exempt from disclosure. This letter must state the exemption being invoked, a brief statement explaining the exemption and the reason for its applicability to the specific records being withheld, and a description of the records withheld. The letter must advise requesters of their administrative appeal rights and the name(s) and title(s) of the personnel responsible for making the determination. Also, the letter should include assessment of fees. Coordinate a denial/partial denial letter, as appropriate, and encourage legal review of the application of exemptions. Only the head of the office, service, region, center, or ATO Vice Presidents have signature authority. They may enter into a service level agreement, approved by AFN-1, authorizing a Regional Administrator signatory responsibility for records of a field activity resident in that region wherein it is impractical for one of their executives to do so.

**No-records Determination Letter:** Issue a no-records determination letter after the agency conducts a reasonable search for responsive records and locates none. The letter must include a brief statement indicating that the responding office could not locate the records along with an explanation, if appropriate. Also, the letter must advise requesters of their administrative appeal rights and the name(s) and title(s) of the personnel responsible for making the determination. Include fees for processing the request in the letter.

Coordinate a no-records determination with all offices that have conducted a search for records and determined that none exist. In headquarters, coordinate the response letters also with AFN-140. Only the head of the office, service, region, center, or ATO Vice Presidents have signature authority. They may enter into a service level agreement, approved by AFN-1, authorizing a Regional Administrator signatory responsibility for records of a field activity resident in that region wherein it is impractical for one of their executives to do so.

**Electronic Communication:** A best practice advocated by the Department of Justice Office of Information Policy is that communication with requesters, including the sending of responsive records, be in electronic formats as much as possible. E-communication is a more customer-friendly and efficient method of communication.

**Digital Signatures:** Per FAA Order 1370.104, Digital Signature Policy, digital signatures that are legally acceptable and offer both signer and transaction authentication are appropriate for all Freedom of Information Act correspondence. The digital signature is the most secure and full-featured type of electronic signature and a Federally acceptable type of electronic signatures for business transactions as specified in the National Institutes of Standards and Technology (NIST) guidelines. *A digital signature is not equivalent to a digitized signature.*





## Decision Letters

### Documentation

A FOIA file consists of the request letter, interim correspondence, the agency response letter, copies of all records released or an exact listing of the documents (accounting for all pages), copies of any records partially or completely withheld from disclosure (with redactions and/or withheld pages noted with exemption), a memorandum or note in the Remarks section of the FOIA checklist documenting the agency search for no-records responses, and the completed and signed FOIA checklist and fee worksheet. In the case of exemption 4, include a copy of the submitter, notice, any objections received, the agency assessment of the objections, and any correspondence back to the submitter overruling the objections.

**FOIA Checklist/Fee Worksheet:** Complete FAA Form 1270-1, Freedom of Information Act Checklist/Fee Worksheet for each FOIA request made to the agency and maintained with the official file. FAA Form 1270-1 is available online.

### Retention of FOIA Documentation

**Full disclosure:** Maintain copies of the initial request response letter(s), and released records in the FOIA file for 2 years from the date of release.

**Denial/partial denials or no-records determinations:** Maintain copies of the request, response letter(s), pertinent correspondence, and withheld records for 6 years by the program office responding to the FOIA request, unless appealed, maintain the records for 6 years after the appeal determination, or 3 years after final adjudication by courts, whichever is later.

**Closed due to non-payment of fees or closed as cancelled/withdrawn:** Maintain copies of the initial request and relevant documentation for 2 years after the date of last correspondence.

**National Tracking System (NTS):** The National Tracking System is a centralized database wherein headquarters, regional, and center coordinators enter and track FOIA requests. The NTS is the official vehicle for tracking FOIA requests. Enter all FOIA requests received by the agency into NTS. Retain NTS records for 6 years after the date of the last entry.



## Decision Letters

### Appeals

The Assistant Administrator for Finance and Management is the decision-maker for all administrative appeals. Upon receipt of an appeal, AFN-140 will request copies of the initial FOIA file from the appropriate program office. FOIA requires making determination of administrative appeals within 20 working days.

**Upholding or Reversing Decision by Disclosure Authority:** The Assistant Administrator for Finance and Management shall review the initial decision *de novo* and administratively affirm, reverse, or remand the initial determination in whole or in part, as appropriate. Any denial decision at the appeal level must obtain the concurrence of FAA Office of Chief Counsel and DOT Office of General Counsel.

**Remands for Reconsideration:** An appeal request, particularly a no-records appeal, is remanded for reconsideration when either the requester provides additional information clarifying the request (i.e., suggesting other search parameters), or provides additional explanation that can readily be provided by the program office and/or that may have been overlooked in the first response. In other cases, when the initial determination is reversed and significant review needs to be conducted of the records, the FOIA package will be remanded for reconsideration consistent with the appeal decision. The action office should reconsider the request as if it were a new request, responding directly to the requester. Remanded request responses are subject to appeal, therefore, an appeal paragraph should be provided if the response is a denial, partial denial, or no-records determination.

**Fee waiver determination or fee assessment:** The Assistant Administrator for Finance and Management shall review and, if appropriate, adjust the determination or assessment. The transmittal letter will reflect the rationale for any adjustment. Copies of the transmittal letter will be sent to the disclosure authority responsible for the original decision, the Office of the Chief Counsel, and the Office of the General Counsel, Office of the Secretary of Transportation, when that office is involved in the review.



## Fees and Fee Waivers

The Department of Transportation (DOT) FOIA regulation prescribes assessment of fees and the agency does not have the authority to arbitrarily waive or reduce the fees for processing a FOIA request unless the statutory fee waiver requirements have been met (see 49 CFR § 7.43 (f)).

Note that the FOIA prohibits assessing search fees when the program office answering the FOIA request does not comply within the time limits. If the requestor is an educational or noncommercial scientific institution or a representative of the news media, the FAA is prohibited from assessing duplication fees.

### Category of Requester

Each FOIA request shall specify the fee category of the requester. There are four categories of requesters: commercial; educational or noncommercial scientific institutions; news media; and all other requesters. In assessing fees, the respondent must determine the category of the requester and the type of services that are rendered to the requester.

**Commercial Requesters:** These requesters seek information for a commercial, trade, or profit interest. Requesters that fall within this category have a use or purpose that furthers their commercial, trade, or profit interests or those of the person on whose behalf the request is being made. Assess the requester all direct costs of searching for responsive records, reviewing for applicability of exemptions, and duplicating the records sought.

### Educational or Noncommercial Scientific Institution Requesters:

- Educational requesters include various categories of schools, as well as institutions of higher learning and vocational education, which operate a program of scholarly research. The requester must show a use or purpose for scholarly research (i.e., schools, institutes of professional education). Students gathering data for research papers do not qualify as educational requesters.
- For colleges and universities, a statement signed by the chairperson of the department to which the requester belongs, attesting to the fact that the request is being made on the institution's behalf in accordance with the criteria stated in 49 CFR 7.42(g), will serve as documentation supporting the requester's inclusion in this category.
- Noncommercial scientific requesters include any institution that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.
- Costs to these requesters shall be assessed for duplication only, excluding the first 100 pages of standard agency size (no larger than 8 1/2" x 14") paper copies.



## Fees and Fee Waivers

**Media Requesters:** A representative of the news media is a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Media may include freelance journalists who can demonstrate a solid basis for expecting the information disclosed to be published by a news organization. Media requests may include information sought for enclosure in soft or hardback books or for distribution to electronic publishing services.

- Exclude as media requesters private libraries or private repositories of government records, or middlemen, such as information vendors or data brokers.
- Assess costs for duplication only, excluding the first 100 pages of standard agency size (no larger than 8 1/2" x 14") paper copies.

**Other Requesters:** For requesters who do not fit into any of the categories, assess costs for search and duplication, except the first 2 hours of search time and the first 100 pages of standard agency size (no larger than 8 1/2" x 14") paper copies.

### Services for Which Fees Are Charged

Assess processing fees for search, review, and duplication activities associated with a FOIA request. Fees are assessed differently depending on the category of the requester and the intended use of the information sought.

Assess **search** fees only for the time it takes to locate responsive records and may be conducted manually or electronically, as the situation warrants. The agency can charge for search time even if it fails to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure.

- Examine any time spent searching for responsive records or inspected in the office by the requester and include this time in the fee charged to the extent allowed by the requester's fee category.
- When conducting a search on a mainframe computer or automated radar terminal system, charge the requester a total fee that combines the cost of operating the computer for the time directly attributable to searching for responsive records with the time expended by the operator/programmer according to their pay range.
- Document on the FOIA fee worksheet the time spent by each individual involved with searching for responsive records.

Note that if the program office answering the FOIA request does not comply with the time limits FAA is prohibited from assessing search fees.

However, if the automatic 10 day extension has been invoked, you can still charge the applicable fees even if you are past the due date



## Fees and Fee Waivers

Assess **review** fees for the time spent determining whether for the time spent determining whether the requested records are exempt from mandatory disclosure.

- Examine responsive documents line by line to determine if FOIA permits withholding any portion of any document.
- Do not charge as review time to the requester time spent resolving general legal or policy issues regarding the applicability of particular exemptions. Account for this time in the FOIA fee worksheet as an incremental cost not charged to the requester.

### Calculating Search Fees and Review Fees

FAA bases search fees and review fees on an hourly rate schedule established by DOT. Based on FG Grades or Pay Bands, FAA groups hourly rates into four pay ranges, depending on the responding program office’s pay compensation system. Find current hourly rates at: [https://my.faa.gov/content/dam/myfaa/org/staffoffices/afn/administration/foia/foia\\_tool\\_kit/worktools/checklist\\_fee\\_worksheet/2014-DOT-dollar-rates.pdf](https://my.faa.gov/content/dam/myfaa/org/staffoffices/afn/administration/foia/foia_tool_kit/worktools/checklist_fee_worksheet/2014-DOT-dollar-rates.pdf)

EMPLOYEE PAY RANGES			
<b>Pay Range 1:</b> FG-1 thru FG-8, or Pay Bands A thru F	<b>Pay Range 2:</b> FG-9 thru FG-12, or Pay Bands G thru H	<b>Pay Range 3:</b> FG-13 thru FG-14, or Pay Bands I thru J	<b>Pay Range 4:</b> FG-15 and above, or Pay Bands K thru L

The National Tracking System automatically calculates search fees and review fees if you provide: (1) fee category of requester; (2) pay range of employee(s) doing search and review; and (3) number of hours of search time and review time for each employee. This is the preferred option. Use the **FOIA Request Checklist/Fee Worksheet** to calculate the search fees and review fees for employees conducting manual or computer searches and reviewing records as an alternative.

### Duplication

Note that when the program office answering the FOIA request does not comply with the time limits, FOIA prohibits FAA from assessing duplication fees if the requester is an educational or noncommercial scientific institution or a representative of the news media.

- **Photocopying.** The standard fee for photocopying is \$.10 per page for paper that is no more than 8 ½” by 14.”
- **Computer Tapes /Printouts.** The standard fee for computer tapes or printouts is the actual direct cost for duplication (e.g., the cost of the tape).
- **Other Methods.** The fee for other methods of duplication (e.g., videos, color copies, CDs, DVDs, flash drives) is the actual expense incurred.
- **Air Traffic Tapes.** Fees for Air Traffic tapes are established by FAA Order JO 7210.3Y *Facility Operation and Administration*. The current fee for air traffic control tapes (cassette tape format) is \$30 per hour or portion thereof (i.e., one tape with 2 hours of



## Fees and Fee Waivers

recording = \$60; one tape with 30 minutes of recording = \$30; two tapes with 2 1/2 hours of recording = \$90). The fee for digital audio tape (DAT) format is \$25. In addition, charge a flat fee of \$30 will be charged for each *different* block of time requested, limited to the daily 24 hour period recorded on the facility's master DAT. For example, although a request for one block of time (0900-0900) is a total of 24 hours, it is spread over a 2-day period. Therefore, consider such a request as two separate blocks of time (\$60), plus the DAT format (\$25), for a total fee of \$85.

- **Special Services.** The fee for certified true copies is \$10; or true copy, without seal, \$5.
- **Incremental Costs.** Costs to the agency in processing a request that are not borne by the requester are considered incremental costs. These costs include all the search, review, and duplication costs not assessed to the requester. Do not charge as review time to the requester time spent resolving general legal or policy issues regarding the applicability of particular exemptions. Account this time in the FOIA fee worksheet as an incremental cost not charged the requester. (**Note:** Section D of the FOIA fee worksheet is an optional block to address other incurred costs not charged to the requester, e.g., amount of time spent duplicating records, participating in meetings, or preparing correspondence.)

### Aggregation

- Aggregate requests broken into a series of requests for the purpose of avoiding the assessment of fees and treat as a single request. Do not aggregate fees for multiple requests on unrelated subjects from one requester.
- On rare occasions, a group of requesters may be acting in concert to avoid paying fees. Do not aggregate fees for such requests unless a concrete basis exists on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees.

### Delinquent Fee Payment

The FOIA does not obligate the agency to fulfill additional request for requesters who have failed to pay prior FOIA fees until the requester demonstrates payment of the fee or payment of the full amount owed. The agency will also require the requester to make an advance payment of the full amount of the estimated fee before processing of a new request or continuation of a pending request is begun.

### Fee Levels/Requester Notification

- **\$20 or less.** Fees that are \$20 or less shall not be assessed. However, these fees shall be noted on the FOIA Checklist/Fee Worksheet and in the National Tracking System under incremental costs. The determination letter should include a statement that there is no charge for the request because the cost of process is under \$20.
- **Over \$20/Under \$25.** No written willingness to pay is required in advance. The amount of fees owed will be indicated in the agency's response letter to the requester.
- **\$25 to \$250.** The agency must notify the requester, preferably in writing, of estimated fees of \$25 to \$250 and seek assurance that the requester will pay costs. Inform the requester of



## Fees and Fee Waivers

whom to contact to reformulate the request in an effort to reduce the cost. Work must proceed on the request concurrent with these actions.

- **Over \$250 or Bad Payment History.** The agency must notify the requester in writing of the estimated fee. Inform the requester who to contact to reformulate the request in an effort to reduce the cost. Include a specific time limit in which the requester must agree to pay the fee or deem the request abandoned/withdrawn. Collect any previously owed fees before processing the request or continuing to process the request.

### Fee Waiver/Fee Reduction

Waive or reduce fees when making a determination that the release of information will benefit the public interest because it is likely to contribute significantly to the public's understanding of the agency's operations or activities and is not primarily in the commercial interest of the requester. The program office will make fee waiver or fee reduction determinations on a case-by-case basis after consideration of all six factors described below.

Authority to deny a fee waiver request is delegated to the head of a division only.

- Whether the subject matter of the requested records concerns the operations of the Federal Government.
- Whether the disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.
- Whether the contribution to the public understanding of Federal Government operations or activities will be significant.
- Whether the requester has a commercial interest that would be furthered by the requested disclosure.
- Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure such that disclosure is primarily in the commercial interest of the requester.

### Fee Payment

Requesters may pay electronically by debit/credit card using *pay.gov* or by check, draft, or money order, payable to the DOT/FAA for deposit to the General Fund of the Treasury of the United States. The number assigned to identify the FOIA request is required as part of the pay.gov process and should be annotated on the check, draft, or money order. Please see the sample invoice on the FOIA Toolkit webpage.

([https://my.faa.gov/content/dam/myfaa/org/staffoffices/afn/administration/foia/foia\\_tool\\_kit/invoice.doc](https://my.faa.gov/content/dam/myfaa/org/staffoffices/afn/administration/foia/foia_tool_kit/invoice.doc))



## FOIA Reports

The FAA FOIA Program Management Branch (AFN-140) prepares the **FOIA Annual Report** statistics for the Office of the Secretary of Transportation (OST) which submits the report to Congress. The National Tracking System is the source for most of the data for the Annual Report. FOIA coordinators are asked to provide certain supplementary information.

The following information is usually reported:

- The number of requests for records pending before the agency as of the end of the fiscal year.
- The median number of days that such requests had been pending before the agency as of that date.
- The number of requests for records received by the agency.
- The number of requests that the agency processed.
- The median number of days taken by the agency to process different types of requests.
- The number of determinations made by the agency not to comply with requests for records made to the agency.
- The reasons for each such determination.
- A complete list of all statutes that the agency relies upon to authorize the agency to withhold information under Exemption 3.
- A description of whether a court has upheld the decision of the agency to withhold information under each such statute.
- A concise description of the scope of any information withheld under each such statute.
- The number of appeals made by persons under Exemption 6.
- The results of such appeals.
- The reason for the action upon each appeal that results in a denial of information.
- The total amount of fees collected by the agency for processing requests.
- The number of FAA full-time staff devoted to processing requests for records under the Act.
- The total amount expended by the FAA to process such requests.

AFN-140 provides AFN-1 with status reports and OST with interim updates of select data for the departmental submission to the Department of Justice.

AFN-140 also provides monthly **Overdue Reports** on overdue FOIA responses to organizational FOIA coordinators to share with their organizations.

Upon request, AFN-140 will provide a **Status Report** to agency senior officials on the FOIA requests received within their purview.





## Disclosure and Access to FAA Records

**FOIA Request Requirements:** A request for agency records may be made by any person, which encompasses individuals (including foreign citizens), partnerships, corporations, associations, and foreign and domestic governments. “Person” does not, however, include Federal agencies. A request for agency records must meet the following provisions:

- The request must be made in writing
- The request must include the name of the requester, address, and contact information.
- The request should indicate that it is being made under FOIA
- The envelope in which the request is mailed should be marked “FOIA”
- The request should be addressed to the appropriate FOIA Service Center. A current listing of FAA FOIA Service Centers is available online on the FAA FOIA Home Page at <http://www.faa.gov/foia>
- The request should state the format (e.g., paper, microfiche, computer diskette, etc.) in which the information is sought, if the requester has a preference.
- Each FOIA request must specify the fee category of the requester (commercial, media, educational or noncommercial scientific institution, media, or other).
- Each FOIA request must state the maximum amount of fees that the requester is willing to pay.
- Each FOIA request including a fee waiver must address how the requester believes each of the criteria for fee waiver is met.
- Each request must describe the particular record to the fullest extent possible. The request should describe the subject matter of the record, and if known, indicate the date when it was made, the place where it was made, and the person or office that made it.

The time for responding to requests will not begin to run until the FOIA request is perfected. A perfected request is defined by the Department of Justice as a FOIA request for records that adequately describes the records sought, that has been received by the FOIA office or organizational component in possession of the records, and for which there is no remaining question about the payment of applicable fees. In addition, the time for responding to requests must not begin to run:

- If the requester has not sufficiently identified the fee category applicable to the request;
- If a requester has not stated a willingness to pay fees as high as anticipated by the Department of Transportation (DOT);
- If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by DOT; or
- If a fee waiver request does not address fee waiver criteria.

The 20 day period to answer a request can be tolled (suspended) once to clarify the request and as many times as necessary to resolve fee issues.

A request provides a right of access only to records existing when the request is made. It does not allow access to records prospectively. A request may *not* require that new records be created in response to the request.



## Disclosure and Access to FAA Records

### Guidelines for Scoping the Request

A FOIA request should contain a sufficient description of the records being sought to enable an agency employee who is familiar with the subject area to locate the records with a reasonable amount of effort.

**Clarifying the Request:** If the request appears too broad or vague, the program office may contact the requester to clarify the description of the records being sought or to narrow the scope of the request.

**Identifying Responsive Records:** The FOIA requires the agency to conduct a search reasonably calculated to locate all records responsive to a FOIA request.

**Coordinating with Other Offices with Responsive Records:** When other program offices are believed to have responsive records, the lead program office should contact them to confirm the existence of records, and then notify the appropriate FOIA coordinator. The coordinators may consolidate the responses.

### Time Limits

The FOIA requires a determination within 20 working days after the appropriate program office receives a FOIA request and determines the request to be a perfected FOIA request. The FOIA National Tracking System (NTS) assigns to each FOIA request a due date that is within the regulatory time limit. The 20 day period to answer a request can be tolled (suspended) once to clarify the request and as many times as necessary to resolve fee issues.

**Extensions:** The program office may extend the initial time limit for an additional 10 working days if there are unusual circumstances. The extension must be by written notice within 20 business days to the person making the request. "Unusual circumstances" means a need to:

- Search for and collect records from field facilities or other establishments that are separate from the office processing the request;
- Examine a voluminous amount of records required by the request; or
- Consult with another agency or DOT component having substantial subject matter interest in the records.

**Negotiations for Extension of Time:** When it appears that the response due date cannot be met, the program office should:

- Contact the requester by telephone, or if no telephone number is available, by letter, or email,
- Explain the reasons for the needed extension; and



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- Provide the requester an opportunity to:
  - modify the scope of the request so that it may be processed within the initial timeframe; or
  - Arrange a new due date for processing the request.
- Follow up with an email confirming the conversation and provide a copy of the email to the appropriate FOIA coordinator. If the requester refuses to reasonably modify the request or arrange a new due date, the due date for response may not be extended. However, the confirming email should provide the estimated completion time for response.

**Expedited Processing:** The responding office may expedite requests at the time of initial request or at a later time, when the requester shows a compelling need based on imminent threat to life or physical safety to an individual, or when a requester primarily engaged in disseminating information shows an urgency to inform the public of an actual or alleged FAA activity.

- A requester who is seeking expedited processing must submit a statement, certified to be true and correct to his or her knowledge and belief, explaining in detail the basis for requesting expedited processing.
- Media representatives must also establish a particular urgency to inform the public about the activity involved in the request--beyond the public's right generally to know about government activity.
- The program office must decide whether to grant an expedited processing request and notify the requester of that decision within 10 working days of receipt of a request to expedite. If the request to expedite is granted, the request will be processed as soon as practicable. In the event of a denial, the notification should include information indicating that the requester may appeal to the Assistant Administrator for Finance and Management within 5 working days of receipt of the letter.
- The program office is responsible for making the decision to grant or deny an expedited processing request. For media requests, any decision about expediting a FOIA request should be coordinated with their Office of Communications staff member.

**Estimating Fees:** Estimate fees before starting to process a request. Any fee issue should be resolved before any substantive work is done on the request. (For additional information, refer to Fees and Fee Waivers in the Procedural Manual.)



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### Search

The agency has a duty to make a “good faith” effort to identify responsive records.

**Reasonable Search:** Conduct an adequate search in a manner reasonable calculated to locate responsive documents by agency personnel familiar with the subject matter and with the likely location of responsive documents. The agency has no obligation either to create records or go outside the agency to obtain them. When the program office does not locate responsive records document the following: name of the person(s) who conducted the search, a note if the person searched for the files manually or electronically, the reason for the search, and the identity of any other offices that might have the requested records.

**Official vs. Unofficial Records:** The FOIA makes no distinction between official and unofficial records. The FOIA applies to agency records, which means records under the possession and control of the agency at the time of the FOIA request.

**FOIA Transfers/Coordination with Other Offices:** A program office responding to a FOIA request should consider whether other offices have documents responsive to the request and, if appropriate, consult with those offices. When requested records are located in another FAA program office or in another DOT modal administration, the program office should notify the FOIA coordinator to ensure all agency records are gathered from the appropriate program office or DOT modal administration with responsibility for the requested records. When referring request, or portion thereof, to another program office, the FOIA coordinator must advise the requester in writing of the forwarding action, indicate a point of contact if possible, and provide AFN-140 an information/courtesy copy, when appropriate, of the forwarding correspondence.

**Referrals:** When the FAA has possession of responsive records created by another Federal agency, the FAA shall refer those records to the originating agency for a release determination. The referral package shall include a copy of the incoming request and the responsive records. The referral letter should request the originating agency to provide the FAA with a copy of its response to the requester. The program office will advise the requester in writing of the referral action, with a point of contact if possible, and provide AFN-140, when appropriate, an information/courtesy copy of the forwarding correspondence.

A request for Federal records that the FAA does not maintain may still require a formal no records response. A respondent may contact the requester by telephone, to advise of the appropriate Federal source for the records, if known, and negotiate withdrawal of the request. If the requester still wants an FAA search for the records, then the respondent must search the files most likely to have the records and follow procedures for a standard no records response.



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**Consultation:** If agency records contain information that may be of substantial concern to another Federal agency, State or local government, or a foreign government, the responding program office will consult with that organization before making any determination regarding release. The program office shall maintain documentation of the consultation (See 49 CFR § 7.28).

**Federal Records Center:** If a perfected FOIA request involves FAA agency records stored at a Federal Records Center, the program office is obligated to retrieve the records from the Federal Records Center.

**Archives:** Agency records released to the National Archives and Records Administration (NARA) are no longer FAA records.

### FAA FOIA Release Policy and Duty to Segregate

Agency records possessed by the FAA are subject to the FOIA and the FAA must make the records available to the public on request, unless specifically exempted or excluded by the FOIA. Provide reasonably segregable information from records which contain information to withhold. Make available for inspection and copying releasable records at the request of the FOIA requester and **review by the program office.**

### Application of Exemptions

There are nine exemptions under the FOIA which permit an agency to withhold records. Within the FAA, Exemptions 8 and 9 are *not* used. The appropriate program office must review each requested record to determine if the records or any reasonably segregable portion of the records fall within one of the nine exemptions. (See 5 U.S.C. 552 for a complete description of the exemptions.)

**Exemption 1: Classified Information.** Exemption 1 protects from disclosure national security information concerning the national defense or foreign policy, provided it has been properly classified in accordance with the substantive and procedural requirements of Executive Order 12958, Classified National Security Information.

**Exemption 2: Internal Matters.** Exemption 2 protects from disclosure records which relate solely to internal personnel rules and practices of the agency.

**Exemption 3: Information Protected by Other Statutes.** Exemption 3 incorporates the disclosure prohibitions that are contained in other statutes. A statute must require withholding without permitting any discretion, or establish particular criteria for withholding or refer to particular types of matter to be withheld. (**Note:** Neither the Privacy Act nor the Government in The Sunshine Act qualify as Exemption 3 statutes.)



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**Exemption 4: Business or Trade Information.** This Exemption protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

A trade secret is a secret, commercially valuable plan, formula, process, or device used for making, preparing, compounding, or processing trade commodities and said to be the end product of either innovation or substantial effort.

Commercial or financial information obtained from a person that is privileged or confidential. Examples of items regarded as commercial or financial information include: business sales statistics; research data; technical designs; customer and supplier lists; profit and loss data; overhead and operating costs; and information on financial condition.

Submitter Notice: Executive Order 12600, Pre-disclosure Notification Procedures for Confidential Commercial Information, directs agencies to establish procedures to notify in writing submitters of confidential commercial information whenever an agency “determines that it may be required to disclose” such information under the FOIA. Once the FAA notifies the submitters in writing, they must give a reasonable period of time to object to disclosure of any of the requested information. At the same time, the requester gives notification that the submitter is being provided the opportunity to comment. Executive Order 12600 also requires that agencies give careful consideration to the submitters’ objections and provide them with a written statement explaining why any such objections are not sustained.

**Exemption 5: Privileged Information.** Exemption 5 protects interagency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency. The three most frequently invoked privileges are the deliberative process, the attorney work-product and the attorney-client product.

The purpose of the deliberative process privilege is to prevent injury to the quality of agency decisions. Records qualify for withholding if they meet the following criteria:

- The records are interagency or intra-agency documents, the agency generated the documents, or in limited case, pursuant to agency initiative can directly tie to the agency’s decision making process.
- The records are pre-decisional in nature, meaning they precede an identifiable agency decision. Final agency decision or documents implementing a final agency decision are not pre-decisional.
- The records or portions thereof, are deliberative in nature, meaning that they express an advisory opinion, recommendation, or advice on a legal matter, policy matter, or other significant matters under agency consideration. Strictly factual information normally does not qualify for protection because it is not deliberative.

The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation.



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The attorney-client privilege protects confidential communications between an attorney and his/her client relating to a legal matter for which the client has sought professional advice.

In the event of a FOIA lawsuit, the office(s) properly assigned the request will pay judgments for Attorney's fees.

**Exemption 6: Personal Privacy.** Exemption 6 protects information in personnel, medical, or similar files, the disclosure of which would “constitute a clearly unwarranted invasion of privacy.” The threshold requirement is “personnel file, medical file, or similar file,” which includes any information that applies to a particular individual. The agency cannot invoke to withhold this exemption from requester information pertaining only to the requester. To determine whether release of information constitutes a clearly unwarranted invasion of privacy, the individual privacy interest at stake must be balanced against the public interest in disclosure.

The first step is to determine whether the subject of the information has a privacy interest in the information.

If a privacy interest exists, then, determine whether there is a qualifying “public interest” in disclosure. “Public interest” requires that disclosure would inform the public about how the agency is performing its statutory duties, or “what the government is up to.” Once both a privacy interest and a public interest have been identified, the two competing interests must be weighed against one another. In balancing these interests, the “clearly unwarranted” language of Exemption 6 weighs the scale in favor of disclosure. If the public benefit is weaker than the threat to privacy or nonexistent, the information should be withheld.

**Exemption 7: Law Enforcement Records.** Exemption 7 applies to criminal, civil, and regulatory law enforcement records. Exemption 7 protects records or information compiled for law enforcement purposes, but only to the extent that the release of such law enforcement records or information would cause one of the “harms” specified in Exemption 7’s six subparts.

**Exemption 7(A)** — Authorizes the withholding of “records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement “records or information...could be reasonably be expected to interfere with enforcement proceedings.”

**Exemption 7(b)** — Protects “records or information compiled for law enforcement purposes, the disclosure of which would deprive a person of a right to a fair trial or an impartial adjudication.”

**Exemption 7(C)** — Provides protection for personal information in law enforcement records, the disclosure of which could reasonably expect to constitute an unwarranted invasion of personal privacy.



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**Exemption 7(D)** — Provides protection for “records or information compiled for law enforcement purposes, ... [which] could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.”

**Exemption 7(E)** — Affords protection to all law enforcement information which “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.”

**Exemption 7(F)** — Permits the withholding of information necessary to protect the physical safety of any individual when disclosure of information about him/or her could reasonably be expected to endanger his/or her life or physical safety.

*FAA does not use Exemptions 8 and 9.*

**Exemption 8: Bank Records.** Exemption 8 protects information that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

**Exemption 9: Well Information.** Exemption 9 protects geological and geophysical information and data, including maps, concerning wells.

### Amount of Information Denied

The Electronic Freedom of Information Act Amendments of 1996 added a provision to the FOIA law which stipulates that the volume of denied records be addressed in the response letter. It states in part: “In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.” 5 U.S.C. § 552(a)(6)(F).

When respondents are denying whole records, they can indicate volume and type of record in the response letter in one of several ways, e.g., “5 draft reports and 1 memorandum under Exemption 5, a record of investigation under Exemption 6,” or “223 pages under Exemption 5 and 8 pages under Exemption 6.”

When respondents are partially denying records, and making redactions using multiple exemptions, then it needs to be clear to the requester which exemption goes with each redaction. This is best done by noting the exemption number, e.g., “Exemption 6,” at the place where the





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redaction is made. Occasionally, the response letter can sufficiently indicate the nature of the redactions, e.g., “home addresses and telephone numbers at the top of each form were withheld under Exemption 6, and blocks 18-23 of each form were withheld under Exemption 5.”

When respondents make redactions by computer or copier, wherever it is technically feasible, the amount of the information and the applicable exemption should be indicated at the place in the record where the deletion is made.

**Discretionary Disclosure:** Agency components should consider voluntarily releasing records which otherwise qualify for exemption if disclosure would not cause the agency harm that the relevant FOIA exemption sought to avoid. Do not make discretionary disclosures for documents that qualify for withholding under Exemptions 1, 3, 4, and 6 or constitute Privacy Act records.

### FOIA and Privacy Act Interface

The Privacy Act is a withholding statute. The Privacy Act applies to a collection of agency records maintained in a system of records about an individual and retrieved by the name of the individual or a personal identifier, such as a social security number.

The Privacy Act, 5 U.S.C. 552a (49 CFR part 10), with 12 narrow exceptions, generally prohibits an agency from disclosing any record contained in a system of records with the ability to retrieve the record by an individual’s name or other personal identifier without the written consent of that individual.

Process under the FOIA procedures a third party request for information contained in a Privacy Act system. If none of the FOIA exemptions are applicable, then release the requested information.

When an individual submits a FOIA request for their records contained solely in a Privacy Act system of records, the respondent may process the request under the Privacy Act. When an individual requests their own records under both FOIA and Privacy Act, the respondent should process the request under both Acts. Process the request procedurally (i.e. timelines, fees, appeal process, etc.) under the applicable Act. For the whole request or portion of the request processed under the Privacy Act, follow guidance provided in FAA Order 1280.1, Protecting Privacy of Information About Individuals.