



# governmentattic.org

*"Rummaging in the government's attic"*

Description of document: Department of the Treasury Directive Publication (TDP)  
25-05 The Freedom of Information Act Handbook, 2023

Requested date: 26-September-2024

Release date: 30-September-2024

Posted date: 14-October-2024

Source of document: FOIA Request  
Departmental Offices  
Disclosure Services  
Department of the Treasury  
Washington, DC 20220  
Email: [FOIA@treasury.gov](mailto:FOIA@treasury.gov)  
[Submit Online FOIA Request \(PAL\)](#)  
[FOIA.gov](http://FOIA.gov)

The governmentattic.org web site ("the site") is a First Amendment free speech web site and is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

9/30/2024

RE: Your FOIA Request to Treasury, Case Number 2024-FOIA-01787

This is the Department of the Treasury's final response to your Freedom of Information Act (FOIA) request dated 9/26/2024. You have requested copies of the following records:

"A copy of the Treasury Directive Publication (TD P) 25-05 Freedom of Information Act HANDBOOK, updated September 2023".

Your request has been processed under the provisions of the FOIA, 5 U.S.C. § 552. A search conducted within the Treasury Departmental Offices located 21 pages of records that are responsive to your request. After review, I have determined that those records will be released to you in their entirety. No exemptions have been claimed.

Please note the Treasury Directive Publication (TD P) 25-05 Freedom of Information Act HANDBOOK, was updated in November 2023, we have provided you with the updated copy.

There are no fees assessed since allowable charges fell below \$25.

You may reach me via telephone at 202-622-0930, extension 2; or via e-mail at [FOIA@treasury.gov](mailto:FOIA@treasury.gov). Please reference FOIA case number 2024-FOIA-01787 when contacting our office about this request.

Sincerely,

Shirley Brown  
Senior FOIA Analyst  
*for* Mark Bittner  
Director, FOIA and Transparency  
Office of Privacy, Transparency, and Records

Enclosures

Responsive document set (21 pages)

DEPARTMENT OF THE TREASURY  
FOIA and Transparency



FREEDOM OF INFORMATION ACT  
HANDBOOK

# The Freedom of Information Act Handbook

U.S. Department of the Treasury

**Updated 11/15/2023**

**TD P 25-05**

# The Freedom of Information Act Handbook

## Table of Contents

<b>THE DEPARTMENT OF THE TREASURY BUREAU FOIA/PA OFFICES.....</b>	<b>1</b>
<b>1. INTRODUCTION.....</b>	<b>1</b>
Policy .....	1
Background .....	1
Role of the Departmental Disclosure Office .....	1
<b>2. UNDERSTANDING THE REQUEST .....</b>	<b>2</b>
Who can request records under the FOIA?.....	2
Before a FOIA request can be processed, it must: .....	2
Reasonable description of records .....	2
Determining scope of request and obtaining clarification .....	2
First and Third-party requests .....	3
What the FOIA does not require .....	3
<b>3. RECEIVING THE REQUEST.....</b>	<b>3</b>
Initial Receipt .....	3
Expedited processing.....	3
Assignment of requests.....	3
<b>4. FEE CATEGORIES .....</b>	<b>3</b>
<b>5. FEES AND FEE WAIVERS .....</b>	<b>4</b>
Fees for processing requests .....	4
Restrictions on Charging Fees: .....	5
Fee waivers .....	6
Appeals of denials of requests for waiver or reduction of fees .....	6
<b>6. SEARCHING FOR RESPONSIVE RECORDS .....</b>	<b>6</b>
Conduct a reasonable search.....	6
Cut-off date .....	6
Providing records in the format requested .....	6
Computer search for electronic records .....	7
Retrieving records from the National Records Center.....	7

When no responsive records are found.....	7
Neither confirm nor deny “Glomar” application.....	7
<b>7. APPLYING THE FOIA EXEMPTIONS.....</b>	<b>7</b>
The “reasonably segregable” requirement .....	7
Additional guidance.....	9
<b>8. THE EXCLUSIONS .....</b>	<b>9</b>
<b>9. CONSULTATIONS AND REFERRALS OF DOCUMENTS .....</b>	<b>11</b>
<b>10.TIME LIMITS AND TIME EXTENSIONS .....</b>	<b>11</b>
Twenty (20)-day limit for responding. ....	11
Unusual circumstances .....	11
Expedited processing.....	12
Multitrack processing.....	12
<b>11. RESPONSES TO FOIA REQUESTS .....</b>	<b>12</b>
Grants of requests .....	12
Adverse determinations of requests .....	12
<b>12. THE SUBMITTER NOTICE PROCESS AND EO 12600 .....</b>	<b>13</b>
<b>13. ADMINISTRATIVE APPEALS.....</b>	<b>14</b>
Adjudication of appeals .....	15
<b>14. PUBLIC READING ROOMS.....</b>	<b>15</b>
Content of Reading Rooms .....	15
<b>15. ADDITIONAL RESOURCES .....</b>	<b>16</b>

## THE DEPARTMENT OF THE TREASURY BUREAU FOIA/PA OFFICES

The current names, addresses, and contact information for Treasury's FOIA Officers can be found on Treasury's Freedom of Information Act website and FOIA.gov.

### Departmental Offices (DO)

1500 Pennsylvania Ave., N.W.  
Washington, D.C. 20220  
(202) 622-0930 Phone  
(202) 622-3895 Fax

### Alcohol and Tobacco Tax and Trade Bureau (TTB)

1310 G Street, N.W., Box 12  
Washington, DC 20005  
(202) 882-9904 Phone  
(202) 453-2331 Fax

### Bureau of Engraving and Printing (BEP)

14<sup>th</sup> & C Streets, S.W., Room 419A  
Washington, DC 20228  
(202) 874-2500 Phone  
(202) 874-2951 Fax

### Bureau of the Fiscal Service (Fiscal Service)

FOIA Disclosure Office/Room 508B  
3201 Pennsy Drive, Building E  
Landover, MD 20785  
(202) 874-5602 Phone  
(202) 874-5484 Fax

Office of the Comptroller of the Currency (OCC)  
400 7<sup>th</sup> Street, S.W.  
Suite 3E-218, Mail Stop 6W-11  
Washington, DC 20219  
(202) 649-6758 Phone

Financial Crimes Enforcement Network (FinCEN)  
P.O. Box 39  
Vienna, VA 22183  
(703) 905-5034 Phone

Internal Revenue Service (IRS)  
HQ Stop 211  
P.O. Box 621506  
Atlanta, GA 30362-3006  
(312) 292-3297 Phone

United States Mint (Mint)  
801 9<sup>th</sup> Street, N.W., 8<sup>th</sup> Floor  
Washington, DC 20220  
(202) 354-7600 Phone

Treasury Inspector General for Tax Administration (TIGTA)  
901 D Street, S.W., Suite 600  
Washington, DC 20024  
(202) 622-4068 Phone  
(202) 622-3339 Fax

## 1. INTRODUCTION

The Freedom of Information Act (FOIA), 5 U.S.C § 552, establishes a right of public access to records at the Department of the Treasury (Treasury). Upon receipt of a perfected request for Treasury records, those records must be disclosed unless they are protected by at least one of the nine categories of exempt information or by one of the three law enforcement exclusions described in the FOIA. Both the FOIA and Treasury regulations contain rules and procedures that must be followed. This Handbook is intended to guide employees of Treasury's bureaus, offices, and organizations, including the offices of Inspectors General, who routinely perform duties related to the FOIA. It closely follows the Treasury FOIA regulations found in 31 CFR Subtitle A, Part 1, Subpart A.

### Policy

It is the policy of the Department of the Treasury to implement the FOIA uniformly and consistently, and to provide maximum allowable disclosure of agency records upon request by any individual. Records shall be withheld only if it is reasonably foreseeable that their disclosure would harm an interest protected by one or more of the FOIA exemptions or exclusions, or if disclosure is prohibited by law.

### Background

The FOIA establishes a process to enable members of the public the right to access records of the Executive Branch of the United States Government. The law provides administrative and judicial remedies for those who are unlawfully denied access to records. The statute requires Federal agencies to provide the fullest possible disclosure of information to the public.

### Role of the Departmental Disclosure Office

FOIA administration is decentralized at the Department of the Treasury. In other words, the nine bureaus that comprise Treasury separately receive and respond to FOIA requests. The Departmental Offices (DO), a Treasury bureau, encompasses several Treasury program and policy offices, including, for example, the Office of Foreign Assets Control (OFAC).

DO's FOIA disclosure office, known as FOIA and Transparency, is situated within the Office of Privacy, Transparency, and Records (PTR) and serves as both a policy and operational office responsible for the receipt and response to FOIA requests directed to DO. FOIA and Transparency administers the FOIA program for DO, with the exception of Terrorism and Financial Intelligence, the Community Development Financial Institutions Fund, and the offices of the Inspectors General who maintain their own disclosure programs.

Requests for DO records are received, assessed, assigned, and tracked by FOIA and Transparency. FOIA and Transparency also establishes and communicates disclosure policy for the Department of the Treasury through regulations, directives, and handbooks. The office provides policy, procedural and technical guidance to Treasury employees; has oversight and reporting responsibilities on behalf of the Department; and provides FOIA-related training.



## 2. UNDERSTANDING THE REQUEST

### Who can request records under the FOIA?

Any person – individuals, foreign citizens, partnerships, corporations, associations, and foreign, state, or local governments - can request access to Treasury Department records. Exceptions to this rule are Federal agencies, and fugitives. Requesters are treated equally under the FOIA; however, in certain instances distinctions are made in order to determine fee category placement, fee waiver requests, and requests for expedited processing.

### Before a FOIA request can be processed, it must:

1. Be made in writing;
2. State that it is made pursuant to the FOIA;
3. Include information that will enable the disclosure office to determine the requester's fee category;
4. Be addressed to the bureau that maintains the record. In order for a request to be properly received by the Department, the request must be received in the appropriate bureau's disclosure office;
5. Reasonably describe the records being sought;
6. Give the physical address or email address of where the response is to be sent;
7. Include a firm agreement from the requester to pay fees for search, duplication, and review, as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the statute at 5 U.S.C § 552(a)(4)(A)(iii).

### Reasonable description of records

FOIA requests must describe the records in reasonably sufficient detail to enable an employee familiar with the subject to locate the records. At a minimum, the description should include subject matter, timeframes, the Treasury office maintaining the records and the names of record custodians, if known, along with any other information which would help an employee clearly identify the requested records.

### Determining scope of request and obtaining clarification

The scope of the request should be clearly identified and understandable at the onset of the FOIA process. When a request is unclear, components are encouraged to communicate with the requester to obtain clarification. If the scope of the request is modified as a result of this conversation with the requester, follow up in writing to confirm the adjustment and add this

documentation to the administrative record.

### **First and Third-party requests**

If the requester is asking for records about themselves, they must provide proof of their identity as described in Treasury's FOIA regulations 31 CFR Subtitle A, Part 1, Subpart A. Treasury's regulations also describe the authorization requirements for the release of records to a third-party.

### **What the FOIA does not require**

The FOIA does not require agencies to answer questions or interrogatories; analyze and/or interpret documents for a requester; create records; conduct research; initiate investigations; or provide statutes, regulations, publications, or other documents that are otherwise publicly available.

## **3. RECEIVING THE REQUEST**

### **Initial Receipt**

Upon receiving a FOIA request, review to determine if the request was submitted to the appropriate bureau. Bureaus are responsible for redirecting misdirected FOIA requests to the correct Treasury FOIA program. Requests are generally processed on a "first-in, first-out" basis; however, bureaus may establish more than one "track" to accommodate differences in the amount of effort and/or time involved in processing requests. For example, requests that will require considerably less time and effort than others can be placed in a first-in, first-out queue that's separate from a queue of the more complex requests.

### **Expedited processing**

Requests for expedited processing will be considered according to Treasury's disclosure regulations at 31 CFR 1.4(e) and the bureau's implementing procedures. If a request for expedited processing has been granted, the responsible official should process the request as soon as practicable.

### **Assignment of requests**

For DO, FOIA and Transparency will assign or reroute requests to the appropriate program office or Treasury bureau that has custody of the requested records. Treasury bureaus will assign requests according to their respective procedures.

## **4. FEE CATEGORIES**

Components may charge fees for processing requests under the FOIA in accordance with the provisions of Treasury's FOIA regulations, or they may issue their own fee schedules as long

as they are consistent with the OMB Guidelines. In order to resolve any fee issues that arise, a component may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or online via a Treasury issued Pay.gov invoice.

Before charging fees, a component must determine the requester's fee category. This must be decided based on information that is supplied by the requester which should indicate whether the requester is a commercial-use requester, an educational institution, non-commercial scientific institution, representative of the news media, or "all other" requester subject to the fee provisions described in 31 CFR 1.7. The categories of requesters are defined as follows:

**Commercial use requester.** These requesters submit a request for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.

**Educational institution requester.** A requester in this category must show that the request is made in connection with the requester's role at the educational institution. Components may seek assurance from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

**Non-commercial scientific institution requester.** Requests made on behalf of an institution that is not operated on a "commercial basis" and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

**Representative of the news media.** Requests made by any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public.

**All other requesters.** Requests made by persons that do not fit into any of the above categories will belong to a group called "all other" requesters.

## **5. FEES AND FEE WAIVERS**

### ***Fees for processing requests***

FOIA and Privacy Act requests from individuals seeking records about themselves will be processed under the fee provisions of the Privacy Act, which authorizes fees for duplication only, excluding charges for the first 100 pages. Fees to be charged under the FOIA will vary, depending upon the fee category applied to the request. The search, duplication, and review services for which fees are charged are defined as follows:

**Search.** Components may properly charge for time spent searching even if responsive records are not located or if records are deemed exempt from disclosure. In addition, requesters may be charged the direct costs associated with the creation of any new computer program required to locate the requested records.

**Duplication.** The process of making copies of documents in order to respond to a FOIA request. A component shall honor a requester's preference for receiving a record in particular form or format where it is readily producible by the component in the form or format requested. For copies of records produced on tapes, disks, or other forms of duplication, or other electronic media, components may charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials, including operator's time. For other forms of duplication, components may charge the direct costs.

**Review.** Review fees will only be charged to requesters who make commercial-use requests. Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted by a component to determine whether an exemption applies to a particular record or portion of record. When a component determines or estimates that the fees to be assessed will exceed \$25.00, the component shall notify the requester the actual or estimated amount of fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. When a component determines or estimates that a total fee to be charged will exceed \$250, it may require that requester to make an advanced payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

**Restrictions on Charging Fees:**

1. No search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media (unless the records are sought for commercial use).
2. If a component fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees.
3. No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.
4. Except for requesters seeking records for a commercial use, components will provide without charge:
  - i. The first 100 pages of duplication (or the cost of equivalent for other media); and
  - ii. The first two hours of search
5. When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated is \$25.00 or less for any request, no fee will be charged.

### Fee waivers

Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested 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. A component must furnish records responsive to a request without charge, or at a reduced rate, when it determines, based on all available information, that disclosure of the requested 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 interest of the requester.

In deciding whether this standard is satisfied the component must consider the following factors:

1. Disclosure of the requested information would shed light on the operations or activities of the government.
2. Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities.
3. The disclosure must not be primarily in the commercial interest to the requester.

### Appeals of denials of requests for waiver or reduction of fees

Appeals of denials of requests for waiver or reduction of fees will be decided by the official authorized to decide appeals from denials of access to records. The requester may also appeal when there has been an adverse determination of the requester's fee category.

## 6. SEARCHING FOR RESPONSIVE RECORDS

### Conduct a reasonable search

Components are required to make reasonable efforts to locate records responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents. All files that are likely to contain responsive records must be searched, including electronic records such as hard drives, shared drives, and databases. Components are not required to create records or answer questions in order to respond to a FOIA request.

### Cut-off date

The date the search is commenced is the date considered as the cut-off date for responsive records, unless a specific date range is identified in the request. Records created or obtained after that date are not responsive to the request. Components are not required to honor a request that asks for continuing production of records as they are being created.

### Providing records in the format requested

Records should be provided in the format that they are requested (e.g., paper, CD-ROM, etc.) if they are reproducible in that format. Agencies are to make reasonable efforts to maintain

records in forms or formats that are reproducible for purposes of the FOIA.

### **Computer search for electronic records**

Electronic records are subject to the FOIA. Documents stored on hard drives, shared drives, and in email accounts, to name a few, may be subject to a FOIA request.

### **Retrieving records from the National Records Center**

Records that are being stored at a National Archives and Records Administration (NARA) operated records center must be retrieved if they are the subject of a FOIA request. Older Treasury records that have been transferred to NARA's legal custody are generally considered the property of NARA.

### **When no responsive records are found**

The requester must be notified when no records were found after a reasonable search was performed. This response must include notice of the right to appeal the determination.

### **Neither confirm nor deny "Glomar" application**

To neither confirm nor deny the existence of records is considered a "Glomar" response. This response can be used only when the confirmation or denial of the existence of responsive records would, in and of itself, reveal exempt information. Components most commonly invoke Exemption 1, Exemption 3, Exemption 6, and Exemption 7(C) to protect the existence or non-existence of responsive records.

## **7. APPLYING THE FOIA EXEMPTIONS**

The FOIA requires that records in the possession of a Federal agency be made available to the public unless the record or any portion of it is exempt from disclosure. The nine exemptions of the FOIA provide the basis for withholding information. Records that meet the exemption criteria may be withheld from public disclosure.

The Department of Justice (DOJ) recognizes the continued agency practice of considering whether to make "discretionary disclosures" of information that is exempt under the Act. DOJ also encourages agencies to consider applying the "foreseeable harm" to information that might technically fall within an exemption where an agency could release the information if there is no foreseeable harm or legal bar from disclosure. See OIP Guidance: Applying a Presumption of Openness and the Foreseeable Harm Standard.

### **The "reasonably segregable" requirement**

If a record contains both disclosable and protected information, any disclosable portion of that record that is "reasonably segregable" (releasable) from the rest of the record must be released to the requester. Courts look closely at an agency's decision process regarding what

portions, if any, of a record are released. However, if disclosable material is so intertwined with exempt material that disclosure would leave only essentially meaningless words and phrases, or if editing out the protected portions would be so extensive as to effectively result in the creation of a new record, the entire record can be withheld.

### ***The Nine FOIA Exemptions***

**Exemption (b)(1)** protects matters “(a) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive order.” This exemption applies to those records properly and currently classified in the interest of national security or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations.

**Exemption (b)(2)** applies to information related solely to the internal personnel rules and practices of an agency. This exemption permits withholding of information related to internal personnel-related rules and practices (where “personnel” pertains to human resources and employee relations).

**Exemption (b)(3)** exempts records concerning matters that are “specifically exempted from disclosure by statute [other than FOIA], provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.” Examples of these statutes include disclosure of tax returns and tax return information, 26 U.S.C. 6103; and Federal Rules of Criminal Procedure, Rule 6(e).

**Exemption (b)(4)** applies to information such as trade secrets and commercial or financial information obtained from a person, company, or business on a privileged or confidential basis which, if released, would result in competitive harm to the person, company, or business.

**Exemption (b)(5)** applies to inter- and intra-agency memoranda or letters which are deliberative in nature; this exemption is appropriate for internal documents which are part of the decision-making process, and contain subjective evaluations, opinions, and recommendations. The three primary privileges incorporated in exemption (b)(5) are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

**Exemption (b)(6)** applies to the information about individuals when disclosure would result in a clearly unwarranted invasion of personal privacy.

**Exemption (b)(7)** exempts from disclosure “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

- A. could reasonably be expected to interfere with enforcement proceedings;
- B. would deprive a person of a right to a fair trial or an impartial adjudication;

- C. could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- D. could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
- E. would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or could reasonably be expected to endanger the life or physical safety of any individual.”

**Exemption (b)(8)** relates to those records contained in or related to the examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for regulation or supervision of financial institutions.

**Exemption (b)(9)** relates to records containing geological and geophysical information and data concerning wells (including maps). This exemption applies only to “well information of a technical or scientific nature.”

### **Additional guidance**

For additional guidance on the appropriate application of FOIA exemptions, refer to the Department of Justice (DOJ) Guide to the Freedom of Information Act, and the Department of Justice Court Decisions resource page. Both publications are prepared by the DOJ’s Office of Information and Policy (OIP) and can be accessed at <https://www.justice.gov/oip>.

## **8. THE EXCLUSIONS**

The three provisions of subsection (C) of the FOIA, referred to as record “exclusions,” are reserved for certain specified circumstances where publicly acknowledging even the existence of the records could cause harm to law enforcement or national security interests. At Treasury, use of the exclusions to protect information from disclosure is very rare. Given the unusual nature of the exclusion provisions, the limited circumstances in which they apply, and the relative infrequency which they are employed, components considering whether to invoke an exclusion must consult first with DOJ/OIP by calling OIP’s FOIA Counselor hotline at (202) 514- FOIA (3642). Components invoking an exclusion must maintain an administrative record of the process of invocation and the consultation with OIP. Agencies report on the use of exclusions annually in the Chief FOIA Officer Report.

**(c)(1) exclusion.** Applies to requests made which involves access to records described in 5 U.S.C. 552 (b)(7)(A), and:



1. The investigation or proceeding involves a possible violation of criminal law; and
2. There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings; the agency may, during only such time as the above circumstance continues, treat records as not subject to the requirements of the FOIA.

The (c)(1) exclusion protects the existence of records of ongoing investigations or proceedings. The records must be of the type that could be withheld in their entirety and must relate to the investigation of a possible violation of criminal law. Records relating to civil law enforcement do not qualify for this exclusion.

The agency must have reason to believe that the subject is unaware of an investigation, and this exclusion will apply only during the time that these circumstances exist. Once the target of the investigation becomes aware of the investigation, this exclusion may no longer be used. Use of this exclusion means that, as far as the FOIA requester is concerned, these records do not exist. The requester will be advised that no records responsive records have been located. When the excluded records are part of a number of other records responsive to the request, the request will be handled as a presumably routine request, with the other responsive records processed as though they were the only ones in existence.

**(c)(2) Exclusion.** Applies to informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier. When such records are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of the FOIA unless the informant's status as an informant has been officially confirmed.

As with exemption (7)(A), invoking exemption (7)(D) in response to a FOIA request could indicate to a requester that a particular person is a confidential source. For example, if all members of an organized crime group request information about themselves, using Exemption (7)(D) could indicate a named individual as a confidential source. The (c)(2) exclusion is intended to remove this risk.

**(c)(3) Exclusion.** Applies to requests involving access to records maintained by the Federal Bureau of Investigation (FBI) pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in exemption (b)(1), the FBI may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of the FOIA. Sometimes the very fact that the FBI does or does not hold any records on a specific person can itself be a sensitive fact, classifiable under E.O. 13526, and protectable under FOIA exemption (b)(1). Citing the exemption or a "no records" response can jeopardize sensitive activities. Note that exclusion (c)(3) can be used only by the FBI.

## 9. CONSULTATIONS AND REFERRALS OF DOCUMENTS

When reviewing records located in response to a request, each component will determine whether another Treasury component or agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, each component must proceed in one of the following ways:

**Consultation.** When a record located within the component processing the request contains information of interest to another Treasury component or Federal Government office, the component processing the request should typically consult with that other entity prior to making a release determination.

**Referral.** When the component processing the request believes that a different Treasury component or Federal Government agency is best suited to determine whether to disclose the record, the component can refer the responsibility for responding to the request containing that record to that component or agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the final disclosure determination. However, if the component processing the request is in the best position to respond regarding the record, then the record may be handled as a consultation. Before issuing a referral, consider discussing the request with the originating agency. When a component refers any part of the responsibility for responding to a request to another Treasury component or Federal Government agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name of the agency to which the record was referred, including that agency's FOIA contact information.

All consultations and referrals will be handled according to the date that the FOIA request was initially received by the component or agency of the Federal government. Components may establish agreements with other Treasury components or agencies of the Federal government to eliminate the need for consultations or referrals with respect to particular types of records.

## 10. TIME LIMITS AND TIME EXTENSIONS

### *Twenty (20)-day limit for responding.*

The initial determination to release or deny a record will be made and the decision reported to the requester within 20 workdays after the receipt of the request by the responsible official.

### *Unusual circumstances*

Whenever the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and a component extends the time limit on that basis, the component shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and the date by which processing of the request can be expected to be completed. Where the extension exceeds ten working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify

the request or agree to an alternative time frame for processing. Each agency is required to make available its FOIA Public Liaison to aid the requester in this regard and to "assist in the resolution of any disputes." When an agency extends the time limit by more than 10 additional working days, it must notify the requester of their right to seek dispute resolution services from the Office of Government Information Services (OGIS).

### **Expedited processing**

Requests and appeals will be processed on an expedited basis only upon request and when it is determined that they involve:

1. Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
2. 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;
3. The loss of substantial due process rights.

Requests for expedited processing may be made at any time. Requests must be submitted to the component that maintains the records requested. The time period for making the determination on the request for expedited processing shall commence on the date that the component receives such request. Components shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny the request.

### **Multitrack processing**

Components may designate processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. A component can consider factors such as the number of pages involved in processing the request or the need for consultations or referrals. Components must designate a specific track for requests that are granted expedited processing.

## **11. RESPONSES TO FOIA REQUESTS**

### **Grants of requests**

When a component decides to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requesters of any fees charged and shall disclose the requested records to the requester promptly upon payment upon any applicable fees. The component must also inform the requester of the availability of the FOIA Public Liaison and the OGIS to offer assistance.

### **Adverse determinations of requests**

A component making an adverse determination by denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that:

1. The requested record is exempt, in whole or in part;
2. The request does not reasonably describe the records sought;
3. The information requested is not a record subject to the FOIA;
4. The requested record does not exist, cannot be located, or has been destroyed;
5. The requested record is not readily reproducible in the form and format sought by the requester; and
6. The denial of a fee waiver or request for expedited processing.

### **Content of a denial letter**

The denial letter shall be signed by the head of the component, or their FOIA designee, and shall include:

1. The name and title or position of the person responsible for the denial;
2. A brief statement of the reasons for the denial, including any exemption applied by the component in denying the request;
3. A statement explaining that the component considered the foreseeable harm standard when reviewing the records and applying exemptions;
4. An estimate of the volume of any records or information withheld by providing the number of pages or some other reasonable form of explanation (when appropriate);
5. The contact information of the FOIA Public Liaison and OGIS; and
6. The requester's appeal rights.

### ***Redaction markings to released records***

Records disclosed in part must be marked clearly to show the amount of information redacted and the exemption pursuant to which the redaction was made unless doing so would harm an interest protected by the applicable exemption.

## **12. THE SUBMITTER NOTICE PROCESS AND EXECUTIVE ORDER 12600**

Executive Order (E.O.) 12600 established a formal, procedural structure for notifying persons who submit "confidential commercial information" to the United States when that information becomes the subject of a FOIA request. The Supreme Court's decision in *Argus Leader* changed the way that agencies define the word "confidential" for the purposes of Exemption 4. Detailed in the court's opinion, agencies should apply the ordinary meaning of the term "confidential." This meaning implicates two conditions, namely, (1) whether the information is "customarily kept private, or at least closely held," by the submitter; and (2) whether the government provides "some assurance" that the information will not be publicly disclosed. Assurances of confidentiality can be either explicit or implicit. See *Argus Leader*, 139 S. Ct. at 2363. In the wake of *Argus Leader*, components shall use the pre-disclosure submitter notice procedures when necessary to seek the submitter's

views on whether the two conditions of determining whether information is “confidential” for the purposes of Exemption 4 of the FOIA are met.

Written notice to the submitter shall be provided if this circumstance applies. The component shall also notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure. The notice to the submitter shall either describe the confidential commercial information requested or include a copy of the requested records or portions of records containing the subject information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it. A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

A component will specify a reasonable time period as determined within its administrative discretion within which the submitter must respond to this notice. If a submitter has any objections to disclosure, it should provide the component with a detailed written statement that specifies all grounds for withholding the particular confidential commercial information under any exemption of the FOIA. A submitter who fails to respond within the time period specified shall be considered to have no objection to disclosure of that information. An objection to disclosure received by the component after the time period specified in the notice will not be considered. A component shall consider a submitter’s objections and specific grounds for nondisclosure in deciding whether to disclose the information. Whenever a component decides to disclose confidential commercial information over the objection of a submitter, the component shall provide the submitter with written notice containing a statement of the reasons why each of the submitter’s disclosure objections was not sustained and include a copy of the records that the component intends to disclose. A submitter may file a lawsuit in an effort to prevent the disclosure of the confidential commercial information.

These notice requirements shall not apply when the confidential commercial information has been lawfully published or has been officially made available to the public and under circumstances where the disclosure of the confidential commercial information is required by a statute other than the FOIA or by regulation issued in accordance with the requirements of E.O. 12600.

### **13. ADMINISTRATIVE APPEALS**

A requester may appeal any adverse determination denying their request to the component’s FOIA appellate authority. The requester must submit their appeal in writing. To be considered timely, it must be postmarked, or electronically transmitted within 90 calendar days after the date of the component’s final response letter. Components may require additional criteria as outlined by their appendix to Treasury’s FOIA regulations. The appeal letter should clearly identify the component’s determination that is being appealed and the assigned request number. The requester should mark the appeal letter and envelope, or the subject line of the electronic transmission, “Freedom of Information Act Appeal.”

### ***Adjudication of appeals***

The FOIA appeal official, or designee will review all appeals to make a final determination. An appeal ordinarily will not be adjudicated if the request becomes the matter of FOIA litigation.

### ***Decision on appeals***

A decision on an appeal must be made in writing by the component within 20 business days after receipt of the appeal. A decision upholding the component's determination must contain a statement that identifies the reasons for affirmance, including any FOIA exemptions applied. The decision must provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by OGIS as a non-exclusive alternative to litigation.

If a component's decision is remanded or modified on appeal the requester will be notified of the determination in writing. The component will then further process the request in accordance with the appeal determination and respond directly to the requester.

## **14. PUBLIC READING ROOMS**

Under subsection (a)(2) of the FOIA, Federal agencies must make certain categories of records affirmatively available for "public inspection and copying." Agencies must satisfy the FOIA's "reading room" provision by providing records either in electronic reading rooms/FOIA library on agency websites, or in a combination of electronic and conventional "paper" reading rooms. Treasury components should be mindful of this disclosure requirement and maintain and continuously update their FOIA reading rooms.

### **Content of Reading Rooms**

The FOIA requires that subsection (a)(2) materials be made available to the public for inspection and copying, unless such materials are published, and copies offered for sale. The (a)(2) materials include:

1. Final opinions, including concurring and dissenting opinions and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.
2. Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register. This qualification is generally met when action is taken by the head of an agency or a responsible official who has been empowered by the agency to make an authoritative issuance.
3. Administrative staff manuals and instructions, or portions thereof, that establish Department of the Treasury policy that affect a member of the public.

4. Records that have been located and processed in response to a request that have become or are likely to become the subject of three or more requests for substantially the same records, regardless of form or format. These are often referred to as "frequently requested" records.

Each Treasury bureau must maintain an electronic reading room that complies with the requirements of subsection (a)(2) of the FOIA.

## **15. ADDITIONAL RESOURCES**

- a. Department of Justice Fee Waiver Policy Guidance, dated April 2, 1987;
- b. E.O. 12600, "Pre-disclosure Notification Procedures for Confidential Commercial Information," dated June 23, 1987;
- c. E.O. 13526, "Classified National Security Information," dated December 29, 2009;
- d. Freedom of Information Reform Act of 1986;
- e. Final Revisions to Uniform Freedom of Information Act Fee Schedule and Guidelines; Fed. Reg. Vol 85, No. 243, dated December 17, 2020;
- f. President's Memorandum for the Heads of Executive Departments and Agencies, dated January 21, 2009, subject: The Freedom of Information Act;
- g. Attorney General's Memorandum for Heads of Departments and Agencies, dated March 19, 2009, subject: Freedom of Information Act Guidelines Favoring Disclosure and Transparency;
- h. The Freedom of Information Act Improvement Act of 2016 (Public Law No. 114-185);
- i. Attorney General's Memorandum for Heads of Departments and Agencies, dated March 15, 2022, subject: Freedom of Information Act Guidelines;
- j. The Open Government Act of 2007 (Public Law 110-175);
- k. The Privacy Act of 1974, as amended, 5 U.S.C § 552a;
- l. Paperwork Reduction Act of 1995, Pub. L. No. 104-13;
- m. Treasury Directive (TD) 80-05, "Records and Information Management Program," dated January 31, 2018;
- n. Treasury Directive (TD) 25-04, "The Privacy Act of 1974, As Amended," dated January 27, 2014.