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Description of document: US Marshals Service (USMS) Freedom of Information Act (FOIA) Standard Operating Procedure (SOP) 2020

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United States Marshals Service  
Office of the General Counsel  
Freedom of Information Act Unit,  
CG-3, 15th Floor,  
Washington, DC 20530-0001  
[USMS FOIA Portal](#)

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**U.S. Department of Justice**

United States Marshals Service

*Office of General Counsel*

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*CG-3, 15<sup>th</sup> Floor  
Washington, DC 20530-0001*

August 29, 2024

**Re: Freedom of Information Act Request No. 2022-USMS-000674**  
**Subject: FOIA Request re FOIA Standard Operating Procedures**

Dear Requester:

The United States Marshals Service (USMS) is responding to your Freedom of Information Act (FOIA) request received by USMS on May 22, 2022 for the following:

*"A copy of each (internal) FOIA Standard Operating Procedure (SOP) at the US Marshals Service FOIA Office. Please apply the foreseeable harm test, and discretionary release of what might otherwise be considered records exempt under b(5), and the presumption of openness.."*

Pursuant to your request, the USMS conducted a search for records responsive to your request and located 41 pages of responsive documentation within the following offices/divisions:

Office of General Counsel

To withhold a responsive record in whole or part, an agency must show both that the record falls within a FOIA exemption, 5 U.S.C. § 552(b), and that the agency "reasonably foresees that disclosure would harm an interest protected by exemption." See § 552(a)(8)(A)(i)(I); *Machado Amadis v. U.S. Dep't of State*, 971 F.3d 364 (D.C. Cir. 2020). As described in this correspondence, the USMS reviewed responsive records to your request and asserted FOIA exemptions as appropriate. Further, the USMS has determined it is reasonably foreseeable that disclosure of the withheld information would harm an agency interest protected by the exemption. These pages are released to you with portions of 2 page(s) withheld and 0 page(s) withheld in full pursuant to the following Exemptions of the FOIA, 5 U.S.C. § 552(b):

(b)(6), FOIA Exemption (b)(6) allows an agency to withhold personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Records that apply to or describe a particular individual, including investigative records, qualify as "personnel," "medical," or "similar files" under Exemption 6. A discretionary release of such records is not appropriate. See United States Department of

Justice (DOJ) v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989).

(b)(7)(C), FOIA Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes to the extent that the production of such records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. A discretionary release of such records is not appropriate. See United States Department of Justice (DOJ) v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989). Accordingly, the personally identifiable information of law enforcement officers and government employees was withheld from the responsive documentation. The disclosure of such sensitive information contained in records compiled for law enforcement purposes to the public could subject law enforcement officers and other government personnel to harassment and unwelcome contact. This could disrupt and impede official agency activity, as well as endanger the safety of law enforcement officials. Additionally, the personally identifiable information of third parties named in the records was withheld. The disclosure of third-party information could constitute an unwarranted invasion of personal privacy and subject the individuals to embarrassment, harassment, and undue public attention. Individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations, not being associated unwarrantedly with alleged criminal activity, and controlling how communications about them are disseminated.

(b)(7)(E), FOIA Exemption (b)(7)(E) exempts from release information that would disclose law enforcement techniques or procedures, the disclosure of which could reasonably be expected to risk circumvention of the law. Public disclosure of law enforcement techniques and procedures could allow people seeking to violate the law to take preemptive steps to counter actions taken by USMS during investigatory operations. Information pertaining to case selection, case development, and investigatory methods are law enforcement techniques and procedures that are not commonly known. The disclosure of this information serves no public benefit and would have an adverse impact on agency operations. Furthermore, public disclosure of information such as internal URLs, codes, and internal identifying numbers could assist unauthorized parties in deciphering the meaning of the codes and numbers, aid in gaining improper access to law enforcement databases, and assist in the unauthorized party's navigation of these databases. This disclosure of techniques for navigating the databases could permit people seeking to violate the law to gain sensitive knowledge and take preemptive steps to counter actions taken by USMS during investigatory operations. The disclosure of this information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities.

(b)(7)(F), FOIA Exemption (b)(7)(F) protects law enforcement information that "could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F). Courts have routinely upheld the use of Exemption (b)(7)(F) to protect the identities of law enforcement agents, as well as protect the names and identifying information of non-law enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters. See *Garza v. U.S. Marshals Serv., et al.*, Civ. A. No. 16-0976, 2018 WL 4680205, \* 17 (D.D.C. Sept. 28, 2018); *Hammouda v. Dep't of Justice*, 920 F. Supp. 2d 16, 26 (D.D.C. 2013); *Fischer v. Dep't of Justice*, 723 F. Supp. 2d 104, 111 (D.D.C. 2010); *Blanton v. Dep't of Justice*, 182 F. Supp. 2d 81, 87 (D.D.C. 2002).

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) (2006 & Supp. IV (2010)). 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.

If you are not satisfied with the USMS determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." If possible, please provide a copy of your original request and this response letter with your appeal.

You may also contact Charlotte Luckstone or our FOIA Public Liaison at (703) 740-3943 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

*/s/ ERT for*

Charlotte Luckstone  
Senior Associate General Counsel  
FOIA/PA Officer  
Office of General Counsel

Enclosure



**United States Marshals Service  
Office of General Counsel  
Freedom of Information Act Unit**

**STANDARD OPERATING PROCEDURES**

Version Effective February 2020

Issued by Charlotte Luckstone, Associate General Counsel, FOIA/PA Officer

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**I. Receipt and Accessing of FOIA Requests**

**A. Submission of FOIA Requests**

The public can submit a FOIA request to USMS via hard copy mail or through email to USMS.FOIA@usdoj.gov or via fax. Incarcerated individuals may only submit a hard copy FOIA request to the following address in Washington, D.C.: FOIA/PA, Office of General Counsel, CG-3, 15th Floor Washington, DC 20350-0001. Mail addressed to OGC is receipted and scanned for any hazardous materials. After being scanned, the mail is then transported from the DC address to the address in Arlington, VA where the USMS OGC is physically located.

**B. Receipt of Incoming FOIA Requests**

A member of OGC's administrative staff receipts incoming FOIA requests. Newly submitted FOIA requests are logged into the agency's FOIA access database, which is a Microsoft Excel based application, and assigned a USMS processing number. The first four digits of the USMS processing number will always be the fiscal year (FY) in which the FOIA request was received.

Prior to the OGC administrative staff logging in a request to the FOIA access database, the administrative personnel should perform a check of the database to ensure the request was not already submitted to USMS. This check is designed to catch duplicate requests, as often a requestor may submit a request in two mediums (such as, email the request and also send a hard copy of the request). The data for the requisite fields entered into the FOIA access database includes the name of the Specialist to whom the request is assigned (processor field), the type of request, date of request, description, track, and the requestor's information.

Once the request is input into the FOIA access database, OGC administrative personnel send an acknowledgement letter to the requestor and the request is assigned to a FOIA/PA Specialist. See Attachment A, Sample Acknowledgement Letters. The version of the acknowledgement letter used will vary depending upon whether an individual is a prisoner, is not incarcerated, and/or failed to include the proper identity certification with the FOIA request.

Every request must be electronically maintained. For those requests that come in via hard copy or fax, administrative personnel is responsible for scanning in the hard copy request to the appropriate file on the shared drive. No FOIA request should remain in hard copy only. Once scanned, the hard copy of the request can be placed into the assigned Specialist's mailbox in the OGC mailroom. Emails indicating an electronic request was submitted to the FOIA email inbox can be dragged and dropped into the relevant sub-file in the FOIA inbox, where sub-files exist based on Specialist name.

FOIA Specialists must access a file on the OGC shared drive to ascertain what requests were assigned to that specific Specialist. The file can be located by accessing the S: drive, accessing the "FOIA" folder, and accessing the "Assigned FOIA Requests" folder. This folder contains sub-folders for each month. Within the respective month's sub-folder, there are folders for each Specialist, organized by name. Specialists must check these folders, in their individual name, no less than twice per week to see what incoming requests were assigned

to the Specialist. Requests are to be processed on a first-in, first-out basis. If a Specialist believes processing of a certain request should be accelerated, he or she should inform the FOIA/PA Officer of the reasons for that assessment.

### C. Referrals and Consultations

USMS FOIA may receive a FOIA referral from another federal agency. This occurs when a federal agency receives a FOIA request, searches for potentially responsive documentation, and locates documents originating from USMS in connection with that search. Federal agencies may send referrals electronically to (b)(7)(E)@usdoj.gov or via hard copy mail.

When a referral from another agency or DOJ component is received, it is not necessary to send an acknowledgment letter. Referrals should be logged in using the name of the original FOIA requester in the description field in the FOIA access database. The name of the FOIA Officer/agency forwarding the referral should not be used in the access database. Administrative personnel should indicate "Referral" in the description field. Once assigned to a FOIA Specialist, the referral should be processed and the responsive documents should be sent directly to the requestor, subject to appropriate withholdings.

USMS may receive FOIA consultations from federal agencies. This occurs when a federal agency receives a FOIA request, searches for potentially responsive documentation, and locates documents containing USMS equities. In a consultation, USMS will provide the federal agency with opinion regarding recommended withholdings. The USMS will not process and release the records; that remains under the purview of the federal agency who received the initial FOIA request. Consultations are typically received in the FOIA inbox (USMS.FOIA@usdoj.gov and (b)(7)(E)@usdoj.gov) and should be responded to electronically as soon as practicable. The FOIA/PA Officer will monitor the consultations email inbox and assign consultations as they are received.

## II. Responding to FOIA Requests

### A. Initial Review of a FOIA Request

As indicated in Section 1, the assigned FOIA Specialist will access his or her file on the OGC shared drive and will review any requests assigned at least twice per week. If the requester seeks expedited review and/or a fee waiver, the FOIA Specialist should promptly notify the requester whether his/her request meets the requirements for such expedited review and/or a fee waiver. Standards for expedited review and a fee waiver are articulated below in Section D. The Specialist should make these determinations in conjunction with the FOIA/PA Officer.

### B. Ascertaining where to task a FOIA Request

The face of the FOIA request may indicate which geographic District Office and/or Headquarters Division may possess records responsive to a FOIA request, should any exist. However, if the face of the FOIA request is not clear, a FOIA Specialist may access the Justice Detainee Information System (JDIS) for further guidance. A search of JDIS may be appropriate because JDIS is the main electronic database that houses all USMS prisoner records. These data records pertain to USMS prisoners who are in USMS custody or have a federal arrest



warrant issued, or are scheduled for a move between detention facilities. The information entered into JDIS represents all data on USMS prisoners provided by federal, state, and local criminal justice agencies, courts, medical care professionals, public and private organizations, witnesses, informants, and other persons interviewed during fugitive investigations. If an individual was in USMS custody, there will be a corresponding record in JDIS. Conversely, if an individual was never in USMS custody, there would be no JDIS record for that person. JDIS may help a FOIA Specialist uncover where an individual was arrested and/or incarcerated, thus providing the Specialist with direction regarding which Office or Division should receive the search request.

FOIA Specialists are not to access and pull records from JDIS themselves. Specialists may only access JDIS to do a preliminary search to ascertain which District Office and/or Headquarters Division may possess responsive records to a FOIA request, should any exist.

### C. Tasking the FOIA Request

Upon ascertaining the correct District Office and/or Headquarters Division to task the FOIA request, the Specialist then commences a search for records which are responsive to the request, should any exist. The Specialist sends an email to the FOIA Point of Contact (POC) within the District Office and/or Headquarters Division explaining the FOIA request and requesting a search in that office be conducted to uncover any potentially responsive documents.

Based on the contents of the FOIA request, and knowledge of work responsibilities and records management within the District and/or Headquarters Division, the FOIA POC will then disseminate the FOIA request to employees located in that office who may possess responsive records. A District Office and/or Headquarters Division has five (5) days to respond to the FOIA tasking and may request an extension to this deadline, if necessary. The Specialist must attach the FOIA request to the email and also attach a Search Tracking Form.

The Search Tracking form requests the USMS employee(s) tasked with a FOIA request certify that a search of all appropriate subject matter file(s) and/or systems of record(s) in a specific office was conducted. Depending on the substance of the FOIA request and the manner in which a specific office and record custodian(s) maintains agency record(s), this could include searching internal databases, hard copy files, email accounts, electronic records on the hard drive of a computer, and electronic records on the shared drive of a computer. Individual FOIA POCs and USMS employees are best suited to ascertain and evaluate which personnel, and which location(s) in a specific office, may possess potentially responsive documentation to a FOIA request. This can vary based on the responsibilities of employees in the office, individual recordkeeping practices, and the specific operational tasks a District Office and/or Headquarters Division is assigned to complete. The Search Tracking Form must be completely executed by the USMS employee(s) who completed the search in the District Office and/or Headquarters Division and remitted along with potentially responsive documentation to OGC. See Attachment B, Search Tracking Form.

### D. Expedited Processing, Fees, and Requests for Fee Waiver

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If a requestor asks for expedited processing of the FOIA request, and/or a fee waiver, the FOIA Specialist engages in some basic fact-finding and preliminary analysis before presenting a recommendation to the FOIA/PA Officer for a final determination.

The FOIA requires agencies to issue regulations that provide for the expedited processing of FOIA requests for requesters who demonstrate compelling need or for any other case deemed appropriate by the Agency. Under the FOIA, a requester can show "compelling need" in one of two ways: (1) by establishing that his or her failure to obtain the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;<sup>1</sup> or, (2) if the requester is a person primarily engaged in disseminating information, by demonstrating that there exists an urgency to inform the public concerning actual or alleged Federal Government activity.<sup>2</sup>

The FOIA Specialist evaluates the face and subject matter of the FOIA request, and the identity of the requestor, to see if the request is properly subject to expedited processing.

Fees may be charged by an agency processing a response to a FOIA request. The FOIA provides for three categories of requesters: 1) commercial use requesters; 2) educational institutions, noncommercial scientific institutions, and representatives of the news media; and finally, 3) all requesters who do not fall within either of the preceding two categories.<sup>3</sup> The FOIA provides for three types of fees that may be assessed in response to FOIA requests: search, review, and duplication.<sup>4</sup> The fees that may be charged to a particular requester are dependent upon the requester's fee category. Commercial use requestors are assessed all three types of fees. Education or noncommercial scientific institutions, as well as members of the news media, are assessed only duplication fees, as applicable. All other requestors are assessed both search and duplication fees. Note that for records transmitted electronically, there are typically no duplication costs (which are the direct costs associated with making copies of records). Agencies must provide the first one hundred pages of duplication, as well as the first two hours of search time, at no cost.<sup>5</sup>

Notably, a federal agency cannot assess fees when the FOIA time limits are not met, unless certain specific situations are present. In order to assess fees, a federal agency must substantively respond to the FOIA request within a 20 calendar day window, and may invoke an additional 10 day extension if unusual circumstances apply.

A FOIA requestor may submit a written request to have any fees associated with the FOIA request waived. The fee waiver standard of the 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

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<sup>1</sup> See 5 U.S.C. § 552(a)(6)(E)(v)(I); *Lawyers Comm. for Civil Rights of the San Francisco Bay Area v. Dep't of the Treasury*, No. 07-2590, 2009 WL 2905963, at \*2 (N.D. Cal. Sept. 8, 2009); *Judicial Watch, Inc. v. Rossotti*, No. 01-2672, 2002 WL 31962775, at \*2 n.8 (D. Md. Dec. 16, 2002), aff'd sub nom. *Judicial Watch, Inc. v. U.S.*, 84 F. App'x 335 (4th Cir. 2004).

<sup>2</sup> See 5 U.S.C. § 552(a)(6)(E)(v)(II); *Nat'l Day Laborer Org. Network v. ICE*, 236 F. Supp. 3d 810, 817 (S.D.N.Y. 2017).

<sup>3</sup> See 5 U.S.C. § 552(a)(4)(A)(ii)(I)-(iii).

<sup>4</sup> *Id.*

<sup>5</sup> See 5 U.S.C. § 552(a)(4)(A)(iv)(I).

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or activities of the government and is not primarily in the commercial interest of the requester.<sup>6</sup> Requests for a fee waiver should be evaluated on a case by case basis. If a requestor does not provide enough information to support the request for a fee waiver, the FOIA Specialist may request additional clarifying information.

The FOIA Specialist should evaluate the face and subject matter of the FOIA request, and the identity of the requestor, to see if a waiver of fees is warranted.

### E. Processing of Records

Upon receipt of records submitted by a FOIA POC in a District Office and/or Headquarters Division, the FOIA Specialist first performs a responsiveness assessment, to ensure that the records submitted to the FOIA Unit are actually responsive to the FOIA request. To the extent duplicative documents exist, the Specialist should remove the duplicative documents from the potential production.

Once responsiveness is established, the Specialist processes the records in accordance with the FOIA and asserts FOIA exemptions, as appropriate. The following is a non-exhaustive list of the most commonly utilized FOIA exemptions by USMS.

- A. Frequently Asserted FOIA Exemptions – Personal Privacy Interests. The following FOIA exemptions are asserted to protect information such as law enforcement officer names (state, local, and federal), USMS employee names (such as, the names of Deputy United States Marshals (DUSMs)), phone numbers, email addresses, suite numbers, and personal identifying information, the release of which could result in undue attention, embarrassment and/or harassment:
- a. FOIA Exemption (b)(6) allows an agency to withhold personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Records that apply to or describe a particular individual, including investigative records, qualify as “personnel,” “medical,” or “similar files” under Exemption 6.
  - b. Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes to the extent that the production of such records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. A discretionary release of such records is not appropriate.<sup>7</sup>
  - c. FOIA Exemption (b)(7)(F) protects law enforcement information that “could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524. Courts have routinely upheld the use of Exemption (b)(7)(F) to protect the identities of law enforcement agents, as well as protect the names and identifying information of non-law enforcement federal employees, local

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<sup>6</sup> See *Cause of Action v. FTC*, 799 F.3d 1108, 1115 (D.C. Cir. 2015).

<sup>7</sup> See *United States Department of Justice (DOJ) v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

law enforcement personnel, and other third persons in connection with particular law enforcement matters.<sup>8</sup>

- i. The personally identifiable information of law enforcement officers and government employees will be withheld from responsive documentation. The disclosure of such sensitive information contained in records compiled for law enforcement purposes to the public could subject law enforcement officers and other government personnel to harassment and unwelcome contact. This could disrupt and impede official agency activity, as well as endanger the safety of law enforcement officials.
- ii. Additionally, the personally identifiable information of third parties named in the records should be withheld pursuant to FOIA Exemptions b(6) and b(7)(C). The disclosure of third party information could constitute an unwarranted invasion of personal privacy and subject the individuals to embarrassment, harassment, and undue public attention. Individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations, not being associated unwarrantedly with alleged criminal activity, and controlling how communications about them are disseminated.

B. Frequently Asserted FOIA Exemptions – Law enforcement techniques and procedures. The following FOIA exemptions are asserted to withhold law enforcement techniques and procedures, the disclosure of which could reasonably be expected to risk circumvention of the law.

- a. FOIA Exemption (b)(7)(A) withholds from public release "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings."<sup>9</sup> Exemption (b)(7)(A) permits withholding of information when a law enforcement proceeding is pending or prospective, and release of information pertaining to the open investigation could reasonably be expected to cause some articulable harm. This exemption may be invoked when an agency retains oversight over an investigatory matter or some other continuing enforcement-related responsibility.<sup>10</sup>
- b. FOIA Exemption (b)(7)(E) exempts from release information that would disclose law enforcement techniques or procedures, the disclosure of which could reasonably be expected to risk circumvention of the law. This exemption can be used to withhold details about law enforcement investigations, operations, and information pertaining to confidential sources. In addition, FOIA Exemption (b)(7)(E) can be used to

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<sup>8</sup> See *Rugiero v. DOJ*, 257 F.3d 534, 552 (6th Cir. 2001); *Johnston v. DOJ*, No. 97-2173, 1998 WL 518529, \*1 (8th Cir. Aug. 10, 1998).

<sup>9</sup> See 5 U.S.C. § 552(b)(7)(A) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524.

<sup>10</sup> See *Alaska Pulp Corp. v. NLRB*, No. 90-1510D, slip op. at 2 (W.D. Wash. Nov. 4, 1991); *Erb v. DOJ*, 572 F. Supp. 954, 956 (W.D. Mich. 1983); *ABC Home Health Servs. v. HHS*, 548 F. Supp. 555, 556, 559 (N.D. Ga. 1982); *Timken v. U.S. Customs Serv.*, 531 F. Supp. 194, 199-200 (D.D.C. 1981).

withhold internal law enforcement identifying numbers. See Attachment C, Properly Redacted Identifying Numbers.

- i. Public disclosure of information such as internal URLs, codes, and internal identifying numbers could assist unauthorized parties in deciphering the meaning of the codes and numbers, aid in gaining improper access to law enforcement databases, and assist in the unauthorized party's navigation of these databases. This disclosure of techniques for navigating the databases could permit people seeking to violate the law to gain sensitive knowledge and take preemptive steps to counter actions taken by USMS during investigatory operations. The disclosure of this information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities.

C. FOIA Exemptions – documentation that would ordinarily be exempt in civil discovery.

- a. Exemption 5 of the Freedom of Information Act protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."<sup>11</sup>
  - i. Exemption 5 covers documents protected under the deliberative process privilege, attorney-client privilege, and attorney work product privilege.
  - ii. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The deliberative process privilege is asserted to encourage the expression of candid opinions and free and frank exchange of information among agency personnel. Exemption (b)(5) and the deliberative process privilege may be utilized to withhold documentation such as non-final legal memorandums, policies, and settlement agreements, and portions of related email correspondence discussing the non-final, draft documents.
  - iii. The attorney work product privilege exempts from public release materials prepared in anticipation of litigation. Exemption (b)(5) and the attorney work product privilege may be utilized to withhold draft legal filings, trial preparation discussions, and litigation risk assessments.
  - iv. The attorney-client privilege can apply if the documents encompass confidential communications between a USMS attorney and his client relating to a legal matter for which the client has sought professional advice. This privilege applies to facts that are divulged to the attorney and encompasses the opinions given by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure in order to encourage a full and frank discussion between the client and his legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these

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<sup>11</sup> See 5 U.S.C. § 552(b)(5) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524.

communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel. Exemption (b)(5) and the attorney client privilege may be invoked over portions of email communications and draft documents sent from operational personnel to OGC personnel.

D. FOIA Exemption – contract information.

- a. Exemption 4 of the FOIA protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. This exemption is intended to protect the interests of both the government and submitters of information. The exemption covers two broad categories of information in federal agency records: (1) trade secrets; and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential.
  - i. Exemption 4 may be utilized to withhold proposed contract amounts.

If a Specialist has questions pertaining to a FOIA exemption, he or she should contact the FOIA/ PA Officer for guidance prior to transmittal of the records to the requestor. The final adjudication letter transmitted along with the responsive records should contain an explanation of all exemptions asserted on the responsive documentation. It should also state which District Office(s) and/or Headquarters Division(s) was tasked to search for responsive documentation and the total amount of pages that were processed by the FOIA Specialist.

F. Requests Requiring Additional Procedures

A. First Party and Third Party Requests

- a. The majority of FOIA requests received by USMS are first party requests for records, and individuals making a records request pertaining to a third party.
- b. An individual must provide a DOJ Form 361, *Certification of Identity*, executed by themselves, if they request personal records maintained by the agency. If a request pertains to a third party, the individual requesting the records must provide an executed DOJ Form 361, showing that the subject of the records consents to their records being released to another individual, or proof of death of the individual in question.
- c. All substantive responses to first party and third party requests must be reviewed by the Investigative Operations Division (IOD), the Prisoner Operations Division (POD) and Judicial Security Division (JSD), as appropriate, prior to dissemination.
- d. Upon assignment of a first party or third party request, the FOIA Specialist should process the FOIA request normally and assert withholdings on the responsive documents. Prior to dissemination, the FOIA Specialist must send the records, with proposed withholdings and the final adjudication letter, to the relevant IOD, POD, and/or JSD POCs for review.
- e. Once concurrence is received from the operational divisions, the FOIA Specialist may send the responsive documents to the requestor.

B. Media Requests

- a. Upon receipt of a request from a member of the news media, the FOIA Specialist will promptly notify the Chief, Office of Public Affairs (OPA) of the request via email, CC'ing the FOIA/PA Officer.
- b. Prior to dissemination of responsive documents to the media requestor, the FOIA Specialist must again consult with the OPA Chief and provide the documents with proposed withholdings to the FOIA/PA Officer and the OPA Chief for concurrence. As applicable, the responsive documents must also be vetted by IOD, POD, and/or JSD as described in Section A, above. Once all concurrences are obtained, the documents and final response letter can be disseminated to the requestor.

C. High Profile Individuals

- a. Upon receipt of a request pertaining to a high profile individual, the FOIA Specialist will promptly notify the Chief, Office of Public Affairs (OPA) of the request via email, CC'ing the FOIA/PA Officer.
- b. Prior to dissemination of responsive documents to the requestor, the FOIA Specialist must again consult with the OPA Chief and provide the documents with proposed withholdings to the FOIA/PA Officer and the OPA Chief for concurrence. As applicable, the responsive documents must also be vetted by IOD, POD, and/or JSD as described in Section A, above. Once these concurrences are is obtained, the documents and final response letter can be disseminated to the requestor.

D. Threat Requests

- a. If a proposed release pertains to an individual who threatened a member of the Judiciary, or a judicial threat or investigation, upon receiving the request, the FOIA Specialist should alert the FOIA/PA Officer.
- b. Prior to disseminating any redacted documents, the FOIA Specialist must obtain the concurrence of the Judicial Security Division, the Deputy General Counsel and General Counsel within OGC, and the FOIA/PA Officer.
- c. Once those concurrences with the proposed withholding and final agency determination letter are obtained, the FOIA Specialist must sent a copy of the request and documents with proposed redactions to the Administrative Office for the US Courts (AOUSC). Only once AOUSC concurrence is received can the responsive documents be released to the requestor.

E. Documentation Pertaining to Supreme Court Justice Travel

- a. If a FOIA Specialist is assigned a FOIA request pertaining to DUSM accompaniment on Supreme Court Justice travel, the Specialist must alert the FOIA/PA Officer.
- b. Once the documents have been processed for release, the Specialist must receive the concurrence of the FOIA/PA Officer, Deputy General Counsel, General Counsel, and legal representatives for the Supreme Court prior to any public dissemination.

F. Investigative or Sensitive Records

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## Freedom of Information Act Unit: Standard Operating Procedures

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- a. All responses involving investigative material, security information, or law enforcement techniques or procedures, whether involving high profile cases or not, must be reviewed by the responsible operational office from which the documents emanate.

### G. Additional OGC Review Required

- a. Certain attorneys within OGC must review responses to FOIA requests prior to public dissemination. See Attachment D for a full listing of OGC subject matter experts, by area.

### G. Sending Out the Final Agency Determination

Once processed and all requisite concurrences are obtained, the Specialist prepares and signs a Disclosure Letter notifying the requester of the agency's determination regarding disclosure and enclosing any responsive documents. All responsive documents must be Bates numbered prior to dissemination. The disclosure letter must inform the requester of the locations where the agency searched for responsive documentation, how many pages were located in response to the FOIA search, and the FOIA exemptions asserted on the responsive documents. The final response letter must also inform the requestor of his or her right to appeal the initial determination by USMS to the Department of Justice Office of Information Policy (OIP) and right to FOIA mediation. See Attachment E, Draft FOIA Response Letters. Other than the sections noted in red, FOIA Specialists should not make modifications to the response letters. If a FOIA Specialist needs additional, relevant language, he or she should consult with the FOIA/PA Officer. Such situations could include when the requestor has posed questions as a FOIA request, asked for an explanation of released documents, and/or has submitted a very overbroad FOIA request. The draft response letters included as Attachment E may be modified **only to add/remove approved language explaining the relevant FOIA Exemptions.**

If the request was received electronically in the USMS FOIA Mailbox, the FOIA Specialist then sends the response by email to the requester. The Specialist must use the USMS.FOIA email address or the USMSFOIAMail email address for this and not his or her personal DOJ email address. If it is necessary to send a hard copy of the response to the requester, the Specialist may provide the responsive records and final adjudication letter to the relevant OGC administrative personnel for mailing or faxing.

Once the final agency determination is sent, the FOIA request is considered closed. All relevant fields in the FOIA access database must be updated by the Specialist to reflect that the request is closed. Upon closing out FOIA request, the administrative record (to include the FOIA request, search request email and search tracking form, final agency response, and redacted documents) must be added by the Specialist to the FOIA shared drive, under the sub-folder "FOIA-PA Files." The requests must be filed by fiscal year and requestor name. The Specialist must ensure a PDF print screen copy of the access database screen (showing the case has been closed) along with a copy of the request, disclosure letter, and documents, is added to the closed file.

If it is necessary to send a hard copy of the response to the requester and the Specialist is working from a remote location, she or he may send the response by email to the relevant OGC administrative



personnel, who will print out the response and transmit by mail or fax to the requestor no later than 2 business days after the remote Specialist request.

### **III. Recordkeeping in the Shared Drive**

#### **A. FOIA Requests**

All specialists will have a file, identified by name, in the OGC shared drive under the main “FOIA” folder. This main file will have sub-files for “closed” and “open” FOIA requests based on fiscal year.

Within the “FOIA” folder in the OGC shared drive (in the sub-file identified by Specialist/employee name), the Specialists will organize files as follows:

- A. Have a FY file for active FOIA requests and a separate one for closed FOIA requests, and then sub-files within each, where cases are identified by the case number and the requestor name.
- B. Have sub-files within that identifying file. The sub-files will be named and organized as follows:
  - a. Acknowledgement Letter and Tasking Emails
  - b. Final Documents (where the response letter and redacted responsive documents are maintained)
  - c. Request (where the initial FOIA request will be housed)
  - d. Responsive Documents (where clean copies of the responsive documents and the search request form, properly executed, must be placed).
  - e. Additionally, Specialists must keep a “record of significant events” word document for each FOIA request. This document will detail dates and actions taken on the FOIA requests.

#### **B. FOIA Litigation**

- A. Each Specialist must have a sub-folder within their file in the OGC Shared Drive, entitled “FOIA Litigations.” Within the “FOIA Litigation” folder, the Specialists must have folders for each litigation identified by case name. Each folder for a specific case must contain the following sub-folders:
  - a. Administrative record (this contains documentation pertaining to the processing and response to the initial FOIA request).
  - b. Complaint and Other Court Filings
  - c. Searches Conducted In Litigation (this is where the Specialist will maintain copies of emails sent out with additional taskings and completed search tracking forms)
  - d. Documents Released in Litigation – this folder must have the following sub-folders:
    - i. Sub Folders:

- i. "Clean"
- ii. "Redacted"
  - a. Both the clean and redacted versions of documents must be Bates stamped.
- e. Important Communications (here the Specialist must house copies of any emails with AUSAs where important litigation decisions were made, and any correspondence showing case strategy decisions and agreements made with opposing counsel).

#### **IV. Reporting and Attendance Obligations**

FOIA Specialists are to provide a monthly report to the FOIA/PA Officer, detailing their accomplishments for the preceding month. This report should state data such as how many pages the FOIA Specialist processed, how many FOIA requests the FOIA Specialist closed out, and if the FOIA Specialist had any involvement in FOIA litigations. The aforementioned list is non-exhaustive; the FOIA Specialist should highlight any important and meaningful work of which he or she feels the FOIA/PA Officer should be aware. Monthly reports should be sent on the 1<sup>st</sup> of each month, reflecting the work that was done in the prior month.

If a FOIA Specialist teleworks, he or she must send an end of day report to the FOIA/PA Officer reporting what the FOIA Specialist completed. The report should be sent before the FOIA Specialist logs off his or her computer for the workday and should be as detailed as possible.

Should a FOIA Specialist work remotely for an extended period of time, he or she is responsible for sending weekly reports to the FOIA/PA Officer, detailing what the FOIA Specialist completed that week. These reports should be as comprehensive as possible and sent to the FOIA/PA Officer by close of business on Friday.

Any leave (whether sick or annual leave) should be submitted as soon as practicable in WebTA. If a FOIA Specialist is out unexpectedly, he or she should email or text message the Deputy General Counsel and FOIA/PA Officer as soon as possible.

FOIA team meetings are held once per month. Attendance by FOIA Unit personnel is mandatory.

FOIA Specialists are expected to respond to communication (whether from the FOIA/PA Officer, other attorneys in OGC, and/or representatives from another federal agency) in the format the communication was originally received, in a timely manner. For example, if a Specialist is emailed about the status of a certain case, the Specialist will issue a response in written form. The Specialist is free to engage in verbal conversation about the contents of the email; however, a written response is also required.

## V. Asset Forfeiture

FOIA requests dealing with asset forfeiture matters are handled by a Forfeiture Support Associates (FSA) contractor. OGC administrative personnel receiving FOIA requests should identify a FOIA request as pertaining to asset forfeiture matters, and assign the FOIA request accordingly. The FSA contractor will then work with the FOIA/PA Officer and asset forfeiture subject matter experts within OGC to process and respond to the FOIA request. The FSA Contractor handling FOIA requests that pertain to asset forfeiture must submit a monthly report of work completed to the FOIA/PA Officer.

## VI. Signature Block Language

All FOIA Specialists and OGC administrative personnel must have the following language in their email signature blocks:

*NOTICE: This email (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient (or the recipient's agent), you are hereby notified that unauthorized dissemination, distribution, copying, or use of this email or its contents is prohibited and may violate applicable law. If you received this email in error, please notify the sender immediately and destroy all copies.*

## VII. Requests for Mug Shots

FOIA Specialists will not release mug shots for USMS prisoners. OGC Policy prohibits the dissemination of mug shots, except for in limited circumstances where dissemination of the photo may serve a law enforcement interest. The FOIA Specialist should never make this determination without consultation with the FOIA/PA Officer, the Deputy General Counsel, and General Counsel of OGC. The FOIA Unit has a specific, standardized letter to respond to requests for mug shots. See Attachment F, Mug Shot Response Letter.

## VIII. Requests forwarded to FOIA/PA Officer

If received by a FOIA Specialist or OGC administrative personnel, the following requests should be forwarded to the FOIA/PA Officer:

- A. *Touhy* requests (requests for USMS records in a litigation where the United States is not a party);
- B. State open records requests;
- C. Privacy Act amendment requests;
- D. Requests for records certification;
- E. Requests for declarations in connection with FOIA litigations;
- F. Requests for *Vaughn* indices in connection with FOIA litigations;
- G. Consular requests for records on a foreign national;
- H. Any request for modification of a standardized FOIA agency determination letter.

**IX. OGC Telephone Receiving and Transferring Instructions**

OGC provides the following guidance to administrative personnel who answer phone calls from the general OGC phone number:

- A. No administrative staff will provide OGC staff's office or cellular numbers to callers.
- B. A call will not be automatically transferred to an OGC attorney or FOIA Specialist's direct line.
- C. If a caller asks for a specific OGC attorney or FOIA Specialist, the OGC administrative personnel will call that employee to ask if he or she will accept the call from the caller. The administrative personnel will provide the caller's name and brief detail regarding why the caller is calling.
- D. OGC administrative personnel can take a message, with the caller's name, phone number, and purpose for call. The message should note whether or not the caller is a USMS employee or from another federal agency, or a member of the public. OGC administrative personnel will promptly provide this information in email form to the OGC attorney or FOIA Specialist.
- E. If a desired employee is teleworking, OGC administrative personnel are not to give out the employee's cell phone number. Rather, OGC administrative personnel should take a detailed message and relay this information via email in a prompt manner to the OGC attorney or FOIA Specialist the caller wishes to reach.
- F. If a caller becomes threatening or uses vulgar and/or profane language, the OGC administrative personnel should note the telephone number immediately off the caller ID and should inform the caller that if he/she continues to be verbally abusive, the OGC administrative personnel will end the call. If verbal abuse continues, the OGC administrative personnel should end the phone call and inform his/her management immediately.

# **Attachment A – Sample Acknowledgement Letters**

Freedom of Information Act Unit: Standard Operating Procedures

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**U.S. Department of Justice**

United States Marshals Service

*Office of General Counsel*

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*CG-3, 15<sup>th</sup> Floor  
Washington, DC 20530-0001*

**PRISONER ACK. LETTER**

**Date**

**Name**  
**Address**

**RE: Freedom of Information/Privacy Act Request No. 2020USMSXXXXX**  
**Subject: FOIA request for Name/Subject Matter**

Dear **NAME**,

The United States Marshals Service (USMS) is in receipt of your Freedom of Information Act/Privacy Act (FOIA/PA) request for records pertaining to **XXX**.

The USMS adopted a "first in/first out" practice for processing all incoming FOIA/PA requests. Your request was placed in chronological order based on the date of receipt and will be handled as quickly as possible when assigned for processing. If you have any questions regarding the status of your request you may contact the Government Information Specialist assigned to your request at the following address:

United States Marshals Service  
CG-3, 15<sup>th</sup> Floor  
Washington, DC 20530-001

Due to a substantial backlog of requests, it is estimated the processing of your request may be significantly delayed. I regret the necessity of this, but assure you that your request will be processed as soon as possible.

At this time, the USMS is unable to determine the amount of fees to be charged to you (if any). The filing of your request constitutes your agreement to pay all applicable fees that may be charged under the Department of Justice FOIA/PA regulations in excess of \$25.00. You will be notified as soon as practicable if the estimated or actual fee for satisfying your request exceeds \$25.00.

Lastly, you may contact the USMS FOIA Public Liaison at the address listed above if you would like to discuss any aspect of your FOIA/PA request.

Sincerely,

Charlotte Luckstone  
Associate General Counsel  
Freedom of Information/Privacy Act Officer  
Office of General Counsel

Freedom of Information Act Unit: Standard Operating Procedures

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**U.S. Department of Justice**

United States Marshals Service

*Office of General Counsel*

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*CG-3, 15<sup>th</sup> Floor  
Washington, DC 20530-0001*

**NON-PRISONER ACK. LETTER**

**Date**

**Name**  
**Address**

RE: Freedom of Information/Privacy Act Request No. 2019USMSXXXXX  
Subject: FOIA request for **Name/Subject Matter**

Dear **NAME**,

The United States Marshals Service (USMS) is in receipt of your Freedom of Information Act/Privacy Act (FOIA/PA) request for records pertaining to **XXX**.

The USMS adopted a "first in/first out" practice for processing all incoming FOIA/PA requests. Your request was placed in chronological order based on the date of receipt and will be handled as quickly as possible when assigned for processing. If you have any questions regarding the status of your request you may contact the Government Information Specialist assigned to your request at the following address:

United States Marshals Service  
CG-3, 15<sup>th</sup> Floor  
Washington, DC 20530-001  
USMS.FOIA@usdoj.gov

Due to a substantial backlog of requests, it is estimated the processing of your request may be significantly delayed. I regret the necessity of this, but assure you that your request will be processed as soon as possible.

At this time, the USMS is unable to determine the amount of fees to be charged to you (if any). The filing of your request constitutes your agreement to pay all applicable fees that may be charged under the Department of Justice FOIA/PA regulations in excess of \$25.00. You will be notified as soon as practicable if the estimated or actual fee for satisfying your request exceeds \$25.00.

Lastly, you may contact the USMS FOIA Public Liaison at 703-740-3972 or at the address listed above if you would like to discuss any aspect of your FOIA/PA request.



Sincerely,

Charlotte Luckstone  
Associate General Counsel  
Freedom of Information/Privacy Act Officer  
Office of General Counsel

Freedom of Information Act Unit: Standard Operating Procedures

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**U.S. Department of Justice**

United States Marshals Service

*Office of General Counsel*

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*CG-3, 15<sup>th</sup> Floor  
Washington, DC 20530-0001*

Date

**IMPERFECT LETTER**

Name  
Address

**Re: Freedom of Information Act Request No. 2019USMSXXXXX**  
**Subject: NAME**

Dear Name:

Reference is made to your above-captioned Freedom of Information Act (FOIA) / Privacy Act (PA) request, received by the United States Marshals Service (USMS) on **DATE**.

Your request as submitted cannot be processed at this time. In order for the USMS to address your request, it is necessary for you to provide the following prerequisite element(s):

**Authorization to disclose records to you.** You must provide a written release, which includes your identifying data, authorizing the USMS to disclose information to you. A Certification of Identity Form, DOJ-361, may be used for this purpose or (if the request is submitted from an attorney's office) a declaration by your client signed under penalty of perjury. See 28 C.F.R §16.41. A Certification of Identity form is available online at <http://www.justice.gov/oip/doj-reference-guide-attachment-d-copies-forms>.

**Please return the required information to Attn: FOIA/PA, Office of General Counsel, CG-3, 15<sup>th</sup> Floor, U.S. Marshals Service, Washington, DC 20530-0001 or via email to [USMS.FOIA@usdoj.gov](mailto:USMS.FOIA@usdoj.gov).** We will acknowledge your request upon receipt of this information and correspond with you again accordingly.

Sincerely,

Charlotte Luckstone  
Associate General Counsel  
Freedom of Information/Privacy Act Officer  
Office of General Counsel

Enclosure

# **Attachment B – Search Tracking Form**

**Search Tracking Form**

Please report the results of your search in the appropriate space below and include the name and telephone number of the individual responsible for the search. Each person conducting a search within a specific office or district **must** fill out this form. Additionally, a **negative report (no records) is required, as applicable**. When your search is complete, return a copy or copies of this memorandum with the search results to the Office of General Counsel (OGC). Please search **all** electronic systems, email communications, and/or hard copy files, as applicable. **If you believe a record is particularly sensitive and/or subject to a law enforcement privilege, please alert the FOIA Specialist handling the request.**

**SEARCH RESULTS:** Please check the office and specific systems you searched.

**Date Search Conducted:** \_\_\_\_\_

Systems Searched in HQ	District	Suboffice(s)
OPF/EPF	_____	_____
BI/Internal	_____	_____
Emp. Relations	_____	_____
PPMS/PTS	_____	_____
Warrants	_____	_____
Civil Desk	_____	_____
Criminal Desk	_____	_____
Medical Records	_____	_____
Seized Assets	_____	_____
Other	_____	_____
Archived/Fed Rds. Ctr	_____	_____

**Terms used to query systems:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If you searched your email, please check and complete the following:**

\_\_\_\_\_ Electronic communications in Outlook were searched on \_\_\_\_\_ (please provide the date of your search) using the following terms (please provide the terms you used to search below):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Freedom of Information Act Unit: Standard Operating Procedures

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**Certification:** please check below as appropriate to certify:

- whether records were located (or, no records were located)
- whether hard copy records were additionally searched

\_\_\_\_\_ We have conducted a search of all appropriate subject-matter files and/or systems of records maintained by this office. We have collected responsive documents from our office, and/or suboffice as appropriate, and are forwarding these documents to your office herewith for final review.

\_\_\_\_\_ We have conducted a search of all appropriate **subject-matter files** and/or **systems of records** maintained by this office. We located **NO RECORDS** responsive to this request.

\_\_\_\_\_ We confirm that **hard copy “paper” files were searched**, as well as computerized records.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name (Print): \_\_\_\_\_ Title: \_\_\_\_\_  
Office: \_\_\_\_\_

# **Attachment C – Internal Identifying Numbers Protected Under FOIA Exemption (b)(7)(E)**

**This list is non-exhaustive; if you have a question regarding an internal identifying number, please see the FOIA/PA Officer.**

- **FBI number**
- **FID number**
- **Case Number**
- **NCIC Number**
- **Federal ORI Number**
- **TECS Number**
- **Certificate numbers**
- **Institution Codes**
- **Project Codes**
- **Special Assignment Numbers**
- **Fund Codes**
- **Organization Codes**
- **Transaction Codes**
- **District Codes**
- **Any state law enforcement identifying numbers, such as:**
  - o **ICR number**
  - o **Report numbers**
  - o **Case Numbers**
  - o **State ORI numbers**

# **Attachment D – List of OGC Personnel with Subject Matters Expertise**



# Freedom of Information Act Unit: Standard Operating Procedures

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## List of OGC Review by Subject Matter Current as of June 2019

(b)(6); (b)(7)(C); (b)(7)(F)

(b)(7)(E)

(b)(6); (b)(7)(C); (b)(7)(F)

- Serves as (b)(6); (b)(7)(C); (b)(7)(F)'s backup on (b)(7)(E)

(b)(6); (b)(7)(C); (b)(7)(F)

- solicitations, contracts, and vendor proposals.

(b)(6); (b)(7)(C); (b)(7)(F)

- Shooting Review Board cases.
- Witness Security Program information.

(b)(6); (b)(7)(C); (b)(7)(F)

- Special deputations.

(b)(6); (b)(7)(C); (b)(7)(F)

- Court Security Officers or (CSOs).

(b)(6); (b)(7)(C); (b)(7)(F)

- 
- 

(b)(7)(E)

- SOIB Administrative Subpoenas – utilized for sex offenders who fail to register as required by the law, or to locate unregistered sex offenders.

(b)(6); (b)(7)(C); (b)(7)(F)

- High profile cases
- Sensitive employment matters

**Charlotte Luckstone**

- FOIA/PA Officer; all requests for disclosure of information (whether to other federal, state, and/or local law enforcement entities, other governmental entities, federal and State courts, federal and state prosecutors).

# **Attachment E – Draft FOIA Final Response Letters**

# Freedom of Information Act Unit: Standard Operating Procedures

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**U.S. Department of Justice**

United States Marshals Service

*Office of General Counsel*

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*CG-3, 15<sup>th</sup> Floor  
Washington, DC 20530-0001*

Date

Name of Requestor  
Address

**Re: Freedom of Information Act Request No. XXX**  
**Subject: XXX**

Dear Requester:

The United States Marshals Service (USMS) is responding to your Freedom of Information Act (FOIA) request for **XXX**.

Pursuant to your request, the USMS conducted a search of the **XXX** and located **XXX** responsive pages. Portions of the pages are withheld pursuant to FOIA Exemptions (b)(6), (b)(7)(C), (b)(7)(F), (b)(7)(A), and (b)(7)(E).

FOIA Exemption (b)(6) allows an agency to withhold personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Records that apply to or describe a particular individual, including investigative records, qualify as "personnel," "medical," or "similar files" under Exemption 6. FOIA Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes to the extent that the production of such records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. A discretionary release of such records is not appropriate. See United States Department of Justice (DOJ) v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989).

FOIA Exemption (b)(7)(F) protects law enforcement information that "could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524. Courts have routinely upheld the use of Exemption (b)(7)(F) to protect the identities of law enforcement agents, as well as protect the names and

identifying information of non-law enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters. See Rugiero v. DOJ, 257 F.3d 534, 552 (6th Cir. 2001); Johnston v. DOJ, No. 97-2173, 1998 WL 518529, \*1 (8th Cir. Aug. 10, 1998).

Accordingly, the personally identifiable information of law enforcement officers and government employees was withheld from the responsive documentation. The disclosure of such sensitive information contained in records compiled for law enforcement purposes to the public could subject law enforcement officers and other government personnel to harassment and unwelcome contact. This could disrupt and impede official agency activity, as well as endanger the safety of law enforcement officials. Additionally, the personally identifiable information of third parties named in the records was withheld. The disclosure of third party information could constitute an unwarranted invasion of personal privacy and subject the individuals to embarrassment, harassment, and undue public attention. Individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations, not being associated unwarrantedly with alleged criminal activity, and controlling how communications about them are disseminated.

FOIA Exemption (b)(7)(A) withholds from public release "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." See 5 U.S.C. § 552(b)(7)(A) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524. Exemption (b)(7)(A) permits withholding of information when a law enforcement proceeding is pending or prospective and release of information pertaining to the open investigation could reasonably be expected to cause some articulable harm. This exemption may be invoked when an agency retains oversight over an investigatory matter or some other continuing enforcement-related responsibility. See Alaska Pulp Corp. v. NLRB, No. 90-1510D, slip op. at 2 (W.D. Wash. Nov. 4, 1991); Erb v. DOJ, 572 F. Supp. 954, 956 (W.D. Mich. 1983); ABC Home Health Servs. v. HHS, 548 F. Supp. 555, 556, 559 (N.D. Ga. 1982); Timken v. U.S. Customs Serv., 531 F. Supp. 194, 199-200 (D.D.C. 1981).

FOIA Exemption (b)(7)(E) exempts from release information that would disclose law enforcement techniques or procedures, the disclosure of which could reasonably be expected to risk circumvention of the law. Public disclosure of information such as internal URLs, codes, and internal identifying numbers could assist unauthorized parties in deciphering the meaning of the codes and numbers, aid in gaining improper access to law enforcement databases, and assist in the unauthorized party's navigation of these databases. This disclosure of techniques for navigating the databases could permit people seeking to violate the law to gain sensitive knowledge and take preemptive steps to counter actions taken by USMS during investigatory operations. The disclosure of this information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities.

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) (2006 & Supp. IV (2010)). 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.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site:

## Freedom of Information Act Unit: Standard Operating Procedures

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<https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may also contact the USMS FOIA Officer or our FOIA Public Liaison at (703) 740-3943 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Charlotte M. Luckstone  
Associate General Counsel  
FOIA/PA Officer  
Office of General Counsel

## Freedom of Information Act Unit: Standard Operating Procedures

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**U.S. Department of Justice**

United States Marshals Service

*Office of General Counsel*

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*CG-3, 15<sup>th</sup> Floor  
Washington, DC 20530-0001*

**Date**

**Name of Requestor  
Address**

**Re: Freedom of Information Act Request No. XXX  
Subject: XXX**

Dear Requester:

The United States Marshals Service (USMS) is responding to your Freedom of Information Act (FOIA) request for **XXX**.

Pursuant to your request, the USMS conducted a search of the **XXX** and located **XXX** responsive pages. All and/or portions of the pages are withheld pursuant to FOIA Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) and (b)(7)(F).

FOIA Exemption (b)(5) protects "inter-agency or intra-agency memorandums or letters which 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) (2006 & Supp. IV 2010). The three primary, most frequently invoked privileges that are incorporated into Exemption 5 are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. The deliberative process privilege protects the integrity of decision-making practices within an agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within non-final inter-agency or intra-agency memoranda or letters. Public release of internal, pre-decisional communications could discourage the expression of candid opinions among agency personnel. Employee trepidation regarding public release of internal agency communications and draft documents could inhibit the free and frank exchange of information among agency personnel. The purpose of the deliberative process privilege is to prevent injury to the quality of agency decisions. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975).

FOIA Exemption (b)(6) allows an agency to withhold personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Records that apply to or describe a particular individual, including investigative records, qualify as "personnel," "medical," or "similar files" under Exemption 6. FOIA Exemption (b)(7)(C) protects records or information compiled for law

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enforcement purposes to the extent that the production of such records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. A discretionary release of such records is not appropriate. See United States Department of Justice (DOJ) v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989).

FOIA Exemption (b)(7)(F) protects law enforcement information that "could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524. Courts have routinely upheld the use of Exemption (b)(7)(F) to protect the identities of law enforcement agents, as well as protect the names and identifying information of non-law enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters. See Rugiero v. DOJ, 257 F.3d 534, 552 (6th Cir. 2001); Johnston v. DOJ, No. 97-2173, 1998 WL 518529, \*1 (8th Cir. Aug. 10, 1998).

Accordingly, the personally identifiable information of law enforcement officers and government employees was withheld from the responsive documentation. The disclosure of such sensitive information contained in records compiled for law enforcement purposes to the public could subject law enforcement officers and other government personnel to harassment and unwelcome contact. This could disrupt and impede official agency activity, as well as endanger the safety of law enforcement officials. Additionally, the personally identifiable information of third parties named in the records was withheld. The disclosure of third party information could constitute an unwarranted invasion of personal privacy and subject the individuals to embarrassment, harassment, and undue public attention. Individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations, not being associated unwarrantedly with alleged criminal activity, and controlling how communications about them are disseminated.

FOIA Exemption (b)(7)(E) exempts from release information that would disclose law enforcement techniques or procedures, the disclosure of which could reasonably be expected to risk circumvention of the law. Public disclosure of information such as internal identifying numbers could assist unauthorized parties in deciphering the meaning of the numbers, aid in gaining improper access to law enforcement databases, and assist in the unauthorized party's navigation of these databases. The disclosure of this information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities.

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) (2006 & Supp. IV (2010)). 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.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site:

<https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."



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You may also contact the USMS FOIA Officer or our FOIA Public Liaison at (703) 740-3943 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Charlotte M. Luckstone  
Associate General Counsel  
FOIA/PA Officer  
Office of General Counsel

# **Attachment F – Mug Shot Response Letter**

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**U.S. Department of Justice**

United States Marshals Service

*Office of General Counsel*

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*CG3, 15<sup>th</sup> Floor  
Washington, DC 20530-0001*

**Date**

**Name**

**Address/Email Address**

**Re: Freedom of Information/Privacy Act Request No. XXX**

**Subject of Request: Booking Photographs**

Dear Requester:

The United States Marshals Service (USMS) is responding to your request for the booking photograph(s) of **Name**.

You did not provide a written authorization from the individual to whom the photo pertains, permitting you to receive his or her booking photograph. Additionally, a sufficient public interest overriding any first-party, privacy protected interest in the photograph has not been identified. Therefore, the USMS cannot release this record to you. Your request for booking photographs is denied pursuant to Exemptions (b)(6) (b)(7)(C), and (b)(7)(F) of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b).

Courts have held that individuals enjoy a non-trivial privacy interest in their booking photographs. See Detroit Free Press Inc. v. U.S. Department of Justice, 829 F.3d 478 (2016). Exemption (b)(6) allows an agency to withhold personnel, medical and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Exemption (b)(7)(C) allows an agency to withhold records or information compiled for law enforcement purposes to the extent that their production could reasonably be expected to constitute an unwarranted invasion of personal privacy. See U.S. Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) (to qualify as “public interest” information must “contribute significantly to public understanding of the operations and activities of the government”). A discretionary release of such records or information, if they exist, would be in violation of the Privacy Act of 1974, 5 U.S.C. § 552a.

Additionally, Exemption (b)(7)(F) protects law enforcement information that “could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524. Courts have routinely upheld the use of Exemption (b)(7)(F) to protect the identities of law enforcement agents, as well as protect the names and identifying information of non-law enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters. See Rugiero v. DOJ, 257 F.3d 534, 552 (6th Cir. 2001); Johnston v. DOJ, No. 97-2173, 1998 WL 518529, \*1 (8th Cir. Aug. 10, 1998). Exemption

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(b)(7)(F) protection has been extended to protect names of, and identifying information about, inmates. See Lee v. DOJ., No. 04-1013, 2007 WL 2852538, at \*7 (W.D. Pa. Sept. 27, 2007).

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) (2006 & Supp. IV (2010)). 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.

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You may also contact Charlotte Luckstone or our FOIA Public Liaison at (703) 740-3943 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Charlotte Luckstone  
Associate General Counsel  
FOIA/PA Officer  
Office of General Counsel

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<b>SOP Name/Title: Freedom of Information Act Unit: Standard Operating Procedures</b>	
<b>SOP Originator: Charlotte Luckstone, Associate General Counsel, FOIA/PA Officer</b>	<b>Document No: 1</b>
<b>SOP Approver: Charlotte Luckstone, Associate General Counsel, FOIA/PA Officer</b>	<b>SOP Approved Date: February 21, 2020</b>
<b>Effective Date: February 21, 2020</b>	<b>Last Edited Date: February 21, 2020</b>