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June 6, 2023

Re: FOIA File No.: **FOIA22-081**

By this letter, we grant the Freedom of Information Act (FOIA) request you submitted to the U.S. Agency for Global Media (USAGM) seeking standard operating procedures (SOPs) at the USAGM FOIA office. As described in further detail below, we have withheld from release a limited amount of information pursuant to the enumerated exemptions described in the FOIA itself. We apologize for the lengthy delay in responding to your request. The agency has suffered staffing issues in its FOIA office. We will endeavor to provide more prompt responses to future requests.

I. Your Request

You submitted your request via FOIA.gov on May 22, 2022 seeking “A copy of each (internal) FOIA Standard Operating Procedure (SOP) at the USAGM FOIA Office.” The agency acknowledged receipt of your request via email on July 8, 2022.

II. Search for and Release of Responsive Agency Records

The Freedom of Information Act was enacted to “ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *Nat’l Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The law provides the public with the right to receive records and information from the government in order to further democratic principles and allow for independent evaluation of government action.

In furtherance of those interests, we conducted a search that was reasonably calculated to identify the records you sought. USAGM’s FOIA processing team is located within its Office of General Counsel. We therefore searched the Office of General Counsel’s shared hard drive, and more specifically any folders utilized by the FOIA program. Within those folders, we searched



using keywords “SOP,” “procedure,” and “guideline.” In total, our search identified the 57 pages of records we release today. Please note that these records are clearly marked as drafts. There are no finalized versions of these procedures. We release those pages without any fee to you because this response is delinquent in time. 5 U.S.C. §552(a)(4)(A)(viii).

You will notice that in the attached records, some information has been redacted and withheld from disclosure. While the FOIA espouses “a general philosophy of full agency disclosure.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976), some governmental information is exempted from release under the FOIA under clearly delineated statutory language. 5 U.S.C. § 552(b) et seq. Thus, while “disclosure, not secrecy, is the dominant objective of [FOIA],” there are some records that exist outside the statute’s broad reach. *Rose*, 425 U.S. at 361.

We have provided you with the greatest amount of information possible. The direct language of the Freedom of Information Act instructs federal agencies to provide any “reasonably segregable portion of a record” to “any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. §552(b). We do not take this charge lightly. To comport with this requirement, this office undertook a line-by-line review of the records and “differentiate[d] among the contents of a document rather than to treat it as an indivisible ‘record’ for FOIA purposes.” *Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615, 626 (1982).

Although these documents are drafts that ordinarily might be withheld in full pursuant to FOIA Exemption 5, we release nearly every line of every page of documents. In withholding this information, we blacked out only the information protected by the statutorily defined exemptions and identified the applicable exemption at the location of redaction. We limited our withholdings to that information in which “the agency reasonably foresees that disclosure would harm an interest protected by an exemption,” 5 U.S.C. §552(a)(8)(A)(i), as described in further detail below. Even if information technically fell within the bounds of an exemption, we did not redact it unless we could identify any foreseeable harm that would flow from its release, and, in some cases we released information that could potentially lead to some harm, such as when stated procedures are contrary to current practice. We do this in the interest of transparency.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

III. Information Withheld from Disclosure to Protect Privileged Information

Exemption 5 protects “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. §552(b)(5). The exemption incorporates, “albeit in a less-than-straightforward way” the privileges available to Government agencies in civil litigation. *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 785 (2021). That list includes, *inter alia*, the deliberative process privilege, attorney-client privilege, and attorney work-product privilege. See *Department of Interior v. Klamath Water Users*

Protective Assn., 532 U. S. 1, 8 (2001). In this case, we have determined that some information in the attached records falls within attorney-client and deliberative process privileges.

A. Information Withheld to Protect Privileged Attorney-Client Communications

We withhold information found in a draft FOIA Processing Handbook because it directly represents legal advice provided by an attorney in USAGM's Office of General Counsel. Keeping in mind that "even the finest attorney [] is no better than the information which his client provides," among the documents that fall within the scope of Exemption (b)(5) are "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." *Mead Data Cent. Inc. v. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977). "Although it principally applies to facts divulged by a client to his attorney, this privilege also encompasses any opinions given by an attorney to his client based on, and thus reflecting, those facts as well as communications between attorneys that reflect client-supplied information." *Elec. Privacy Info. Ctr. v. Dep't of Homeland Sec.*, 384 F. Supp. 2d 100, 114 (D.D.C. 2005). The purpose of this privilege is to "assure that a client's confidences to his or her attorney will be protected, and therefore encourage clients to be as open and honest as possible with attorneys." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 862 (D.D.C. 1980).

For the purposes of the privilege, the government is treated no differently than any private party. "Thus, when the Government is dealing with its attorneys as would any private party seeking advice to protect personal interests, and needs the same assurance of confidentiality so it will not be deterred from full and frank communications with its counselors, Exemption 5 applies." *Cuban v. Sec. & Exch. Comm'n*, 744 F. Supp. 2d 60 (D.D.C. 2010). To invoke the privilege, an agency must show that the document "(1) involves 'confidential communications between an attorney and [his or her] client' and (2) relates to a 'legal matter for which the client has sought professional advice.'" *Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 267 (D.D.C. 2004) (internal citations omitted).

Here, this exemption has been applied to a note found on Page 42 of the provided handbook. The note contains interpretations of law and advice presented by the Office of General Counsel to the agency's FOIA processing team. This note reflects a request for legal advice and provides a suggested posture related to a specific type of record that requesters regularly seek. It includes both legal advice and legal citations supporting that position. This material has not been disclosed outside the agency and fits squarely within the bounds of the exemption and has been properly redacted. See e.g. *Nat'l Sec. Counselors v. Cent. Intel. Agency*, 206 F. Supp. 3d 241, 286 (D.D.C. 2016) (withholding training materials developed by agency attorneys); *Freedom of the Press Found. v. Dep't of Justice*, 241 F. Supp. 3d 986, 1002 (N.D. Cal. 2017) (same).

B. Information Withheld to Protect Predecisional, Deliberative Material

We withhold some very limited information pursuant to the deliberative process privilege found in the draft documents. The rationale behind the deliberative process privilege – one of several protected by the exemption – is that public disclosure of deliberative, predecisional documents would prevent "the full and frank exchange of ideas" from "flowing freely" within government

agencies. *Mead Data Cent.*, 566 F.2d at 256. Indeed, in applying the privilege in an analogous context, the Supreme Court recognized that "[h]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances... to the detriment of the decisionmaking process." *United States v. Nixon*, 418 U.S. 683, 705 (1974).

The privilege therefore "serves to assure agency employees that they can provide a decisionmaker with their uninhibited opinion without fear of public scrutiny, to prevent premature disclosure of proposed policies, and to protect against public confusion through the disclosure of document advocating or discussing reasons for policy decisions that were ultimately not adopted." *Kidd v. Dep't of Justice*, 362 F. Supp. 2d 291, 296 (D.D.C. 2005). As is the case here, because the exemption protects the deliberative process and not necessarily the substance of the records, it continues to apply even after the agency has made a final determination on the subject matter the records address. *Elec. Privacy Info. Ctr. v. Dep't of Homeland Sec.*, 384 F. Supp. 2d 100, 112-113 (D.D.C. 2005) ("Contrary to plaintiff's assertion that materials lose their Exemption 5 protection once a final decision is taken, it is the document's role in the agency's decision-making process that controls").

To invoke the privilege, the records must be both predecisional and deliberative. *Wolfe v. Dep't of Health & Human Servs.*, 839 F.2d 768, 774 (D.C. Cir. 1988). A predecisional record is one that is "antecedent to the adoption of an agency policy." *Elec. Privacy Info. Ctr.*, 384 F. Supp. 2d at 112. That is, it must be generated as part of a continuing process of agency decision-making. *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 39 (D.C. Cir. 2002) (holding that a document is predecisional if it was prepared to assist an agency in arriving at a decision, rather than supporting a decision already made). The determinative factor, then, is "whether the agency treats the document as its final view on the matter." *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786. If it does, the record will fall outside the ambit of the privilege.

A deliberative record is one that plays "a direct part of the deliberative-process in that it makes recommendations or express opinions on legal or policy matters." *Public Citizen, Inc. v. Office of Mgmt. and Budget*, 598 F.3d 865, 876 (D.C. Cir. 2009). The "key question" in identifying "deliberative" material is whether the records "were prepared to help the agency formulate its position." *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786.

We withhold just three small bits of information pursuant to the deliberative process privilege. We note at outset that the entirety of the draft SOPs are both pre-decisional and deliberative and therefore fall within the deliberative process privilege. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 867 (D.C. Cir. 1980) (holding that deliberative process privilege "covers recommendations, draft documents, proposals, suggestions, and other subjective documents"). They reflect proposed policies and operations that were proposed to but never accepted by the agency's Chief FOIA Officer. These recommendations and opinions are of the exact type of records contemplated by Congress in enacting Exemption 5. *Sears*, 421 U.S. at 150 (noting that the "focus" of the Exemption is on records "reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated"). The release of these internal documents would "stifle honest and frank communication within" USAGM, and potentially prevent the free flow of information from

reaching key decisionmakers within the agency. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Doing so would inevitably result in diminished work product and uneven or inappropriate FOIA processing procedures.

That said, much of the information initially withheld has been released, despite the fact that the entirety of the documents fall within the bounds of the privilege. Courts have routinely found that draft documents fall squarely within the bounds of Exemption 5. See e.g., *Abdelfattah v. Dep't of Homeland Sec.*, 488 F.3d 178 (3d Cir. 2007). Nevertheless, we have released a great deal of information that falls within Exemption 5's bounds as we struggle to identify a harm that would flow from their release. We have released as much of those records as possible – the only information we continue to withhold is that which presents an identifiable harm to the deliberative process. The withheld bits of information describe proposed policies that are contrary to law and are not practiced by the agency. In two instances, the redacted information reflects outdated or superseded interpretations of the law. In the third, the withheld information withholds information related to a considered but never adopted policy. Release of that information, which does not reflect current agency practice, would lead to confusion amongst the public regarding the agency's current practice interpretation of the FOIA. As related to our duty to segregate and release that information that would not cause harm to the agency, tellingly, zero total pages of the production were withheld in full.

IV. Administrative Remedies

This completes the processing of your FOIA request. If you disagree with our determination, you may submit an administrative appeal of this determination to USAGM's Access Appeals Board. Your appeal must be transmitted by email to foia@usagm.gov within 90 days of the date of this letter. You should clearly identify your submission as a FOIA appeal and you should include any information you believe indicates an error in this determination. If you need additional assistance submitting your appeal or have questions about this determination, you can contact the USAGM FOIA Public Liaison, Stephen McGinley at smcginley@usagm.gov or 202-920-2366.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Sincerely,



Matthew Pollack, Assistant General Counsel
Office of General Counsel
U.S. Agency for Global Media

USAGM FOIA/PA PROCESSING



HANDBOOK

UPDATED DRAFT September 2022

DRAFT

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FREEDOM OF INFORMATION ACT (FOIA) PROCESSING INSTRUCTIONS

INTRODUCTION & BACKGROUND

The *Freedom of Information Act (FOIA)*, 5 U.S.C. § 552, is a Federal law and became effective in 1967. Its purpose was to provide a statutory basis for public access to official agency information previously restricted from public view. Through the FOIA, Congress made it clear that the public has the right to know what its government is doing, for an informed public is vital to democracy. The FOIA applies to all Federal Government Agencies, including the USAGM.

Under the FOIA, official information is available to "any person," without regard to need for or interest in the material. FOIA requesters do not have to justify or explain their reasons for making request. The FOIA may be used by anyone, including non-Americans. **Only Federal Agencies and "fugitives from justice" are prohibited from making requests.**

FOIA does not apply to States, local governments, or private entities, although some States have similar open government or sunshine laws.

- **NOTE:** Congress – when acting through its Committees. That is, Congress can request information from an agency without having to use FOIA. This request is known as a **Congressional Request.**

The *Privacy Act (PA)*, 5 U.S.C. § 552a, became effective in 1974. It establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies. In other words, the Privacy Act permits an individual to gain access to records or any information pertaining to that individual which is contained in a system of records, subject to certain limitations and exemptions. In addition to access, the Act also provides individuals with a means by which to amend their records. The Privacy Act prohibits the disclosure of a record about an individual from a system of records absent the written consent of the individual unless the disclosure is pursuant to one of twelve statutory exceptions. USAGM processes all Privacy Act requests for access to records under both the Privacy Act and the Freedom of Information Act (FOIA).

AGENCY RESPONSE TIME RULE

Under the FOIA regulations all agencies are required to respond within **20 working days** to a proper request. If information is withheld, the requester may appeal the Agency's decision.

- **NOTE:**
 - The 20-day time period begins on the date the request is first received by the agency.
 - A one-time extension of up to 10 working days for the following unusual circumstances is allowed by the regulations:
 - ✓ Search for/collect records from facilities separate from the office processing the request
 - ✓ Search for/collect /examine a voluminous amount of separate and distinct records

- ✓ Consult with other offices

FOIA REQUEST PROCESS

FOIA requests are sent to us by email (FOIA@usagm.gov), mail (FedEx, UPS, or USPS), facsimile (fax) or hand delivery. The agency will receive two types of requests for FOIA:

- (1) sent directly from the requester or requester's representative(s) (such as an attorney, etc.) and
- (2) sent to us from another government agency.

A request sent to us from another agency is called a **CONSULTATION/REFERRAL**. A referral is a FOIA request from another agency letting us know that they have located our documents among their response material. In this situation, the other agency will send us a letter letting us know that they have located our document(s). Along with their letter, they would provide us with the following information: (1) a copy of the original FOIA request and (2) a copy of our agency documents that they have.

The same situation can occur when we locate documents that belong to another agency. We would consult with that originating agency before making a direct FOIA response.

As required by the FOIA regulations¹ each FOIA request received is assigned a case number. The case number is unique to each request. USAGM's case number format is based on the FOIA calendar year which begins on October 1 and ends on September 30 of the following year. See below for full explanation of USAGM's numbering system.

- **NOTE:** The FOIA year follows the same calendar as the federal government fiscal year (i.e., October 1st through September 30 of the following year). The agency's FOIA numbering system is based on the start of the fiscal year.
 - **The first request would be FOIAXX-001. Subsequent requests will be the next numerical order.**

Below are the steps to process a new Freedom of Information Act (FOIA) or Privacy Act (PA) request.

¹ Section 7 of the OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, requires agencies to assign an individualized tracking number to requests that will take longer than ten days to process.

THE BASIC STEPS TO USAGM's FOIA PROCESS

- (1) Initial Receipt of Request - FOIA request is received by OGC for the agency.**
- (2) E-mail is sent to FOIA team notifying receipt of request.**
- (3) Preparing the Acknowledgement Letter - request is processed and acknowledgment letter sent to requester.**
- (4) FOIA/PA Distribution & Document Receipt – notice sent to various offices in the agency asking for a search time estimate to be done for responsive documents**
- (5) Document Receipt - responsive documents are received and reviewed.**
- (6) Scanning and Redacting of Documents – responsive documents are processed**
- (7) Fee Letter - sent to requester (if applicable)**
- (8) Payment Received (if applicable)**
- (9) Closing Letter – documents released (if applicable)**
- (10) Lack of Response from Requester**
- (11) FOIA Appeal Process**

INITIAL RECEIPT OF REQUEST - STEPS #1 & 2 (FOIA Paralegal)

1. When the agency receives a FOIA request, **READ** the request thoroughly to determine if it is a FOIA or Privacy Act (PA). IF it is a PA, a verification of identity is required. *See Tab 7 for sample.*
 - Privacy requesters usually ask for information pertaining to themselves such as security file, employment application, personnel file, etc.
2. Use the electric date stamp machine to stamp the request.
3. Next assign a case number to each new request. Case numbers are assigned based on current fiscal year and in numerical order. *See explanation on page 6.*

NOTE: If the request is a **follow-up letter** such as status check on the original request there is **NO need to assign a new case number.**

4. To add the FOIA case number to the request letter after you have received and saved as PDF, simply add info using PDF Tools.
5. Next, send an e-mail to the FOIA team informing them of the new request received. The e-mail subject line should include the FOIA or PA request with the case number. Be sure to attach a **scanned copy of the new request to your e-mail.**
6. Create a new case folder in the 'S' Drive for each new FOIA/PA request.
7. Under each new FOIA case number folder on the 'S' drive, create the following sub-folders:
 - **Closing Letter (or Closing Letter & Docs)**
 - Note: you can note that NRD next to Closing Letter = *No Responsive Docs*
 - **Correspondence**
 - **FOIAXX__ Search, Time and Page Count**
 - **Responsive Documents (or Responsive Docs)**
8. FINAL STEP in logging a new FOIA or PA request/case is to update the information in the **COMPREHENSIVE USAGM FOIA STATUS REPORT**. This report contains all the requests received under the fiscal year (FYXX, etc.).

PREPARING THE ACKNOWLEDGEMENT LETTER – Step #3 (Paralegal & FOIA Attorney)

1. The body of all acknowledgement letters must have the following components:
 - Date that the request was received,
 - What the requester is asking,
 - Assigned case number and
 - Assigned category of the request and/or any request for expedited service or fee waiver

- Draft the acknowledgement letter and include the bulleted items above. The acknowledgement letter must be prepared within 5 days of receiving request. *(See Tab 1 for sample)*

Expedited Service

If the requester is asking for expedited service, this must be addressed in the letter. The FOIA attorney will determine if requester qualifies for expedited service and/or fee waiver. Expedited means that the request skips the queue and is handled as soon as practicable. An agency can grant expedited service to a requester for the following two specific situations.

- A request will be expedited if the lack of expedited treatment could reasonably be expected to pose a threat to someone's life or physical safety.
- If there is an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information, his or her request will be expedited. Agencies can also allow expedited processing for additional reasons.

Note: Determination must be made in 10 calendar days.

Fee Waivers

Under the FOIA regulations, fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest. That is the disclosure is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for fee waivers from individuals (Privacy Act requesters) who are seeking records on themselves usually do not meet this standard. In addition, a requester's inability to pay fees is not a legal basis for granting a fee waiver.

- If the requester is asking for a fee waiver, the individual or organization must fall into one of the following categories. See *chart below for fee and requester's category.*
- Once drafted, send e-mail acknowledgement letter to FOIA attorney for review and signature. If the FOIA attorney is out the office, the letter goes to the Senior FOIA attorney for signature.

FOIA Fees Quick Reference Chart

Category	Search Fees	Review Fees	Duplication Fees
Commercial use	Yes	Yes	Yes
Educational Institution	No	No	Yes (minus first 100 pages)
Non-commercial Scientific Institution	No	No	Yes (minus first 100 pages)

Category	Search Fees	Review Fees	Duplication Fees
News Media	No	No	Yes (minus first 100 pages)
All Other	Yes (minus first 2 hrs.)	No	Yes (minus first 100 pages)

FOIA or PA DISTRIBUTION & DOCUMENT RECEIPT - Steps #4 & 5 (FOIA/PA Officer)

- Once the e-mail is sent to the FOIA team announcing a new request, the FOIA/PA Officer will then send a *Document Request E-mail (DRE)* to the appropriate offices to do a search time estimate for the responsive documents.
 - NOTE:** Each *DRE* will have a summary of the requested information and a **due date** for the appropriate office to respond. *(See Tab 2 for sample)*
- The appropriate search office then sends an e-mail with the estimated time it will take to search for the responsive documents. FOIA/PA Officer always forwards this information to the rest of the team. E-mail subject line usually reads: FOIAXX-001 - **SEARCH ESTIMATE**.
- In some cases, a follow up e-mail is sent to the search office if they have failed to meet the due date given in the *DRE*. The whole FOIA team is usually copied on follow up email. This keeps the team information of the status of each search. Email subject line usually read: FOIAXX-001 - **STATUS REQUEST**.
- After responsive documents are received, the Document Request Search Form is noted with the dated when OGC received the responsive documents.
- FOIA/PA Officer then performs an initial review and forwards documents to Paralegal to be scanned in and filed in the requester's assigned folder.

SCANNING AND REDACTING OF DOCUMENTS – Step #6 (Paralegal)

- Before redacting, **ALWAYS file an original un-redacted copy** in the appropriate case folder on the 'S' drive. That is, the responsive documents for say FOIAXX-001 should be filed in the online folder with the same name.
- Account for all responsive records. If there is a large number of responsive documents, always Bates number the pages. This helps us to keep track of large amounts of documents.
- Next redact documents if applicable and file in the requester's folder. When redacting the documents, be sure to follow the guidelines provided by the initial reviewer.

- **NOTE:** although, the initial reviewer may suggest that certain items be redacted, the final reviewer may not agree and decides to leave the items unmarked. This is OK, as the final reviewer can determine this.
4. During the redacting process, be sure to mark each redacted item with the appropriate exemption number.
 5. After the redacting is completed, next send an e-mail to FOIA team informing them that documents are available for final review.
 6. Prepare letter to requester with results of documents found and address any fees info if appropriate. (*See Tab 3 for sample*)

Redacting Documents

The most common redactions in documents are personal identification information. These are

- **private citizen names,**
- **social security numbers,**
- **home addresses,**
- **personal telephone numbers,**
- **e-mail addresses and**
- **any other personal information about the individual**

USAGM uses the Adobe Acrobat X Pro program to redact documents.

Redacting - Getting Started

Open the document to be redacted in Adobe Acrobat. In the open pdf document, you will notice on the right side the following tabs: **Tools, Sign** and **Comment**.

- I. Click on the **Tools** tab.
- II. Click on Protection (the arrow will open to show all contents available to use).
- III. Next, click on **Mark for Redaction** and then OK
- IV. Move the cursor over the face of the pdf document to start the process.
- V. Left click mouse down to redact word or phrase
- VI. Right click mouse to **U.S. FOIA or U.S. Privacy Act**. This will open the list of exemptions.
- VII. Select the correct exemption to apply to the redacted word or phrase.

Add Page Numbers (Bates Numbering) to a Document

- Open document
 - Click on tools
 - Click on Header & Footer
 - Add Header & Footer
1. Click where you want the page number to go
 2. Then click insert page number,

3. Next, click page range options
4. Then click OK and click OK again to complete the action.

Adding Pages to an Existing Document

To add pages to an existing document. You can add the pages, or you can scan documents to make one pdf document whatever is easier for you.

1. Click on pages
2. Insert from file
3. Find the file you want to add to the document
4. Select the locations where you want to put the document (**After** or **Before**)
5. Page (first or last) and then click OK

FOIA FEE LETTER – Step #7 (Paralegal)

Once you have received the search time and the responsive documents, draft a fee letter for the FOIA attorney to review. The fee letter should include the total hours spent searching and reviewing the responsive documents, grade & step of employee(s) who performed the search and total pages of documents found. *(See Tab 3 for sample)*

NOTE: Due to the COVID-19 pandemic, the Agency waived the fees for processing requests. Management is considering ^{(b) (5)} [REDACTED] (TBA)

FOIA PAYMENT RECEIVED – Step #8

FOIA fee payments are usually paid in the form of a personal/business check or a certified money order. When a FOIA payment is received from a requester, do the following steps:

1. Send an e-mail to the FOIA team letting them know that a FOIA payment check was received.
2. Next, scan and save a copy of the check in the appropriate FOIA file folder on the 'S' drive.
3. Take the FOIA payment check and a copy of the fee letter to **the Financial Operations Division in the CFO office.**
 - In that office, ask for the Accounts Receivable Specialist. The individual in the CFO office will walk you through their process. **Be sure to get a receipt as proof that the check was submitted** to the CFO office.

NOTE: All FOIA payment checks received should be made payable to:
The U.S. Treasury and include the case number.

CLOSING LETTER – Step #9

1. Prepare a draft closing letter and e-mail it to the FOIA team letting them know that the draft is ready for review. *(See Tab 4 for sample)*
2. After the closing letter is signed, scan a copy to the folder on the 'S' drive.
3. Mail the original signed letter with the appropriate FINAL REDACTED documents to the FOIA requester.
4. Next step is to close out the request in the requester's folder (on the 'S' drive).
5. Send an email to the FOIA team that the FOIA request is closed.

LACK OF RESPONSE FROM REQUESTER – Step #10

If you do not hear back from the requester within **30 days** of sending the fee letter, the request is automatically closed. Send a closing letter stating that the requester did not respond in a timely manner, and the request is now closed. *(See Tab 5 for sample)*

Close out the request in the requester's folder. Send an email to the FOIA team that the FOIA request is **closed**.

“STILL INTERESTED LETTER” – Step #10 (If applicable)

It is not the practice of this agency to send out such letter. Any delay in processing would not mean a requester does not want the information unless the requester has stated so in a letter to the agency. However, in the situation that occurred during the COVID-19 pandemic and under a new political administration, the FOIA office experienced tremendous backlog. Due to this, the Agency had to send “still interested letters” to requesters.

FOIA APPEAL PROCESS – Step #11

Under the *FOIA Improvement Act of 2016 (the 2016 Act)*², agencies are required to provide a minimum of **90 days** for requesters to file an administrative appeal. Before *the 2016 Act*, requesters were given only 30 days in which to appeal.

A requester may file an appeal of an adverse agency determination in writing. When an appeal is submitted, it should be clearly marked in the letter with the words "FOIA Appeal," and include the FOIA request tracking number, a copy of the initial request, and a copy of the Agency's final determination letter. Also, the appeal letter should clearly identify the agency determination that is being appealed and the provide specific reasons explaining why requester believes the agency's adverse determination should be reconsidered.

A requester may submit the appeal via mail or by email (FOIA@USAGM.gov). We strongly recommend the use of email. If the requester sends the appeal by mail, it must be postmarked, or in the case of electronic submissions, transmitted within 90 calendar days from the date of such determination. Email requests made after normal business hours will be considered to

² <https://www.gpo.gov/fdsys/pkg/PLAW-114publ185/html/PLAW-114publ185.htm>

have been transmitted on the next calendar day. If a mailed request postmark is not legible, the timeliness of a submission will be based on the date the appeal is received.

The Agency's adverse determinations are based on the following criteria:

1. Refusal to release a record, either in whole or in part;
2. Determination that a record does not exist or cannot be found;
3. Determination that a request does not reasonably describe the records sought;
4. Determination that the record you sought was not subject to the FOIA;
5. Denial of a request for expedited processing;
6. Denial of a fee waiver request; or
7. Fee category determination.

Once an appeal is filed, the appeal request is assigned a case tracking number based on the original case number and include the number one after it and the word "Appeal" in parenthesis. For example: **FOIA20-XXX-1 (Appeal)**. The FOIA Officer/Attorney will review the request and prepare a justification memo citing the reason for the determination in the closing letter and also his/her recommendations. The letter must be sent to the Agency's **Access Appeal Committee (AAC)** for review and decision.

Access Appeal Committee (AAC)

The AAC's responsibility is to review the information (the justification memorandum) sent by the FOIA Officer/Attorney and to render a decision on the next action the Agency would take on the appeal request. The Committee must decide whether to grant or deny the requester's appeal based on the documents presented and the discussion at the meeting. One of the attorneys in OGC attends the meeting as the Committee's legal consultant. The Chair of the Committee will be the only signatory on the Agency's decision response letter to the requester.

Access Appeal Committee consisted of three members: two standing members and one rotating panel member.

1. **Deputy Director of Operations or Chief of Staff - Chair of the AAC**
2. **Director of Public Affairs**
3. **Director of the office that submitted the responsive documents (i.e., VOA or TSI or OPR or Contracts, etc.) – the rotating member**

The FOIA POC/Liaison schedules and attends the meeting with the AAC.

EXPLANATION OF FEE CATEGORY

CATEGORY I - COMMERCIAL REQUESTER

This category refers to requests from or on behalf of one who seeks information for a use or purpose that furthers the commercial trade or profit interests of the requester or the person on whose behalf the request is made. Consistent with this fee category, the requester will assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

Charges for all categories of are: **\$36/\$20/\$10** per hour, depending on General Schedule Pay Rate of the clerical and professional staff conducting the search, review, and copying. The fee for copying is **\$0.15** per page

CATEGORY II - MEDIA REQUESTER

This category refers to requests from on or behalf a representative of the news media in that qualifies as a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Consistent with this fee category, the requester will assess charges to recover the full direct costs of duplicating the records sought, but only for those pages in excess of 100 pages. Charges are \$0.15 per page of photo duplication.

CATEGORY III - ALL OTHER REQUESTER

This category refers to “all other requester” category because they do not fall within any of the other fee categories. Consistent with this fee category, the requester will assess charges to recover the full direct costs of searching for the requested documents and the duplication of those documents. As a requester in this category, they will not be charged for the first 100 pages of duplication or the first two hours of search time.

Charges for all categories are **\$36/\$20/\$10** per hour, **depending** on General Schedule Pay Rate of the clerical and professional staff conducting the search, review, and copying. The fee for copying is **\$0.15** per page. **Additionally**, the requester will be charged for search time even if the agency fails to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure.

Category	Search Fees	Review Fees	Duplication Fees
Commercial use	Yes	Yes	Yes
Educational Institution	No	No	Yes (minus first 100 pages)
• Non-commercial Scientific Institution	No	No	Yes (minus first 100 pages)
News Media	No	No	Yes (minus first 100 pages)
All Other	Yes (minus first 2 hrs.)	No	Yes (minus first 100 pages)

USAGM FOIA SEARCH HOURLY RATE

Salary Grade	Hourly Rate
GS-1 through GS-8 FS-9 through FS-5	\$10.00
GS-9 through GS-13 FS-5 through FS-2	\$20.00
GS-14 or above FS-2 or above	\$36.00

SAMPLE DOCUMENTS

- **Draft Acknowledgement Letter – Tab 1**
- **Document Request Email (DRE) – Tab 2**
- **Letter to Requester with Result and Fee Info – Tab 3**
- **Sample Closing and Release Letters – Tab 4**
- **Sample Lack of Response Letter to Requester – Tab 5**
- **Sample of Redacted Documents - Tab 6.**
- **Privacy Act Certification of Identity – Tab 7**
- **List of FOIA Exemptions - Tab 8.**
- **FOIA Workflow Chart - Tab 9.**
- **Summary of FOIA Improvement Act of 2016 – Tab 10**
- **OGIS – Resolving FOIA Disputes - Tab 11.**

TAB 1

DRAFT

*Office of the General Counsel
Freedom of Information and Privacy Act Office*

DATE

**[REQUESTER'S NAME]
[ADDRESS]
[CITY, STATE & ZIP CODE]**

Via Email: _____ -

RE: Request Pursuant to the Freedom of Information Act – FOIAXX-00X

Dear REQUESTER'S NAME:

This letter is an acknowledgment of your Freedom of Information Act (FOIA) request dated **[DATE or UNDATED]**, to the U.S. Agency for Global Media (USAGM), which the Agency received on the same business day or **[DATE REQUEST WAS RECEIVED]**

In your request, you ask for

***“[A] copy of the successful candidate’s application, resume, interview questions, and all other related materials submitted under vacancy announcement M/P-00-00, as well as the rating score and evaluation criteria.**”*

Since this office receives a large quantity of requests each year, your request has been assigned **Reference Number FOIAXX-00X**; please refer to this number in all future correspondence with our office regarding your request. Also, please be advised that the Agency processes FOIA requests on a first in, first out basis.

Pursuant to the FOIA, an agency is required to make a determination on a request within 20 business days whether to comply with a FOIA request. In this case, the Agency will require additional time (10 business days) beyond the 20-day time limit for processing your request under “unusual circumstances” defined by statute, specifically the need to search for the requested records from office(s) outside of this office. The Agency is currently processing your request and anticipates making a determination within 30 business days.

For purposes of assessing fees pursuant to the OMB Fee Guidelines, your request has been placed in Category III, the “all other requester” category. Consistent with Category III, you will be assessed charges to recover the full direct costs of searching for the requested documents and the duplication of those documents; you will not be charged for the first 100 pages of duplication or the first two hours of search time. Charges for all categories are \$36/\$20/\$10 per hour, depending on the General Schedule Pay Rate of the clerical and professional staff conducting the search or review, and the fee for reproduction is \$0.15 per page. You may be charged for search time even if the agency fails to locate any records responsive to the request, and even if the records located are subsequently determined to be exempt from disclosure. In accordance with your request, we will notify you if fees will exceed \$25.

If you have any other questions regarding your request, please contact me at (202) 203-4550 or the Office of the General Counsel at the above address. Currently, inquiries are not accepted via E-mail.

Sincerely,

FOIA and Privacy Act Officer

SAMPLE – Closing Letter (No Docs Found)

*Office of the General Counsel
Freedom of Information and Privacy Act Office*

DATE

**REQUESTER'S NAME
ADDRESS
CITY, STATE & ZIP CODE**

RE: Request Pursuant to the Freedom of Information Act– FOIAXX-00X

Dear **[REQUESTER]**:

This letter is in response to your Freedom of Information Act (FOIA) request dated **[DATE]** to the U.S. Agency for Global Media (USAGM), which the Agency received on the same day. In your request, you asked for incoming and outgoing correspondence, including email, from January 3, 2011 to present between USAGM employees in the Office of _____, Office of _____, and Board of Governors and a list of members of the Office of U.S. Senator John Q. Public.

The agency has completed its search for records responsive to your request and no responsive records were found. This concludes the agency's response to your request, and it is now closed. There were no chargeable fees associated with your request.

If you have any questions regarding your request, please contact me at 202-203-4550 or the Office of the General Counsel at the above address. You may also contact the Agency's FOIA Public Liaison at 202-203-4550 or the same address for additional assistance or to discuss any aspect of your request.

Sincerely,

FOIA and Privacy Act Officer

TAB 2

DRAFT

SAMPLE Document Request Email

From: _____
Sent: _____
To: _____
Cc: _____
Subject: FOIAXX-OXX ([OFFICE])

[NAME OF DIVISON POC],

The Agency has received a FOIA request for documents from **[DIVISION'S NAME]**. Attached is the search form containing detailed processing instructions. The law provides only 20 business days for an agency to respond to a FOIA request, so your prompt attention to this matter is appreciated.

REVIEW/SCOPING: As an initial matter, please review the FOIA request. Do you understand what records the requester seeks? Do you know where to look for them? Is the request too burdensome? Please let us know as soon as possible if:

- (a) the request is not specific enough (i.e., you cannot determine what records the requester seeks or where in USAGM or your office the records are likely to be found); or
- (b) the request is clearly burdensome (i.e., the request is specific but would be difficult to conduct because of the manner in which the records are stored; or
- (c) the search would result in such a large volume of records that processing would be too time consuming (i.e., approximately 500 or more).

Under these circumstances, OGC will collaborate with you and the requester to scope the request more narrowly before your office starts its search for responsive documents.

SEARCHING: Please provide a copy of the attached search form to each individual in your office who will search for responsive records. Each should complete the form, documenting their search, sign it, scan it, and provide it to your office's FOIA liaison, along with PDF copies of each responsive record identified. If no records are identified, they still must complete, sign, scan, and return the form to the FOIA liaison, documenting the search and stating so.

IDENTIFYING EXEMPT MATERIALS: Next, if possible, the FOIA liaison should merge the PDFs using Adobe Pro or DC and review the resulting, single PDF for exempt or sensitive materials. In doing so, please mark all material within the records that may be covered by FOIA Exemption 4 (covering trade secrets and confidential business information), Exemption 5 (covering attorney-client or pre-decisional/deliberative materials) and Exemption 6 (personally identifiable information, the release of which would place an undue burden on individual privacy).

When the FOIA liaison is done with this review, they should send the single PDF marked for redactions, to FOIA@usagm.gov for review by the FOIA team.

DUE DATE: The responsive documents are due to the FOIA Team by **[Due date]**.

Should you or others in your office have any questions or want assistance with any part of the FOIA process, please do not hesitate to contact FOIA@usagm.gov.

Thank you in advance for your assistance with this FOIA request.

[SENDER]

NOTICE: This email message contains confidential, privileged information intended solely for the addressee. Please do not forward this message without permission. If you have received this in error, please delete the erroneously received message from any devices/media where the message is stored.

DRAFT

SAMPLE – DRE Form

Freedom of Information Act (FOIA) SEARCH FORM
USAGM FOIA Office
202-293-1950

FOIA Case No. **XX-0XX**
Date Search Form Sent to Program Office: [FOIA Team Insert]
Date Search Form Due to FOIA Office: [FOIA Team insert]
Program Office Search POC: [FOIA Team Insert]
Name and Signature of Employee Completing Search Form:
Date Initial Search Performed:
Date(s) of any Subsequent Search(es):
Date Search Form Completed by Employee
Conducting Search,
Requestor Seeks: Search Parameters:
[FOIA Team/Program Office POC: insert request, as narrowed if applicable, including search terms, time frame and individual employees identified in search; attach copy of request with a handwritten "narrowed" on the document, if applicable]
How to Search for Records:
Please search your official files to determine if you possess any records responsive to this request:
• Look for responsive documents in both paper and electronic form, including in your hard copy and computer files, and in any other electronic storage media on which you store records;
• Include documents in your possession from other USAGM elements, agencies, and

Description of search (check all that apply) and indicate number of pages identified for review:
• Outlook Email Boxes ___ pages
• Locally Archived Email ___ pages
• Centrally Archived Email ___ pages
• Locally Stored Electronic Files ___ pages

• Terms
• Date range
• Office
• Employee(s)

FREEDOM OF INFORMATION ACT REQUEST – SEARCH FORM #XX-0XX
FOIA Team Information

sources;
• If the FOIA request seeks email records, please search your Outlook email box, as well as any local email archives
• Please use the "Description of Search" box above to detail the specific locations that you searched in the course of responding to this request
How to Collect Responsive Records:
• Please do not print digital files or send original documents.
• Make a PDF copy of each responsive record that you locate in your search, including of each email
• If you are able, use ADOBE to combine into a single PDF and save a "clean" copy; if not, please send the individual PDFs to your office's POC
How to Review Responsive Records:
• Use a second electronic copy of the PDF or PDFs containing the responsive records to perform your review.
• On the PDF copy or copies, please mark the following:
o Deliberative/Pre-decisional information
o Trade Secret or Confidential Commercial Business Information
o Personally identifiable information of private individuals (not business email addresses or telephone numbers or names of individuals making business communications)
What Happens Next?
• The FOIA Team will review your marked up documents and determine whether the marked information can be withheld from release under FOIA privacy, deliberative information, or other exemptions.
• FOIA counsel will perform another review and may contact you to discuss specific documents or parts of documents.
• Once finalized, you will have an opportunity to review and express any concerns about the final set of documents before the agency releases them to the requester.

Note: Please feel free to contact the FOIA Office at FOIA@USAGM.gov if you need help with any of these steps – or with transferring any large digital files

FREEDOM OF INFORMATION ACT REQUEST – SEARCH FORM #XX-0XX
FOIA Team Information

o Any other information you view as sensitive
How Long did the Search Take?
• Please use the "Search Time" box on the right to let us know the amount of time it took your office to search for, compile and review responsive documents;
• If multiple employees participated in the search, are involved in the search, please document the time spent for each employee
Office Search Time/ GS Grade _____;
• Time spent checking Outlook/Outlook – _____
• Time spent searching on computer – _____
• Time spent reviewing and marking for redaction all computer files and local email files – _____
• Time spent reviewing and marking for redaction any centrally stored email – _____
• Time spent consulting with other offices (TIS or FOIA Office) – _____
• Other (please detail) – _____
PROGRAM OFFICE NOTES TO THE FOIA TEAM:
PROGRAM OFFICE STOP HERE
THE FOLLOWING PAGE WILL BE COMPLETED BY OGC

FREEDOM OF INFORMATION ACT REQUEST – SEARCH FORM #XX-0XX
FOIA Team Information

Scoping/Classification Communications with Requester:
Original Request:
Narrowed Request:
Other Communications with Requester:
FOIA Team Communications with Program Office/TIS:
Fee Category/Justification:
• Commercial Use Requesters
• Educational and Non commercial Scientific Institutions Requesters
• Representatives of the News Media
• All Other Requesters
Fee Estimate provided to Requester/Basis:
Total time:
• Program Office _____ /GS
• FOIA Office Time _____ /GS
• TIS Time _____ /GS
• Etc.
Closing Date/number of pages
Final Fee:
Fee collected?
Yes
No

TAB 3

DRAFT

SAMPLE – Fee Letter

*Office of the General Counsel
Freedom of Information and Privacy Act Office*

DATE

**REQUESTER'S NAME
ADDRESS
CITY, STATE & ZIP CODE**

RE: Request Pursuant to the Freedom of Information Act– FOIA #16-00X

Dear **[REQUESTER]**:

This letter is in response to your Freedom of Information Act (FOIA) request dated December 16, 2016 to the U.S. Agency for Global Media (USAGM), which the Agency received on December 19, 2016. In your request, you seek copies of all records and documents, including e-mails, referring, or relating to USAGM's determinations set forth in the December 6, 2016 letter regarding The Department of State Office of Inspector General's Report on Donald May's allegation of retaliation. You are also seeking any documents generated as a result of the investigation.

The agency has completed its search for and review of documents responsive to your request. For the purposes of assessing fees pursuant to OMB Fee Guidelines, your request was placed in Category I, or commercial use request. Requests in Category I are charged fees to recover the full direct costs of searching for and review and duplication of requested documents. Charges for search and review are \$36/\$20/\$10 per hour, depending on the General Schedule Pay Rate of the clerical and professional staff involved. The fee for duplication is \$0.15 per page. However, because the Agency was not able to fully respond to your request within the timeframe required by the FOIA you are not to be charged for any search fees. Accordingly, the fee breakdown for your request is as follows:

Fees for review	
Number of employees: 1	
GS-14 and above (\$36/hour x .75 hour)	\$27.00
Total review fees:	\$27.00
Fees for duplication	
Total number of pages: 62	
Total duplication fees: (62 x \$0.15/pg.)	\$9.30
TOTAL CHARGEABLE FEES:	\$36.30

If you are still interested in the requested materials, please submit a check for \$36.30 payable to The U.S. Treasury to this office within thirty (30) calendar days from the date of this letter. Please be advised that if you fail to respond within thirty days of this letter, we will assume you are no longer interested in pursuing your request and it will be closed.

If you have any questions regarding your request, please contact me at (202) 203-4550 or the Office of the General Counsel at the above address. Currently, inquiries are not accepted via E-mail.

Sincerely,

FOIA and Privacy Act Officer

TAB 4

DRAFT

SAMPLE – No Records

*Office of the General Counsel
Freedom of Information and Privacy Act Office*

DATE

**REQUESTER'S NAME
ADDRESS
CITY, STATE, ZIP CODE**

RE: Request Pursuant to the Freedom of Information Act– FOIA #16-00X

Dear **[REQUESTER]**:

This letter is in response to your Freedom of Information Act (FOIA) request dated **[DATE]** to the U.S. Agency for Global Media (USAGM), which the Agency received on the same day. In your request, you asked for incoming and outgoing correspondence, including email, from January 3, 2011 to present between USAGM employees in the Office of _____, Office of _____, and Board of Governors and a list of members of the Office of U.S. Senator John Q. Public.

The agency has completed its search for records responsive to your request and no responsive records were found. This concludes the agency's response to your request, and it is now closed. There were no chargeable fees associated with your request.

If you have any questions regarding your request, please contact me at 202-203-4550 or the Office of the General Counsel at the above address. You may also contact the Agency's FOIA Public Liaison at 202-203-4550 or the same address for additional assistance or to discuss any aspect of your request.

Sincerely,

FOIA and Privacy Act Officer

SAMPLE – Full Release

*Office of the General Counsel
Freedom of Information and Privacy Act Office*

DATE

**REQUESTER'S NAME
ADDRESS
CITY, STATE, ZIP CODE**

RE: Request Pursuant to the Freedom of Information Act – FOIA #16-00X

Dear **[REQUESTER]**:

This letter is in response to your Freedom of Information Act (FOIA) request to the U.S. Agency for Global Media (USAGM) dated _____, which the Agency received on same day. In your request, you ask for a copy of the "IFA Budget Request" submitted by Radio Free Asia to USAGM from December 16, 2015 to March 29, 2017.

The Agency has completed the search for and review of documents responsive to your request, which are enclosed with this letter. No information was redacted or withheld, and all responsive documents have been provided to you. No fees were incurred in processing your request and the enclosed documents are provided to you at no charge.

This concludes the Agency's response to your request, and it is now closed. If you have any questions regarding your request, please contact me at 202-203-4550 or the Office of the General Counsel at the above address. You may also contact the Agency's FOIA Public Liaison at 202-203-4550 or the same address for additional assistance or to discuss any aspect of your request.

Sincerely,

FOIA and Privacy Act Officer

Enclosures:
Releasable Documents

DATE

**REQUESTER'S NAME
ADDRESS
CITY, STATE, ZIP CODE**

RE: Request Pursuant to the Freedom of Information Act– FOIA #16-00X

Dear **[REQUESTER]**:

This letter is in response to your Freedom of Information Act (FOIA) request to the U.S. Agency for Global Media (USAGM) dated _____, which the Agency received on _____. In your request, you seek a copy of FY15 and FY16 digital advertising proposals, as well as any FY16 billboard advertising proposals.

The Agency completed its search for and review of documents responsive to your request, and the releasable documents are on the CD-ROM enclosed with this letter. Certain information has been redacted from the enclosed documents pursuant to FOIA Exemption 5 to protect the Agency's deliberative process privilege, and such redactions have been marked with the code "(b)(5)" on the enclosed documents. No other information was redacted or withheld, and all responsive documents located have been provided to you. No chargeable fees were incurred in processing your request.

This concludes the Agency's response to your request, and it is now closed. You may contact me or the Agency's FOIA Public Liaison at 202-203-4550 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Finally, if you are not satisfied with this response to your request, you may file an administrative appeal with the Agency by writing to: Chairperson, Access Appeal Committee, USAGM, Suite 3349, 330 Independence Avenue, SW, Washington, DC 20237. Your appeal must be postmarked or transmitted by facsimile to 202-203-4548 within 90 days of the date of this letter.

If you have any questions regarding your request, please contact me at 202-203-4550 or the Office of the General Counsel at the above address. Currently, inquiries are not accepted via E-mail.

Sincerely,

FOIA and Privacy Act Officer

TAB 5

DRAFT

SAMPLE – Fail to Respond Letter

*Office of the General Counsel Freedom of
Information and Privacy Act Office*

DATE

REQUESTER'S NAME
ADDRESS
CITY, STATE, ZIP CODE

RE: Request Pursuant to the Freedom of Information Act – FOIA #16-00X

Dear [REQUESTER]:

This letter is in response to your Freedom of Information Act (FOIA) request dated [DATE] to the U.S. Agency for Global Media (USAGM), which the Agency received on the same day. In your request, you asked for information associated with the Agency's _____.

On [DATE] our office sent you a letter informing you that the estimated chargeable fees for your request totaled \$2,629.50. You were also informed that if you failed to respond to our letter within 30 days your request would be closed.

Unfortunately, because we have not received a written response from you within the stated timeframe your request is hereby closed. Since your request is being closed without releasing any information, you are not charged any fees and do not owe any money to the agency or the Federal government. If you are still interested in obtaining the information requested, you may submit a new request to restart the FOIA process. The USAGM's FOIA Guidelines can be found at: <http://www.USAGM.gov/about-the-agency/research-reports/foia/>.

Sincerely,

FOIA and Privacy Act Officer



TAB 6

DRAFT

SAMPLE

**International Broadcasting Bureau
Non-Competitive Candidate Referral List
Control Sheet**

Ex. #6

3/12/09

Certificate Number: BB-09-LYB-01035S0

Agency: Other Agencies and Independent Organizations

Customer: Central News Division

Agency Request No: Reassignment-el-gs-8

Issued On: 12/15/2008

Customer Phone: [REDACTED]
Ex. #6

Vacancy Information

Vacancy ID: 219625

Professional: No

Appointment Type: Career/Career Conditional

Series-Position: 0303 - Administrative Assistant

Vacancy Type: Case Exam

Ordering Criteria

Certificate Type: Merit Referral List

Rank Applicant By: Eligibles Only

Tie Breaker Used: None

Random Number: 4

Sort Order: Name

Vet Points Used: No

Priority Order Used: None

Referral List Type: Reassignment

Address To Print: Home/Work

Selection Criteria

Specialty: 001 - Administrative Assistant Grade: 08

Location(s):

0675 - Washington DC Metro Area, DC

Applicant Referral Status: Open Dual Certify

Number of Names Requested: 2

Number of Eligibles Certified: 2

TAB 7

DRAFT

Certification of Identity

Privacy Act Statement. In accordance with 22 CFR Section 505.4 personal data sufficient to identify the individuals submitting requests under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of Broadcasting Board of Governors systems of records are not wrongfully disclosed by the Agency. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Full Name of Requester ¹ _____

Citizenship Status ² _____ Social Security Number ³ _____

Current Address _____

Date of Birth _____ Place of Birth _____

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Pursuant to 5 U.S.C. Section 552a(b), I authorize the Broadcasting Board of Governors to release any and all information relating to me to:

Print or Type Name

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature ⁴ _____ Date _____

¹ Name of individual who is the subject of the record(s) sought

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number the Agency may be unable to locate any or all records pertaining to you

⁴ Signature of individual who is the subject of the record sought

TAB 8

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FOIA EXEMPTIONS

In this chart is a list of the FOIA exemptions used. Of the nine exemptions listed, USAGM uses the ones below that are highlighted.

(b) 1 Protects Classified Matters of National Defense or Foreign Policy	(b) 2 Personnel Rules and Practices	(b) 3 Information Specifically Exempted by Other Statutes
(b) 4 Trade Secrets, Commercial or Financial Information	(b) 5 Privileged Interagency or Intra-Agency Memoranda or Letters	(b) 6 Personal Information Affecting an Individual's Privacy
(b) 7 Investigatory Records Compiled for Law Enforcement Purposes	(b) 8 Records of Financial Institutions	(b) 9 Geographical and Geophysical Information Concerning Wells

FOIA Exemption 1

5 U.S.C. 552(b)(1): 1st Statutory Exemption

Exemption 1 allows for the withholding of national security information concerning the national defense or foreign policy that has been properly classified in accordance with the substantive and procedural requirements of the current national security classification executive order, Executive Order 12958, signed by President Bush on March 25, 2003. **USAGM does not use this exemption.**

FOIA Exemption 2

5 U.S.C. 552(b)(2): 2nd Statutory Exemption

Generally, Exemption 2 covers **purely internal operational material**, such as procedures for processing promotions. Exemption 2 applies when the disclosure of the information would lead to or risk circumvention of statutes and agency regulations, such as when disclosing a job crediting plan would allow candidates to tailor their applications in such a way as to obtain unfair advantage in selections. This exemption may also be applied to records or documents relating to building protection and security.

FOIA Exemption 3

5 U.S.C. 552(b)(3): 3rd Statutory Exemption

The primary Exemption 3 statute that applies to GSA records is the National Defense Authorization Act for Fiscal Year 1997, 41 U.S.C. 253(b). This statute provides that proposals in a competitive procurement may not be disclosed under FOIA. The Procurement Integrity Act (41 U.S.C. 423 (a)) also prohibits the release of "contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates."

FOIA Exemption 4

5 U.S.C. 552(b)(4): 4th Statutory Exemption.

Agency may withhold commercial or financial records submitted to the Government by a person (e.g., a business), if release of the information would ^{(b)(5)}

Lease files are especially likely to contain information protected from release under this exemption.

Correspondence from prospective lessors frequently reveals information regarding the manner in which a prospective lessor operates or manages its building, which, if released, could be commercially harmful to the lessor in subsequent leasing actions for non-Government space within the building.³

Examples of proprietary business information that may qualify for this exemption include:

1. *Private business sales statistics.*
2. *Technical designs.*
3. *Research data.*
4. *Non-Federal customer and supplier lists.*
5. *Overhead and operating costs.*
6. *Non-public financial statements.*
7. *Resumes of company employees.*
8. *Names of consultants and subcontractors.*
9. *Details of production or quality control systems information.*
10. *Internal operating procedures and staffing patterns.*

FOIA Exemption 5

5 U.S.C. 552(b)(5): 5th Statutory Exemption

Records that may be withheld under the fifth statutory exemption include pre-decisional agency memorandums that reflect and describe the agency's decision-making process and pre-

³ Information taken from - [http://www.gsa.gov/graphics/staffoffices/2009 FOIA Report.pdf](http://www.gsa.gov/graphics/staffoffices/2009%20FOIA%20Report.pdf)

decisional documents generated by the Government in the process leading up to the award of a contract.

1. Records that are part of USAGM's decision-making process. When screening records for documents that should be withheld under the fifth statutory exemption, OGC will ask whether the document is pre-decisional and whether it reflects the deliberative process (makes recommendations or expresses opinions or advice).

Examples of typical pre-decisional, deliberative material are drafts and internal memoranda expressing an opinion on a proposed policy or course of action. Pre-decisional material can retain its exempt status even after the final decision is made. USAGM will disclose material of a purely factual nature that can be reasonably extracted from exempt material unless the factual material is exempt under some other criteria.

2. Records that are generated by the Government in the process leading up to the award of a contract. USAGM may withhold records under the fifth statutory exemption if disclosure would cause commercial harm to the Government; e.g., place the Government at a competitive disadvantage in pre-award negotiations. Examples include realty appraisals generated by the Government in the course of soliciting buyers for Government property and Government cost estimates. Some of these documents may lose their exempt status after award if the potential for commercial harm no longer exists. Other documents, such as cost estimates, may continue to qualify for withholding if disclosure is likely to harm a similar ongoing procurement action.

3. Records that contain other legally recognized privileges. USAGM may withhold records that are covered by attorney-client privilege or that may be classified as attorney work products.

FOIA Exemption 6

5 U.S.C. 552(b)(6): 6th Statutory Exemption

USAGM's primary consideration in invoking the sixth statutory exemption under FOIA is protecting the privacy of the person who is the subject of a requested file. The public interest in disclosure must be balanced against personal privacy interests that may be invaded by disclosing the record. USAGM will determine whether to release personal information under this exemption or when applying the personal privacy exemption for law enforcement records (5 U.S.C. 552(b)(7)(c)) by using a four-step process:

1. Is an identifiable personal privacy interest involved? If there is none, this exemption does not apply.
2. Is a public interest involved; e.g., would disclosure benefit the general public in light of content and context of the information? If there is no general public interest to be served by disclosure, the personal information should be protected.
3. Does the identified public interest qualify for consideration; e.g., is it an interest which would shed light on the agency's performance of its statutory duties? If disclosure of

requested information would not serve this interest, the personal privacy interest should be protected.

4. Where an identifiable personal privacy interest and qualifying public interest are present, which is greater? If the privacy interest is greater, the information should be withheld. If the public interest is greater, this exemption does not apply.

FOIA Exemption 7

5 U.S.C. 552(b)(7): 7th Statutory Exemption

The seventh statutory exemption allows agencies to withhold law enforcement records in order to protect the law enforcement process from interference.

FOIA Exemption 8

5 U.S.C. 552(b)(8): 8th Statutory Exemption

The eighth statutory exemption protects matters that are "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. The courts have discerned two major purposes underlying in Exemption 8:

- (1) "to protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a bank's stability," and
- (2) "to promote cooperation and communication between employees and examiners."⁽¹³⁾ Accordingly, different types of documents have been held to fall within the broad confines of Exemption 8.

Bank examination reports and related documents prepared by state regulatory agencies have been found protectible under Exemption 8 on more than one ground.

FOIA Exemption 9

5 U.S.C. 552(b)(9): 9th Statutory Exemption

The ninth statutory exemption protects "geological and geophysical information and data, including maps, concerning wells."⁽¹⁾ In a court decision, it was held that information related to the presence of groundwater -- including "ground water inventories, [water] well yield in gallons per minute, and the thickness of the decomposed granite aquifer" -- was exempt from disclosure under both Exemption 4⁽⁶⁾ and Exemption 9.⁽⁷⁾ Thus far, courts have applied Exemption 9 to all types of wells and to various information about these wells.⁽¹¹⁾ It also is reasonable to assume that both agencies and courts may apply Exemption 9 to protect well data in other compelling circumstances, such as when Exemption 9 protection is necessary to guard against an attack upon pooled natural resources intended to cause harm to the public.⁽¹²⁾

FOIA REDACTION GUIDE (W/ EXEMPTIONS USED)

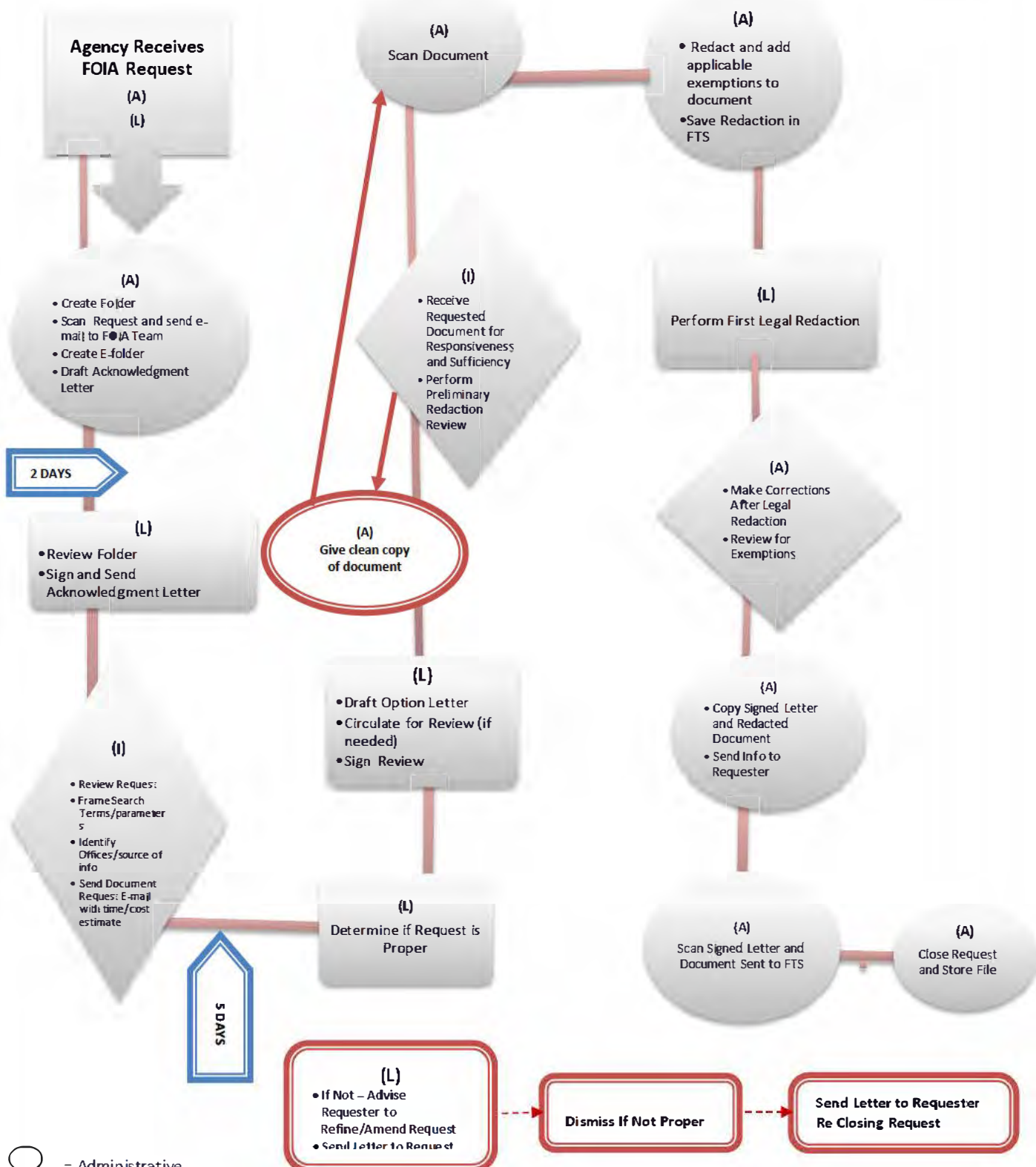
Description	Exemption #
Security Files	
1. E-MAILS: Names in the <i>To, From</i> and <i>CC</i> header (<i>if not relevant to the request</i>)	6
2. Salutation (<i>name</i>)	6
3. Body of Security e-mail (<i>if it discusses the person and mentions of other individuals' comments, etc.</i>)	5
4. Ending of e-mail with writer's name	6
5. E-mail addresses (<i>ex. jqpublic@america.com</i>)	6
6. Telephone # (<i>of private citizens not relevant to the request</i>)	6
7. Signatures (<i>of security staff and others</i>)	6
HR Files – Vacancy Applicants	
1. Name of reviewer	6
2. To, From and CC info	6
3. Test #	6
4. Evaluator's name and signature	6
5. Resumes of Other Applicants (<i>i.e., redact all personal info such as name, address, telephone #, email, graduation date (possible link to calculating age), etc.</i>)	6
Contract Documents	
1. Contractor POC info (<i>telephone, address, e-mail address, etc.</i>)	6
2. Signatures	6
3. Contractor's pricing list	4

NOTE:

TAB 9

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FOIA WORKFLOW CHART



- = Administrative
- = Information Management
- ◇ = Legal

TAB 10

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SUMMARY OF FOIA IMPROVEMENT ACT of 2016

§1

Provides the short title for the Act, which is the "FOIA Improvement Act of 2016."

§2

Proactive Disclosures

Agencies are now required to "make available for public inspection in an electronic format," records "that have been requested 3 or more times."

Disclosure Requirements

- Agencies "shall withhold information" under the FOIA "only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."
- Agencies shall "consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible."
- Agencies shall "take reasonable steps necessary to segregate and release nonexempt information."
- This provision does not require disclosure of information "that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under [Exemption] 3."

Exemption: "the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested."

Changes in Procedures

When Processing Requests

Extending Time Limits - New Requirement when extending deadline beyond an additional ten days

- Whenever agencies extend the time limits by more than ten additional working days, in the written notice to the requester they "must notify the requester of right to seek dispute resolution services from the Office of Government Information Services."

Fees - Further limitation on Assessing Search Fees (or, for requesters with preferred fee status, duplication fees) if Response time is delayed:

- When agencies determine that "unusual" circumstances apply to the processing of a request, and they have provided "timely written notice to the requester," the delay is "excused for an additional 10 days." "If the agency fails to comply with the extended time limit," it may not charge search fees (or for requesters with preferred fee status, may not charge duplication fees).

Exception: If unusual circumstances apply and "more than 5000 pages are necessary to respond to the request," agencies may charge search fees (or, for requesters in preferred fee status, may charge duplication fees) if timely written notice has been made to the requester and "the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request."

Court Determination that "exceptional circumstances" exist: If a court determines that "exceptional circumstances exist," the agency's failure to comply with a time limit "shall be excused for the length of time provided by the court order."

Response Letters - New Required Elements for Response Letters

When agencies make their determinations on requests, they must offer the services of their FOIA Public Liaison and must notify requesters of their services provided by the Office of Government Information Services (OGIS). They must also allow requesters a period of at least 90 days within which to file an administrative appeal. Specifically, agencies must include in their notification to the requester:

- “the right of such person to seek assistance from the FOIA Public Liaison of the agency,” and, in the case of an adverse determination:
- the right to appeal within a period of time “that is not less than 90 days after the date of such adverse determination,” and
- “the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services.”

New Duties for Chief FOIA Officers

Officials are required to:

- “offer training to agency staff regarding their [FOIA] responsibilities,” and
- “serve as the primary liaison with the Office of Government Information Services and the Office of Information Policy.”

Chief FOIA Officers are also now required to “review, not less frequently than annually, all aspects” of their agency’s administration of the FOIA “to ensure compliance” with the FOIA’s requirements. The following topics are to be included in the review:

- Agency regulations,
- Disclosure of records under paragraphs (a)(2)[proactive disclosure provision] and (a)(8) [foreseeable harm standard],
- Assessment of fees and fee waivers,
- Timely processing of requests,
- Use of exemptions, and
- Dispute resolution services with the Office of Government Information Services or the FOIA Public Liaison.

Creation of “Chief FOIA Officer Council”

- The Directors of the Office of Information Policy and the Office of Government Information Services are to serve as co-chairs of the newly created Chief FOIA Officer Council.
- Membership of the Council is composed of:

1. The Deputy Director for Management of OMB,
2. The Chief FOIA Officer for each agency, and
3. Any other officers as designated by the co-chairs.

- GSA is to provide administrative support to the Council.
- The duties of the Council shall include the following:
 4. Develop recommendations for increasing compliance & efficiency under the FOIA.
 5. Disseminate agency experiences, ideas, best practices, and innovative approaches related to the FOIA.
 6. Identify, develop, and coordinate initiatives to increase transparency and compliance with the FOIA.
 7. Promote development and use of “common performance measures for agency compliance” with the FOIA.

- The Council shall “consult on a regular basis” with requesters. It shall “meet regularly and such meetings shall be open to the public” and at least annually the Council must have an open meeting that permits interested members of the public to appear and present statements.

Additions to Annual Reports

Additions to agency reporting requirements for Annual FOIA Reports.

- On or before **February 1st** of each year, agencies must submit their Annual FOIA Report to the Attorney General and to the Director of OGIS
- The Annual FOIA Report must include two new elements:
 1. The number of times “the agency denied a request for records under subsection (c)” of the FOIA, and
 2. The “number of records that were made available for public inspection in an electronic format under subsection (a)(2).”
- **The raw, statistical data** used in the agency’s Annual FOIA Report must be available **without charge**, in an aggregated, searchable format that may be downloadable in bulk.
- The Attorney General must notify Congress that agency Annual FOIA Reports are posted by **March 1st**.

Agency Reference Guides

Must be made available in electronic format. _____

Department of Justice's Litigation & Compliance Report

Changes:

- The Department’s annual Litigation and Compliance Report detailing the Department’s efforts to encourage government wide compliance with the FOIA is now due to Congress and the President on **March 1st**.
- The disposition for each case listed in this report must include “each subsection, and any exemption, if applicable,” involved in each case.
- The raw statistical data used in the report must be available without charge, in a searchable format that is downloadable in bulk.

Revised Duties for OGIS

- OGIS shall “identify procedures and methods for improving compliance” under the FOIA.
- In providing mediation services, OGIS may issue advisory opinions at its discretion or upon the request of any party to the dispute.
- Not less than annually OGIS shall submit to Congress and the President, and make available to the public electronically:
 1. A report on its findings from its reviews of agency policies, procedures, and compliance.
 2. A summary of its mediation services, including any advisory opinions issued and the number of times each agency engaged in dispute resolution with the assistance of OGIS or the FOIA Public Liaison.
 3. Any legislative and regulatory recommendations to improve FOIA.
- OGIS is not required to obtain prior approval of any officer or agency of the United States before submitting to Congress reports, recommendations, testimony, or comments, if such submissions include a statement indicating that the views expressed are those of the OGIS Director and not necessarily the views of the President.

Creation of Consolidated Online Request Portal

- Not less than annually, OGIS shall hold a public meeting on its activities and “allow interested persons to appear and present oral or written statements.”
- The Director of OMB, in consultation with the Attorney General, shall ensure the operation of a consolidated online request portal that:
 1. Allows the public to submit a request to any agency from a **single website, and**
 2. May include additional tools that OMB finds will improve FOIA.
- Agencies may still create or maintain independent online portals for submission of requests.
- OMB shall establish standards for interoperability between the consolidated portal and agency case management systems.

§3 Regulation Review & Issuance Within 180 Days

- The head of each agency must, no later than 180 days after enactment, review their agency regulations and “issue regulations on procedures for the disclosure of records under [the FOIA] in accordance with the amendments made by section 2.”
- Agency FOIA regulations shall include procedures for engaging in dispute resolution through the FOIA Public Liaison and OGIS.

§4 Proactive Disclosures through Records Management

Amendment to Section 3102 of the Federal Records Act, 44 U.S.C. § 3102 to include a requirement that agencies establish “procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format.”

§5 No Additional Funds Authorized

The *FOIA Improvement Act of 2016* does not authorize additional funds to carry out the requirements of the FOIA.

§6 Effective Date of the Amendments

Law takes effect on the date of enactment and shall apply to any request made after **June 30, 2016**.

TAB 11

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Office of Government Information Services (OGIS)

Resolving Federal FOIA Disputes



About OGIS

The OPEN Government Act of 2007 amended the Freedom of Information Act (5 U.S.C. Section 552) to create the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA). OGIS opened in early September 2009, with its main office at NARA in College Park, Maryland. The OGIS staff works with the Department of Justice, other agencies, and with private-sector stakeholders to promote transparency, provide training in dispute resolution, and resolve requester and agency FOIA issues.

OGIS Mission

- 1. Review compliance and policy.** Review policies and procedures of administrative agencies under the Freedom of Information Act (FOIA). Review compliance with FOIA by agencies. Recommend policy changes to Congress and the President to improve the administration of FOIA.
- 2. Mediate disputes.** Offer mediation services to resolve disputes between persons making FOIA requests and agencies (nonexclusive alternative to litigation). May issue advisory opinions if mediation has not resolved the dispute.
- 3. Serve as ombudsman.** Solicit and receive comments and questions from Federal agencies and the public regarding the administration of FOIA to improve FOIA processes and facilitate communication between agencies and FOIA requesters.

OGIS Contact Information

Mailing address: National Archives and Records Administration, 8601 Adelphi Road (OGIS), College Park, MD 20740-6001

Street address: 800 N. Capitol St. N.W., Suite 795, Washington, D.C. 20002

Telephone: 202-741-5770 • **Toll-free:** 1-877-684-6448 • **Fax:** 202-741-5769 • **E-mail:** ogis@nara.gov

Web: www.ogis.archives.gov • **The FOIA Ombudsman Blog:** blogs.archives.gov/foiablog

Miriam Nisbet, Director, miriam.nisbet@nara.gov • **Nikki Gramian**, Deputy Director, nikki.gramian@nara.gov

Corinna Zarek, Attorney Advisor, corinnazarek@nara.gov • **Carrie McGuire**, Facilitator, carrie.mcguire@nara.gov

Kirsten Mitchell, Facilitator, kirsten.mitchell@nara.gov • **Robin Ross**, Staff Assistant, robin.ross@nara.gov

The amended portions of the FOIA, 5 U.S.C. Section 552, concerning OGIS as well as some other aspects of agency compliance and service are:

- (h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.
- (2) The Office of Government Information Services shall—
- A. review policies and procedures of administrative agencies under this section
 - B. review compliance with this section by administrative agencies, and
 - C. recommend policy changes to Congress and the President to improve the administration of this section.
- (3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a nonexclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.
- (i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.
- (j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).
- (k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—
- 1) have agency-wide responsibility for efficient and appropriate compliance with this section
 - 2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section
 - 3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section
 - 4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section
 - 5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply, and
 - 6) designate one or more FOIA Public Liaisons.
- (l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

In addition, subsection (a)(6)(B)(ii)—which gives a FOIA requester and an agency the opportunity to modify the scope of a request and to agree to an alternative time frame for processing the request—was amended:

To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency.

OUTSIDE FOIA HELP

For any FOIA related questions, you may call:

**Office of Information Policy (OIP)
Department of Justice
Desk Officer at
202-514-3642**

GLOSSARY

Administrative Appeal

-A request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level

Backlog

-The number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.

Congressional Inquiry

- A request from a member of Congress to a federal agency requesting information. The request can be a Congressional Inquiry or "A Congressional" on behalf of a constituent regarding the status of a person's case with a federal agency or department. When agency receives one of these requests, the agency should first determine whether it is a duly authorized request on behalf of Congress through a legislative committee or subcommittee. If the request is not an official committee or subcommittee request, then the agency should process it as a request from "any person" under the FOIA, but with particular regard for the considerations of congressional relations, discretionary disclosure, and waiver per the FOIA regulations.

Consultation

- The procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.

Exemption

- A federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.

Expedited Service

- The FOIA regs require that federal agencies determine whether to release requested records within 10 working days, but that period may be extended for an additional 10 working days whenever any of three statutorily defined "unusual circumstances" exist.

- **Threat to Life or Safety** - request is expedited whenever it is demonstrated that an individual's life or personal safety would be jeopardized by the failure to process a request immediately. substantiated "life-or-death" matters are rare, but no more compelling justification can exist for special FOIA treatment.
- **Loss of Substantial Due Process Rights** - request also should be expedited if it is shown that substantial due process rights of the requester would be impaired by the failure to process immediately and that the information sought is not otherwise available.
- **Other Considerations** - Beyond the above two narrow categories, only one judicial decision in 1982, where a court ordered immediate disclosure of a record related to imminent action by Congress. Because a decision to take a FOIA request out of turn necessarily entails further delay for other requesters waiting patiently in line, simple

fairness demands that it be made only upon careful scrutiny of truly exceptional circumstances.

Fee Waiver

- Freedom of Information Act (FOIA) provides that fees should be waived or reduced "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 government and is not primarily in the commercial interest of the requester." The statutory fee waiver standard contains two basic requirements: (1) the public interest requirement and (2) the requirement that the requester's commercial interest in the disclosure. Both of these statutory requirements must be satisfied before properly assessable fees are waived or reduced, with the requester bearing the burden of showing the statutory standard is met.

FOIA Request

- A FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., "first-party" requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act "systems of records" or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency.

Full Grant

- An agency decision to disclose all records in full in response to a FOIA request.

Full Denial

- An agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as a no records could be located.

Multi-track Processing

- A system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first-in/first-out basis.

i. Expedited processing

- an agency will process a FOIA request on an expedited basis when a requester satisfied the requirements for expedited processing as set forth in the statute and in agency regulations.

ii. Simple request

-a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.

iii. Complex request

-a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.

Partial Grant/Partial Denial

- This is in response to a FOIA request, an agency decision to disclosure portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

Pending Request or Pending Administrative Appeal

- A request or administrative appeal for which an agency has not taken final action in all respects.

Perfected Request

-A request for records, which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.

Processed Request or Processed Administrative Appeal

- A request or administrative appeal for which an agency has taken a final action in all respects.

Referral

- When an agency locates records which originated with another agency or component, the records are ordinarily referred to the originating agency for processing and direct response to the requester.

Time Limits

- The time period in the statute for an agency to respond to a FOIA request (ordinarily 20 working days from a proper receipt of a perfected FOIA request).

DRAFTED September 2014

ⁱ Information added as of 11/10/2022

FOIA PROCESSING QUICK GUIDE

1. Initial request information

- Read request thoroughly, pay attention to the receive date, determine scope (seek clarification from requester if necessary).
 - Note: Requests received by fax or email – the **receipt date is the date the item was faxed or emailed to the Agency.**
- Identify if it is FOIA or PA
 - Note: PA will require verification of identity
- Assign case number, create an online folder to store request and save request to folder.

2. Acknowledgement/Expedition/Fee Information

- Acknowledgement must be sent **within 20 working days**
- Is expedited service requested? – Determination must be made in **10 calendar days**.
- Is fee waiver requested?
- What is the requester's fee category?

3. Searching for Documents/Records

- Send the necessary search email to the appropriate division (office).
- The appropriate office conducts email/computer searches.
- OGC – receives a clean copy of retrieved documents and the search estimate form from the search office
- Are located documents responsive?
- Address any fee issues (search estimate is used in calculating fees).

4. Reviewing Retrieved Documents/Records

- Are consultations and/or referral required?
 - Note: Consult with contractors before releasing their documents. Documents belonging to other agencies such as OPM, DOS, etc. send a referral letter along with documents found.
- Verify with search office that documents are releasable to public.
- Apply the appropriate redactions and exemptions to documents.
- Separate releasable from non-responsive documents.
- Can any discretionary releases be made? ^{(b) (5)}

5. Letter to Requester

- Account for all responsive documents (released, withheld in part or in full, referred).
- List and describe all exemptions taken (including PA exemptions if 1st party request).
- Address any fee issues and appeal rights.

6. File Organization

- Clearly identify all responsive documents, including those withheld in full.
- Keep detailed case notes (in case the request goes into litigation).
- Document any outstanding issues (if acknowledgement letter was return because of wrong address, slow response from requester about narrowing the scope, etc.)
- Description of action taken on each documents should be clearly understandable by attorney reading the file if case is applied.

7. Closeout Case

- Move online case folder to the CLOSED file

October 1st – starts the new FOIA year