Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 8/15/2019 4:58:12 PM
**To**: Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]
**CC**: Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; OGC NFO [OGC-NFO@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 4530 and Skype Meeting

**Start**: 8/28/2019 2:00:00 PM
**End**: 8/28/2019 4:00:00 PM
**Show Time As**: Tentative

This is the second of three general listening sessions scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019. Additional general listening sessions are scheduled for:

Tuesday, August 20, 2019 from 1-3pm
Tuesday, September 10, 2019 from 1-3pm

The National FOIA Office (NFO) encourages you to participate in at least one of these general listening sessions.

The NFO has also scheduled a focused listening session on Wednesday, August 21, 2019 from 10am – noon to seek input on Lead FOIA Office and Contributing Office search and first-level review responsibilities.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

In addition, the NFO invites you to provide written comments on these updates. Please submit any written comments to Heather Thompson at thompson.heather@epa.gov and Krishna Bhatt at bhatt.krishna@epa.gov by COB Friday, September 20, 2019. Each FOIA Program should coordinate within their office and provide a consolidated response wherever possible.

Please use the conference line below to connect to audio if you are participating remotely.

Conference Lin
Conference ID: **Ex. 6**

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Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 8/15/2019 5:02:01 PM
**To**: FOIA Officers [FOIAOfficers@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]
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**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 6013 Skype Meeting

**Start**: 9/10/2019 5:00:00 PM
**End**: 9/10/2019 7:00:00 PM
**Show Time As**: Tentative

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Creech, Christopher [Creech.Christopher@epa.gov]; Payne, James [payne.james@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]; Pirzadeh, Michelle [Pirzadeh.Michelle@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Attachments**: Proposal on FOIA Consultations rt2 9.5.19.docx
**Location**: WJC North 6013 Skype Meeting

**Start**: 9/10/2019 5:00:00 PM
**End**: 9/10/2019 7:00:00 PM
**Show Time As**: Tentative

This is the third and final general listening session scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019.

Region 3 has drafted the attached proposal describing the consultation process and outlining NFO and Responding Office roles for consultations. We will discuss this proposal during this listening session.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

In addition, the NFO invites you to provide written comments on these updates. Please submit any written comments to Heather Thompson at thompson.heather@epa.gov and Krishna Bhatt at bhatt.krishna@epa.gov by COB Friday, September 20, 2019. Each FOIA Program should coordinate within their office and provide a consolidated response wherever possible.

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Draft FOIA Policy and Procedures

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**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 6013 Skype Meeting

**Start**: 9/10/2019 5:00:00 PM
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**CC**: Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; OGC NFO [OGC-NFO@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]; Kennedy, Chandra [Kennedy.Chandra@epa.gov]; Tonic, Ingrid [tonic.ingrid@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Clausen, Rebecca [Clausen.Rebecca@epa.gov]; Barnett-Owens, Inga [Barnett-Owens.Inga@epa.gov]; Blackburn, Elizabeth [Blackburn.Elizabeth@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Kudarauskas, Paul [Kudarauskas.Paul@epa.gov]; Bigioni, Neil [bigioni.neil@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Brown, Sineta [Brown.Sineta@epa.gov]; Almazan, Christina [almazan.christina@epa.gov]; Hauser, Mitchell [hauser.mitchell@epa.gov]; Swanson, Amy [Swanson.Amy@epa.gov]; Zipf, Lynn [Zipf.Lynn@epa.gov]; Collazo, Beatriz [collazo.beatriz@epa.gov]; Weyer, Erica [weyer.erica@epa.gov]; Coogan, Daniel [Coogan.Daniel@epa.gov]; Gupta, Kaushal [Gupta.Kaushal@epa.gov]; McLendon, Wanda [McLendon.Wanda@epa.gov]; Newman, Maya [Newman.Maya@epa.gov]; Smith, Susan [Smith.Susan@epa.gov]; Brooks, Becky [Brooks.Becky@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Stanich, Ted [Stanich.Ted@epa.gov]; Latham, John [Latham.John@epa.gov]; Calvo, Kathy [Calvo.Kathy@epa.gov]; Richmond, Jonah [Richmond.Jonah@epa.gov]; Armstrong, Marilyn [Armstrong.Marilyn@epa.gov]; Bell-Anderson, Marie [Bell-Anderson.Marie@epa.gov]; Commodore, Carolin [Commodore.Carolin@epa.gov]; Fredericks, Sharon [Fredericks.Sharon@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Jones, Knolyn [Jones.Knolyn@epa.gov]; Reynolds, David [Reynolds.David@epa.gov]; Silver, Edna [silver.edna@epa.gov]; Ward, Valerie [Ward.Valerie@epa.gov]; Minor-Gordon, Jerry [Minor-Gordon.Jerry@epa.gov]; Newton, Jonathan [Newton.Jonathan@epa.gov]; Langley, Shirley [Langley.Shirley@epa.gov]; Murdock, James [Murdock.James@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Levine, Scott [Levine.Scott@epa.gov]; Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Bhatt, Krishna [bhatt.krishna@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Hines, Andrea [hines.andrea@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]; Bossard, Justin [bossard.justin@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; Rementer, Nicole [rementer.nicole@epa.gov]; Cunningham, Dennis [Cunningham.Dennis@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Donaldson, Yerusha [donaldson.yerusha@epa.gov]; Ford, Mark [Ford.Mark@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Pirzadeh, Michelle [Pirzadeh.Michelle@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]; Noga, Vaughn [Noga.Vaughn@EPA.GOV]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]; Conway, Timothy [Conway.Tim@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 4530 and Skype Meeting

**Start**: 8/28/2019 2:00:00 PM
**End**: 8/28/2019 4:00:00 PM
**Show Time As**: Tentative

This is the second of three general listening sessions scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019. Additional general listening sessions are scheduled for:

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Tuesday, September 10, 2019 from 1-3pm

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**Sent**: 8/15/2019 5:02:03 PM
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**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 6013 Skype Meeting

**Start**: 9/10/2019 5:00:00 PM
**End**: 9/10/2019 7:00:00 PM
**Show Time As**: Tentative

This is the third general listening session scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019. Additional general listening sessions are scheduled for:

Tuesday, August 20, 2019 from 1-3pm
Wednesday, August 28, 2019 from 10am – noon

The National FOIA Office (NFO) encourages you to participate in at least one of these general listening sessions.

The NFO has also scheduled a focused listening session on Wednesday, August 21, 2019 from 10am – noon to seek input on Lead FOIA Office and Contributing Office search and first-level review responsibilities.

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**Sent**: 8/15/2019 4:58:14 PM
**To**: Thompson, Heather [Thompson.Heather@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; Powell-Dickson, Antoinette [Powell-Dickson.Antoinette@epa.gov]; Ingram, Earl [Ingram.Earl@epa.gov]; Sheehan, Charles [Sheehan.Charles@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]
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**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 4530 and Skype Meeting

**Start**: 8/28/2019 2:00:00 PM
**End**: 8/28/2019 4:00:00 PM
**Show Time As**: Tentative

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**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 4530 and Skype Meeting

**Start**: 8/28/2019 2:00:00 PM
**End**: 8/28/2019 4:00:00 PM
**Show Time As**: Tentative

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**Location**: WJC North 6013 Skype Meeting

**Start**: 9/10/2019 5:00:00 PM
**End**: 9/10/2019 7:00:00 PM
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**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 4530 and Skype Meeting

**Start**: 8/28/2019 2:00:00 PM
**End**: 8/28/2019 4:00:00 PM
**Show Time As**: Tentative

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[Newman.Maya@epa.gov]; Smith, Susan [Smith.Susan@epa.gov]; Brooks, Becky [Brooks.Becky@epa.gov]; Murdock, James [Murdock.James@epa.gov]

**Subject**: Listening Session - FOIA Search and Review Responsibilities
**Attachments**: Search and Review Listening Session.pptx
**Location**: WJC North 6013 and Skype Meeting

**Start**: 8/21/2019 2:00:00 PM
**End**: 8/21/2019 4:00:00 PM
**Show Time As**: Tentative

The National FOIA Office (NFO) is seeking your input on Lead FOIA Office and Contributing Office search and review responsibilities. I have attached some session slides to facilitate discussion on these topics.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

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National FOIA Office
EPA Office of General Counsel

# Listening Sessions
# Updates to EPA FOIA Policy and EPA FOIA Procedures

*Heather Thompson, OGC National FOIA Office*
*Krishna Bhatt, OGC National FOIA Office*

# *Purpose/Road Map*

- The draft Policy and draft Procedures went out on August 12, 2019. Requesting consolidated, written comments by COB September 20, 2019.
- The purpose of this listening session is to:
  - Answer any questions you may have regarding the search and review tasks outlined in the draft Procedures.
  - Allow you to provide initial comments/feedback on these two topics.
- May be helpful to have a copy of the draft Procedures at hand during the listening session.
  - Find the link under FOIA News on our SharePoint site.
    https://usepa.sharepoint.com/sites/EPA_OGC_NFO

# *Ground Rules*

- Please mute your phone until your Region/Program is called on.
- Roundtable Format: we want to make sure that each office has a chance to provide feedback on these two topics. NFO will call on each Region and Headquarters office to provide input.
- After roundtable and if time allows, we will open up the session for general comments/suggestions.

# Topic 1 - Search

| Lead FOIA Office | Contributing Office |
| --- | --- |
| Coordinate with Contributing Office(s) to define search parameters and identify search locations | Assist Lead FOIA Office in defining search parameters and identifying search locations |
| Issue local search tasks to staff within your office and to Contributing Office(s) | Complete and close out search tasks |
| Submit eDiscovery centralized search request(s) | |
| Ensure all search tasks are completed | |

# Topic 2 - Review

| Lead FOIA Office | Contributing Office |
|---|---|
| Review all locally collected records and load the records to FOIAonline | Review all locally collected records and load the records into FOIAonline |
| Review/coordinate the review of records collected through the eDiscovery centralized search | Assist Lead FOIA Office in review of records collected through the eDiscovery centralized search |
| Complete equity reviews, consultations, and referrals | Close out any assigned review tasks |
| Request productions and load records into FOIAonline | |
| Ensure all review tasks are completed | |

# *Next Steps*

- Additional general listening sessions
  - August 28, 2019 10am-noon WJC North 4530
  - September 10, 2019 1-3pm WJC North 6013
- Written comments/suggested edits to Heather Thompson and Krishna Bhatt by COB September 20, 2019
- Additional review/comment period on draft documents - TBD

Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 8/15/2019 5:02:03 PM
**To**: Thompson, Heather [Thompson.Heather@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]
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**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 6013 Skype Meeting

**Start**: 9/10/2019 5:00:00 PM
**End**: 9/10/2019 7:00:00 PM
**Show Time As**: Tentative

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**To**: Thompson, Heather [Thompson.Heather@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]
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**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 6013 and Skype Meeting

**Start**: 8/20/2019 5:00:00 PM
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**Show Time As**: Tentative

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Conference Line
Conference ID: 2 **Ex. 6**

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Appointment

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**Start**: 9/10/2019 5:00:00 PM
**End**: 9/10/2019 7:00:00 PM
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**From**: Rementer, Nicole [rementer.nicole@epa.gov]
**Sent**: 2/15/2019 5:58:41 PM
**To**: OGC NFO [OGC-NFO@epa.gov]
**Subject**: FW: Interim FOIA Policy and Procedures Update
**Attachments**: FOIAPolicyand ProceduresMemo.pdf

YAY!!!!

***Nicole M. Rementer***
Attorney-Adviser | FOIA Expert Assistance Team (FEAT)
U.S. Environmental Protection Agency | Office of General Counsel
7426NN WJCN | 202.564.3692

**From:** Leopold, Matt (OGC)
**Sent:** Friday, February 15, 2019 12:56 PM
**To:** Konkus, John <konkus.john@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Bennett, Tate

<Bennett.Tate@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Stanich, Ted <Stanich.Ted@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Lapierre, Kenneth <lapierre.kenneth@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Nishida, Jane <Nishida.Jane@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Cook, Steven <cook.steven@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Sheehan, Charles <Sheehan.Charles@epa.gov>; Shields, Edward <Shields.Ed@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>; Lopez, Peter <lopez.peter@epa.gov>; Mugdan, Walter <Mugdan.Walter@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>; Servidio, Cosmo <servidio.cosmo@epa.gov>; Rodrigues, Cecil <rodrigues.cecil@epa.gov>; Coe, Mary <Coe.Mary@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Stepp, Cathy <stepp.cathy@epa.gov>; Payne, James <payne.james@epa.gov>; Nelson, Leverett <nelson.leverett@epa.gov>; Frey, Bert <frey.bertram@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Gray, David <gray.david@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Gulliford, Jim <gulliford.jim@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Humphrey, Leslie <Humphrey.Leslie@epa.gov>; Skelley, Dana <Skelley.Dana@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Thomas, Deb <thomas.debrah@epa.gov>; Schefski, Kenneth <Schefski.Kenneth@epa.gov>; Joffe, Brian <Joffe.Brian@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>; Stoker, Michael B. <stoker.michael@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Quast, Sylvia <Quast.Sylvia@epa.gov>; Busterud, Gretchen <Busterud.Gretchen@epa.gov>; Hladick, Christopher <hladick.christopher@epa.gov>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>; Stern, Allyn <Stern.Allyn@epa.gov>; Castanon, Lisa <Castanon.Lisa@epa.gov>; OGC NFO <OGC-NFO@epa.gov>
**Subject:** Interim FOIA Policy and Procedures Update

Colleagues,

Over the last year, the Agency has taken significant steps to improve our implementation of the Freedom of Information Act (FOIA). Improvements include a Strategic Goal on transparency as well as reorganizations that created a new National FOIA Office in the Office of General Counsel, delegated the Chief FOIA Officer functions to the General Counsel, and launched a reorganization of the regional FOIA programs into the Regional Counsels Offices. Today, I am issuing an interim FOIA Policy and Procedures Update to reflect the current organizational structure and to make clear that the Agency should continue to follow the Agency's FOIA Policy and Procedure as well as OGC's guidance on the FOIA Improvement Act of 2016. Over the coming months, the Agency plans to issue an update to EPA's FOIA regulations to be consistent with the FOIA Improvement Act of 2016, and I have directed the National FOIA Office thereafter to review and provide additional updates to these FOIA Policy and Procedures consistent with any regulatory changes.

If you have questions regarding the attached documents, or if you have suggestions for improving the Agency's implementation of the FOIA, please call Timothy Epp, Acting Director of the National FOIA Office at 202-564-2830.

Best Regards, Matt

**Matthew Z. Leopold**
General Counsel
U.S. Environmental Protection Agency
(202) 564-8040

Message

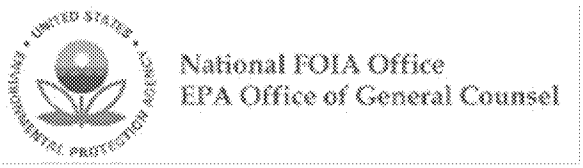
**From:** Walker, Denise [Walker.Denise@epa.gov]
**Sent:** 8/28/2019 3:38:44 PM
**To:** OGC NFO [OGC-NFO@epa.gov]
**CC:** Grantham, Nancy [Grantham.Nancy@epa.gov]
**Subject:** FW: August 27, 2019 OIG Follow-Up Audit: EPA Took Steps to Improve Records Management

NFO:

FYI and Good Job!!

Denise

**Denise A. Walker**
Acting Assistant General Counsel| National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7308A
Phone 202-564-6520 | Cell 202-816-9872| walker.denise@epa.gov




EPA FOIA Intranet: https://usepa.sharepoint.com/sites/EPA_OGC_NFO

**From:** Walker, Denise
**Sent:** Wednesday, August 28, 2019 11:37 AM
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>
**Cc:** Epp, Timothy <Epp.Timothy@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>
**Subject:** August 27, 2019 OIG Follow-Up Audit: EPA Took Steps to Improve Records Management

Matt, Elise, and Katherine:

The OIG released their report **"Follow-Up Audit: EPA Took Steps to Improve Records Management"** on Wednesday, August 27th. It is available here: https://www.epa.gov/sites/production/files/2019-08/documents/_epaoig_20190827-19-p-0283.pdf

Briefly, OIG concluded that EPA completed all corrective actions for 13 past audit recommendations and accepted EPA's plan to issue the FOIA policy and procedure updates by December 5, 2019. Of note, the OIG did not review specific allegations made against Mr. Pruitt since he left the agency during the preliminary stages of the audit. No response from EPA is required.

**Background**
The audit was conducted to determine whether the EPA took action to complete OIG's recommendations from three prior reports: 1) No. 13-P-0433, Congressionally Requested Inquiry Into the EPA's Use of Private and Alias Email

Accounts. 2) No. 14-P-0262, Briefing Report: Review of EPA's Process to Release Information Under the Freedom of Information Act. 3) No. 17-P-0062, Congressionally Requested Audit: EPA Needs to Improve Processes for Preserving Text Messages. OGC previously responded to the draft version of this report in a July 12, 2019, memorandum from Elise Packard.

**Findings Summary**
"The EPA completed all corrective actions for 13 past audit recommendations related to its records management and FOIA practices. Two recommendations from Report No. 17-P-0062, Congressionally Requested Audit: EPA Needs to Improve Processes for Preserving Text Messages as Federal Records, with corrective action completion dates of September 30, 2018, were completed by the established milestone dates during our audit.
In Report No. 14-P-0262, we recommended that the EPA create an agencywide FOIA policy and procedure. On September 30, 2014, the EPA's Chief Information Officer (CIO) issued agencywide directives in the form of a FOIA policy (CIO 2157.1) and a FOIA procedure (CIO 2157-P-01.1), which satisfied the intent of the original recommendation.

While the EPA completed corrective actions on all of the past recommendations, the FOIA statute changed in 2016 and the EPA updated its FOIA regulations in June 2019. Consequently, the EPA's FOIA policy and procedure again require management review to determine whether updates are needed."

**OIG's Recommendation**
OIG recommended that the EPA update the FOIA Policy and Procedures following the publication of our new regulations. The National FOIA Office is currently working on these updates.

"We recommend in this report that the General Counsel issue an updated agency Freedom of Information Act policy and procedure. The agency agreed with the OIG's findings and recommendation. Management stated it updated the agency's FOIA regulations on June 26, 2019, and plans to issue a new FOIA policy and procedure. The agency provided us with December 5, 2019, as the planned completion date for issuing the FOIA policy and procedure updates. **We consider the recommendation resolved with corrective actions pending.**"

**Media Responses**

**EPA Has Completed FOIA Fixes But Needs New Policy, Watchdog Says**
https://news.bloombergenvironment.com/environment-and-energy/epa-has-completed-foia-fixes-but-needs-new-policy-watchdog-says

https://www.whistleblower.org/in-the-news/bloomberg-environment-epa-has-completed-foia-fixes-but-needs-new-policy-watchdog-says/

**IG failed to review FOIA allegations against Pruitt**
https://www.eenews.net/greenwire/stories/1061091337/most_read

If you have questions, please contact me or Chris Creech,

Denise

**Denise A. Walker**
Acting Assistant General Counsel| National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7308A
Phone 202-564-6520 | Cell 202-816-9872| walker.denise@epa.gov

National FOIA Office
EPA Office of General Counsel

EPA FOIA Intranet: https://usepa.sharepoint.com/sites/EPA_OGC_NFO

Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 8/27/2019 9:07:02 PM
**To**: Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; Powell-Dickson, Antoinette [Powell-Dickson.Antoinette@epa.gov]; Ingram, Earl [Ingram.Earl@epa.gov]; Sheehan, Charles [Sheehan.Charles@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]
**CC**: Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; OGC NFO [OGC-NFO@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]; Kennedy, Chandra [Kennedy.Chandra@epa.gov]; Tonic, Ingrid [tonic.ingrid@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Clausen, Rebecca [Clausen.Rebecca@epa.gov]; Barnett-Owens, Inga [Barnett-Owens.Inga@epa.gov]; Blackburn, Elizabeth [Blackburn.Elizabeth@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Kudarauskas, Paul [Kudarauskas.Paul@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Bigioni, Neil [bigioni.neil@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]; Brown, Sineta [Brown.Sineta@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Almazan, Christina [almazan.christina@epa.gov]; Hauser, Mitchell [hauser.mitchell@epa.gov]; Swanson, Amy [Swanson.Amy@epa.gov]; Zipf, Lynn [Zipf.Lynn@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Pirzadeh, Michelle [Pirzadeh.Michelle@epa.gov]; Collazo, Beatriz [collazo.beatriz@epa.gov]; Weyer, Erica [weyer.erica@epa.gov]; Coogan, Daniel [Coogan.Daniel@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]; Noga, Vaughn [Noga.Vaughn@EPA.GOV]; Gupta, Kaushal [Gupta.Kaushal@epa.gov]; McLendon, Wanda [McLendon.Wanda@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Newman, Maya [Newman.Maya@epa.gov]; Smith, Susan [Smith.Susan@epa.gov]; Brooks, Becky [Brooks.Becky@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Stanich, Ted [Stanich.Ted@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]; Latham, John [Latham.John@epa.gov]; Calvo, Kathy [Calvo.Kathy@epa.gov]; Richmond, Jonah [Richmond.Jonah@epa.gov]; Armstrong, Marilyn [Armstrong.Marilyn@epa.gov]; Bell-Anderson, Marie [Bell-Anderson.Marie@epa.gov]; Commodore, Carolin [Commodore.Carolin@epa.gov]; Fredericks, Sharon [Fredericks.Sharon@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Jones, Knolyn [Jones.Knolyn@epa.gov]; Reynolds, David [Reynolds.David@epa.gov]; Silver, Edna [silver.edna@epa.gov]; Ward, Valerie [Ward.Valerie@epa.gov]; Minor-Gordon, Jerry [Minor-Gordon.Jerry@epa.gov]; Newton, Jonathan [Newton.Jonathan@epa.gov]; Langley, Shirley [Langley.Shirley@epa.gov]; Murdock, James [Murdock.James@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Levine, Scott [Levine.Scott@epa.gov]; Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]; Conway, Timothy [Conway.Tim@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Bhatt, Krishna [bhatt.krishna@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Hines, Andrea [hines.andrea@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]; Bossard, Justin [bossard.justin@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; Rementer, Nicole [rementer.nicole@epa.gov]; Cunningham, Dennis [Cunningham.Dennis@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Donaldson, Yerusha [donaldson.yerusha@epa.gov]; Ford, Mark [Ford.Mark@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; R10 ORC FOIA [R10-ORC-FOIA@epa.gov]; MacDonald, Jennifer [Macdonald.Jennifer@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 4530 and Skype Meeting

**Start**: 8/28/2019 2:00:00 PM
**End**: 8/28/2019 4:00:00 PM
**Show Time As**: Tentative

Link to folder with Listening Session slides, draft FOIA Policy, draft FOIA Procedures and related documents:

Draft EPA FOIA Policy and EPA Procedures and Related Documents

This is the second of three general listening sessions scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019. Additional general listening sessions are scheduled for:

Tuesday, August 20, 2019 from 1-3pm
Tuesday, September 10, 2019 from 1-3pm

The National FOIA Office (NFO) encourages you to participate in at least one of these general listening sessions.

The NFO has also scheduled a focused listening session on Wednesday, August 21, 2019 from 10am – noon to seek input on Lead FOIA Office and Contributing Office search and first-level review responsibilities.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

In addition, the NFO invites you to provide written comments on these updates. Please submit any written comments to Heather Thompson at thompson.heather@epa.gov and Krishna Bhatt at bhatt.krishna@epa.gov by COB Friday, September 20, 2019. Each FOIA Program should coordinate within their office and provide a consolidated response wherever possible.

Please use the conference line below to connect to audio if you are participating remotely.

Conference Lin Ex. 6
Conference ID:

Join Skype Meeting

Trouble Joining? Try Skype Web App

Help

**Awareness Notification Email Template**

**To Line:** Elizabeth White, Director, OEX
Brian Hope, Deputy Director, OEX
Victoria Tran, Advisor, OEX
Timothy Epp, National FOIA Office
Nancy Grantham, Principle Deputy Associate Administrator, OPA
Michael Abboud, Press Secretary, OPA
Joseph Brazauskas, Acting Associate Administrator, OCIR
Robin H. Richardson, Principle Deputy Associate Administrator, OCIR
Denise Walker, Acting Assistant Director, National FOIA Office
Larry Gottesman, Assistant Director, National FOIA Office

[*insert Action Office's Deputy Assistant Administrator or Deputy Regional Administrator*]
[*insert - individual assigned to the request in FOIAonline*]

**Subject:** Awareness Notification [*Include EPA FOIA ID here*] [*Identify general topic of FOIA*]

To whom it may concern,

[*Identify the Action Office here*] is responding to the above-referenced FOIA request(s). We are providing this awareness notification email pursuant to the Chief of Staff's November 16, 2018 memorandum "Awareness Notification Process for Select Freedom of Information Act Releases." Recipients of this email have up to three business days following transmission of this email to review the documents to be released.

There is no requirement for you to respond to this email or otherwise take action. The Action Office has completed review and obtained management approval consistent with the agency's FOIA policy and procedures.

After 4 p.m. on the third business day after transmission of this email, the Action Office will issue the Agency's FOIA determination to the requester(s). The determination will be issued promptly, but in no event later than one business day following completion of the three-day awareness notification period.

The information provided below is consistent with Paragraph 4 of the above-referenced November 16, 2018 memorandum.

| [*Action Office*] | | | | | | | |
|---|---|---|---|---|---|---|---|
| **FOIA ID** | Requester | Requester Organization | Date FOIA Request Perfected | Date sent for Awareness Notification | Brief description of request as clarified | Interim or Final Response | Number of Records and/or pages |
| ***EPA-HQ-2019-00xxx*** | *Jane Q. Public* | *News Group* | *11/10/2018* | *11/17/2018* | *Documents seeking records about X.* | *Interim response* | *10 records* |

The following offices have equities in these records and have reviewed the relevant records:

*Office 1*
*Office 2*
*Office 3*

The manager who approved this release is: _____

The records are:

___ attached

___ may be found at the following link: [*Insert link*]

Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 8/20/2019 10:11:49 PM
**To**: FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; Shields, Edward [Shields.Ed@epa.gov]; Sheehan, Charles [Sheehan.Charles@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Ingram, Earl [Ingram.Earl@epa.gov]
**CC**: Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; OGC NFO [OGC-NFO@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Kudarauskas, Paul [Kudarauskas.Paul@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]; Clausen, Rebecca [Clausen.Rebecca@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Smiley, Cassandra [smiley.cassandra@epa.gov]; Gupta, Kaushal [Gupta.Kaushal@epa.gov]; Gary, Gayvonne [Gary.Gayvonne@epa.gov]; Harmon, Stephanie [harmon.stephanie@epa.gov]; Hoff, David [hoff.david@epa.gov]; Holst, Linda [holst.linda@epa.gov]; Jaffess, Sharon [jaffess.sharon@epa.gov]; Jones, Evette [jones.evette@epa.gov]; King-Hackney, Ashadee [King-Hackney.Ashadee@epa.gov]; Matheson, Thomas [matheson.thomas@epa.gov]; O'Lone, Kimberly [OLone.Kimberly@epa.gov]; Rosado, Elizabeth [rosado.elizabeth@epa.gov]; Rowan, Anne [rowan.anne@epa.gov]; Sulej, Erik [Sulej.Erik@epa.gov]; Vernon, Portrice [vernon.portrice@epa.gov]; Weimer, Noreen [weimer.noreen@epa.gov]; Wilson, Terri [Wilson.Terri@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Tonic, Ingrid [tonic.ingrid@epa.gov]; Kennedy, Chandra [Kennedy.Chandra@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Rementer, Nicole [rementer.nicole@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]; Brown, Sineta [Brown.Sineta@epa.gov]; Almazan, Christina [almazan.christina@epa.gov]; Hauser, Mitchell [hauser.mitchell@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Swanson, Amy [Swanson.Amy@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Armstrong, Kathy [Armstrong.Kathy@epa.gov]; Robinson, Donna [Robinson.Donna@epa.gov]; Woodard-Burrell, Gwendolyn [Woodard-Burrell.Gwendolyn@epa.gov]; Cody, Karen [Cody.Karen@epa.gov]; Cruver, Melvin [Cruver.Melvin@epa.gov]; Pearce, Jennifer [Pearce.Jennifer@epa.gov]; Pressley, Miriam [Pressley.Miriam@epa.gov]; Johnson, Priscilla [Johnson.Priscilla@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]; Hoverman, Taylor [hoverman.taylor@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Blackburn, Elizabeth [Blackburn.Elizabeth@epa.gov]; Furey, Eileen [furey.eileen@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Levine, Scott [Levine.Scott@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]; Hines, Andrea [hines.andrea@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Bhatt, Krishna [bhatt.krishna@epa.gov]; Bossard, Justin [bossard.justin@epa.gov]; Schumacher, Wendy [schumacher.wendy@epa.gov]; Malloy, Marilyn [Malloy.Marilyn@epa.gov]; DeBell, Kevin [debell.kevin@epa.gov]; Cunningham, Dennis [Cunningham.Dennis@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]; Collazo, Beatriz [collazo.beatriz@epa.gov]; Weinstock, Larry [Weinstock.Larry@epa.gov]; Sandfoss, Kristina [Sandfoss.Kristina@epa.gov]; Stanich, Ted [Stanich.Ted@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Coogan, Daniel [Coogan.Daniel@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]; Badalamente, Mark [Badalamente.Mark@epa.gov]; Noga, Vaughn [Noga.Vaughn@EPA.GOV]; Creech, Christopher [Creech.Christopher@epa.gov]; McLendon, Wanda [McLendon.Wanda@epa.gov]; Newman, Maya [Newman.Maya@epa.gov]; Smith, Susan [Smith.Susan@epa.gov]; Brooks, Becky [Brooks.Becky@epa.gov]; Murdock, James [Murdock.James@epa.gov]

**Subject**: Listening Session - FOIA Search and Review Responsibilities
**Attachments**: Search and Review Listening Session.pptx
**Location**: WJC North 6013 and Skype Meeting

**Start**: 8/21/2019 2:00:00 PM
**End**: 8/21/2019 4:00:00 PM
**Show Time As**: Tentative

The National FOIA Office (NFO) is seeking your input on Lead FOIA Office and Contributing Office search and review responsibilities. I have attached some session slides to facilitate discussion on these topics.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

Please use the conference line below to connect to audio if you are participating remotely.

Conference Line
Conference ID: Ex. 6

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Message

**From:** Epp, Timothy [Epp.Timothy@epa.gov]
**Sent:** 8/15/2019 6:09:38 PM
**To:** OGC NFO [OGC-NFO@epa.gov]
**Subject:** Need to stand-up a workgroup
**Attachments:** Life Cycle of FOIA Main Toolkit JGK 32519 (002).WLb.docx

Hi all,

Now that the Regulation Update is effective, we have a draft FOIA Policy & Procedure out for comment, delegations 1-30 and 1-31 are soon to be effective, and we have accomplished several weeks of intake review and assignments, we need to tackle updates to the FOIA training toolkit – *The Life Cycle of a FOIA—The Key Steps to Processing any FOIA Request*. This is likely to be a fairly significant undertaking because the entire document will need to be reviewed to ensure that it fully comports with our current practice.

At staff meeting next week, let's discuss how best to tackle this project including possibly standing up a new workgroup or to assign it to one of the existing groups.

(GLO has identified a few updates they want to make – see attached.)

Tim

**Timothy R. Epp**
|National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309B
Phone (202) 564-2830| epp.timothy@epa.gov

National FOIA Office
EPA Office of General Counsel

Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 8/15/2019 4:53:13 PM
**To**: Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]
**CC**: Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; OGC NFO [OGC-NFO@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 6013 and Skype Meeting

**Start**: 8/20/2019 5:00:00 PM
**End**: 8/20/2019 7:00:00 PM
**Show Time As**: Tentative

This is the first of three general listening sessions scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019. Additional general listening sessions are scheduled for:

Wednesday, August 28, 2019 from 10am – noon
Tuesday, September 10, 2019 from 1-3pm

The National FOIA Office (NFO) encourages you to participate in at least one of these general listening sessions.

The NFO has also scheduled a focused listening session on Wednesday, August 21, 2019 from 10am – noon to seek input on Lead FOIA Office and Contributing Office search and first-level review responsibilities.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

In addition, the NFO invites you to provide written comments on these updates. Please submit any written comments to Heather Thompson at thompson.heather@epa.gov and Krishna Bhatt at bhatt.krishna@epa.gov by COB Friday, September 20, 2019. Each FOIA Program should coordinate within their office and provide a consolidated response wherever possible.

Please use the conference line below to connect to audio if you are participating remotely.

Conference Line: Ex. 6
Conference ID:

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Message

**From**: Hill, Kevin W. [hill.kevinw@epa.gov]
**Sent**: 7/31/2019 3:46:41 PM
**To**: OGC NFO [OGC-NFO@epa.gov]
**Subject**: Costs for Postage
**Attachments**: K. EPA FOIA Regulations Update 7.24.19.pdf

Hello all,

I have a question for the group. I'm looking over the updated regs section on fees and there is no mention of charging a requester for postage. Do you know if the agency traditionally charges this, and how it is justified (as direct cost or as duplication for having to mail paper?)

Regards,
Kevin

**Kevin W. Hill**
Attorney-Adviser | National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309C
Phone 202-564-1652| hill.kevinw@epa.gov

National FOIA Office
EPA Office of General Counsel

issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or the private sector.

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program number and title for this interim final rule are as follows: 64.024 VA Homeless Providers Grant and Per Diem Program.

**List of Subjects in 38 CFR Part 61**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on June 20, 2019, for publication.

Dated: June 20, 2019.

**Consuela Benjamin,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

## PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ Accordingly, the interim final rule amending 38 CFR part 61, which was published at 83 FR 25915 on June 5, 2018, is adopted as a final rule without changes.

[FR Doc. 2019–13500 Filed 6–25–19; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 2**

**[FRL–9995–48–OGC]**

**RIN 2015–AA02**

## Freedom of Information Act Regulations Update

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) takes final action to revise the Agency's regulations under the Freedom of Information Act (FOIA or Act). This action supports the Agency's mission by updating the process by which the public may access information about EPA actions and activities. These revisions include changes required by amendments to the Act in 2007, 2009, and 2016, updates to correct obsolete information, and changes to reflect internal EPA realignment.

**DATES:** This final rule is effective on July 26, 2019.

**FOR FURTHER INFORMATION CONTACT:** Christopher T. Creech, Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, (2310A), Washington, DC 20460; telephone, 202–564–4286; email, *creech.christopher@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

I. Scope of This Action
II. Why is EPA Using the Good Cause and Procedural Exceptions?
A. Procedural Exception
B. Good Cause Exception
III. Background
A. Background on EPA's FOIA Regulations and FOIA Processes
B. Why EPA is Proposing Changes to its FOIA Regulations
IV. Revisions Related to the Amendments to the FOIA
A. Revisions Related to the 2007 Amendments
1. Incorporating the Definition of "Representative of the News Media"
2. Methods of Submitting FOIA Requests
3. Tolling of the Time-Period To Respond to Requests
4. FOIA Public Liaison
B. Revision Related to the 2009 Amendments to FOIA—Elimination of List of FOIA Exemptions
C. Revisions Related to the 2016 Amendments to FOIA
1. When the Agency May Charge Search Fees
2. Content of Response Letters
3. Agency- or Government-Wide Submission Tool
4. Extension of Minimum Time To File Administrative Appeal
V. Clarifications to EPA's FOIA Process
A. Authority To Respond to Requests
B. Administrative Appeals
VI. Other Changes
A. Timing of Received Date
B. References to the National FOIA Office
C. Clear Writing Changes
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
C. Paperwork Reduction Act
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act

### I. Scope of This Action

This action makes changes to the Agency's FOIA regulations at 40 CFR part 2, to implement statutory updates, correct obsolete information, and reflect internal EPA realignment and processing changes to improve the Agency's FOIA response process. These changes affect the process by which any individuals and entities request records from EPA under the Act. The EPA makes changes to bring EPA's FOIA regulations into compliance with the FOIA, as amended by the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524 (2007 Amendments), the OPEN FOIA Act of 2009, Public Law 111–83, 123 Stat. 2142 (2009 Amendments), and the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (2016 Amendments).

Although EPA also makes these revisions as a single action, EPA intends that the revisions detailed below would be severable from each other on judicial review. At this time, the EPA makes these changes to its regulations to comply with the 2007, 2009, and 2016 Amendments, and to remove and correct provisions that are superseded by the statutory amendments.

The EPA has reserved for a later, second rulemaking phase certain

discretionary and modernizing changes that the EPA is considering and on which the EPA will consider taking public comment. The changes in today's rule bring EPA's regulations into compliance with nondiscretionary provisions of the amended statute and reflect changes in the Agency's organization, procedure, or practice.

## II. Why is EPA using the good cause and procedural exceptions?

### *A. Procedural Exception*

The Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), provides that an agency may issue interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice without providing notice and an opportunity for public comment. Certain revisions in this action update the EPA's rules to accurately reflect the Agency's organizational structure and implement statutorily directed changes, which are self-executing. Importantly, these revisions do not change the substantive standards the Agency applies in implementing the FOIA to the extent they conform with the Act and the 2007. 2009, and 2016 Amendments. As such, these revisions will not significantly affect the substantive rights of regulated entities or the general public.

EPA has determined that the following changes announced in the preamble in this rule are exempt from notice and comment under the procedural exception: Modifying the methods of submitting a FOIA request (Section IV.A.2); reflecting the statutory language for the tolling of the time-period for responding to requests (Section IV.A.3); reflecting the statutory requirements to make the Agency's FOIA Public Liaison available (Section IV.A.4); updating the Agency's standard requirements for response letters (Section IV.C.2); acknowledging the possibility of an agency- or government-wide electronic submission tool (Section IV.C.3); extending the minimum time to file an administrative appeal (Section IV.C.4); clarifying the positions that have authority to respond to FOIA requests (Section V.A); modifying methods for submitting an administrative appeal and clarifying positions that have authority to respond to administrative appeals (Section V.B); clarifying that requests, appeals, and other communications from requesters, must be submitted before 5:00 p.m. Eastern Time for the Agency to consider the communication as received on that business day (Section VI.A); and replacing references to "Agency FOI Office" with references to the National FOIA Office (Section V.B).

### *B. Good Cause Exception*

The Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause to revise portions of its FOIA regulations without prior proposal and opportunity for comment. Notice and opportunity for comment on the revisions identified below is unnecessary because the agency lacks discretion to reach a different outcome in response to comment.

It is routine for agencies to update their FOIA regulations to reflect self-executing statutory provisions. The 2016 Amendments provide that "each agency . . . shall review the regulations of such agency and shall issue regulations in accordance with the [2016 Amendments]." Under section 3 of the FOIA Improvement Act (130 Stat. 544) . The significance and consequence of the recent FOIA amendments derive from the amendments themselves. Whereas Congress required the Agency to follow the statutory provisions of the FOIA, these regulatory revisions are insignificant in impact and inconsequential to the public.

This rule revises or strikes provisions in the EPA's prior regulations that are repetitive of the FOIA: Replacing the outdated definition of "news media" with a cross-reference to the FOIA (Section IV.A.1 in this preamble); and striking the obsolete list of FOIA exemptions as incorrect and duplicative of the FOIA (Section IV.B in this preamble). This rule also corrects certain provisions in the EPA's prior regulations to conform to the amended statutory text: Reflecting the statutory requirements to make the Agency's FOIA Public Liaison available (Section IV.A.4 in this preamble); incorporating the text of the 2016 Amendments, which changed when an agency may charge search fees (Section IV.C.1 in this preamble); and incorporating the statutorily required information that the agency must include in FOIA determinations (Section IV.C.2 in this preamble). These provisions now accurately reflect the statutory language of the FOIA, and the EPA is exercising no discretion in revising these sections. Further, any portions of this rule that have slightly different phrasing than the FOIA have no independent effect.

Additionally, EPA has made minor and purely ministerial changes: Replacing references to "Agency FOI Office" with references to the National FOIA Office (Section V.B in this preamble); and making certain non-substantive style and grammatical corrections to the regulations (Section VI.C in this preamble).

## III. Background

### *A. Background on EPA's FOIA Regulations and FOIA Processes*

EPA's FOIA regulations at 40 CFR part 2 set forth the process and administrative rules by which EPA handles FOIA requests. These regulations address such topics as: Where and how to make a FOIA request to the Agency; who within the Agency is responsible for responding to FOIA requests; how and when the Agency will respond to requests; how to appeal final FOIA determinations and how the Agency handles appeals; and how FOIA fees are charged and processed. The Agency has not substantively updated these regulations since 2002. *See* 67 FR 67303 (November 5, 2002).

### *B. Why EPA Is Proposing Changes to Its FOIA Regulations*

EPA revises its FOIA regulations to ensure compliance with amendments to the FOIA. Since the last time the EPA substantially revised these regulations in 2002, Congress has enacted three laws amending the FOIA. Congress passed the 2007 Amendments, which addressed several procedural issues that concern FOIA administration. Congress passed the 2009 Amendments, which revised the requirements of FOIA Exemption 3 regarding records exempt from disclosure by other statutes. Congress passed the 2016 amendments, which addressed a range of procedural and substantive issues and directed all agencies to amend their FOIA regulations to incorporate these required changes.

EPA is also updating its FOIA regulations to correct obsolete information and reflect internal EPA realignment and processing changes to improve the Agency's FOIA response process.

## IV. Revisions Related to the Amendments to the FOIA

This action revises the Agency's FOIA regulations to incorporate certain required changes brought about by the 2007 Amendments, the 2009 Amendments, and the 2016 Amendments.

*A. Revisions Related to the 2007 Amendments*

1. Incorporating the Definition of "Representative of the News Media"

EPA incorporates by reference the statutory definition provide by the 2007 Amendments of "representative of the news media." Section 3 of the 2007 Amendments amends 5 U.S.C. 552(a)(4)(A)(ii) by providing a definition of "a representative of the news media" directly in the statute. The amended statutory provision defines the term "news," gives examples of news-media entities such as "television or radio stations broadcasting to the public at large," and includes provision for a "freelance journalist." Further, the amended statutory provision recognizes the evolution of "methods of news delivery" through, for example, "electronic dissemination," and notes that news-media entities might make their products available by "free distribution to the general public."

2. Methods of Submitting FOIA Requests

EPA also revises the location to which requesters may submit a FOIA request. By this action, EPA makes the National FOIA Office (NFO) in the Office of General Counsel (OGC) the point of entry for all requests. EPA clarifies that requesters may submit FOIA requests to the NFO only by the following four methods: 1) EPA's FOIA submission website at *https://www.foiaonline.gov;* 2) an electronic government submission website established pursuant to 5 U.S.C. 552(m); (3) U.S. Mail sent to the following address: National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (2310A), Washington, DC 20460; or (4) overnight delivery service to National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania NW, Room 5315, Washington, DC 20460. EPA removes certain existing provisions in 40 CFR 2.102(a) and (b) regarding the routing of requests to conform with the approach for the submission of requests. A request triggers the statutory time-periods for response and the tolling provisions of the Act only when the NFO receives a FOIA request through one of the methods outlined above. The 2007 Amendments also decreased the amount of time an agency may take to route a request to the appropriate component of the agency to ten working-days or less. 5 U.S.C. 552(a)(6)(A)(ii). The Agency makes these revisions above to address this change and to minimize the number of misdirected requests sent to the Agency.

Under EPA's former regulations, requesters may have submitted FOIA requests to EPA Headquarters as well as to each of EPA's ten Regional Offices through various means. EPA will no longer accept FOIA requests sent (1) to any office by facsimile; (2) to any office by email; or (3) to Regional FOIA Offices by U.S. Mail or other non-electronic means. If a requester erroneously submits a FOIA request to an EPA program or regional office, the EPA will not consider the request received by the Agency. Consistent with the 2007 Amendments, the EPA will no longer consider these methods and offices "components of the agency" that are "designated in the agency's regulations . . . to receive requests." 5 U.S.C. 552(a)(6)(A)(ii). Requests submitted by one of these three methods will not trigger the statutory time-periods for response or the tolling provisions of the Act. The requester therefore needs to submit a new request to the NFO by one of the four acceptable methods identified in the previous paragraph. Only when a requester properly submits a request by one of the four acceptable methods will EPA's timelines to respond begin to run.

3. Tolling of the Time-Period To Respond to Requests

EPA revises the regulations regarding when the Agency may toll its time-period for responding to requests. The FOIA provides that agencies have 20 working days to respond to requests (unless "unusual circumstances" exist). Consistent with the 2007 Amendments to 5 U.S.C. 552(a)(6)(A)(ii), the Agency may toll the response time once during the first 20 working days to obtain necessary clarification from a requester and as many times as necessary to address issues related to fees.

4. FOIA Public Liaison

The 2007 Amendments to FOIA require agencies to make the FOIA Public Liaison available to requesters to resolve disputes. Therefore, this action includes information about the existence and role of EPA's FOIA Public Liaison, who is available to work with requesters and Agency staff concerning issues related to the Agency's response to FOIA requests.

*B. Revision Related to the 2009 Amendments to FOIA—Elimination of List of FOIA Exemptions*

EPA repeals the list of the FOIA exemptions in its regulations at 40 CFR 2.105. Providing this list of exemptions by regulation is unnecessary and redundant of the statute. EPA will continue to apply the exemptions found in accordance with 5 U.S.C. 552(b) as appropriate. In 2009, Congress amended the FOIA to revise the requirements of FOIA Exemption 3, 5 U.S.C. 552(b)(3), regarding records exempted from disclosure by other statutes. If the EPA were to retain the list of statutory exemptions in its regulations, the EPA would be required to update the list to reflect the changes to Exemption 3. Further, EPA's removal of the list of exemptions from its regulations reduces the need for conforming amendments to EPA's regulations if Congress enacts future changes to the FOIA exemptions and reduces confusion regarding EPA's FOIA process, as it will eliminate any potential for inconsistency between EPA's regulations and the statute. By undertaking this change, no further changes to EPA's regulations would be required by the 2009 Amendments.

*C. Revisions Related to the 2016 Amendments to FOIA*

1. When the Agency May Charge Search Fees

EPA does not charge search fees (or duplication fees for educational or noncommercial scientific institutions, or representatives of the news media) if the Agency fails to meet FOIA's period to respond to a FOIA request except where the following criteria are met: (1) "unusual circumstances" (as defined in FOIA) exist; (2) timely written notice is provided to the requester; (3) more than 5,000 pages are necessary to respond to the request; and (4) Agency staff have made at least three good faith attempts to discuss limiting the scope of the request with the requester as provided for in section 552(a)(6)(B)(ii), which includes notice of the availability of the FOIA Public Liaison and the right to seek dispute resolution services from the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA).

The 2016 Amendments limited agencies' ability to charge for search or duplication fees for certain requests. Specifically, the 2016 Amendments limited agencies from assessing search fees (or duplication fees for educational or noncommercial scientific institutions, or representatives of the news media) if an agency's response time is delayed beyond statutory time-periods. 5 U.S.C. 552(a)(4)(viii). In general, the time-period for determining whether to comply with a FOIA request is 20 working days. When agencies determine that "unusual" circumstances apply to the processing of a request, and they have provided timely written notice to the requester, a delay may be excused for an additional 10 working

days. However, if the agency fails to comply with the extended time limit, it may not charge search fees (or duplication fees for educational or noncommercial scientific institutions, or representatives of the news media). The law contains an exception: if unusual circumstances apply (as defined by 5 U.S.C. 552(a)(6)(B)(iii)) and more than 5,000 pages are necessary to respond to the request, agencies may charge search fees (or duplication fees for educational or noncommercial scientific institutions, or representatives of the news media) if timely written notice has been made to the requester and "the agency has discussed with the requester by written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request [under 5 U.S.C. 552(a)(6)(B)(ii)] ." *Id.* § 552(a)(A)(4)(viii)(II)(bb).

2. Content of Response Letters

EPA now requires that final determinations include information about the right to seek assistance from the FOIA Public Liaison, and in the case of an adverse determination, of the existence and role of OGIS in providing dispute resolution services in FOIA-related matters. EPA also requires that the office which is processing the FOIA requests to include information about the existence and role of the OGIS when any request for an extension exceeds the 10-day period, as required by the 2016 Amendments. The 2016 Amendments established new requirements for providing notification of assistance from public liaisons. When agencies make determinations on requests they now must offer the services of their FOIA Public Liaison and must notify requesters of the dispute resolution services provided by OGIS. Agencies must also allow requesters a period of at least 90 days within which to file an administrative appeal. Specifically, agencies must notify requesters of "the right of such person to seek assistance from the FOIA Public Liaison of the agency," and, in the case of an adverse determination, the right to appeal within a period of time "that is not less than 90 days after the date of such adverse determination" and "the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services."

3. Agency- or Government-Wide Submission Tool

EPA amends the regulations to permit electronic submission of FOIA requests to the Agency through an agency- or government-wide electronic submission tool that may be approved in the future pursuant to 5 U.S.C. 552(m), such as FOIA.gov, in addition to permitting electronic submission through the Agency's current electronic submission tool, FOIAonline.

4. Extension of Minimum Time To File Administrative Appeal

EPA extends the time in which a requester is required to file an administrative appeal from 30 calendar days to 90 calendar days, which reflects changes made by the 2016 Amendments.

## V. Clarifications to EPA's FOIA Process

The Agency is taking this opportunity to make additional changes to its regulations to improve the FOIA process.

### *A. Authority To Respond to Requests*

EPA clarifies that the Administrator and Deputy Administrator and all assistant administrator-level positions and regional administrator positions in the Agency, or their deputies, and certain other office heads have the authority to respond to FOIA requests. This change eliminates a potential conflict in the existing regulations and ensures consistency of responses across the Agency. The previous regulations contained a potential inconsistency. EPA simplifies and consolidates section 2.103(b), which empowered the "head of an office, or that individual's designee" to grant or deny requests, and section 2.104(h), which empowered division directors or equivalents authority to issue "denials."

In addition, the Agency clarifies the authorities, and delegation of the authority, because the term "division director" is not easily interpreted across the Agency. The Agency does not intend to affect the Agency's use of delegation directives to set forth specific rules and limitations regarding who may be delegated FOIA decision making authority; it is not necessary to set forth such delegations, and limitations, in Agency regulations.

### *B. Administrative Appeals*

EPA revises the provisions of its regulations relating to administrative appeals to further streamline the appeals process. Like the changes regarding the receipt of FOIA requests, EPA accepts administrative appeals through centralized means to ensure timely receipt by the Agency of the appeal. EPA accepts appeals only by 1) electronic means through the Agency's FOIA management system, or 2) by U.S. Mail to the NFO.

Final determinations made by the General Counsel or the General Counsel's delegates will be heard by an authorized decisionmaker within OGC who did not make the final determination. This change ensures the most efficient receipt and processing of FOIA appeals by the Agency.

## VI. Other Changes

In addition to revisions related to the amendments to the FOIA, EPA is making both changes to procedural provisions to improve the way the Agency responds to FOIA requests and non-substantive edits for clarity.

### *A. Timing of Received Date*

The Agency must receive all requests, appeals, and other communications from requesters, submitted electronically (through EPA's electronic FOIA management system or otherwise) before 5:00 p.m. Eastern Time for the Agency to consider the communication as received on that business day. EPA considers any such communications received after 5:00 p.m. Eastern Time as received on the next working day (*i.e.,* excluding weekends and federal holidays). This timing rule will govern how the Agency calculates its time-periods for action under FOIA, as well as time-periods requesters may face (such as the requirement to file administrative appeals within 90 days).

### *B. References to the National FOIA Office*

EPA revises references to the Headquarters FOI Office, Headquarters FOIA Office, National FOI Office, etc., to refer to the National FOIA Office. The Chief FOIA Officer designates the office that performs the duties of the National FOIA Office.

### *C. Clear Writing Changes*

The EPA makes certain non-substantive changes to clarify references to Agency offices, correct grammatical errors, remove gendered language, remove second person pronouns, and correct passive voice.

## VII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Submission of a FOIA request is a voluntary action that any member of the public, including small entities, can elect to do and the rule relates to the procedures for submitting and processing a FOIA request for EPA records.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on Indian Tribal governments or on the relationship between the national government and the Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629 (February 16, 1994)) because it does not establish an environmental health or safety standard. This regulatory action is a procedural change and does not have any impact on human health or the environment.

*L. Congressional Review Act*

This rule is exempt from the Congressional Review Act because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

**List of Subjects in 40 CFR Part 2**

Environmental Protection, Administrative practice and procedure, Confidential Business Information, Freedom of Information, government employees.

Dated: June 14, 2019.

**Andrew R. Wheeler,**

*Administrator.*

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 2, as follows:

## PART 2—PUBLIC INFORMATION

■ 1. The authority citation for Part 2 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

■ 2. Subpart A of Part 2 is revised to read as follows:

### Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

2.100 General provisions.
2.101 Where to file requests for records.
2.102 Procedures for making requests.
2.103 Responsibility for responding to requests.
2.104 Responses to requests and appeals.
2.105 [Reserved]
2.106 Preservation of records.
2.107 Fees.
2.108 Other rights and services.

### Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

#### § 2.100 General provisions.

(a) This Subpart contains the rules that the Environmental Protection Agency (EPA or Agency) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The Agency also has rules that it follows in processing FOIA requests for records submitted to it as Confidential Business Information (CBI). Such records are covered in Subpart B of this Part. Requests made by individuals for records about themselves under the Privacy Act of 1974, which are processed under 40 CFR part 16, will also be treated as FOIA requests under this Subpart. This ensures that the requestor has access to all responsive records. Information routinely provided to the public as part of a regular EPA activity may be provided to the public without following this Subpart.

(b) EPA will inform the requester of the steps necessary to obtain records from agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service.

(c) The Chief FOIA Officer designates the office that performs the duties of the National FOIA Office. The National FOIA Office reports to the Chief FOIA Officer.

(d) The Chief FOIA Officer designates the FOIA Public Liaisons. The FOIA Public Liaisons report to the Chief FOIA Officer. A FOIA Public Liaison is an official to whom a requester can raise concerns about the service the requester received from the FOIA Requester Service Center. A FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. The public can find more information about the FOIA Public Liaisons at EPA's website.

#### § 2.101 Where to file requests for records.

(a) Requesters must submit all requests for records from EPA under the

FOIA in writing and by one of the following methods:

(1) EPA's FOIA submission website at *https://www.foiaonline.gov;*

(2) An electronic government submission website established pursuant to 5 U.S.C. 552(m), such as FOIA.gov;

(3) U.S. Mail sent to the following address: National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (2310A), Washington, DC 20460; or

(4) Overnight delivery service to National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania NW, Room 5315, Washington, DC 20460. EPA will not treat a request submitted by any other method as a FOIA request, and the Agency will not re-route the request. The requester or requester organization must include the full name of their point of contact and their mailing address for EPA to process the request. For all requests, requesters should provide an email address and daytime telephone number whenever possible. For requests submitted through EPA's FOIA submission website or as provided by an electronic government submission website established pursuant to 5 U.S.C. 552(m), requesters must include an email address. For requests submitted through U.S. Mail, the requester must mark both the request letter and envelope "Freedom of Information Act Request." The requester should not provide social security numbers when making a request for information under the FOIA. Requesters submitting requests electronically must do so before 5:00 p.m. Eastern Time for the Agency to consider the request as received on that date.

(b) EPA provides access to all records that the FOIA requires an agency to make regularly available for public inspection and copying. Each office is responsible for determining which of the records it generates are required to be made publicly available and for providing access by the public to them. The Agency will also maintain and make available for public inspection and copying a current subject matter index of such records and provide a copy or a link to the respective website for Headquarters or the Regions. Each index will be updated regularly, at least quarterly, with respect to newly-included records.

(c) All records created by EPA on or after November 1, 1996, which the FOIA requires an agency to make regularly available for public inspection and copying, will be made available electronically through EPA's website, located at *http://www.epa.gov,* or, upon request, through other electronic means. EPA will also include on its website the current subject matter index of all such records.

**§ 2.102 Procedures for making requests.**

(a) *General information.* EPA will consider a request received when the Agency receives a request by one of the methods identified in § 2.101(a).

(b) EPA employees may attempt in good faith to comply with oral requests for inspection or disclosure of EPA records publicly available under § 2.201(a) and (b), but such requests are not subject to the FOIA or this Part.

(c) *Description of records sought.* A request should reasonably describe the records the requester seeks in a way that will permit EPA employees to identify and locate them. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, the requester should include any file designations or descriptions for the records that the requester wants. The more specific the requester is about the records or type of records that the requester wants, the more likely EPA will be able to identify and locate records responsive to the request. If EPA determines that the request does not reasonably describe the records, EPA will tell the requester either what additional information the requester needs to provide or why the request is otherwise insufficient. EPA will also give the requester an opportunity to discuss and modify the request to meet the requirements of this Section.

(d) *Agreement to pay fees.* If the requester makes a FOIA request, EPA will consider the request to be an agreement that the requester will pay all applicable fees charged under § 2.107, up to $25.00, unless the requester seeks a waiver of fees. The EPA office responsible for responding to the request ordinarily will confirm this agreement in writing. When making a request, the requester may specify a willingness to pay a greater or lesser amount.

**§ 2.103 Responsibility for responding to requests.**

(a) *In general.* Upon receipt of a FOIA request under § 2.101(a) of this Subpart, the National FOIA Office will assign the request to an appropriate office within the Agency for processing. To determine which records are within the scope of a request, an office will ordinarily include only those records in the Agency's possession as of the date the request was received by one of the methods described in § 2.101(a). The Agency will inform the requester if any other date is used.

(b) *Authority to issue final determinations.* The Administrator, Deputy Administrators, Assistant Administrators, Deputy Assistant Administrators, Regional Administrators, Deputy Regional Administrators, General Counsel, Deputy General Counsels, Regional Counsels, Deputy Regional Counsels, and Inspector General or those individuals' delegates, are authorized to make determinations required by 5 U.S.C. 552(a)(6)(A), including to issue final determinations whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue "no records" responses.

(c) *Authority to grant or deny fee waivers or requests for expedited processing.* EPA's Chief FOIA Officer or EPA's Chief FOIA Officer's delegates are authorized to grant or deny requests for fee waivers or requests for expedited processing.

(d) *Consultations and referrals.* When a request to EPA seeks records in its possession that originated with another Federal agency, the EPA office assigned to process the request shall either:

(1) In coordination with the National FOIA Office, consult with the Federal agency where the record or portion thereof originated and then respond to the request, or

(2) With the concurrence of the National FOIA Office, refer the request to the Federal agency where the record or portion thereof originated. The National FOIA Office will notify the requester whenever all or any part of the responsibility for responding to a request has been referred to another agency.

(e) *Law enforcement information.* Whenever a requester makes a request for a record containing information that relates to an investigation of a possible violation of law and the investigation originated with another agency, the assigned office, with the concurrence of the National FOIA Office, will refer the request to that other agency or consult with that other agency prior to making any release determination.

**§ 2.104 Responses to requests and appeals.**

(a) *Timing of response.* The EPA office assigned to process the FOIA request will initiate the search, collection, and review process, and respond to a request within 20 working days from the date the request was received by one of the methods identified in § 2.101(a), unless unusual or exceptional circumstances

exist as provided in paragraph (e) of this section. If EPA fails to respond to the request within the statutory time-period, or any authorized extension of time, the requester may seek judicial review to obtain the records without first making an administrative appeal.

(b) On receipt of a request, the National FOIA Office ordinarily will send a written acknowledgment advising the requester of the date the Agency received the request and of the processing number assigned to the request for future reference.

(c) *Multitrack processing.* The Agency uses three or more processing tracks by distinguishing between simple and complex requests based on the amount of work, time needed to process the request, or both, including limits based on the number of pages involved. The Agency will advise the requester of the processing track in which the Agency placed the request and the limits of the different processing tracks. The Agency may place the request in a slower track while providing the requester with the opportunity to limit the scope of the request to qualify for faster processing within the specified limits of a faster track. If the Agency places the request in a slower track, the Agency will contact the requester.

(d) *Tolling the request.* Once the request is received, the Agency shall not toll the processing time-period except:

(1) The Agency may toll the processing time-period one time while seeking clarification from the requester; or

(2) The Agency may toll the processing time-period as many times as necessary to resolve fee issues.

(e) *Unusual circumstances.* When the Agency cannot meet statutory time limits for processing a request because of "unusual circumstances," as defined in the FOIA, and the time limits are extended on that basis, the Agency will notify the requester in writing, as soon as practicable, of the unusual circumstances and of the date by which processing of the request should be completed. If the 20 working-day period is extended, EPA will give the requester an opportunity to limit the scope of the request, modify the request, or agree to an alternative time-period for processing, as described by the FOIA. EPA will also provide contact information for its FOIA Public Liaison to assist in the resolution of any disputes between the requester and the Agency, and the Agency will notify the requester of their right to seek dispute resolution services from the Office of Government Information Services within the National Archives and Records Administration.

(f) *Expedited processing.* (1) EPA will take requests or appeals out of order and give expedited treatment whenever EPA determines that such requests or appeals involve a compelling need, as follows:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.

(2) Requesters must make a request for expedited processing at the time of the initial request for records or at the time of appeal.

(3) If the requester seeks expedited processing, the requester must submit a statement, certified to be true and correct to the best of the requester's knowledge and belief, explaining in detail the basis for the request. For example, if the requester fits within the category described in paragraph (f)(1)(ii) of this section and is not a full-time member of the news media, the requester must establish that they are a person whose primary professional activity or occupation is information dissemination, although it need not be the requester's sole occupation. If the requester fits within the category described in paragraph (f)(1)(ii) of this section, the requester must also establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally.

(4) Within 10 calendar days from the date of the request for expedited processing, the Chief FOIA Officer, or the Chief FOIA Officer's delegates, will decide whether to grant the request and will notify the requester of the decision. If the Agency grants the request for expedited processing, the Agency will give the request priority and will process the request as soon as practicable. If the Agency denies the request for expedited processing, the Agency will act on any appeal of that decision expeditiously.

(g) *Grants of requests.* Once the Agency determines to grant a request in whole or in part, it will release the records or parts of records to the requester and notify the requester of any applicable fee charged under § 2.107. The office will annotate records released in part, whenever technically feasible, with the applicable FOIA exemption or exemptions at that part of the record from which the exempt information was deleted.

(h) *Adverse determinations of requests.* When the Agency makes an adverse determination, the Agency will notify the requester of that determination in writing. Adverse determinations include:

(1) A decision that the requested record is exempt from disclosure, in whole or in part;

(2) A decision that the information requested is not a record subject to the FOIA;

(3) A decision that the requested record does not exist or cannot be located;

(4) A decision that the requested record is not readily reproducible in the form or format sought by the requester;

(5) A determination on any disputed fee matter, including a denial of a request for a fee waiver; or

(6) A denial of a request for expedited processing.

(i) *Content of final determination letter.* The appropriate official will issue the final determination letter in accordance with § 2.103(b) of this subpart and will include:

(1) The name and title or position of the person responsible for the determination;

(2) A brief statement of the reason or reasons for the denial, including an identification of records being withheld (either individually or, if a large number of similar records are being denied, described by category) and any FOIA exemption applied by the office in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through annotated deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that an adverse determination may be appealed under (j) of this section and description of the requirements for submitting an administrative appeal; and

(5) A statement that the requester has the right to seek dispute resolution services from an EPA FOIA Public Liaison or the Office of Government Information Service.

(j) *Appeals of adverse determinations.* If the requester is dissatisfied with any adverse determination of their request, the requester may appeal that determination by letter to the National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (2310A), Washington, DC 20460 or *hq.foia@epa.gov.* The requester must make their appeal in writing, and

the Agency must receive the requester's appeal no later than 90 calendar days from the date of the letter that denied the request. The Agency will not consider appeals received after the 90-calendar day limit. Requesters submitting appeals electronically must do so before 5:00 p.m. Eastern Time for the Agency to consider the appeal as received on that date. The appeal letter may include as much or as little related information as the requester wishes, as long as it clearly identifies the determination being appealed (including the assigned FOIA request number, if known). For quickest handling, the requester must mark their appeal letter and its envelope with "Freedom of Information Act Appeal." Unless the Administrator directs otherwise, the General Counsel or the General Counsel's delegate will act on behalf of the Administrator on all appeals under this Section, except that:

(1) The Counsel to the Inspector General will act on any appeal where the Inspector General or the Inspector General's delegate has made the final adverse determination; however, if the Counsel to the Inspector General has signed the final adverse determination, the General Counsel or the General Counsel's delegate will act on the appeal;

(2) An adverse determination by the Administrator on an initial request will serve as the final action of the Agency; and

(3) If a requester seeks judicial review because the Agency has not responded in a timely manner, any further action on an appeal will take place through the lawsuit.

(k) EPA will make the decision on the appeal in writing, normally within 20 working days of its receipt by the National FOIA Office. A decision affirming an adverse determination in whole or in part will contain a statement of the reason or reasons for the decision, including any FOIA exemption or exemptions applied, and inform the requester of the FOIA provisions for judicial review of the decision. If the Agency reverses or modifies the adverse determination on appeal, the Agency will notify the requester in a written decision. In the written decision, the Agency will attach the requested information that the Agency determined on appeal to be releasable, or the Agency will return the request to the appropriate office so that the office may reprocess the request in accordance with the appeal decision.

(l) If the requester wishes to seek judicial review of any adverse determination, the requester must first appeal that adverse determination under this Section, except when EPA has not responded to the request within the applicable time-period. In such cases, the requester may seek judicial review without making an administrative appeal.

**§ 2.105 [Reserved]**

**§ 2.106 Preservation of records.**

The Agency shall preserve all correspondence pertaining to the FOIA requests that it receives until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Copies of all responsive records should be maintained by the appropriate program office. Records shall not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

**§ 2.107 Fees.**

(a) *In general.* The Agency will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (l) of this section. Requesters will pay fees by check or money order made payable to the U.S. Environmental Protection Agency.

(b) *Definitions.* For purposes of this section:

(1) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's commercial, trade, or profit interests, which can include furthering those interests through litigation. The Agency will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the Agency has reasonable cause to doubt a requester's stated use, the Agency will provide the requester a reasonable opportunity to submit further clarification.

(2) Direct costs means those expenses that the Agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) Duplication means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape, disk, or compact disk), among others. The Agency will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) Noncommercial scientific institution means an institution not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section, and that is operated solely for conducting scientific research that is not intended to promote any particular product or industry. To be in this category, a requester must show that a qualifying institution authorizes the request, that the requester makes the request under the auspices of the qualifying institution, and that the requester does not seek the records for a commercial use but to further scientific research.

(6) Representative of the news media has the meaning provided at 5 U.S.C. 552(a)(4)(A)(ii).

(7) Review means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure (for example, doing all that is necessary to redact it and prepare it for disclosure). Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter requesting confidential treatment but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within

records and includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Offices will ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, offices will not search line-by-line where duplicating an entire document would be quicker and less expensive.

(c) *Fees to be charged.* (1) There are four categories of requests. The Agency charges fees for each of these categories as follows:

(i) *Commercial use requests.* The Agency will charge a requester seeking access to records for a commercial use for the time spent searching for the records, reviewing the records for possible disclosure, and for the cost of each page of duplication. The Agency may charge for searching for and/or reviewing the records even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(ii) *Educational or non-commercial scientific requests.* The Agency will charge requesters from educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, only for the cost of record duplication, except that the Agency will furnish the first 100 pages of duplication at no charge.

(iii) *News media requests.* The Agency will charge requesters who are representatives of the news media, and whose purpose in seeking records is noncommercial, for the cost of duplication, except that the first 100 pages of duplication will be furnished at no charge.

(iv) *All other requests.* The Agency will charge requesters not covered by one of the three categories above for the full cost of search and duplication, except that the Agency will furnish without charge the first two hours of search time and the first 100 pages of duplication. The Agency will charge for searching for the records even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(2) In responding to FOIA requests, the Agency will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (l) of this section:

(i) *Search.* (A) The Agency will charge search fees for all requests except for those made by educational institutions or noncommercial scientific institutions, or representatives of the news media subject to the limitations of paragraph (d) of this section. The Agency will charge for time spent searching even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(B) For searches and retrievals of requested records, either manually or electronically, conducted by clerical personnel, the fee will be $4.00 for each quarter hour of time. For searches and retrievals of requested records, either manually or electronically, requiring the use of professional personnel, the fee will be $7.00 for each quarter hour of time. For searches and retrievals of requested records, either manually or electronically, requiring the use of managerial personnel, the fee will be $10.25 for each quarter hour of time.

(C) When contractors conduct searches and retrievals, the Agency will charge requesters for the actual charges up to but not exceeding the rate that the Agency would have charged the requester had EPA employees conducted the search. The Agency will charge the costs of actual computer resource usage in connection with such searches, to the extent they can be determined.

(ii) *Duplication.* The Agency will charge duplication fees to all requesters, subject to the limitations of paragraph (d) of this section. For either a photocopy or a computer-generated printout of a record (no more than one copy of which need be supplied), the fee will be fifteen (15) cents per page. For electronic forms of duplication, other than a computer-generated printout, offices will charge the direct costs of that duplication. Such direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy, to the extent they can be determined.

(iii) *Review.* The Agency will charge review fees to requesters who make a commercial use request. The Agency will charge review fees only for the initial record review (that is, the review done when an office is deciding whether an exemption applies to a particular record or portion of a record at the initial request level). The Agency will not charge for review at the administrative appeal level for an exemption already applied. However, the Agency may again review records or portions of records withheld under an exemption that the Agency subsequently determines not to apply to determine whether any other exemption not previously considered applies; the Agency will charge costs of that review when a change of circumstances makes it necessary. The Agency will charge review fees at the same rates as those charged for a search under paragraph (c)(1)(i) of this section.

(d) *Limitations on charging fees.* (1) The Agency will charge no search or review fees for requests by educational institutions or noncommercial scientific institutions, or representatives of the news media.

(2) The Agency will charge no search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, offices will provide without charge:

(i) The first 100 pages of duplication, and

(ii) The first two hours of search.

(4) The Agency will charge no fee when a total fee calculated under paragraph (c) of this section is $14.00 or less for any request.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, the Agency will charge no fee unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $14.00.

(6) If EPA fails to comply with the FOIA's time limits for responding to a request, EPA will not charge search fees, or, in the instance of requesters described in paragraphs (b)(4) through (6) of this section, duplication fees, except as follows:

(i) If EPA determined that unusual circumstances as defined by the FOIA apply and the Agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 working days;

(ii) If EPA determined that unusual circumstances as defined by the FOIA apply and more than 5,000 pages are necessary to respond to the request, EPA may charge search fees, or, in the case of requesters described in paragraph paragraphs (b)(4) through (6) of this section, may charge duplication fees, if the following steps are taken: EPA must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the EPA must have discussed with the requester by written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii), which includes notification to the requester of the availability of the FOIA Public Liaison and the right to seek dispute resolution services from the Office of Government

Information Services. If this exception is satisfied, EPA may charge all applicable fees incurred in the processing of the request; or

(iii) If a court determines that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(e) *Notice of anticipated fees in excess of $25.00.* When the Agency determines or estimates that the fees the Agency will charge under this Section will amount to more than $25.00, the Agency will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. The amount of $25.00 is cumulative for multi-office requests. If the Agency can only readily estimate a portion of the fee, the Agency will advise the requester that the estimated fee may be only a portion of the total fee. When the Agency notifies a requester that actual or estimated fees will amount to more than $25.00, the Agency will do no further work on the request until the requester agrees to pay the anticipated total fee. The Agency will exclude time from the twenty (20) working day time limit. EPA will memorialize any such agreement in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Agency personnel to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when the Agency chooses as a matter of administrative discretion to provide a special service—such as certifying that records are true copies or sending records by other than ordinary mail—the Agency will ordinarily charge the direct costs of providing the service.

(g) *Charging interest.* EPA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. The Agency will assess interest charges at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until the Agency receives payment. EPA will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset. The Agency will assess no penalty against FOIA requesters for exercising their statutory right to ask the Agency to waive or reduce a fee or to dispute a billing. If a fee is in dispute, the Agency will suspend penalties upon notification.

(h) *Delinquent requesters.* If requesters fail to pay all fees within 60 calendar days of the fees assessment, the Agency will place the requester on a delinquency list. The Agency will not process subsequent FOIA requests until the requester makes payment of the overdue fees.

(i) *Aggregating requests.* When the Agency reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Agency may aggregate those requests and charge accordingly. The Agency may presume that multiple requests of this type made within a 30-day period have been made to avoid fees. When requests are separated by a longer period, the Agency will aggregate them only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. The Agency will not aggregate multiple requests involving unrelated matters.

(j) *Advance payments.* (1) For requests other than those described in paragraphs (j)(2) and (3) of this section, the Agency will not require the requester to make an advance payment (that is, a payment made before EPA begins or continues work on a request). Payment owed for work already completed (that is, a prepayment before the Agency sends copies to a requester) is not an advance payment.

(2) When the Agency determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except when it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) When a requester has previously failed to pay a properly charged FOIA fee to the Agency within 30 calendar days of the date of billing, the Agency may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the Agency begins to process a new request or continues to process a pending request from that requester.

(4) When the Agency requires advance payment or payment due under paragraph (j)(3) of this section, the Agency will not consider the request, and EPA will do no further work on the request until the requester makes the required payment.

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any other statute that specifically requires an agency to set and collect fees for particular types of records. When records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, EPA will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(l) *Waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section when the Agency 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 commercial interest of the requester.

(2) To determine whether the request meets the first fee waiver requirement, the Agency will consider the following factors:

(i) *The subject of the request.* Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote.

(ii) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public is likely to result from the disclosure. Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The Agency will consider a requester's expertise in the subject area and ability and intention to effectively

convey information to the public. The Agency presumes that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The Agency will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the request meets the second fee waiver requirement, the Agency will consider the following factors:

(i) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure. The Agency will consider any commercial interest of the requester (with reference to the definition of "commercial use request" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. The Agency will give the requester an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure.* Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Agency ordinarily will presume that when a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. The Agency will not presume that disclosure to data brokers or others who merely compile and market government information for direct economic return is to primarily serve the public interest.

(4) When only some of the requested records satisfy the requirements for a waiver of fees, the Agency will grant a waiver for only those records.

(5) Requests for the waiver or reduction of fees must address the factors listed in paragraphs (k)(l) through (3) of this section, as far as they apply to each request. Offices will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in deciding whether to grant waivers or reductions of fees and will consult the appropriate EPA offices as needed. Requesters must submit requests for the waiver or reduction of fees along with the request.

(6) When the EPA denies a fee waiver request, EPA will do no further work on the request until it receives an assurance of payment from the requester, or until the requester appeals the fee waiver adverse determination and the EPA completes its final appeal determination pursuant to § 2.104(j).

**§ 2.108 Other rights and services.**

Nothing in this Subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

[FR Doc. 2019–13290 Filed 6–25–19; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 181210999–9239–02]**

**RIN 0648–XX004**

### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Closed Area I Scallop Access Area to General Category Individual Fishing Quota Scallop Vessels

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the Closed Area I Scallop Access Area is closed to Limited Access General Category Individual Fishing Quota scallop vessels for the remainder of the 2019 fishing year. Regulations require this action once it is projected that 100 percent of trips allocated to the Limited Access General Category Individual Fishing Quota scallop vessels for the Closed Area I Scallop Access Area will be taken.

**DATES:** Effective 0001 hr local time, June 23, 2019, through March 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Shannah Jaburek, Fishery Management Specialist, (978) 282–8456.

**SUPPLEMENTARY INFORMATION:** Regulations governing fishing activity in the Sea Scallop Access Areas can be found in 50 CFR 648.59 and 648.60. These regulations authorize vessels issued a valid Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) scallop permit to fish in the Closed Area I Scallop Access Area under specific conditions, including a total of 571 trips that may be taken during the 2019 fishing year. Section 648.59(g)(3)(iii) requires the NMFS Greater Atlantic Regional Administrator to close the Closed Area I Scallop Access Area to LAGC IFQ permitted vessels for the remainder of the fishing year once the allowed number of trips for fishing year 2019 are projected to be taken.

Based on trip declarations by LAGC IFQ scallop vessels fishing in the Closed Area I Scallop Access Area, analysis of fishing effort, and other information, NMFS projects that 571 trips will be taken as of June 23, 2019. Therefore, in accordance with § 648.59(g)(3)(iii), NMFS is closing the Closed Area I Scallop Access Area to all LAGC IFQ scallop vessels as of June 23, 2019. No vessel issued an LAGC IFQ permit may fish for, possess, or land scallops in or from the Closed Area I Scallop Access Area after 0001 local time, June 23, 2019. Any LAGC IFQ vessel that has declared into the Closed Area I Access Area scallop fishery, complied with all trip notification and observer requirements, and crossed the vessel monitoring system (VMS) demarcation line on the way to the area before 0001, June 23, 2019, may complete its trip without being subject to this closure. This closure is in effect for the remainder of the 2019 scallop fishing year, through March 31, 2020.

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. For these same reasons, NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period. The Closed Area I Scallop Access Area opened for the 2019 fishing year on April 1, 2019. The regulations at § 648.59(g)(3)(iii) require this closure to ensure that LAGC IFQ scallop vessels do not take more than their allocated number of trips in the

Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 9/6/2019 1:24:39 PM
**To**: FOIA Officers [FOIAOfficers@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; Powell-Dickson, Antoinette [Powell-Dickson.Antoinette@epa.gov]; Ingram, Earl [Ingram.Earl@epa.gov]; Info Attys [Info_Attys@epa.gov]; Bloom, David [Bloom.David@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Armstrong, Kathy [Armstrong.Kathy@epa.gov]
**CC**: Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; OGC NFO [OGC-NFO@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Clausen, Rebecca [Clausen.Rebecca@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Zipf, Lynn [Zipf.Lynn@epa.gov]; Woodard-Burrell, Gwendolyn [Woodard-Burrell.Gwendolyn@epa.gov]; Cruver, Melvin [Cruver.Melvin@epa.gov]; Cody, Karen [Cody.Karen@epa.gov]; Robinson, Donna [Robinson.Donna@epa.gov]; Pearce, Jennifer [Pearce.Jennifer@epa.gov]; Pressley, Miriam [Pressley.Miriam@epa.gov]; Johnson, Priscilla [Johnson.Priscilla@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]; Barnett-Owens, Inga [Barnett-Owens.Inga@epa.gov]; Blackburn, Elizabeth [Blackburn.Elizabeth@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Kudarauskas, Paul [Kudarauskas.Paul@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Kennedy, Chandra [Kennedy.Chandra@epa.gov]; Tonic, Ingrid [tonic.ingrid@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Palomaki, Ashley [Palomaki.Ashley@epa.gov]; Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Almazan, Christina [almazan.christina@epa.gov]; Hauser, Mitchell [hauser.mitchell@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Swanson, Amy [Swanson.Amy@epa.gov]; Collazo, Beatriz [collazo.beatriz@epa.gov]; Coogan, Daniel [Coogan.Daniel@epa.gov]; Noga, Vaughn [Noga.Vaughn@EPA.GOV]; Gupta, Kaushal [Gupta.Kaushal@epa.gov]; McLendon, Wanda [McLendon.Wanda@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Calvo, Kathy [Calvo.Kathy@epa.gov]; Latham, John [Latham.John@epa.gov]; Richmond, Jonah [Richmond.Jonah@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]; Murdock, James [Murdock.James@epa.gov]; Langley, Shirley [Langley.Shirley@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Donaldson, Yerusha [donaldson.yerusha@epa.gov]; Ford, Mark [Ford.Mark@epa.gov]; Stanich, Ted [Stanich.Ted@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Jones, Knolyn [Jones.Knolyn@epa.gov]; Brockett, Aretha [Brockett.Aretha@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Conway, Timothy [Conway.Tim@epa.gov]; Stoy, Alyse [Stoy.Alyse@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]; Campbell, Rich [Campbell.Rich@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]; Le, Kathryn [le.kathryn@epa.gov]; MacDonald, Jennifer [Macdonald.Jennifer@epa.gov]; Newman, Maya [Newman.Maya@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Clark, Jacqueline [clark.jacqueline@epa.gov]; DeBell, Kevin [debell.kevin@epa.gov]; Newton, Jonathan [Newton.Jonathan@epa.gov]; Levine, Scott [Levine.Scott@epa.gov]; Connery, Shannon [Connery.Shannon@epa.gov]; Hines, Andrea [hines.andrea@epa.gov]; Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]; Bhatt, Krishna [bhatt.krishna@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Kaminer, Joan [Kaminer.Joan@epa.gov]; Malloy, Marilyn [Malloy.Marilyn@epa.gov]; Debes, Alison [Debes.Alison@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Bossard, Justin [bossard.justin@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; Boydston, Michael [Boydston.Michael@epa.gov];

Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]; Payne, James [payne.james@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 6013 Skype Meeting

**Start**: 9/10/2019 5:00:00 PM
**End**: 9/10/2019 7:00:00 PM
**Show Time As**: Tentative

This is the third and final general listening session scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

In addition, the NFO invites you to provide written comments on these updates. Please submit any written comments to Heather Thompson at thompson.heather@epa.gov and Krishna Bhatt at bhatt.krishna@epa.gov by COB Friday, September 20, 2019. Each FOIA Program should coordinate within their office and provide a consolidated response wherever possible.

You can access the draft FOIA Policy, draft FOIA Procedures, Listening Session Notes, and the written comments submitted from the following link:

Draft FOIA Policy and Procedures

Please use the conference line below to connect to audio if you are participating remotely.

Conference Lin
Conference ID:

Ex. 6

Join Skype Meeting

Trouble Joining? Try Skype Web App

Help

Message

**From:** Epp, Timothy [Epp.Timothy@epa.gov]
**Sent:** 6/27/2019 9:26:34 PM
**To:** OGC NFO [OGC-NFO@epa.gov]
**Subject:** Elise and I sent this letter today on our FOIA Regulations
**Attachments:** Elise & Tim letter.pdf

This is an FYI.

Tim

**Timothy R. Epp**
|National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309B
Phone (202) 564-2830| epp.timothy@epa.gov

National FOIA Office
EPA Office of General Counsel

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

Meahan E. Parker
Executive Director
Society of Environmental Journalists
1629 K Street NW, Suite 300
Washington, D.C. 20006

Dear Director Parker:

On behalf of the Administrator of the U.S. Environmental Protection Agency, we write in response to your letter dated, June 26, 2019. Together we manage the Agency's National Freedom of Information Act Office, which advises the Agency on legal issues pertaining to FOIA requests, coordination, and project management. Additionally, we are the two career attorneys tasked with providing the recommendations to update the Agency's FOIA regulations.

This week EPA finalized an updated FOIA regulation that brings the Agency into compliance with a series of Congressional amendments. Unfortunately, a series of false and misleading claims have relayed inaccurate information to the public about this updated regulation. The Agency believes it is important to address these significant misrepresentations and emphasize that the update to the Agency's FOIA regulation in no way expands or increases the authority of political officials in the FOIA process. The Agency's updated regulation does not grant political officials' additional authority to review or withhold FOIA documents, their authority will remain consistent with the authority granted to them under the past regulation.

**1. EPA did not expand political officials' oversight of FOIA responses.**

EPA's updated FOIA regulation did not change the political officials with FOIA decisionmaking authority or expand their authority.

In fact, the FOIA decisionmakers identified in EPA's updated regulation are nearly identical to the list in EPA's old regulations at 40 CFR 2.104(h).

EPA's updated regulation now expressly lists the Administrator, who always had full FOIA decisionmaking authority under the statute, itself. The updated regulations have not increased or otherwise altered the Administrator's authority to make decisions under FOIA.

EPA's updated regulation also expressly lists the Deputies in Program and Regional Offices. These officials always had FOIA decisionmaking authority under the regulations as "designees." Deputies most frequently include the top career official in each program and regional office. Rather than expanding political officials' oversight – which this language did not do — this change expressly recognizes the role of career officials.

In fact, FOIA responses are rarely, issued by political employees -- to the contrary, such decisions typically are issued at the career director or career branch chief level. The updated regulation is not expected to impact or alter that practice.

**2. EPA did not expand political officials' power.**

EPA's updated regulation did not and cannot change the statute Congress passed.

FOIA determinations have always included decisions to withhold records or to issue "no records" responses. The updated regulation does not grant more power than EPA's prior regulations. EPA's prior rules provided in section 104(g) that "[a]n adverse determination consists of . . . a determination that a requested record does not exist or cannot be located[.]" EPA's new updated regulation does not state anything more than this.

**3. EPA's decision to centralize the intake process will speed FOIA processing, not slow it.**

EPA's decision to streamline submission of FOIA requests to its National FOIA Office will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

In 2018, the FOIA Federal Advisory Committee, convened by the National Archives, recommended that federal departments and agencies "centralize FOIA processing where appropriate." Centralized FOIA submission will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

Many other departments and agencies have gone further than EPA in streamlining the FOIA processing, such as Department of State, USAID, Social Security Administration (in the Office of General Counsel), the Securities and Exchange Commission, and Commodity Futures Trading Commission (in the Office of General Counsel), among others. EPA has left the FOIA response decisionmaking authority with the offices that are document custodians. Department of Labor has a similar centralized FOIA submission mailbox and decentralized FOIA processing and response structure.

Centralized FOIA intake and initial review will allow EPA to minimize coordination required for initial assignment of FOIA requests and to ensure consistency in early outreach to requesters. Centralized FOIA intake will allow EPA to gain efficiencies of scale in training, build upon common skills needed to for intake, and enhance counseling and sharing of knowledge and techniques.

**4. EPA's decision to publish a final rule does not violate Administrative law**

EPA's decision to increase efficiency by providing a single location for the public to submit FOIA requests is a procedural rule that does not require notice and comment under the Administrative Procedure Act.

EPA also published its FOIA updated regulation as a final rule without notice and public comment because EPA had no discretion for the changes mandated by the amendments to FOIA in 2007, 2009, and 2016.

Many other agencies similarly published final rules to implement these amendments without notice and comment. Those include:

- Housing and Urban Development. 82 FR 3619 (01/12/2017)
- NEH, National Foundation on the Arts and the Humanities, 82 FR 44 (01/03/2017)
- U.S. Nuclear Regulatory Commission, 81 FR 96344 (12/30/2016)
- Department of Energy, 81 FR 94915 (12/27/2016)
- U.S. International Trade Commission, 81 FR 86575 (12/01/2016)
- Farm Credit Administration, 81 FR 63365 (09/15/2019)
- Surface Transportation Board, 81 FR 90750 (12/15/2019)
- Office of Special Counsel, 82 FR 15609 (03/30/2017)
- National Labor Relations Board, 82 FR 11748 (02/24/2017)
- National Council on Disability, 81 FR 93791 (12/22/2016)
- Tennessee Valley Authority, 82 FR 41511 (09/01/2017)
- Defense Nuclear Facilities Safety Board, 82 FR 30722 (07/03/2017)

**5. EPA regions are still empowered to grant requests**

Under the updated regulation regional offices have the authority to grant FOIA requests.

The updated regulation only centralizes the intake of FOIA requests to the National FOIA Office; it does not centralize the searching, reviewing, or production of records.

The updated regulation, like the 2002 regulations, continues to provide regional administrators, their deputies, and delegates the authority to issue final determinations.

Best Regards,

Elise Packard

Timothy R. Epp

**To:** Lewis, Judith[Lewis.Judith@epa.gov]; Griffo, Shannon[Griffo.Shannon@epa.gov]; Schumacher, Wendy[schumacher.wendy@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Lewis, Monica[lewis.monica@epa.gov]
**Cc:** Collazo, Beatriz[collazo.beatriz@epa.gov]
**From:** Collazo, Beatriz[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B92F716A88B43ED8762F89D0D73732A-COLLAZO, BE]
**Sent:** Thur 6/27/2019 2:03:58 PM (UTC)
**Subject:** FW: Awareness Notification
Awareness Notificiation Temp 1.docx
FOIA Efficiency Memo (1).pdf

Hello Everyone,

Please be aware of this requirement on your requests.

Thank you and have a great day,

**Beatriz Collazo**
Government Information Specialist | National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7409K
Phone 202-564-1259| collazo.beatriz@epa.gov

National FOIA Office
EPA Office of General Counsel

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**From:** Person, Linda
**Sent:** Thursday, June 27, 2019 9:43 AM
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
**Cc:** Collazo, Beatriz <collazo.beatriz@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>
**Subject:** Awareness Notification

(This is being sent on behalf of Larry Gottesman.)

Dear Mr. Fotouhi:

The following FOIA requests, assigned to your office, have been selected for the Awareness Notification Process set forth in the attached Chief of Staff's Memorandum.

The FOIAonline tracking number(s) for the selected FOIA requests is/are:

| OFFICE | FOIA NUMBER | SUBJECT |
|---|---|---|
| OGC | EPA-HQ-2019-006284 | * Documents describing or generated as part of the **establishment of any different processing queues for FOIA requests**<br>* Documents describing the rules and procedures governing any different processing FOIA queues<br>* Documents, produced in the previous 15 years, containing reports or statistics describing the FOIA processing queues<br>* Documents describing procedures for the handling or coordination of requests from high volume FOIA requesters<br>* Documents describing procedures, rules and prerequisites for any exceptions to processing requests in a "first in, first out" process<br>* Documents describing procedures and rules for the processing of especially complex or delicate FOIA requests |

| | | |
|---|---|---|
| | | * Documents describing procedures and rules for the processing of 'high visibility' FOIA requests, such as those which are likely to elicit reactions from the media or the public<br>* Documents describing procedures and rules for the processing of FOIA requests from members of Congress and federal government agencies<br>* Documents describing procedures and rules for the processing of FOIA requests from non-federal law enforcement agencies. |
| **OGC** | EPA-HQ-2019-006354 | I request all documents related to EPA **employees' ethics waivers** in resolving financial conflicts of interest from May 1 to June 1, 2019. These documents are maintained by federal agencies and are released to the public upon request under 18 U.S.C. 208. |
| **OGC** | EPA-HQ-2019-006361 | I request records of all approval of outside activity forms; certifications of qualified trusts; certificates of divestiture; impartiality determinations; notices of disqualification; recusals; screening arrangements; waivers, including those resolving financial conflicts of interest; and all other **ethics-related records** filed by and/or given to EPAâ€™s **political appointees** â€“ either classified as Administratively Determined, Schedule C, Non-career Senior Executive Service, Presidential Appointment without Senate Confirmation or Presidential Appointment with Senate Confirmation â€“ from May 1 to June 1, 2019. |
| **OGC** | EPA-HQ-2019-006408 | 1. Any memoranda, protocols or other directives from the White House regarding the administration's policy, practice, or approach to responding to requests for documents, testimony, or information from congressional committees, including any policies, practices or approaches for responding to **congressional subpoenas.**<br>2. Any memoranda, protocols or other directives from your agency's leadership regarding the administration's policy, practice, or approach to responding to requests for documents, testimony, or information from congressional committees, including any policies, practices or approaches for responding to congressional subpoenas.<br>Please provide all responsive records from September 1, 2018, through the date of the search. |
| **OGC** | EPA-HQ-2019-006428 | All email communications (including emails, email attachments, and calendar invitations) between (1) political appointees* in the Environmental Protection Agency General Counsel's office and (2) any individual employed by the White House (email addresses ending in @who.eop.gov).<br>Please provide all responsive records from September 1, 2018, through the date of the search. |
| **OGC** | EPA-HQ-2019-006496 | Copies of emails sent to or from either the director's office (or equivalent) as well as their chief of staff (or equivalent) and executive director (or equivalent) containing **any of the following 50 (non-case sensitive) words** between 1 January 2018 and the present:<br>1. damn 2. damnit 3. goddamn 4. goddam 5. goddammit 6. webcomic 7. hurt 8. accuse 9. accused 10. allege 11. alleges 12. alleged 13. disgrace 14. disgraced 15. worry 16. worries 17. worried 18. lost 19. perjury 20. perjured 21. lie 22. lies 23. lied 24. 1001 25. 1621 26. game 27. marijuana 28. drug 29. activist 30. activists 31. riot 32. soda 33. reward 34. prize 35. save 36. kill 37. decimate 38. punish 39. punishment 40. penalize 41. penalized 42. shred 43. wipe 44. erase 45. delete 46. bastard 47. bitch 48. bitched 49. bitching 50. dessert |

For these FOIA requests, please follow the procedures set out in the attached Chief of Staff's Memorandum. For steps 4 and 5, an email template is attached for your use.

Please contact me if you have any questions.

Thank you,

Larry F. Gottesman
Agency FOIA Officer
Office of General Counsel
U.S. Environmental Protection Agency

202-566-2162 (Direct line)
202-689-4588 (Mobile)
202-566-1667 (Main line)

National FOIA Office
EPA Office of General Counsel

**Awareness Notification Email Template**

**To Line:** Elizabeth White, Director, OEX
Brian Hope, Deputy Director, OEX
Victoria Tran, Advisor, OEX
Timothy Epp, Director, National FOIA Office
Nancy Grantham, Principle Deputy Associate Administrator, OPA
Travis Voyles, Associate Administrator, OCIR
Robin H. Richardson, Principle Deputy Associate Administrator, OCIR
John Konkus, Deputy Associate Administrator, OPA
Denise Walker, Assistant Director, National FOIA Office
Larry Gottesman, Assistant Director, National FOIA Office

[*insert Action Office's Deputy Assistant Administrator or Deputy Regional Administrator*]
[*insert - individual assigned to the request in FOIAonline*]

**Subject:** Awareness Notification [*Include EPA FOIA ID here*] [*Identify general topic of FOIA*]

To whom it may concern,

[*Identify the Action Office here*] is responding to the above-referenced FOIA request(s). We are providing this awareness notification email pursuant to the Chief of Staff's November 16, 2018 memorandum "Awareness Notification Process for Select Freedom of Information Act Releases." Recipients of this email have up to three business days following transmission of this email to review the documents to be released.

There is no requirement for you to respond to this email or otherwise take action. The Action Office has completed review and obtained management approval consistent with the agency's FOIA policy and procedures.

After 4 p.m. on the third business day after transmission of this email, the Action Office will issue the Agency's FOIA determination to the requester(s). The determination will be issued promptly, but in no event later than one business day following completion of the three-day awareness notification period.

The information provided below is consistent with Paragraph 4 of the above-referenced November 16, 2018 memorandum.

| [*Action Office*] | | | | | | | |
|---|---|---|---|---|---|---|---|
| **FOIA ID** | Requester | Requester Organization | Date FOIA Request Perfected | Date sent for Awareness Notification | Brief description of request as clarified | Interim or Final Response | Number of Records and/or pages |
| ***EPA-HQ-2019-00xxx*** | *Jane Q. Public* | *News Group* | *11/10/2018* | *11/17/2018* | *Documents seeking records about X.* | *Interim response* | *10 records* |

The following offices have equities in these records and have reviewed the relevant records:

*Office 1*
*Office 2*
*Office 3*

The manager who approved this release is: _____

The records are:

___ attached

___ may be found at the following link: [*Insert link*]

Message

**From**: Schumacher, Wendy [schumacher.wendy@epa.gov]
**Sent**: 6/20/2019 6:32:58 PM
**To**: Bhatt, Krishna [bhatt.krishna@epa.gov]; Lewis, Monica [lewis.monica@epa.gov]; Lewis, Judith [Lewis.Judith@epa.gov]; Person, Linda [Person.Linda@epa.gov]; Thompson, Heather [Thompson.Heather@epa.gov]
**CC**: Hill, Kevin W. [hill.kevinw@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
**Subject**: FW: Unusual Circumstances
**Attachments**: FOIA Toolkit Appendix.docx; FOIA Toolkit.pdf; B - EPA FOIA Regulations (2016).pdf; Email Templates_Enhancing Intake_draft 6.20.19.docx

All,

Looping in this morning's participants in the unusual circumstances call.

Wendy
**Wendy Schumacher, Ph.D., PMP**
Government Information Specialist | National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310 A)
Washington, D.C. 20460 | WJCN 5315 E
Phone (202) 566-2513 | schumacher.wendy@epa.gov

---

**From:** Hill, Kevin W.
**Sent:** Thursday, June 20, 2019 1:00 PM
**To:** Schumacher, Wendy <schumacher.wendy@epa.gov>; Spears, Rasheena <spears.rasheena@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>
**Subject:** Unusual Circumstances

INTERNAL DELIBERATIVE
DO NOT RELEASE UNDER FOIA

Workgroup,

Please let me know your thoughts about the updated email tempaltes by COB Monday. I checked the language with the FOIA, EPA Regs, the toolkit, and the toolkit appendix. I would like if someone could also check it with DOJ guidance before then.

Key features:

**Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

Thanks.

Regards,
Kevin

**Kevin W. Hill**
Attorney-Adviser | National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309C
Phone 202-564-1652| hill.kevinw@epa.gov

National FOIA Office
EPA Office of General Counsel

# APPENDIX

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# STEP 1: Acknowledge Receipt of FOIA Request and Understand Your Statutory Deadlines

**[ TOC \o "1-3" \h \z \u ]**

# Initial Short FOIA Response Template

*This template is a short initial note that you can send via FOIAonline, letting the requester know your contact information, that you are reviewing the request and that you will be back in touch promptly once you have had a chance to review fully the request. This can be accomplished by clicking the "Create Correspondence" tab in FOIAonline or by sending via e-mail and then uploading into FOIAonline.*

[DATE STAMP]

*[Name*
*Organization*
*Street*
*City, State Zip]*

Dear [FOIA Requester]:
Re: Freedom of Information Act Request No. EPA-*XX-XXXX-XXXXXX*,

My office has received your FOIA request. I will contact you again after we have had the opportunity to fully review your request. I will be your point of contact. Please feel free to contact me directly with questions or concerns.

Additionally, at any time, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS).

You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

[Your Name]
[Your Phone Number]

# Initial Detailed Response Template

*This template provides optional sections and language to fit the circumstances of any particular request. If the requester provides telephone contact information, it is always a* ***best practice*** *to accompany the initial response letter with a telephone call to the requester. When using this template, read the sections below carefully and edit the bracketed portions consistent with the request at issue. Send via regular mail on Agency Letterhead and upload correspondence in FOIAonline or send as an email via FOIAonline.*

[DATE STAMP]

*[Name*
*Organization*
*Street*
*City, State Zip]*

Re: Freedom of Information Act Request No. EPA-*XX-XXXX-XXXXXX*, Initial Response

Dear Mr./Ms. *[Last name]*:

Thank you for your Freedom of Information Act request. This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on *[MONTH DAY, YEAR]*, in which you requested

> *[INSERT directly what the FOIA request stated or accurately paraphrase description of requested records].*

**Opportunity to Discuss and Modify** *(if needed)*

> *[Edit as appropriate]*

Your request is *[too broad to be completed within 20 days and/or does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them.]*

For example, we would like to discuss the types of records you are interested in, and the possible locations of these records. We would like to further understand the specific subject matter of the records so that we are able to craft a search and provide you with the records you seek. *[TO MAKE THIS STATEMENT DEFENSIBLE IT IS ESSENTIAL TO EXPLAIN WHY YOU CANNOT IDENTIFY AND LOCATE THE RECORDS].*

In addition, requests phrased as legal discovery, e.g., for all records "including but not limited to" and "pertaining to" a subject with no further limitation, do not provide adequate information to allow a professional employee to determine which records you wish EPA to provide.

EPA's FOIA regulations state:

> "Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request." 40 C.F.R. § 2.102(c).

We would like to provide you the opportunity to discuss the request with us and clarify the records that you are seeking so that EPA can process your request. As indicated in 40 C.F.R. § 2.102(c), please include or be prepared to discuss any specific information about the records you seek, including time period, authors, or a more detailed description of the records' subject matter.

**Unusual Circumstances and Extension of Time** *(if needed)*

*[Edit as appropriate]*

Pursuant to 40 C.F.R. § 2.104(d), an extension of time to respond to your request is necessary. Given the scope of the request, EPA anticipates that

*[...the response will require significant amount of EPA's resources and time to search for, and appropriately examine the voluminous amount of records to complete this request and/or*

*...to search for and collect the requested records from multiple EPA offices that are separate from the office processing the request" and/or*

*...the need for consultation with another agency having a substantial interest in the determination of the request."]*

EPA has initiated the coordination of and search for responsive records in our files. Because of the circumstances described above, it is difficult to predict with certainty how many records may be involved. [Optional: *Nonetheless, at this time, EPA estimates the Agency will be able to complete this request by [DATE, MONTH, YEAR]. We appreciate your patience.*]

[*Only if Relevant: Since the time of your request and as of today's date, EPA has received additional FOIA requests about [Topic] including several requests that were approved for expedited processing. These expedited requests will be processed before your request. However, many of the documents that are responsive to those requests will also be responsive to your request. These documents will be made publicly available on a rolling basis as they are produced.]*

**Processing Fees** *(if needed)*

*[Edit as appropriate]*

*[Option 1: On [DATE], the EPA's National Freedom of Information Office granted the fee waiver request that accompanied the FOIA request. Therefore, you will not be assessed fees.*

*Option 2: On [DATE], the EPA's National Freedom of Information Office denied the fee waiver request that accompanied the FOIA request. Therefore, we must receive an assurance of payment before processing the request.*

*Option 3: You were placed in the "other" fee category, which means you will be charged for search, and duplication costs in accordance with the Agency's regulations under 40 C.F.R. Part 2, Subpart A. Therefore, we must receive an assurance of payment before processing the request.*

*Option 4: You were placed in the commercial fee category, which means you will be charged for search, review, and duplication costs in accordance with the Agency's regulations under 40 C.F.R. Part 2, Subpart A. Therefore, we must receive an assurance of payment before processing the request.*

*Option 5: You were placed in the "media/educational" fee category, which means you may be charged for duplication costs in accordance with the Agency's regulations under 40 C.F.R. Part 2, Subpart A.*]

**Publicly Available Information** *(if needed)*

The following are sources of publicly available information that you can access immediately:
*[ Edit as appropriate to your request. You may include fire links to other relevant FOIA responses, your Program specific website, and any of the links below]:*

- Our website: [ HYPERLINK "https://www.epa.gov/home/advanced-search" \h ]
- FOIAonline for records previously released through FOIA requests: [ HYPERLINK "https://foiaonline.regulations.gov/foia/action/public/search/" \h ]
- Frequently requested records: [ HYPERLINK "https://www.epa.gov/foia/national-online-foia-library" \h ]
- Environmental Topics Information repositories: [ HYPERLINK "https://www.epa.gov/environmental-topics/z-index" \h ]
- Technical/scientific/educational publications: [ HYPERLINK "https://www.epa.gov/nscep" \h ]
- Administrative and Environmental Appeals Board cases: [ HYPERLINK "https://www.epa.gov/foia/national-online-foia-library" \h ]
- Staff Manuals and Guidance: [ HYPERLINK "https://www.epa.gov/foia/national-online-foia-library" \h ]
- Policy Statements: [ HYPERLINK "https://www.epa.gov/foia/national-online-foia-library" \h ]
- Superfund sites and data: [ HYPERLINK "https://www.epa.gov/foia/national-online-foia-library" \h ]

**Next Steps**

*[Edit as appropriate]*

The processing clock is stopped for your FOIA request until we receive *[your assurance of payment [and/or] your clarification or modification.]*

Please respond within ten calendar days from the date of this letter to arrange a time to discuss your [*request and fees]*.

You may contact *[Program Contact]* at (*email address)* or at *(telephone number)* with your response or if you have any further questions. If we do not receive a response from you *[By X Date (at least 20 days from date of letter)]*, we will consider your request to be voluntarily withdrawn. [*Edit as appropriate: Once the request is clarified and we receive a written assurance of payment, we will continue processing your FOIA request*] and provide you with an estimated timeframe for completion. If you wish to request information connected to this request in the future, please reference the FOIA request number.

Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

*[NAME]*
*[TITLE]*

# Closure for Failure to Modify FOIA Request Template

*This template is for correspondence to a requester who has failed to modify an improper request. This should be used only after it is clear that the requester will not modify a request. Send via regular mail on Agency Letterhead and upload correspondence in FOIAonline or send as an email via FOIAonline.*

[DATE STAMP]

*[Name*
*Organization*
*Street*
*City, State Zip]*

Re: Freedom of Information Act Request No. EPA-*XX-XXXX-XXXXXX*, Closure For Failure to Modify

Dear Mr./Ms. *[Last name]*:

Thank you for your Freedom of Information Act request. This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on *[MONTH DAY, YEAR]*, in which you requested

*[INSERT directly what the FOIA request stated or accurately paraphrase description of requested records]*.

Your request does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them. The EPA's FOIA regulations explain:

"Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request." 40 C.F.R. § 2.102(c).

We sent you a letter dated *[DATE]* providing you the opportunity to clarify the records that you are seeking so that EPA can process your request. We asked that you contact us by *[DATE]*, with your clarification, and we have not received additional information from you, so we are administratively closing your request.

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are

submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

*[NAME]*
*[TITLE]*

# Requests Seeking Only Information Publicly Available on EPA's Website Template

*This template can be used for responding to requests that seek only information publicly available on EPA's website. Send via regular mail on Agency Letterhead and upload correspondence in FOIAonline or send as an email via FOIAonline.*

Subject: *[FOIA ID # XXX-XXXX]*

Dear *Mr./Ms. [Last Name ]:*

This is in response to your Freedom of Information Act (FOIA) request, identified above, dated *[Month, Day, Year],* that you submitted to the U.S. Environmental Protection Agency (EPA). Your request seeks the following documents:

> *[INSERT directly what the FOIA request stated or accurately paraphrase description of requested records].*

The information that you are seeking is publicly available on EPA's website *[Describe where on EPA's website material can be found and insert link to that location].* Because this information is publicly available, your FOIA request for this information is being administratively closed, in accordance with EPA's FOIA regulations. See 40 C.F.R. Part 2, Subpart A.

If you consider this response to be a denial of your request, you may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Thank you for your interest in this information.

Sincerely,

*[NAME]*
*[TITLE]*

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# STEP 2: Evaluate the FOIA Request and Determine Fees to be Charged, if Any

**[ TOC \o "1-3" \h \z \u ]**

# Checklist for Clarifying Requests

*This checklist is a quick reference for things to consider when attempting to identify components of a request that may be missing or ambiguous and for which clarification is needed.*
*While EPA's regulations cite the categories below as items that should be included in a request, failure to include one or more of these categories* ***does not*** *automatically make the request improper or not reasonably described.*

**Categories of Information to Discuss with Requester for Clarification:**

*The more categories on which you and the requester can agree, the more straightforward processing the request will be.*

- ☐ **Type(s) of Records**: Emails, Documents, Memoranda, Notes, Presentations, Text Messages, Schedule, Voicemail, Data, Logs, etc.
- ☐ **Subject Matter/Topic/Search Terms**
- ☐ **Date Range**
- ☐ **Specific Departments/Custodians/Positions**

# New Complex FOIA Project: Initial Meeting with Team Checklist

*This checklist may assist the Action Office in coordinating the initial meeting with the Contributing Offices and any other necessary parties and begin meaningful collaboration on the FOIA request. This checklist assumes the request has been clarified with the requester.*

**Participants for an initial discussion**: Lead contact and Subject Matter Experts from Action Office and FOIA Coordinator and Subject Matter Experts from Contributing Office(s).

- ☐ Identify and Clarify the following roles:
  - FOIA Coordinator for each office; and
  - Lead contact in the Action Office and any other lead contact(s) from Contributing Office(s) to include on all internal correspondence.

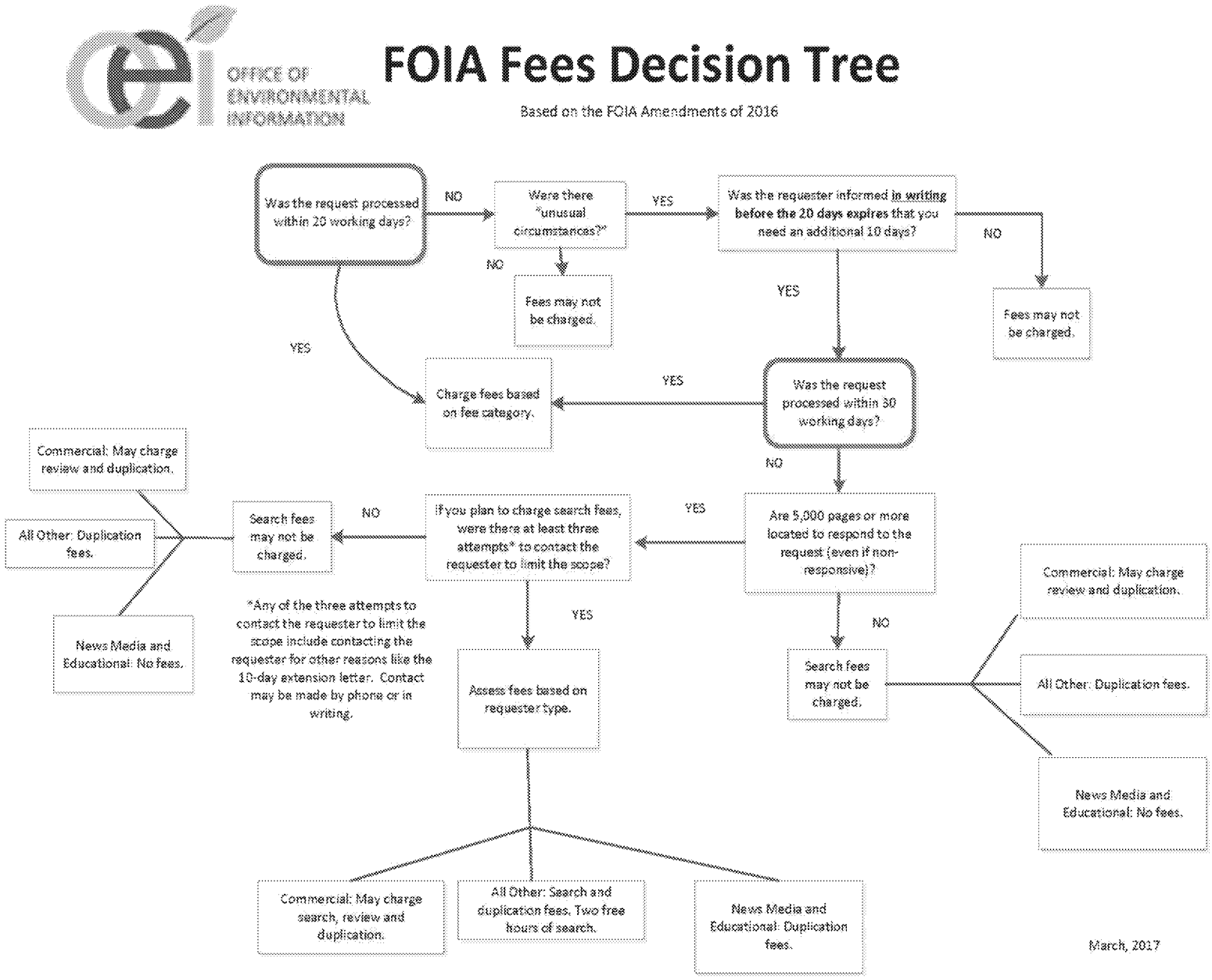
- ☐ Listen carefully and ask questions. Think through:
  - Scope;
  - Time Period;
  - Potential Custodians;
  - Record Types, Locations, and Systems; and
  - Potential Search Terms.

- ☐ Timing
  - FOIA Clock
    - How many days remain on the FOIA clock? and
    - Are there unusual circumstances permitting the Agency to extend the due date?

  - Potential Resource Concerns
    - What do the team's resources look like?
    - Any upcoming large projects?
    - Emergency Project or anticipated resource issues?
    - Familiarity with Relativity?

# FOIA Fees Decision Tree

*The following flow chart can assist with determining which fees should be charged to the requester.*



# ***Confirmation of Clarification Template***

*This template is to document any clarification that the requester has made regarding a pending FOIA request. It is a best practice to document any modification of the request in writing. Send via regular mail on Agency Letterhead and upload correspondence in FOIAonline or send as an email via FOIAonline.*

[DATE STAMP]

*[Name*
*Organization*
*Street*
*City, State Zip]*

Re: Freedom of Information Act Request No. EPA-*XX-XXXX-XXXXXX*, Confirmation of Clarification

Dear Mr./Ms. *[Last name]*:

Thank you for your Freedom of Information Act request. This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on *[MONTH DAY, YEAR]*, in which you requested

*[INSERT directly what the FOIA request stated or accurately paraphrase description of requested records].*

**Clarification**

On *[DATE]* you spoke to *[CONTACT]* regarding the scope of your request. During the conversation you clarified your request as follows:

[*Edit as appropriate to reflect your conversation and the needs of the request… you may wish to include information about:*

**Type(s) of Records**: *Emails, Documents, Memoranda, Notes, Presentations, Text Messages, Schedule, Voicemail, Data, Logs, etc.*
**Subject Matter/Topic/Search Terms:**
**Date Range:**
**Specific Departments/Custodians/Positions:**

**Estimated Date of Completion and Fee Estimate**

*[Provide an estimated date of completion and appropriate information regarding fees]***Next Steps**

*[Edit as appropriate]*

EPA has initiated the coordination of and search for responsive records in our files. During the call, we agreed to set up regular check-in calls to keep you updated. **Our next call is scheduled for *[insert date]*.**

Please contact [Contact] if you have any questions about your request. Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (301) 837-1996 or (877) 684-6448; or fax, (301) 837-0348.

If you wish to request information connected to this request in the future, please reference the FOIA request number.

Sincerely,

*[NAME]*
*[TITLE]*

TABLE OF CONTENTS

# STEP 3: Plan and Conduct a Search for Responsive Records

**[ TOC \o "1-3" \h \z \u ]**

# Search Instruction Template for Potential Custodians

*These are model search instructions for the Action Office to provide to potential record custodians, both in the Action Office and Contributing Offices. These instructions should be customized to reflect the search plan that the Action Office and Contributing Office develop to search for and collect all non-Outlook records.*

*As part of the Search Plan, the Action Office should identify a Point of Contact (POC) who will collect all responsive and nonresponsive records and upload releasable, responsive records to FOIAonline. Each Contributing Office should also identify a POC who will collect records from Contributing Office custodians, propose redactions where appropriate, and transfer both unresponsive records and responsive records to the Action Office POC through an agreed-upon method of transfer.*

## Search Instructions

You have been identified as a potential custodian of responsive records to a Freedom of Information Act (FOIA) request. The request ***[FOIA Request Number]*** concerns ***[describe the request and any modification agreed upon with the requestor].*** A copy of the request and any relevant communication with the requester is attached for your reference.

*Reminder*: In accordance with EPA's FOIA Procedures, you should track and record the time spent searching for responsive records.

### STEP 1: CONDUCT THE SEARCH

Please search the following locations for responsive records: [*The Action Office should select the appropriate locations from the list below.]*

- Lotus Notes mailboxes or calendars, other Lotus Notes databases*
- Enterprise Content Management System (ECMS)
- Local or shared computer drives (C:, F:, G:, etc.);
- SharePoint sites
- OneDrive
- Mobile devices (e.g., text messages and photographs)
- Voicemail
- External drives and discs
- Hard-copy files
- Other

* Please use the following key words in your Lotus Notes search or other non-Outlook electronic search:

- *[The Action Office should provide search terms here.]*

Attached for your reference are step-by-step instructions for conducting a search of *[Lotus Notes]/ [ECMS]/ [Other Electronic Files]. The Action Office should select and attach applicable instructions.*

**STEP 2: CONFIRM THE SEARCH IS COMPLETE**

When you have completed your search, please send an email, with the subject line: "Search Response for [FOIA Request Number]" to Action Office Point of Contact@epa.gov. In your email, including the following information:

- The number of records located each search location [If you did not locate any records, please note this in your email];
- The time spent searching for responsive records

**STEP 3: TRANSFER SEARCH RESULTS FOR REVIEW**

***[For Action Office Custodians]*:** Once you have completed your search of all non-Outlook records, in accordance with Step 1, above, and confirmed that your search is completed (Step 2), you will need to review those records for responsiveness. For both responsive and nonresponsive records, please collect the records in accordance with the instructions below. You may also be asked to review the responsive records for potential FOIA exemptions, once all responsive records are collected.

***[For Contributing Office Custodians]*:** Once you have completed your search of all non-Outlook records, in accordance with Step 1, above, and confirmed that your search is completed (Step 2), you will need to review those records for responsiveness. For both responsive and nonresponsive records, please collect the records in accordance with the instructions below. Contributing Office POC will review responsive records for potential redactions and may seek your input before providing both responsive records and nonresponsive records to the Action Office.

*[For Lotus Notes]*: As described in the attached Lotus Notes Search Instructions, all Lotus Notes records should be uploaded to the Lotus Notes Collection Database. You will receive an email with a hyperlink that allows you to access the database.

All other records: *[The Action Office Point of Contact (POC) should select from sample instructions provided below]*

*For collection via Lotus Notes Collection Database:* Please include all other electronic files in the Lotus Notes Collection Database as described in Step 6 of the Lotus Notes Search Instructions.

*For collection via email*: Consolidate all responsive records in a folder on your computer, labelled as "Your Name, FOIA Request Number, Folder # of #_Responsive" and all non-responsive records in a folder labelled "Your Name, FOIA Request Number, Folder # of #_Nonresponsive." You will send these folders via email to [For Action Office custodians: Action Office POC@epa.gov] or [For Contributing Office custodians: Contributing Office POC@epa.gov]. Due to limitations on file size, you may need to compress the folder(s) and/or send multiple emails. For each email, use the folder label as the subject line.

*For collection via OneDrive:* Action Office POC and/or Contributing Office POCs will need to create "responsive" and "unresponsive" folders for each custodian on OneDrive. Using the following link: [link to OneDrive folder], upload all responsive and unresponsive records into the corresponding folders.

*For collection via thumb drive:* Create a folder on the thumb drive titled "Your Name, FOIA Request Number" and separate subfolders for responsive and nonresponsive records. Upload all responsive records and nonresponsive records to corresponding subfolders and save on a thumb drive. Please deliver this drive to Action Office POC or Contributing Office POC.

Note: All hardcopy documents should be scanned into an electronic document and transferred to Action Office POC or Contributing Office POC in accordance with the instructions above.

# Search Tracking Memo

*This memo provides an example of how the Action Office may document the search plan and track the search process.*

Action Office:
***Point of Contact:***

Contributing Offices or Regions:
***Point(s) of Contact:***

Requester:

FOIAonline Number(s):

Subject of Request:

Date Range:

Custodians:

| Name | Office (If separated N/A) | Tasked (Date) | Completed (Date) |
|---|---|---|---|

The following databases were searched:

| Repository | Repository |
|---|---|
| □ Outlook | □ SharePoint Sites |
| □ Lotus Notes | □ OneDrive |
| □ ECMS | □ Mobile Devices |
| □ CMS | □ Voicemail |
| □ Local or shared computer drives | □ External Drives and Discs |
| □ Hard-copy files | □ Other: |

Search Terms Used:

_____

_____

**Total Number Responsive Records:** _____

# Instructions for Searching & Collecting Other Electronic Files

*These instructions are for custodians who may be searching and collecting electronic files. If applicable, please include this as an attachment to your Search Instructions for custodians.*

Using the search terms provided in the Search Instructions, search for responsive records located in the other computer drives to which you have access. This includes, but is not limited to, your C: drive and your F: drive on your EPA computer. Unless you are designated by the Action Office/ Contributing Office Point of Contact to search a shared drive, such as the G: drive, you should limit your search to those drives to which you have sole access.

Note: Computer drives cannot be collectively searched. For each search term, you will need to conduct a separate search within each drive that you have identified as containing potentially responsive records.

Below are detailed instructions that will guide you through the following steps:

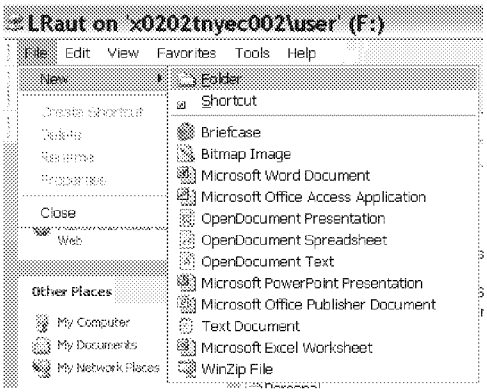
(1) Create search folders to collect search results and final collection folders for responsive and nonresponsive records
(2) Conduct term-specific searches of a single drive, and repeat for each drive
(3) Copy search results into a search folder
(4) Consolidate all search results into the final collection folders and search for duplicates
(5) Review files for responsiveness and sort into subfolders
(6) Optional: upload files to the Lotus Notes Collection Database.

## Step 1. Create Search Folders

Before you begin your search for records, you will need to create folders to store the records from each search. You will then consolidate these folders into a "Final Collection" folders for responsive and nonresponsive records. To create and name the "Search Results" folders and "Final Collection" folder, do the following:

- ✓ Select the "**File Explorer**" located on your desktop or on the task bar at the bottom of your screen.

- ✓ Create a folder either by selecting *Home > New Folder* or *File > New > Folder* as shown below. [How to create the folder may vary depending on the computer system]




- ✓ Name the folder using a simple convention, such as "Search Results [insert # of search]." Do NOT use the case name or any search term in the folder name.

- ✓ Repeat this process for each search, and to create a "Final Collection" folder where you will copy all of the records from the search folders.

- ✓ In the "Final Collection" folder, create two subfolders, one for "responsive" records and the other for "nonresponsive" records.

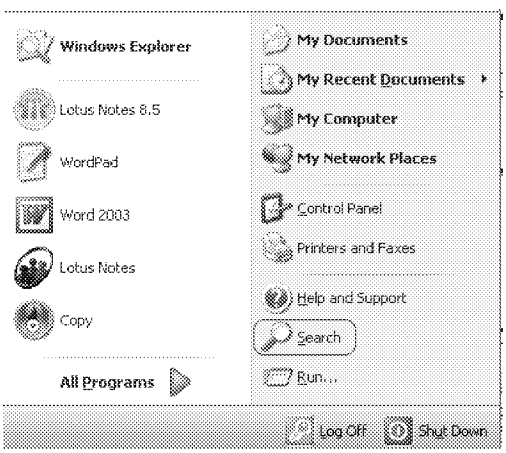
## Step 2. Conduct the Search

Below are some tips to assist with your electronic document search. These tips would apply to searches for files located, for example, in Word, Excel, PowerPoint, WordPerfect, Adobe, and .tif documents, saved in your C:drive, F:drive, and G:drive (if applicable).

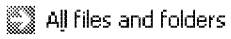
One place to start is with a Windows Search of an entire drive, such as the C:Drive. To perform such a search, follow the steps below.

### Windows Explorer Search for Entire Drive

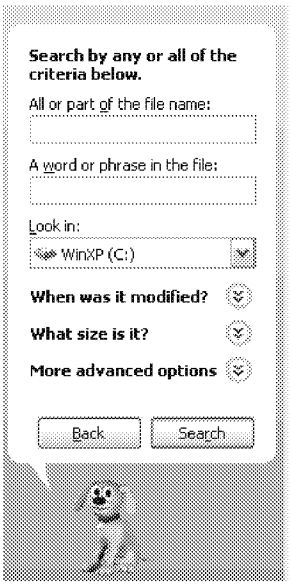
- ✓ From the "Start" menu, select "Search." *Start > Search*



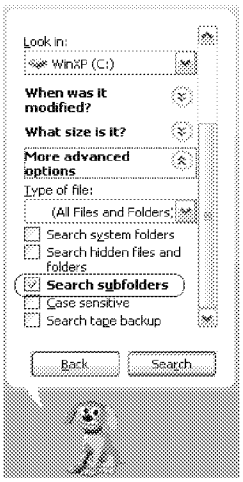
- ✓ Select "**Files and Folders**" (3rd option from the top) from the list at the left side of the screen.




- ✓ Identify the drive that you want to search (C:, F:, etc.).
- ✓ Type the search term in the box entitled "**A word or phrase in the file.**"




- ✓ Click on "**More Advanced Options**" at the bottom of the search menu. Make sure that only "**Search Subfolders**" is checked.
- ✓ Click "**Search.**"




Depending upon the number of files, the search may take anywhere from 5 minutes to 40

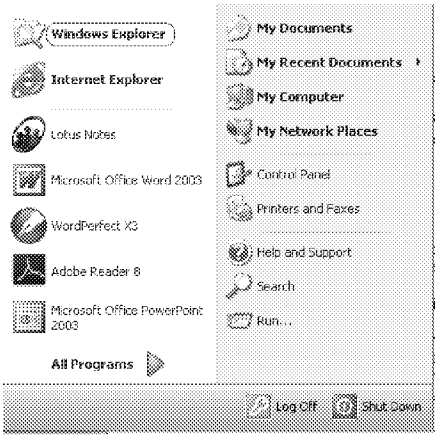
minutes. If the search completes successfully, the search companion will indicate that the search is done and that the search has found a specific number of documents.

- ✓ Record this number for later reference.

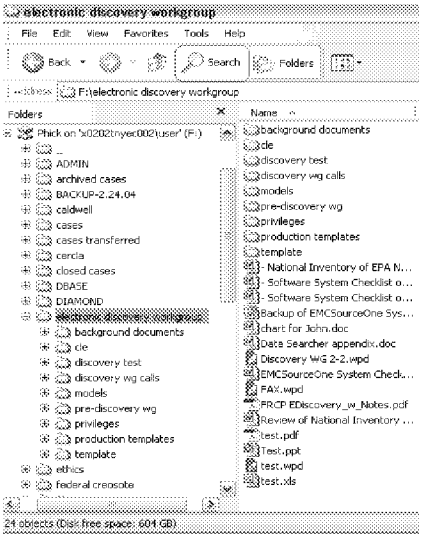
If when searching, the search unexpectedly stops running, the green "progress" bar stops moving, or the search gets stuck in one folder, consider searching each subfolder within a drive separately per the instructions below.

**Windows Explorer Search for Subfolders within a Drive**

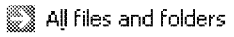
- ✓ Select *Start > Windows Explorer*




- ✓ Highlight the subfolder that you would like to search and click "Search."



- ✓ Select "**All Files and Folders**,"




- ✓ Type the search term into the box entitled "**A word or phrase in the file**"
- ✓ Select "**More Advanced Options**" and select *only* "**Search Subfolders**"
- ✓ Click "**Search**"

Depending upon the number of files, the search may take anywhere from 5 minutes to 40 minutes. If the search completes successfully, the search companion will indicate that the search is done and that the search has found a specific number of documents.

- ✓ Record this number for later reference.

If when searching, the search unexpectedly stops running, the green "progress" bar stops moving, or the search gets stuck in one folder, proceed with a manual search. The instructions below may assist you with performing that search.

**Manual Search**

In conducting a manual search, review those locations in the drive that are reasonably likely to contain responsive records.

**Step 3. Copy Records to Search Folders**

- ✓ As you complete each search, go to the Toolbar, click *Edit > Select All*. Right click and drop down to **Copy**.
- ✓ Go to the Search folder created to hold documents pulled from that specific search, open it, right click, and select "**Paste**" from the drop-down menu. The documents will appear in that folder.

**Repeat Steps 1 through 3 for each of the drives to which you have sole access.**

**Step 4. Copy Records from the Search Results Folders to the "Final Collection" Folder**

- ✓ Once you have completed your search, you should consolidate all documents collected in your Search Results folders into a Final Collection Folder. Open one Search Folder so that you can see all of the files inside the folder. Go to the Toolbar, click *Edit > Select All*. Right click and drop down to **Copy**.
- ✓ Go to the Final Collection folder created to hold all documents. Open the folder, right click, and select "**Paste**" from the drop-down menu.

- ✓ Repeat for all Search Folders until all files are located in the Final Collection Folder.

Because you will need to search each drive for every search term, it is likely that a file will respond to more than one search and that you will have the same file saved in more than one Search Folder. To eliminate duplicates in your Final Collection Folder, do the following:

- ✓ When you open the Final Collection folder and paste the highlighted documents into that folder, if the document is a duplicate of a document already in the folder you will get a dialog box "**Confirm File Replace**." Click "**No**" for each document for which such a box appears because it is a duplicate.

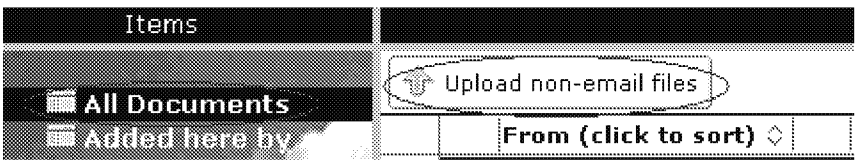
**Step 5. Sort Responsive Records from Nonresponsive Records**

Review documents in the Final Collection folder for each drive to make sure that they are actually responsive to the FOIA request and were not captured because of the presence of a search term used in another context. All responsive records should be separated into a "Responsive" Subfolder; all nonresponsive records should be separated into a "Nonresponsive" Subfolder.

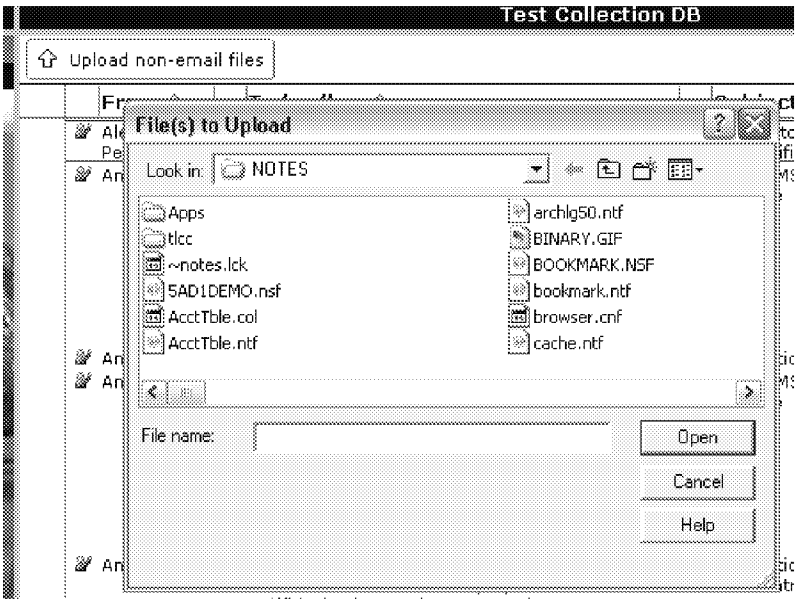
**OPTIONAL: Step 6. Upload Documents to Collection Database**

Please refer to the Search Instructions for guidance on how to transmit your files to the Action Office/Contributing Office Point of Contact. If the Search Instructions direct you to use the Lotus Collection Database to receive all electronic files, please follow the instructions below.

- ✓ Open the All Documents view of the Collection Database and click on the green button at the top of the view labeled "**Upload non-email files**".



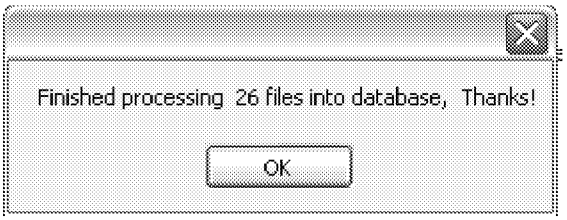

A new box will appear from which you must select your file.




- ✓ Go to the location where you have saved the search results and open that folder.
- ✓ To select more than one file, simply hold down the <Shift> key and click on the first desired filename and then click on the last one. All the files between those will automatically be chosen.
- ✓ If the desired files are not sequential, press <Ctrl> and click on each filename that you wish to include.

<u>If you receive an execution security alert, click on the third option under the "What to Do" heading that says: Start Trusting the Signer to execute this action.</u>

After the files are uploaded you will get the following notice:




Please make note of the confirmed number of items since default setup for a collection database is a "ballot box" style collection where you cannot see any items in the collection, including your own. Refer to Step 3 of the Search Instructions for details on how to transfer your results to the appropriate Point of Contact.

# Instructions for Searching & Collecting Lotus Notes Email

*These are instructions for custodians who may be searching and collecting electronic Lotus Notes files. If applicable, please include this as an attachment to your Search Instructions for custodians. Note that any request seeking emails sent/received prior to February 2013 require a Lotus Notes search.*

***Note: These instructions are subject to change as of January 2018. OEI will provide additional guidance on searching Lotus Notes at that time.***

To fulfill your responsibility under the FOIA, you will need to manually search your Lotus Notes Email for any potentially responsive records and collect these records in the Collection Database(s). Search terms have been provided to you in the Search Instructions, and you have received an email with the link(s) to the Collection Database(s). If you have not received the link(s) or misplaced the email that includes the link(s), please contact the Action Office/Contributing Office Point of Contact responsible for overseeing this FOIA request in your office.

Below are detailed instructions to guide you through the following steps:

(1) Index your Inbox emails
(2) Access the Collection Database(s)
(3) Create a folder to organize your search results by responsiveness
(4) Perform the search for emails
(5) Review the search for responsiveness and sort into subfolders
(6) Upload records to the Collection Database(s)
(7) Repeat Search, Review, and Collection for Archived emails
(8) Search and print ECMS (EZ Record) emails
(9) Delete indexes

## Step 1. Index Your E-mail

Before you search for and collect emails, you *must* index your emails. Indexing your emails ensures that e-mail attachments are included in the search.

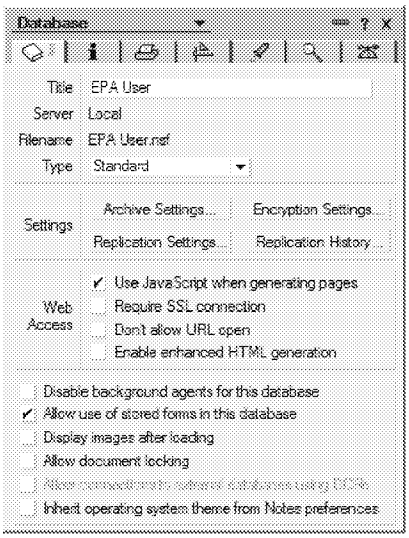
Indexing a large mail file will take several hours. (Most e-mail files are large!)

However, you can continue to use your email normally while the indexing process is running. You may also close your email and/or turn off your computer. This will not interrupt the indexing. Here's how it works:

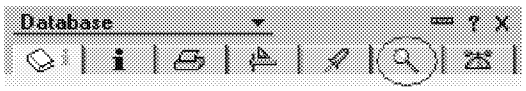
- ✓ Open your Lotus Notes Email Inbox

✓ On the menu bar in the upper left corner of your Notes screen select:

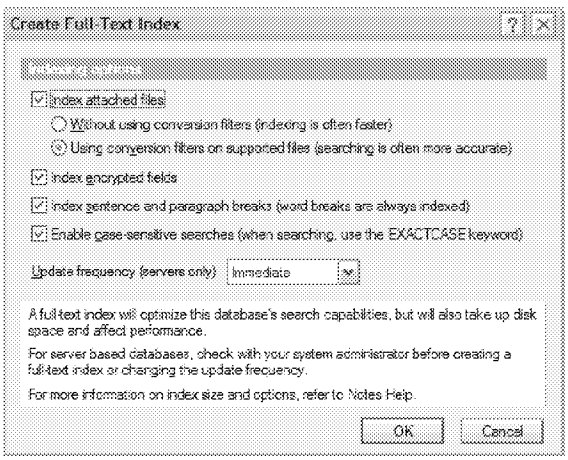
*File > Application > Properties* in Notes 8




✓ Select the tab with the magnifying glass icon.




✓ Click the **Create Index** button, make the selections below (or follow local instructions), and click **OK.**



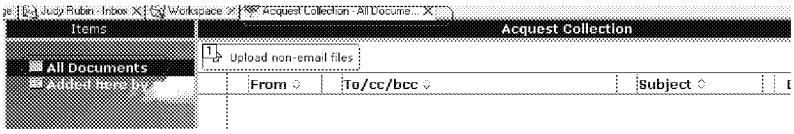

✓ Close the Database Properties box

## Step 2. Open the Collection Database(s)

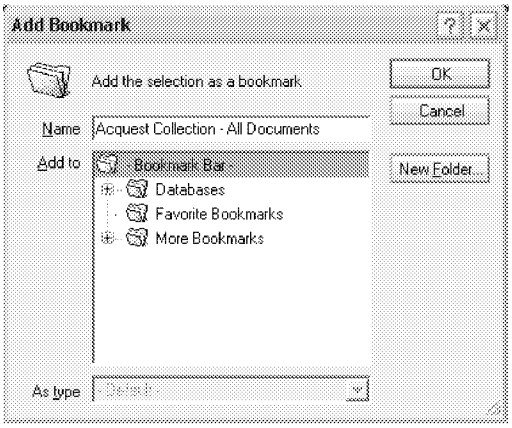
By this point, you should have received an email containing a link to the Collection Database. Follow the instructions below:

- ✓ Click on the link to open the database. For easy access to the database, you will create a bookmark by following the steps below.

- ✓ Right click on the database tab at the top of your screen




- ✓ Select **Create Bookmark.** The following screen will appear:




- ✓ Make sure that "Bookmark Bar" is highlighted and press **OK**. The "Tree" icon will now appear at the bottom of your bookmark bar on the left side of your email Inbox screen.

Both your Email Inbox and the Collection Database(s) are now open, so you can easily switch between your mailbox and the database(s) by selecting the desired tab.

## Step 3. Create a "Search Results" Folder and Final Collection Folder

Before you upload emails to the Collection Database, you will transfer the emails from your inbox into a separate "search results" folder and into "responsive" and "nonresponsive" subfolders. To create these folders, do the following:

- ✓ In your Inbox select *Actions > Folder > Create Folder*

- ✓ Name the Folder "Search Results," and click **OK**

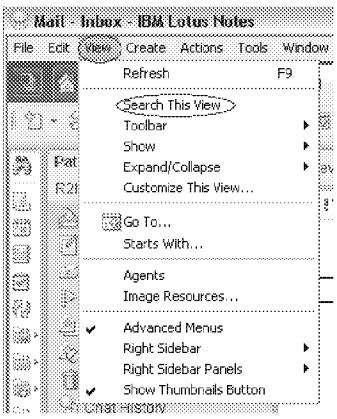
- ✓ Within the "Search Results" Folder, select *Actions > Folder > Create Folder* to create "Responsive" and "Nonresponsive" subfolders.

## Step 4. Perform Search for Emails

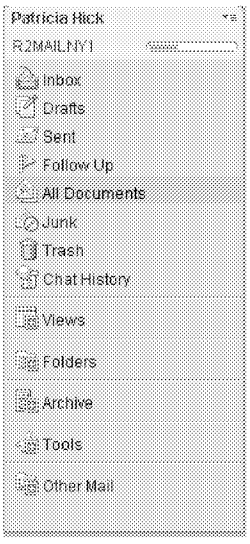
**NOTE: Make sure that your e-mail is indexed prior to conducting the search.** When indexing has completed, you should see a green ball ● and "Indexed" to the right of the search function.

If you do not see the search box:

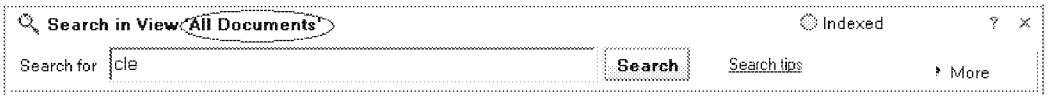
- ✓ Click *View > Search this View* from the menu bar at the top of your Notes screen.




- ✓ On the listings at the left side of your Inbox select *All Documents*. This will capture all potentially responsive documents, even if emails are stored in folders.

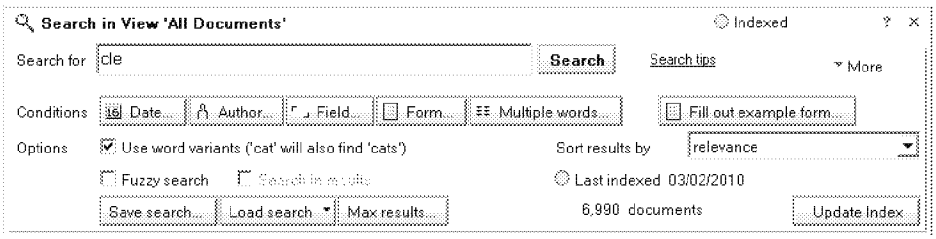


The "Search in View" will now indicate that the search will consider "All Documents."




✓ Click on **More** at the right side of the screen to reveal additional options.

The screen should now look like the snapshot below:




Clicking on the **Multiple words** box will allow you to choose up to eight words for your search.

✓ Enter the search terms provided in the Search Instructions and click **Search**. Your search results will appear below the Search window.

> Note: Lotus Notes has a search limit of 5,000 documents. If your search returns "5,000" documents, there are probably more potentially responsive emails that were not captured. You will need to do one of the following to address this issue:
>
> - Refine your research terms (talk with your POC prior to doing this)
> - Conduct multiple searches using fewer terms
> - Contact your local help desk to request removal of the search limit.

✓ Select ***Edit > Select All***, then click ***Actions > Folder > Move to Folder*** and select the "Search Results" Folder and click the **Add** button.

**Do NOT copy and paste search results into the folder.** This creates duplicates and will overwhelm future searches.

Repeat these steps above until you have searched for all relevant search terms and have deposited potentially responsive emails in the "Search Results" folder.

✓ Click **<Ctrl A>** to reveal the number of documents collected in the "Search Results" folder in the lower left of the Notes screen. Tip: Record this number so that you can later verify that you have transferred all documents from your Notes to the Collection Database.

Note: The "Search Results" folder will only contain an unduplicated collection of documents. Even if an email responded to multiple searches, it will only appear once in the folder.

**Step 5. Review Search Results for Responsiveness**

Once you have completed the search, you should review emails and attachments to make sure that they are actually responsive to the FOIA request. It is possible for a search to collect documents that use a search term in context that is outside the scope of the request and are therefore not responsive.

- ✓ On the left side of your in-box in Notes select *Folders > Search Results*
- ✓ If an item is clearly not responsive, select the document and sort into "Nonresponsive" subfolder. Sort responsive records into the "Responsive" subfolder. You will upload all search results into the collection database, but indicate to the document reviewer which records are nonresponsive.

  **Do NOT delete any items from folders.** Either follow the instruction above or drag and drop documents between folders.

**Step 6. Upload Responsive Search Results into Collection Database(s)**

After you have reviewed the records in Lotus Notes, you will need to copy them into the Collection Database(s). Depending on the number of records, you may need to copy them in several batches (of no more than 100); copying and pasting a large batch may also take several minutes.

- ✓ Open the "Responsive" and "Nonresponsive" subfolders in the "Search Results" folder and select *Edit > Select All* from the menu bar (at the very top left of your Notes screen)
- ✓ Select *Edit > Copy* from the menu bar
- ✓ Select *Edit > Deselect All* from the menu bar. Do NOT skip this step.
- ✓ Open the Collection Database by selecting the bookmark that you created in Step 2.
- ✓ Open the "**All Documents**" folder
- ✓ Select *Edit > Paste* from the menu bar at the very top left of your Notes screen

Repeat these steps until you have copied all of your search results from your e-mail to the Collection Database.

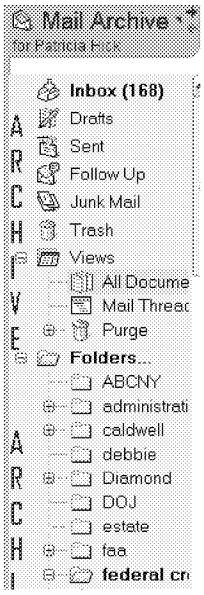
You will receive a dialog box confirming the number of items you pasted. This number should match the number of search results recorded in Step 4.

## Step 7. Repeat Search, Review, and Collection for Archived Emails

The search described above will not capture emails that were archived and deleted from the inbox. You will need to repeat Steps 1-5 for emails that you have saved in your Lotus Notes Archive.

- ✓ Access your Archive from your Notes inbox by clicking *Archive > R2 etc. Archive.*
- ✓ Repeat Step 1 to index your Archive.
- ✓ Repeat Step 2 to open the Collection Database.
- ✓ Repeat Step 3 to create a "Search Results" folder.

Before you begin the search, make sure that you are in the All Documents view in Archive, as shown below:




- ✓ Follow the directions in Step 4 to conduct the search(es) using the search terms provided.
- ✓ Repeat Step 5 to review the search results, if applicable.
- ✓ Repeat Step 6 to upload records to the Collection Database(s)

## Step 8. Search and Print EZ Record Emails

You will need to manually search ECMS for responsive emails that are not already captured in your Inbox and Archive search. Please visit the following site for further instructions: [ HYPERLINK "http://intranet.epa.gov/ecms/guides/search/" \h ]

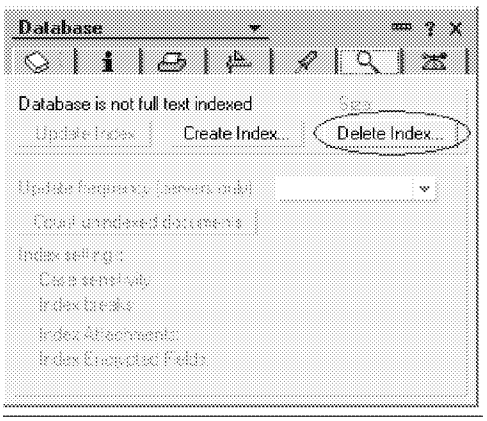
Any responsive emails should be printed and either provided to your FOIA coordinator in hard-copy form or scanned and uploaded/emailed in accordance with Search Instructions.

**Step 9. Delete Indexes**

Mailboxes that are indexed use substantially more space than an un-indexed mailbox, so you should remove the index once you have completed your search for records.

- ✓ Open your Lotus Notes Email Inbox
- ✓ On the menu bar in the upper left corner of your Notes screen select:

*File > Application > Properties* in Notes 8 > *Delete Index*




**Your Lotus Notes Email Collection is now complete. Please notify the Action Office/Contributing Office Point of Contact.**

# Access to Absent and Separated Employee Records

*This document provides additional guidance for the Action Office for custodians who have departed the agency or who are otherwise unable to conduct their own search.*

## Access to an Absent or Separated Employee's Email and Data

If a potential custodian of responsive records is on scheduled leave from the Action Office or a Contributing Office during the time of the search, the Action Office must ensure that the employee's records are searched in their absence. The Office of Environmental Information has a procedure on accessing the email and electronic records of separated or absent employees.

To request access, the Action Office processing the request must send an email, requesting access, to the custodian's manager (or former manager, in the case of separated personnel). If the manager approves the request, they then forward the request, via email, to their Information Resources Management Branch Chief (IRM BC) or Information Management Official (IMO). If the IRM BC or IMO approves the request, they forward the request to [ HYPERLINK "mailto:OEI%20FILE%20ACCESS%20REQUEST@epa.gov" \h ] [ HYPERLINK "mailto:REQUEST@epa.gov" ].

The email requesting access should include the information in the table below. The email subject line should include the nature of the request (i.e. Access to email). Please note that access to the OEI File Access Request mailbox includes federal and contractor email staff necessary to support the request.

| **Table must be completed by the Approver (IRM BC or IMO) and submitted in the Email to OEI FILE ACCESS. Email Subject must include the nature of the request (i.e. email access)** | |
|---|---|
| Role | Name |
| Approver | John Doe (IMO, IRM BCs or their designee whose name has been provided as authorized approvers) |
| Mail Box Name<br>Employee's full name<br>Employee's LAN ID<br>Telephone number | [ HYPERLINK "mailto:Doe.Jane@epa.gov" \h ] Jane<br>Any Doe Jdoe<br>[illegible] |
| Person Receiving Access (Include email address) | Steven Jones (Jones.StevenT@epa.gov) |

| | |
|---|---|
| Access Needed for the Following Applications (as applicable): | o Legacy Notes<br>o Office 365 (Including OneDrive)<br>o Data Files (network drives, (F: and/or G:)(EZ Tech)<br>o HQ Voice mail files<br>o HQ VoIP Call logs<br>o Mobile device data<br>o Login Events (EZ Tech) |

Managers may request access to an absent or separated employee's email files (Legacy Notes and Office 365), data files contained on OneDrive or network drives, voice mail files, call logs, and mobile devices by contacting the Office of Environmental Information (OEI). Once the manager has received access to these files, the manager is responsible for manually searching these files. OEI will not perform searches, nor is OEI responsible for data contents of any files. Moreover, OEI will not sign affidavits pertaining to the search or acquisition of files.

The table below depicts the type of information available and the time limit for requesting access to the related data.

| **Electronic Activities** | **Content** | **Request Time Limit** |
|---|---|---|
| Legacy Notes | Emails, Calendars | Unlimited |
| Office 365 | Email, Calendar, OneDrive | 2/29/2013 - Forward |
| Data Files (network drives, (F: and/or G:) – EZ Tech Users | File and Folders | Unlimited |
| HQ Voice mail files | Voice mails | 20 days |
| HQ VoIP Call logs | Outbound call/inbound calls | 01/01/2014 - Forward |
| Mobile device data | Call Detail Reports (including text messages logs) | 7 years |
| Login Events – EZ Tech Users | Login activities | 30 days |

As each access request is completed, the Action Office requesting the information will be notified and any instructions, if necessary, provided through the IRM BC or IMO. A list of IRM BCs and IMOs, by office, is available at the "SIO Corner" Sharepoint site, accessible through the EPA Intranet.

# Quick Reference Guide: How to Save Text Messages

*This document offers guidance on how to forward text messages from a mobile device to the EPA email system. These instructions are originally located at:* [ HYPERLINK "http://intranet.epa.gov/mobiledevices/pdf/Instructions-Saving-Text-Messages.pdf" ].

EPA discourages the use of text messages for transmitting substantive (or non- transitory) federal records. ([ HYPERLINK "http://www2.epa.gov/records" \h ]) If a substantive (or non- transitory) text message is sent or received on your government-issued mobile device, it must be saved into an EPA-approved records management system. If you follow the steps below, you can forward the text message into the EPA email system and then later save it as a record using EZ Email Records or another approved recordkeeping system. When forwarding the text message from the mobile device to the EPA email system, you must include contextual information such as the time, date, subject, and sender/recipient of the message. Please follow the instructions below to manage text messages that are substantive (or non- transitory) records.

**How to Forward Text Messages to Email from an iPhone**

1. Tap the "***Messages***" icon on the device.
2. Find the text message conversation that you need to save as a record.
3. Tap and hold one of the text messages in the conversation.
4. Tap the "***More***" option that appears above the text message.
5. Put a check mark in the circle beside any or all of the text messages that you want to save as records.
6. Tap the blue arrow icon in the lower right corner of the screen.
7. Type your EPA email address in the "***To***" field.
8. After the text message, enter contextual information about the message including: to, from, date, time, and a relevant subject, then tap "Send." For example, add "(To: Susan Employee, From John Worker, Date: 01.01.15, Time: 6:35 PM, Subject: Project Y)." Press ***"Send".***
9. After receiving the email containing the text message, follow the EZ Email Records process in Outlook to save the email as a record. After following these instructions, you may also notice that a copy of the message containing the contextual information created in step 8, appears in your list of messages in the Messages app on your phone.

**Note:** If you have problems forwarding text messages to email using the above instructions, please try the below options, starting with Option 1, below.

**Option 1:**

1. Tap the Settings App > Messages > Send & Receive
2. If your email address is listed with a checkmark next to it, tap on it to uncheck.
3. Exit out of Settings and try to forward a text message to your email. If you don't have an email listed or it still doesn't work, try Option 2.
   **Be sure to check your Junk Email folder to ensure it did not route there.*

**Option 2:**

1. Tap the Settings App > iTunes & App Store > Apple ID > Sign Out
2. Re-enter your Apple ID (work email address) and Apple ID password.
3. Exit out of Settings and try to forward a text message to your email.

**How to Forward Text Messages to Email from a Windows Phone**

1. On ***Start***, tap "***Messaging***", then tap the thread that contains the text message you want to save as a record.
2. Open the text message, press and hold the message to be forwarded, then click "***Forward***".
3. Type your EPA email address in the "***To***" field.
4. After the text message, enter contextual information about the message including: to, from, date, time, and a relevant subject, then tap . For example, add "(To: Susan Employee, From John Worker, Date: 01.01.15, Time: 6:35 PM, Subject: Project Y)."
5. After receiving the email containing the text message, follow the EZ Email Records process in Outlook to save the email as a record.

*Note*: This approach for saving text messages on a Windows phone can only be used for forwarding individual text messages. If multiple messages need to be stored as records, forward each message and the related contextual information to EPA's email system individually.

**Technical Assistance**

If you have questions about managing records on your mobile or portable devices, contact the [ HYPERLINK "http://www.epa.gov/records/contact.htm" \h ] and refer to the [ HYPERLINK "http://www.epa.gov/records/faqs/pda.htm" \h ] [ HYPERLINK "http://www.epa.gov/records/faqs/pda.htm" \h ] for more information.

# FOIA Search Guide: Best Practices

*This document offers simple, take-away tips for conducting a search.*

As you oversee the search for records responsive to a FOIA request, keep in mind the following recommended best practices:

- ✓ Do NOT conduct a search for an improper request.
  Before you plan your search, make sure that the request "reasonably describes the records sought." If the request is overly broad, poses questions, or seeks records not yet in existence, contact the requester to modify the request.
- ✓ Document the process from start to finish.
  Any external communications that you have with the requester, as well as any notable intra-agency communication pertaining to the request, should be memorialized in writing. Documented changes to the request and any correspondence that you have with the requester should be uploaded to FOIAonline.
- ✓ Keep an eye on the clock.
  Unless you can identify "unusual circumstances," you will have 20 working-days to conduct a reasonable search and provide the requester with responsive records. Remember, you can stop the clock ***once*** to seek clarification from the requester, but remember to re-start the clock once the request is clarified and keep track of the amended due date on FOIAonline.
- ✓ Planning your search is essential.
  Before you begin your search, you should compile a search plan that identifies the relevant offices, repositories, and custodians. Do not forget about absent or former employees!
- ✓ Maximize the Centralized Search.
  OEI's Centralized Search will only capture records in EPA's Microsoft Office 365 system, including Outlook email/calendar and Skype/Lync Chats. As soon as you distribute the Search Instructions, remind custodians to transfer any potentially responsive records from, for example, mobile devices (e.g. text messages and photos) to Outlook Email so that they will be captured in the centralized search.
- ✓ Remember to Conduct a Defensible Search.
  Remind Custodians to search all locations where they are reasonably likely to find responsive records. This may include lesser-used locations, including CMS and external drives.
- ✓ Prepare for Collection.
  Once custodians complete their search, you will need to collect and review records. Consider using a cloud-based collection option, such as OneDrive, for the collection of documents that are not sourced from Lotus Notes and not captured in OEI's centralized search.

✓ When in Doubt, Ask.

The General Law Office's Information Law Practice Group, the FOIA Expert Assistance Team within the Office of General Counsel, the Office of Regional Counsel, if the matter concerns a Regional FOIA, and the National FOIA Program Office are available to assist you.

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# STEP 4: Plan and Conduct a Search for Responsive Records

**[ TOC \o "1-3" \h \z \u ]**

# Proprietary Business Information (PBI) Case Tracking Standard Operating Procedures (SOP)

**PROPRIETARY BUSINESS INFORMATION CASE TRACKING**

A. Purpose:

a. Ensure proper tracking in FOIA Online of all Freedom of Information Act (FOIA) requests for records containing PBI.

B. Procedures:

**Headquarters Request where program withholds information under FOIA Ex. 4:**

1. Include the following language in the initial denial letter:

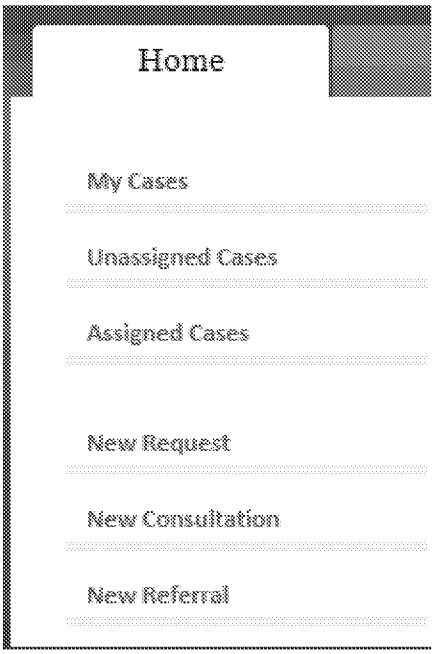
> The information withheld under Exemption 4 will be sent to the appropriate legal office to issue a final confidentiality determination. The appropriate legal office will contact you to confirm your continued interest in receiving a final confidentiality determination and provide you with a fee estimate, where appropriate. Therefore, you do not need to appeal the information withheld pursuant to Exemption 4. To the extent you would like to appeal any other issue, including any non-Exemption 4 withholding, you may appeal this response… [FOLLOWED BY APPEAL LANGUAGE]

2. Notify the National FOIA Office to create a PBI tracking number in FOIAonline:

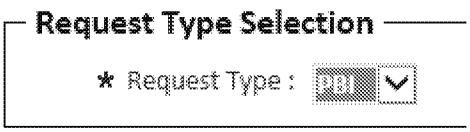
a. Email [ HYPERLINK "mailto:FOIA_HQ@epa.gov" ]
b. Email Template:
Subject: PBI Case Tracking number for **[EPA-HQ-20XX-XXXXXX]**
Please create a PBI case tracking number for the following initial FOIA request:
Initial Request Number: **[EPA-HQ-20XX-XXXXXX]**
Requester Name: **[NAME]**
Requester Address: **[ADDRESS]**
Requester Email Address: **[EMAIL]**

3. National FOIA Office creates PBI case and assigns to OGC/GLO:

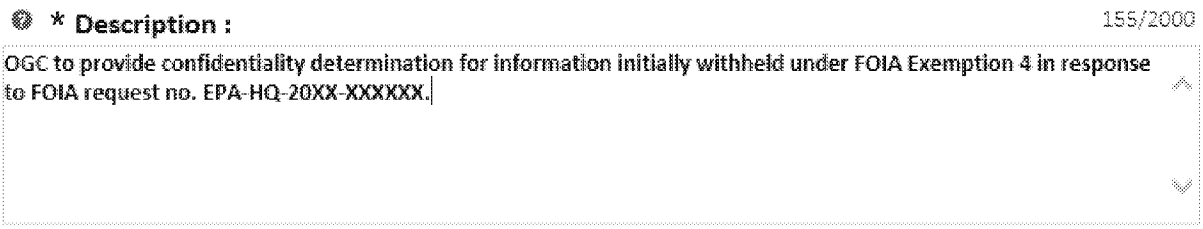
a. Select "New Request"




b. Agency and Submitted Date is pre-populated -> Select "Headquarters" as Sub-Agency
c. Select "PBI" as Request Type:




d. Fill in contact information as provided by program
e. Processing Fees information pre-populated
f. Fill in Description (OGC to provide confidentiality determination for information initially withheld under FOIA Exemption 4 in response to FOIA request no. EPA-HQ-20XX-XXXXXX.):




g. Select Preview -> Submit

4. National FOIA Office assigns PBI Case to OGC

5. ILPG Appeal Team Leader or Assistant General Counsel will assign PBI Case to ILPG Attorney

6. ILPG Attorney is responsible for:

a. Contacting requester to:

1. Confirm continued interest in receiving a final confidentiality determination;
2. Closing out PBI request if requester fails to confirm interest or is not interested in receiving a final confidentiality determination;
3. Providing an estimate of fees where appropriate;
4. Closing our PBI request if requester fails to assure payment of fees;
5. Notifying program office of need to request substantiation from affected business(es) and provide program recommendation where appropriate;
6. Issue final confidentiality determination;
7. Provide updated response/records to requester;
8. Close our PBI appeal.

**Regional Request where regional program withholds information under FOIA Ex. 4:**

1. Include Initial Denial language in decision:

   The information withheld under Exemption 4 will be sent to the appropriate legal office to issue a final confidentiality determination. The appropriate legal office will contact you to confirm your continued interest in receiving a final confidentiality determination and provide you with a fee estimate, where appropriate. Therefore, you do not need to appeal the information withheld pursuant to Exemption 4. To the extent you would like to appeal any other issue, including any non-Exemption 4 withholding, you may appeal this response… [FOLLOWED BY APPEAL LANGUAGE]

2. Notify the Region FOIA Coordinator to create a PBI tracking number in FOIAonline:

   a. Email [ HYPERLINK "mailto:FOIA_HQ@epa.gov" ]

   b. Email Template:

   Subject: PBI Case Tracking number for **[EPA-RX-20XX-XXXXXX]**

   Please create a PBI case tracking number for the following initial FOIA request:

   Initial Request Number: **[EPA-RX-20XX-XXXXXX]**

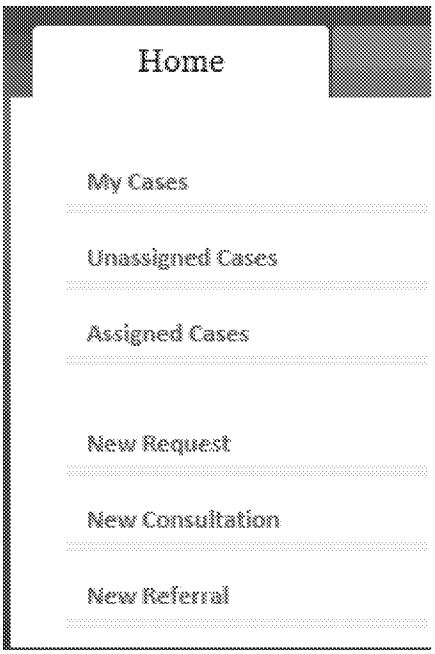
   Requester Name: **[NAME]**

   Requester Address: **[ADDRESS]**

Requester Email Address: **[EMAIL]**

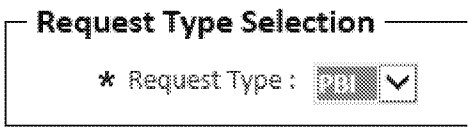
3. Region FOIA Coordinator creates PBI case and assigns to appropriate ORC contact

   a. Select "New Request"




   b. Agency and Submitted Date is pre-populated -> Select appropriate Region as Sub-Agency

   c. Select "PBI" as Request Type




   d. Fill in contact information as provided by program

   e. Processing Fees information pre-populated

f. Fill in Description (ORC to provide confidentiality determination for information initially withheld under FOIA Exemption 4 in response to FOIA request no. EPA-RX-20XX-XXXXXX.)

*** Description :** 155/2000

OGC to provide confidentiality determination for information initially withheld under FOIA Exemption 4 in response to FOIA request no. EPA-HQ-20XX-XXXXXX.

g. Select Preview -> Submit

# Substantiation Request Letter Sample A- Generic CBI Substantiation, FOIA

Approved OMB 2020-0003
Approval expires 05-31-2020

**Request for Substantiation in Response to a Request Under the Freedom of Information Act**

**By Certified U.S. Mail; Return Receipt Requested**

(*Name, title, and address of the [designated] representative of the affected business*)

Re: Freedom of Information Act (FOIA) Request [INSERT FOIA #]

Dear [*Addressee*]:

The U.S. Environmental Protection Agency ("EPA" or "Agency") has received a request under the FOIA for certain records [*if submitted by the business whose information it is:* that you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* in EPA's possession] pertaining to [*a detailed description of the information or specific list of documents that is/are the subject of the advance or final confidentiality determination*]. [*If information has been claimed as CBI:* You have claimed (all *or* part) of this information as confidential business information ("CBI").] [*If no claim has been made:* In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [*if submitted by the business whose information it is:* the information you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* this information in EPA's possession] is confidential business information ("CBI").] Under the EPA regulations at 40 C.F.R. Part 2, Subpart B, the FOIA request has been initially denied to afford you an opportunity to provide comments to [*If no claim has been made:* claim this information as CBI and] substantiate your claim(s) as described below.

The purpose of this letter is to notify you that the EPA (*appropriate legal office*) will be making a(n) (*advance* or *final*) confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that

you claim to be CBI. Please note that if a page, document, group, or class of documents claimed by you to be CBI contains a significant amount of information which (*appropriate legal office*) determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed to the requester without further notice to you.

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is

voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

10. If you believe any information to be (a) trade secret (s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret (s).

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

[*For contract-related CBI:* Enclosed is the EPA Class Determination 1-95 entitled, Confidentiality *of Certain Business Information Submitted by Contractors and Prospective Contractors,* which addresses the treatment of different types of information related to contracts. You may consider reviewing Class Determination 1-95 as you develop your response.]

[*If applicable to another EPA class determination*: Enclosed is the EPA Class Determination [*class determination number*] entitled, [*name of the class determination*], which addresses the treatment of [*description of class determination*]. You may consider reviewing Class Determination [#] as you develop your response.]

Please note that *you bear the burden of substantiating your confidentiality and trade secret claim(s).* Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your comments must be postmarked or hand delivered to this office, or emailed to [*email address*], by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved without the consent of the FOIA requester. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call me at [*telephone number*].

Sincerely,

[NAME]
[Title]
[Office Name and Address]

[Enclosure]

# Substantiation Request Letter Sample B-Generic CBI Substantiation, Non-FOIA

Approved OMB 2020-0003
Approval expires 05-31-2020

**Request for Substantiation from an Affected Business**

**By Certified U.S. Mail; Return Receipt Requested**

[*Name, title, and address of the [designated] representative of the affected business*]

Re: _____

Dear [*Addressee*]:

The U.S. Environmental Protection Agency ("EPA" or "Agency") is seeking to determine the entitlement to confidentiality of [*description of the information that is the subject of the advance or final confidentiality determination*] [*if submitted by the business whose information it is:* that you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* in EPA's possession.] [*If information has been claimed as CBI:* You have claimed (all *or* part) of this information as confidential business information ("CBI").] [*If no claim has been made:* In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [*if submitted by the business whose information it is:* the information you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* this information in EPA's possession] is confidential business information ("CBI").]

The purpose of this letter is to notify you that the EPA [*appropriate legal office*] will be making a(n) [advance *or* final] confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group or class of documents claimed by you to be CBI contains a significant amount of information which our [*appropriate legal office*] determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed without further notice to you.

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

[*For contract-related CBI:* Enclosed is the EPA Class Determination 1-95 entitled, Confidentiality *of Certain Business Information Submitted by Contractors and Prospective Contractors,* which addresses the treatment of different types of information related to contracts.

You may consider reviewing Class Determination 1-95 as you develop your response.]

[*If applicable to another EPA class determination*: Enclosed is the EPA Class Determination [*class determination number*] entitled, [*name of the class determination*], which addresses the treatment of [*description of class determination*]. You may consider reviewing Class Determination [#] as you develop your response.]

Please note that *you bear the burden of substantiating your confidentiality and trade secret claim(s).* Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your comments must be postmarked or hand delivered to this office, or emailed to [*email address*], by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call me at [*telephone number*].

Sincerely,

[NAME]
[TITLE]
[Office Name and Address]

[Enclosure]

# CBI Substantiation Request Letter Sample C- FIFRA, FOIA

OMB 2020-0003
Expires: 05-31-2020
Inert Ingredients

**Request for Substantiation from an Affected Business**

**By Certified U.S. Mail; Return Receipt Requested**

[*Name, title, and address of the [designated] representative of the affected business*]

RE: Confidential Business Information Determination

Dear [*Addressee*]:

The U.S. Environmental Protection Agency ("EPA") Office of Pesticide Programs has received a request under the FOIA for certain records [*if submitted by the business whose information it is:* that you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* in EPA's possession] pertaining to [*a detailed description of the information or specific list of documents that is/are the subject of the advance or final confidentiality determination*]. [*If information has been claimed as CBI:* You have claimed (all *or* part) of this information as confidential business information ("CBI").] [*If no claim has been made:* In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [*if submitted by the business whose information it is:* the information you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* this information in EPA's possession] is confidential business information ("CBI").] Under the EPA regulations at 40 C.F.R. Part 2, Subpart B, the FOIA request has been initially denied to afford you an opportunity to provide comments to [*If no claim has been made:* claim this information as CBI and] substantiate your claim(s) as described below.

The purpose of this letter is to notify you that the EPA Office of General Counsel will be making a(n) [advance *or* final] confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that

you claim to be CBI. Please note that if a page, document, group, or class of documents claimed by you to be CBI contains a significant amount of information which the Office of General Counsel determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed to the requester without further notice to you.

1. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

4. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

5. Is the information contained in any publicly available material such as promotional publications, annual reports, articles, etc.? Is there any means by which a member of the public could obtain access to the information?

6. For each category of information claimed as confidential, discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is "voluntarily submitted" as defined at 40 C.F.R. § 2.201(i)? If so, explain why and how disclosure would tend to lessen EP A's ability to obtain similar information in the future.

8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality and trade secret claim(s) pursuant to 40 CFR § 2.208(e). Generalize or conclusory allegations will be given little or no weight in EPA's determination on the confidentiality of information you claim to be CBI.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar

designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Your reply can be mailed to the following address:

Or your reply can be delivered to the following address:

Your comments must be postmarked or hand-delivered by the 15th working day after your receipt of this letter. If you intend to submit timely comments, please notify by phone at [TELEPHONE NUMBER], by email at or by mail at the address above. Failure to submit timely comments will be regarded as a waiver of your confidentiality claim and EPA will release the information. You may request an extension of the 15-day deadline. Except in extraordinary circumstances, no extension will be granted without the permission of the requestor.

Should you have any questions in this matter, please contact [CONTACT NAME].

Sincerely,

[NAME]
[TITLE]

Enclosures

# CBI Substantiation Request Letter Sample D- FIFRA, Non-FOIA

OMB 2020-0003
Expires 05-31-2020

**Request for Substantiation from an Affected Business**

**By Certified U.S. Mail; Return Receipt Requested**

[*Name, title, and address of the [designated] representative of the affected business*]

Re: Freedom of Information Act Request [INSERT NUMBER]

Dear [*Addressee*]:

The U.S. Environmental Protection Agency ("EPA") Office of Pesticide Programs is seeking to determine the entitlement to confidentiality of [*description of the information that is the subject of the advance or final confidentiality determination*] [*if submitted by the business whose information it is:* that you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* in EPA's possession.] [*If information has been claimed as CBI:* You have claimed (all *or* part) of this information as confidential business information ("CBI").] [*If no claim has been made:* In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [*if submitted by the business whose information it is:* the information you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* this information in EPA's possession] is confidential business information ("CBI").]

The purpose of this letter is to notify you that the EPA Office of General Counsel will be making a(n) [advance *or* final] confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group, or class of documents claimed by you to be CBI contains a significant amount of information which the Office of General Counsel determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a

confidentiality claim and substantiated as such in your response to this letter may be disclosed to the requester without further notice to you.

Questions 1-7 must be answered with respect to any confidentiality claims pertaining to the enclosed product chemistry information.

1. What value can your competitors derive from knowing the identity, percent by weight, certified limits, or parent process of each impurity? Is this impurity unique to your manufacturing process? Why would your competitors find this impurity preferable over whatever impurity results from their equivalent process?

2. Does published analytical methodology exist that could identify and quantify this impurity? If so, why do you believe that your competitors have not already performed such analysis?

3. What value can your competitors derive from knowing the description of materials used to produce the product, the description of the production process, or the preliminary production analysis? Why would your competitors find these processes preferable over their equivalent processes?

Questions 4-7 must be answered with respect to any confidentiality claims pertaining to the inert ingredients. Each question must be answered separately with respect to each inert ingredient:

4. What is the value that this inert ingredient brings to the product formulation? What characteristics of this ingredient are unique such that competitors might prefer it over whatever ingredients perform the equivalent function in their formulations? Is the use of this ingredient limited to your product, or does it have broader applications?

5. Why is it unlikely that your competitors have not already discovered the value of this ingredient? Are you aware of the use of this ingredient as an inert by your competitors?

6. To your knowledge, has the use of this inert ingredient in a pesticide been disclosed in a patent? If so, how would disclosure of the identity of the ingredient assist your competitors beyond what is already available through a patent?
7. Can the identity of this inert ingredient be determined by product sample analysis? If so, why do you believe that your competitors have not already performed such analysis?

Question 8 must be answered with respect to any confidentiality claims pertaining to the enclosed records:

8. For each category of information claimed as confidential, discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

Questions 9 through 15 must be answered for each type of information that you claimed as confidential:

9. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

10. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question number 9?

11. What measures have you taken to protect the information? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose it further? If so, why should it still be considered confidential?

12. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

13. Is the presence of this information disclosed in any publicly available material such as Material Safety Data Sheets, promotional publications, annual reports, articles, etc.? Is there any means by which a member of the public could obtain access to the information?

14. Do you assert that the information is "voluntarily submitted" as defined at 40 CFR § 2.201(i)? If so, explain why, and how disclosure would tend to lessen EPA's ability to obtain similar information in the future.

15. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality and trade secret claim(s) pursuant to 40 CFR § 2.208(e). Generalize or conclusory allegations will be given little or no weight in EPA's determination on the confidentiality of information you claim to be CBI.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Be advised that information described by Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") section 10(d)(l)(A), (B), and (C) is not automatically entitled to confidential treatment. Disclosure of such information would only be prohibited, by FIFRA section (b), if the information is eligible for confidential treatment as described by 40 CFR 2.208.

Your reply can be mailed to the following address:

Or your reply can be delivered to my attention at the following address:

Your comments must be postmarked or hand-delivered by the 15th working day after your receipt of this letter. If you intend to submit timely comments, please notify by phone: [TELEPHONE], by email: [EMAIL ADDRESS], or by mail at the address above. Failure to submit timely comments will be regarded as a waiver of your confidentiality claim and EPA will release the information. You may request an extension of the 15-day deadline. Except in extraordinary circumstances, no extension will be granted without the permission of the requester.

Should you have any questions in this matter, please contact [CONTACT PERSON].

Sincerely,

[NAME]
[TITLE]

Enclosures

# CBI Substantiation Request Letter Sample E- TSCA

OMB 2020-0003
Approval expires 05-31-2020

**By Certified U.S. Mail; Return Receipt Requested**

**MAY CONTAIN CONFIDENTIAL BUSINESS INFORMATION**

[*Technical Contact Name, title, Company, and Address*]

Re: Notice of Review and Request for Substantiation of Confidential Business Information Claim(s)

Document Type:
Document Identifying Number:
Date of Submission:
Type of claim(s) to be reviewed: ☐ specific chemical identity
☐ all other CBI claims

Dear [*Addressee*]:

Under the Toxic Substance Control Act (TSCA) most confidential business information (CBI) claims for chemical identity and at least 25% of other CBI claims are subject to a review and final determination. TSCA section 14(g). 15 U.S.C. § 2613(g).

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of General Counsel will be making a final confidentiality determination concerning information you have claimed as CBI, as identified above. All non-exempt CBI claims must be substantiated.

If you feel that some or all of the information checked above is entitled to confidential treatment, you must substantiate as described below with specific reference to those portions of the information you consider confidential.

Note that TSCA section 14(c)(2) generally exempts certain information types from the requirement to substantiate. 15 U.S.C. § 2613(c)(2). *See* EPA webpage [INSERT WEBPAGE] for more guidance on information exempt from substantiation. To the extent that you believe the information that you have claimed as CBI is one of these exempt information types, you may make this assertion in your response by identifying the specific section 14(c)(2) exemption, in lieu of substantiating the CBI claim for that information. If the Agency disagrees with this assertion, you may be asked to provide additional information to support your claim.

**Substantiating a CBI Claim.**

There are two different sets of substantiation questions for CBI claims: (I) questions for all CBI claims in the submission; and (II) questions for chemical identity CBI claims. Please use the appropriate question set. In some instances, your TSCA submission may contain both types of CBI claims or a CBI claim may require completing both sets of substantiation questions. For example, if you assert a CBI claim to protect a chemical substance's identity, then you must answer both question sets. EPA has identified the appropriate question set(s) via the checkboxes at the top of this letter. In some instances, for example TSCA section 8(a) Chemical Data Reporting (CDR) Rule submissions, you may have already provided up-front substantiations for some of the CBI claims. If you have already substantiated your CBI claim at the time of submission, please refer to or preferably physically attach your substantiation to your response to this letter.

Note also that the providing of incorrect information in this substantiation request may be a failure to comply with TSCA, specifically 15 U.S.C. § 2614.

## I. REQUIRED FOR ALL CBI CLAIMS.

**If you are asserting ANY information in the submission as CBI, please answer the following questions.**

In supporting your CBI claim(s), please be specific by page, paragraph, sentence, or by data element when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI.

In some cases, it may be appropriate to group the information into a class of information rather than responding to each item claimed as CBI. *See* EPA webpage [INSERT WEBPAGE] for suggested approaches to providing substantiations of materials grouped. For any information that is not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter, it shall be determined that you have waived your CBI claim, pursuant to 40 C.F.R. § 2.205(d).

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your substantiation response to these questions will be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

A. Do you believe that any of the information claimed as CBI is exempt from substantiation pursuant to TSCA section 14(c)(2)[1]? Yes/No.

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[1] TSCA Section 14(c)(2) states:

If you answered yes, please identify the information, provide the specific exemption and answer no further questions related to that information.

If you answered no, please respond to the questions below.

B. Will disclosure of the information likely result in substantial harm to your business competitive position? Yes/No.

If you answered yes, please describe with specificity the substantial harmful effects that would result to your competitive position if the CBI information is made available to the public. In your answer, explain the causal relationship between disclosure and any resulting substantial harmful effects. Consider in your answer such constraints as capital and marketing cost, specialized technical expertise, or unusual processes and your competitor's access to your customers.

C. To the extent you have disclosed information to others (both internally and externally), what precautions has your business taken? Please identify any measures or internal controls your business has taken to protect the information claimed as confidential.

1. Non-disclosure agreement required prior to access. Yes/No
2. Access is limited to individuals with a need-to-know. Yes/No
3. Information is physically secured (e.g. locked in room or cabinet) or electronically secured (encrypted, password protected, etc.). Yes/No
4. Other internal control measure(s). If so, please explain.

D. Does the information claimed as confidential appear in any public documents, including (but not limited to) safety data sheet, advertising or promotional material, professional or

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**(2) Information generally not subject to substantiation requirements**

Subject to subsection (f), the following information shall not be subject to substantiation requirements under paragraph (3):

(A) Specific information describing the processes used in manufacture or processing of a chemical substance, mixture, or article.

(B) Marketing and sales information.

(C) Information identifying a supplier or customer.

(D) In the case of a mixture, details of the full composition of the mixture and the respective percentages of constituents.

(E) Specific information regarding the use, function, or application of a chemical substance or mixture in a process, mixture, or article.

(F) Specific production or import volumes of the manufacturer or processor.

(G) Prior to the date on which a chemical substance is first offered for commercial distribution, the specific chemical identity of the chemical substance, including the chemical name, molecular formula, Chemical Abstracts Service number, and other information that would identify the specific chemical substance, if the specific chemical identity was claimed as confidential at the time it was submitted in a notice under section 2604 of this title.

trade publication, or any other media or publications available to the general public? Yes/No.

If you answered yes, please explain why the information should nonetheless be treated as confidential.

E. Does the information claimed to be CBI contain (a) trade secret(s)[2] ? Yes/No

If yes, please explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

F. If you assert a claim of confidentiality that is less than 10 years (see TSCA section 14(e)(1)(B)), then please indicate the number of years (between 1-10 years) or specific date of which the claim is withdrawn.[3]

G. Has EPA, another federal agency, or court made any confidentiality determination regarding information associated with this substance? Yes/No.

If yes, please explain the outcome of that determination and provide EPA with a copy of the previous confidentiality determination or any information that will assist the Agency in identifying the prior determination.

## II. REQUIRED FOR ONLY CHEMICAL IDENTITY CBI CLAIMS.

**If you are claiming a specific chemical identity as CBI, please answer the additional following questions.** If you are not substantiating a chemical identity CBI claim, then you do not need to respond to the questions below.

A. Is the chemical substance on the confidential portion of the TSCA Inventory? Yes/No.

B. Commerce:
   1. Has the chemical substance (or mixture) been offered for commercial distribution? Yes/No.

   2. Is the chemical substance known to be in U.S. commerce? Yes/No.

   If you answered yes, please explain why the information should nonetheless be treated as confidential.

C. Disclosure of the specific chemical name would release:

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[2] "Trade secret" is defined as "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." Pub. Citizen Health Research Grp. v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

[3] Information with withdrawn CBI claims will be made available to the public without further notice.

1. Confidential process information. Yes/No.
2. Confidential portion of a mixture information. Yes/No.

If you answered yes to either question, please explain

**Asserting a CBI claim in your substantiation response.**

Businesses may claim their substantiation response as CBI. Information claimed as confidential should be clearly marked by bracketing, circling, or underlining. All pages containing such information must also be stamped "CONFIDENTIAL BUSINESS INFORMATION" or with similar designation in order to assert a confidentiality claim. Care should be taken to ensure that these markings do not obscure the text.

If you claim your substantiation response as CBI, you must include the following statement in the submission.

> I hereby certify to the best of my knowledge and belief that all information entered on this form is complete and accurate.
> I further certify that, pursuant to 15 U.S.C. § 2613(c), for all claims for confidentiality made with this submission, all information submitted to substantiate such claims is true and correct, and that it is true and correct that
> (i) My company has taken reasonable measures to protect the confidentiality of the information;
> (ii) I have determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;
> (iii) I have a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of my company; and
> (iv) I have a reasonable basis to believe that the information is not readily discoverable through reverse engineering.
>
> Any knowing and willful misrepresentation is subject to criminal penalty pursuant to 18 U.S.C. § 1001.

**Timely Responses and Postal Requirements**

Your substantiation response must be postmarked or hand delivered to this office **by the 15th working day after your receipt of this letter**. While it is anticipated that there will be a means for sending these to the Agency electronically in the future, at this point substantiations should be sent via US Mail or courier.

**Filings should be directed to the below address.**

TSCA Confidential Business Information Center (7407M)
WJC East; Room 6428; Attn: TSCA CBI Substantiations
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

Courier Deliveries:

U.S. EPA
Office of Pollution Prevention and Toxics
Confidential Business Information Center (CBIC)
Attn: TSCA CBI Substantiations
1201 Constitution Avenue, NW
WJC East; Room 6428
Washington, DC 20004-3302
(202) 564-8930

You may seek an extension of time to submit your substantiation response to this office, but the request must be made before the end of the 15-day period. Requests for an extension may be directed to Ms. Quoc Nguyen, Office of General Counsel, Nguyen.Quoc@epa.gov.

**Failure to timely submit your substantiation response will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.**

Should you have any questions concerning this matter, please contact Mr. Scott Sherlock at (202) 564-8257 or [ HYPERLINK "mailto:Sherlock.Scott@epa.gov" \h ]; or Ms. Jessica Barkas at (202) 250-8880 or [ HYPERLINK "mailto:Barkas.Jessica@epa.gov" \h ].

Sincerely,

[NAME]
[TITLE]
[Office Name and Address]

# OGC Relativity Guidance

*Use this guidance to familiarize yourself with the Relativity platform, including how to redact documents. Remember that before you can use Relativity for the first time, you need to contact EZ-tech (or technical support for your office) to install the Relativity Web Viewer Plugin.*

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## ONLINE RESOURCES

EPA uses Relativity version 8.2. There are a number of video trainings and other resources available here: [ HYPERLINK "https://www.kcura.com/relativity/ediscovery-resources/training/" \h ] Below are some tutorials that you may find useful.

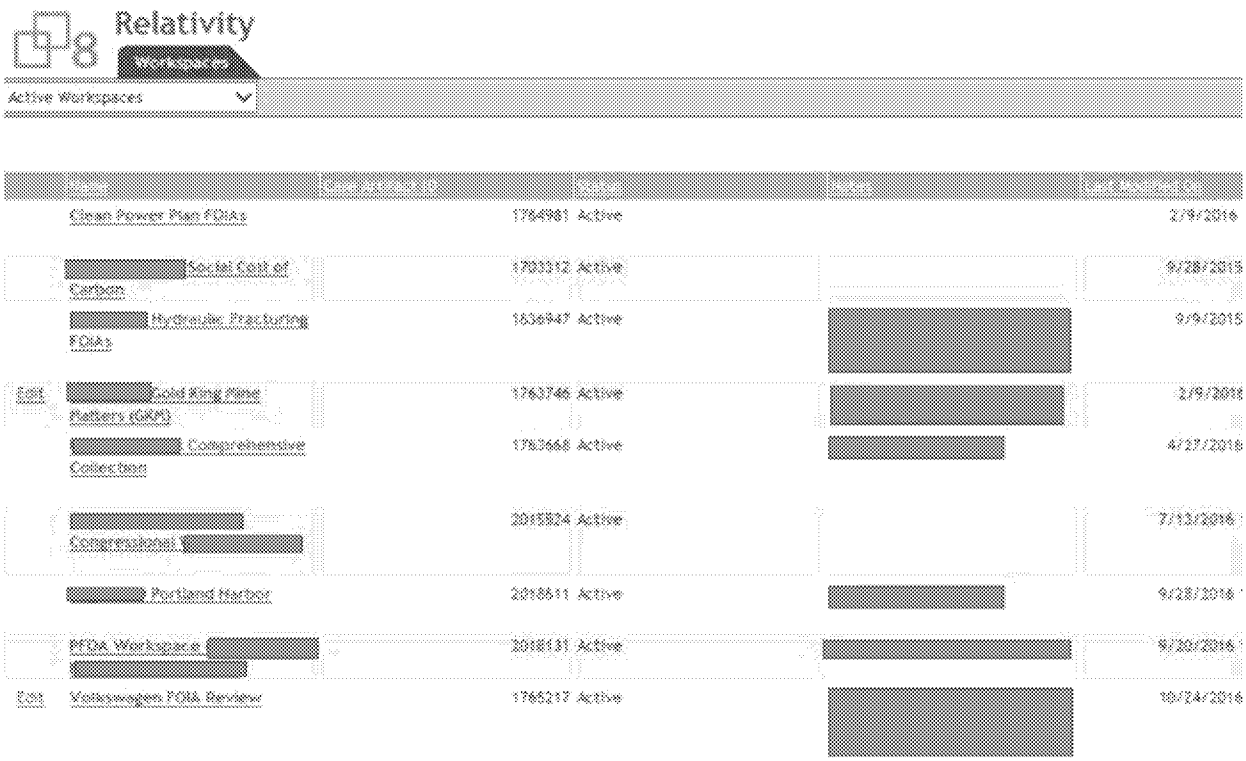
1. Getting Started (3:41): [ HYPERLINK "https://www.kcura.com/relativity/ediscovery-resources/training/on-demand/getting-started/" \h ][ HYPERLINK "https://www.kcura.com/relativity/ediscovery-resources/training/on-demand/getting-started/" \h ]
2. Redactions and Annotations (6:46): [ HYPERLINK "https://www.kcura.com/relativity/ediscovery-resources/training/on-demand/adding-redactions-and-annotations-8-2/" \h ][ HYPERLINK "https://www.kcura.com/relativity/ediscovery-resources/training/on-demand/adding-redactions-and-annotations-8-2/" \h ]

3. Coding and Tagging Documents (5:15): [ HYPERLINK "https://www.kcura.com/relativity/ediscovery-resources/training/on-demand/coding-and-tagging-documents/" \h ][ HYPERLINK "https://www.kcura.com/relativity/ediscovery-resources/training/on-demand/coding-and-tagging-documents/" \h ]

4. Reviewer Training (36:33): [ HYPERLINK "https://www.kcura.com/relativity/ediscovery-resources/training/on-demand/reviewer-training/" \h ][ HYPERLINK "https://www.kcura.com/relativity/ediscovery-resources/training/on-demand/reviewer-training/" \h ]

## SIGNING IN, FINDING YOUR WORKSPACE

If you are a first-time user, your sign in credentials will be emailed to you along with a link to EPA's Relativity viewer. It is a good idea to save or bookmark this link. If you have password issues or cannot find the link, email your case manager. Once you sign in, you will see the workspace list. Click on the name of your case to enter your workspace.




(sample screenshot of a Workspace List, some information removed)

## BATCHES

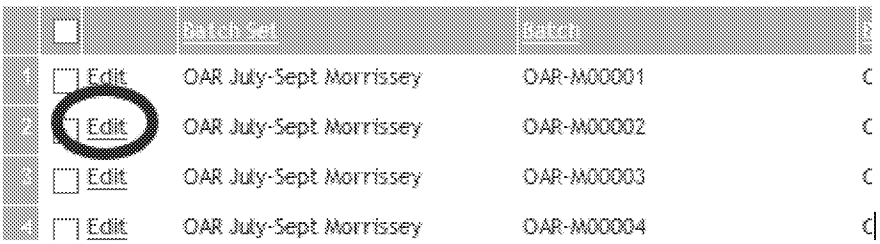
Documents are organized into groups called batches. To review documents, you must have a batch assigned to you. No one else will work on documents in your batch while they are assigned to you. To check out a batch, follow the instructions below. If you are done working, your batch will remain assigned to you unless you check it back in, even if you sign out of Relativity and sign back in later.

1. At the top of your screen, you will see tabs. Every database is different, but you will likely have a *Documents* tab and a *Review Batches* tab. Click the *Review Batches* tab.

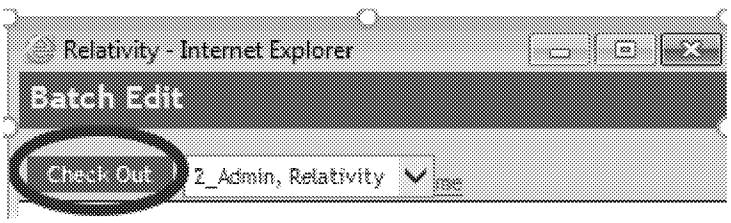
2. This will bring you to a list of batches. There will be several fields of information displayed in the columns.

    a. The *Batch Status* column will tell you whether a batch has been completed, is in progress, or if the field is blank, the batch is open and may be checked out.
    b. If a batch is assigned to a reviewer, their name will be displayed in the *Assigned To* column.
    c. The columns should display how many documents have been reviewed in a batch as well as the total size of the batch.

3. To check a batch out, look to the left of the screen. Next to the batch names, there will be a blue hyperlink *Edit* button. Once you have selected your batch, click this edit button to begin the checkout process.

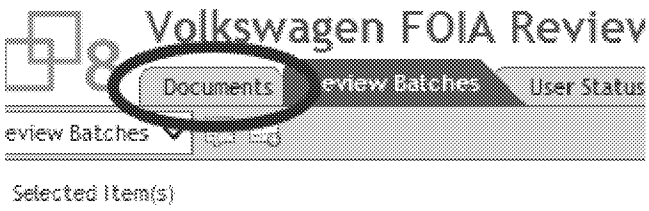



4. Click the "Check Out" button to check the batch out to yourself.

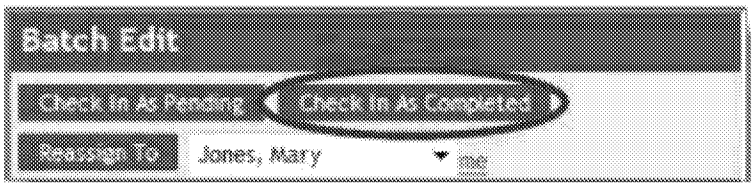



5. Once a batch is checked out, you will notice that it is assigned to you in the *Assigned To* column.

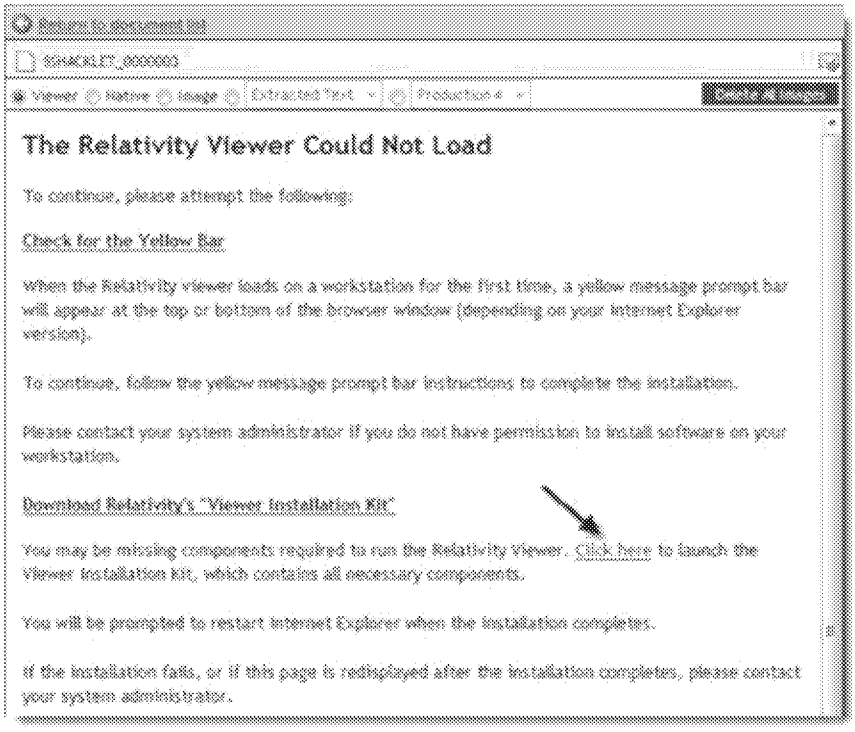
6. To view the documents in the batch you have checked out, you must look again to the tabs at the upper left of your screen. Click back to the documents tab to view the documents.




7. Follow the same steps to check a batch back in. (Go to the batches tab, find your batch, press the *Edit* button). You may check the batch back in as *Pending* if it is not complete. But if all documents have been reviewed, check it back in as *Completed*.



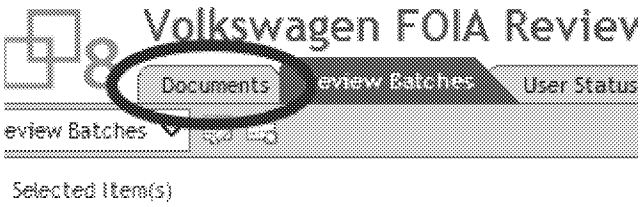

# INSTALLING THE WEB VIEWER



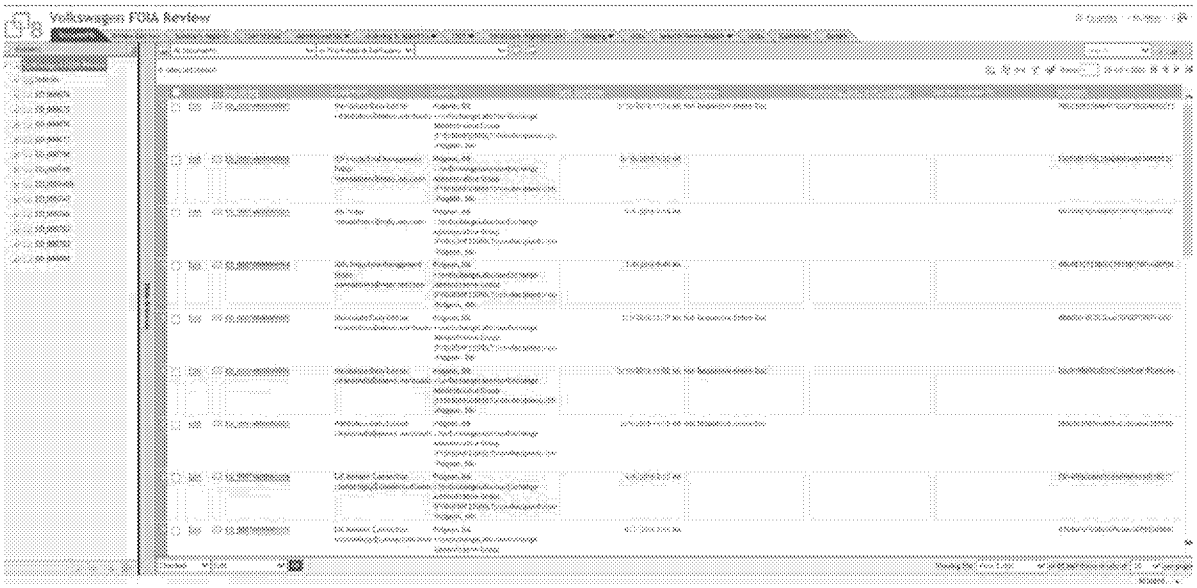

If this is the first time you are using Relativity on your machine, you will likely need to install a plugin before being able to view documents. If you are prompted with the below error or a similar message when you try to open a document, then you will need someone with administrator rights to download the Relativity Viewer and install it. Call your technical support line and ask for assistance installing the Relativity Viewer plugin. Your technician will be able to remotely download and install the plugin, usually in a matter of minutes. This should only need to be done once.

# OPENING AND VIEWING A DOCUMENT

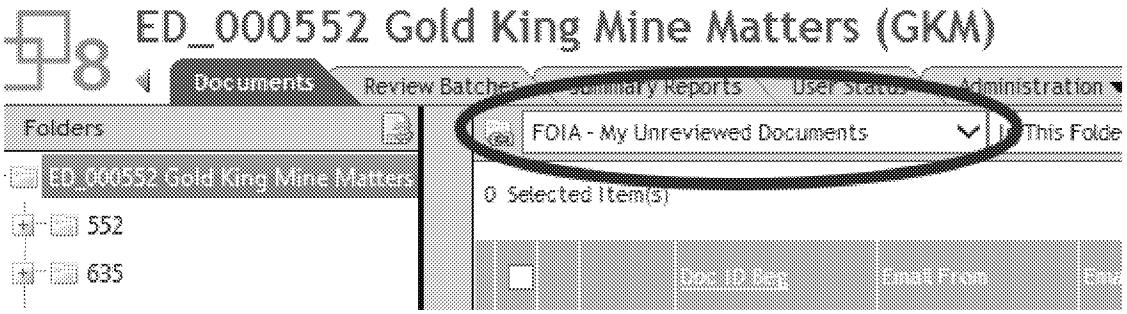
1. Make sure you are in the *Documents* tab.



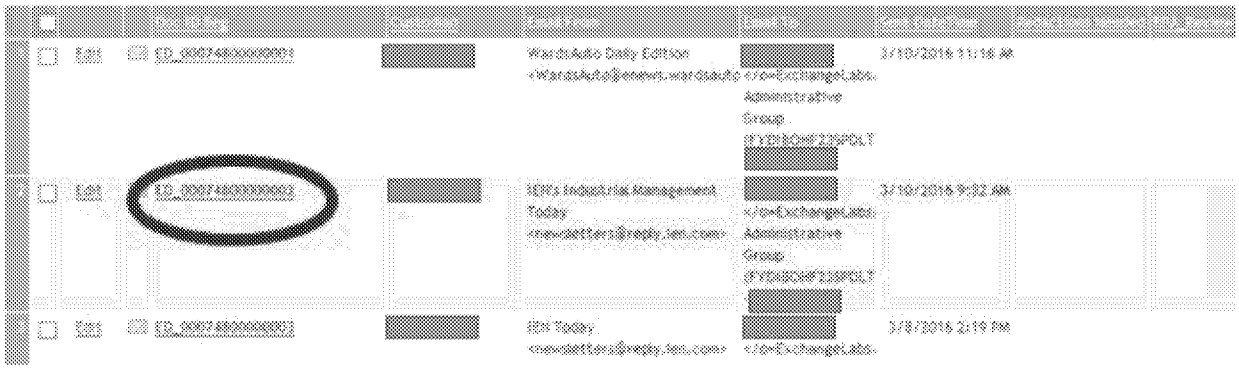

2. Your screen should look something like this:



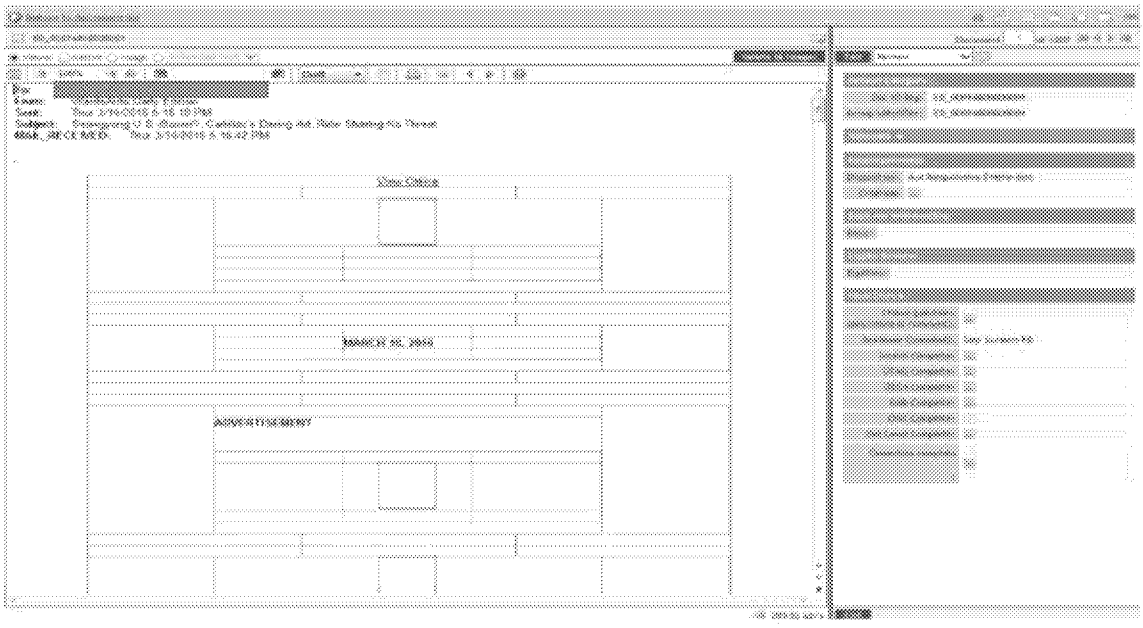
3. Look at the drop down menu towards the upper left of your screen. It will likely say "All Documents" or "unreviewed documents" or have similar choices. Your case manager should give you guidance as to what view to use, or they may limit your access to a single useful view.



4. You will see a list of documents with columns of information. One of the leftmost columns will contain links to the documents themselves. Click the blue hyperlink Doc ID number of the document you would like to open.



5. Opening a document will take you to the reviewer interface, it should look like this:



6. You should have access to three views depending on the type of document you are looking at and how it has been processed. To change to a different view, click the radial button.

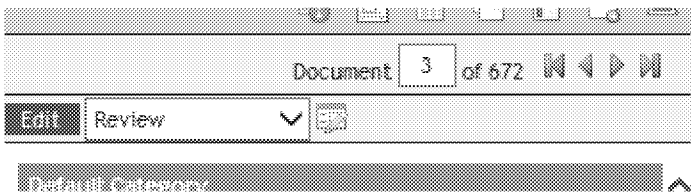
   a. Viewer Mode: Default view which contains the rendered version of the native file. This view will display the entire content of the document in one continuous view. If persistent highlighting is used, certain terms may be

highlighted to aid in your review.

b. Native Mode: Clicking on the native viewer will open the file in a separate window in its native form. If you are looking at an email, it will open the file in outlook, if you are looking at a spreadsheet, excel will open. This can be useful for certain file types, but should generally be avoided.

c. Image Mode: This view will only be available if the document set you are working with has been processed to be "imaged." If you need to use image mode but your documents are not imaged, talk to your case manager. Image mode shows you the document as it will be produced to the requester. The document may contain several pages that you will need to click through. This is the view you will use to make redactions.

7. To move on to the next document in your list automatically, or back to a previous document, use the navigation arrows in the upper right corner of your screen.

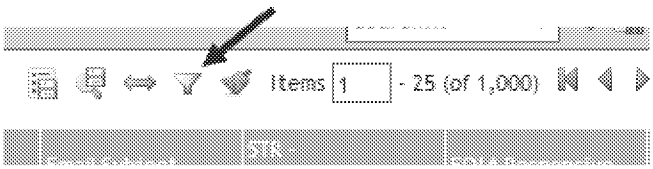



8. To return to your document list from a document view, look to the upper left of your screen and select *Return to document list*.

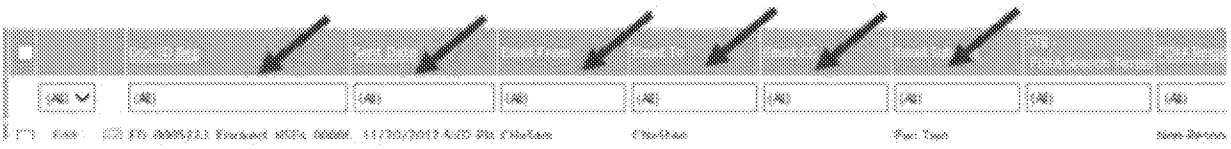
## SORTING AND FILTERING DOCUMENTS

1. Your document list should have several columns. If a column title is underlined, like *Sent Date* is in the image below, you can slick on the title and your documents will be sorted by that column.

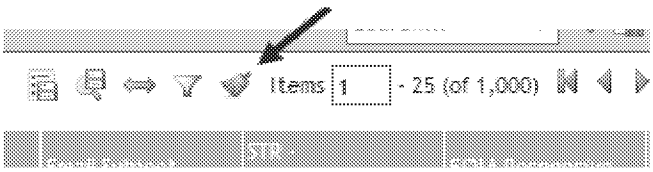
2. Clicking on the filter icon above your document list will allow you to filter the documents you are viewing. For example, you could limit your view to only documents from a particular sender.



3. Text boxes will appear below the headings of each column. Type the terms you want to use to filter in the text box of the relevant column.

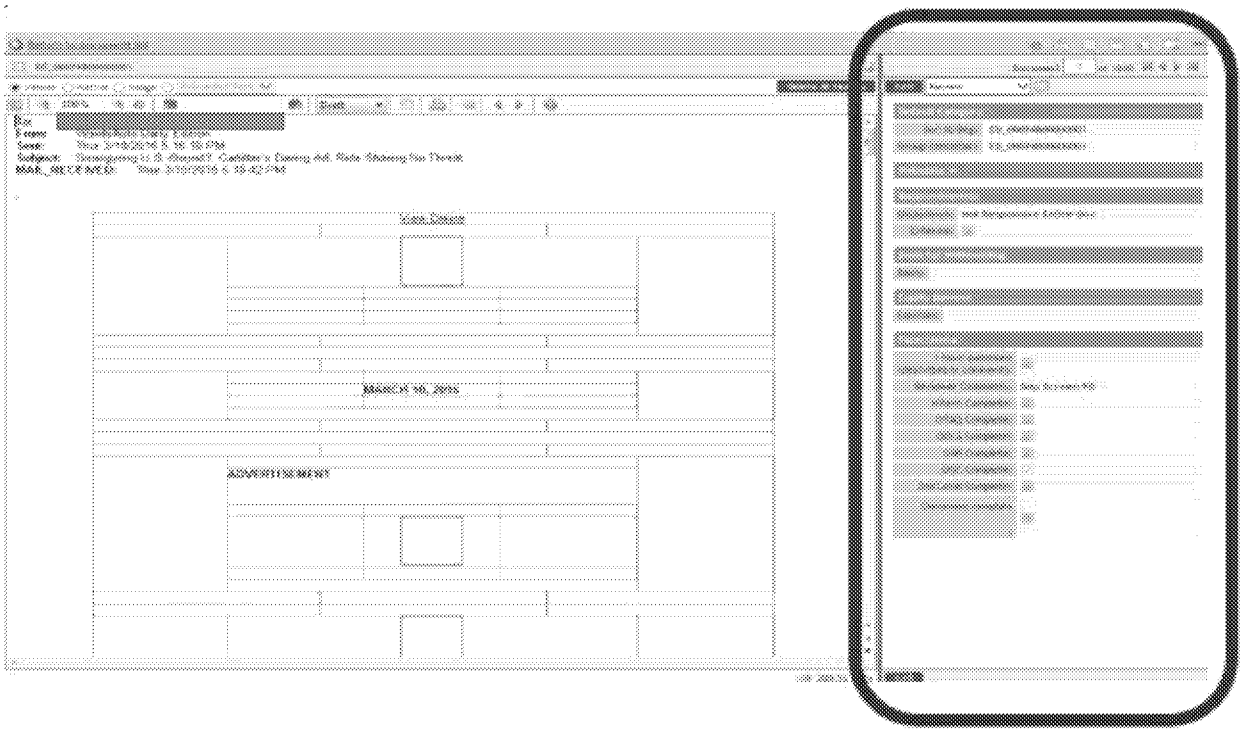


4. To clear your filters, click the sweep icon next to the filter icon.

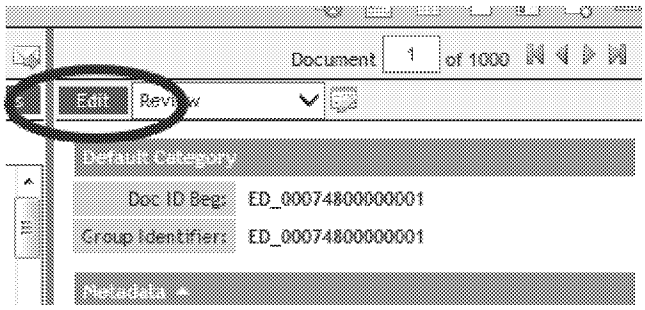



## CODING A DOCUMENT

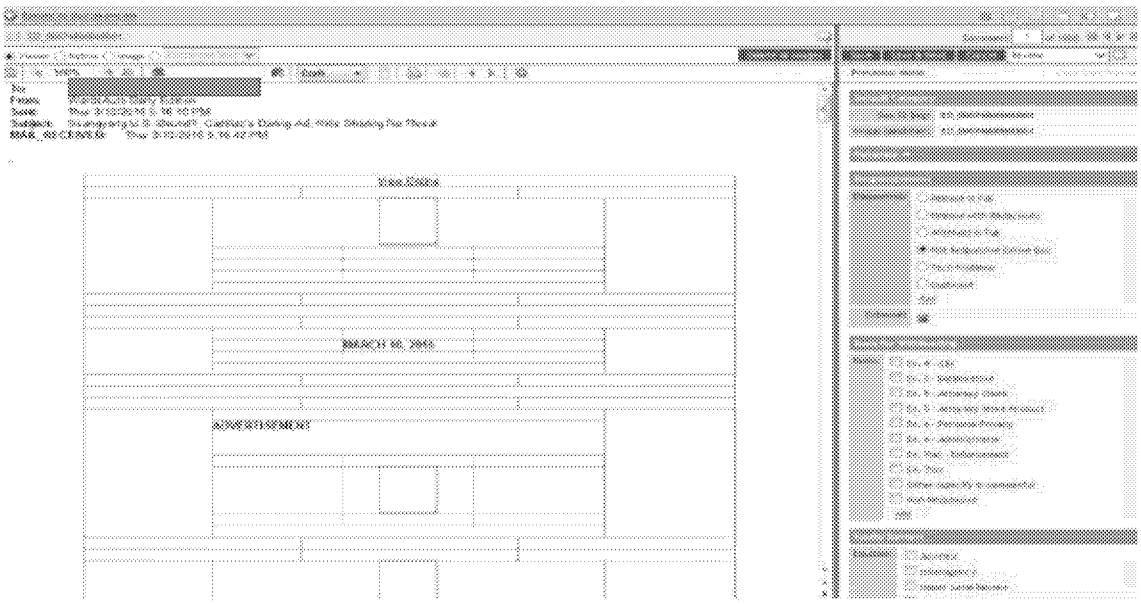
"Coding" is a term we use to describe the process of adding information to the documents that you review. To do this, when viewing a document, use the coding pane on the right side of your reviewer interface.



1. To begin coding, you must select the edit button in the upper left of your coding pane.

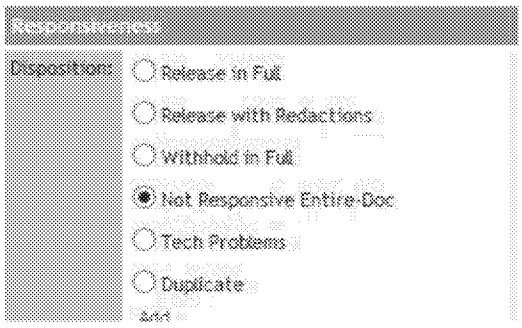



2. This will bring your coding pane to life and allow you to make edits. Your reviewer interface should now look like this:



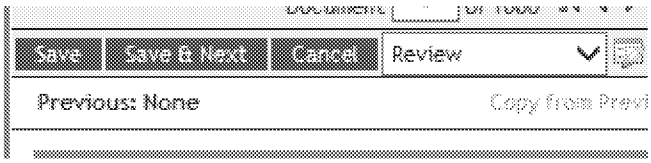
3. Follow the instructions provided by your case manager for coding your documents. You will find that some fields of information use radial buttons that only allow you to make one choice, and other fields use check boxes which allow you to select more than one item.

Radial Buttons:




Check Boxes:

4. After you have finished coding a document, remember to save. If you plan to move on to the next document in your set, clicking "Save and Next" will save and take you there automatically. The save buttons are located above and below your coding pane.

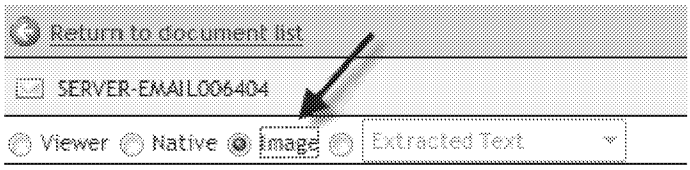



5. When you move onto another document, your coding pane will remain in edit mode, and you should be able to begin coding right away.

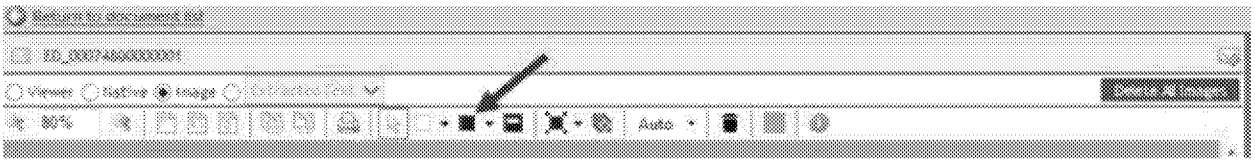
## REDACTING

In general, when a FOIA exemption applies to part of a document, we have an obligation to release reasonably segregable material within that document. This is accomplished by redacting the exempt part of the document. You should redact as needed according to the instructions below. Redactions are automatically saved.

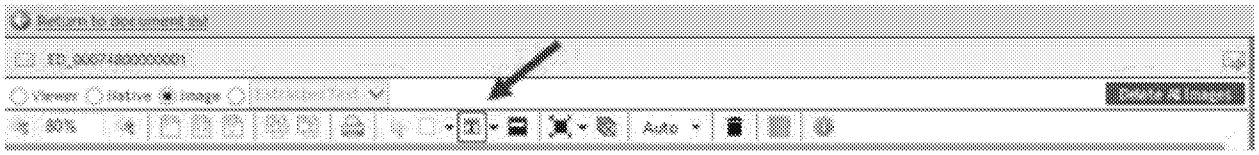
1. To create a redaction, make sure you are in Image mode in the Document viewer.




2. Look to the toolbar at the top of your screen. See the solid black square with the drop down menu. If you hover your cursor over it, it will display "*Redact*".



3. The drop down options when you click on the down arrow will be *Black, Cross, Text, or White*. Always select *Text*. When you have *Text* selected, the icon will look like below. Once this is selected, it will remain in *Text* mode unless you change it or sign out.



4. To make a redaction, click on your document and drag to create a square text

box. You will be able to resize or move this text box so that it conceals the information that is exempt from disclosure.

5. To change the text that is displayed in the box, right click on the box. This will allow you to select the appropriate basis for withholding from a series of drop down choices.

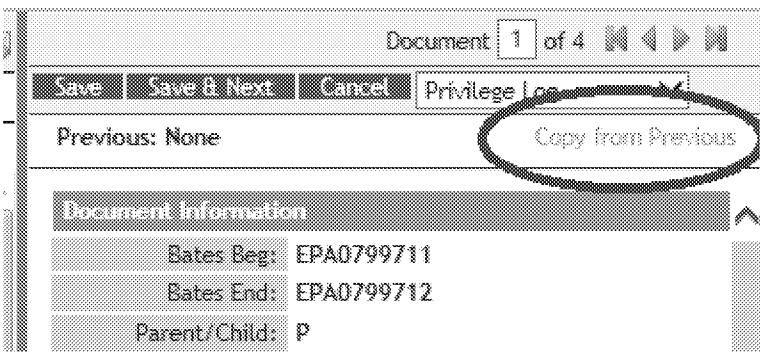
6. To delete a redaction, right click on the redaction and select delete.

7. Remember that the coding pane will not be automatically updated when you make a redaction. Be sure to code which exemptions you are asserting.

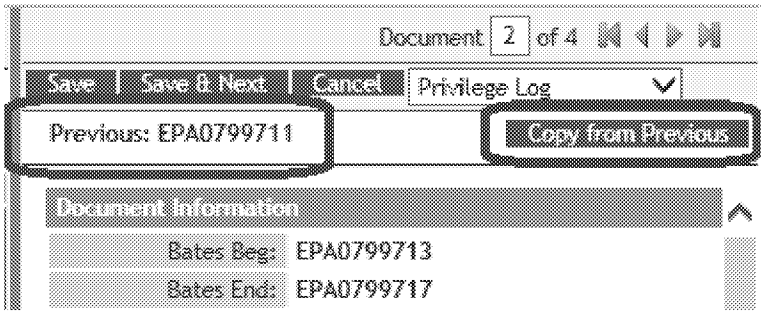
## COPY FROM PREVIOUS

At the top right-hand side of the coding pane, there is a "Copy from Previous" button on the Relativity review screen, which will allow you to copy the coding from the most recently coded document in your current review session. This button may save time if you are working in a sequence of similar documents.

1. To use Copy from Previous, you must first code at least one document. If you have not yet coded a document in your current session, or if you click Save (as opposed to Save & Next) or Cancel after reviewing a document, the layout is displayed as read-only and the Copy from Previous button is disabled:




2. Once you have coded a document in the current session and hit Save & Next, the Previous field will show the document identifier of the document that you last coded, and the Copy from Previous button will be enabled:




3. Relativity will also display a gray arrow icon next to the fields with values that will be copied from the previous document when you use Copy from Previous (Document Status, Privilege Basis, and Reviewer Comments). After you click Copy from Previous, the gray arrow icon will be replaced with a green arrow icon. The icon redisplays next to a copied field that you have modified. You must still click Save or Save & Next to apply the changes that you have copied into the document.

*How to effectively use Copy from Previous*

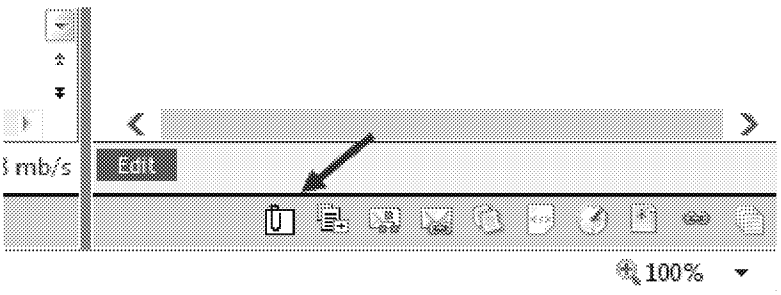
Use the Copy from Previous function when you want to copy the coding values of the designated fields from the last-saved document to the current one, like in cases where you have a series of similar documents one after another. After Relativity populates the layout with these coding values, you can still modify them (as you might need to, for instance, when copying a Privilege Basis description from an email into one of its attachments). After making any necessary changes, click the Save & Next button to save your changes and review a new document.

## REVIEWING FAMILY MEMBERS AND DUPLICATES

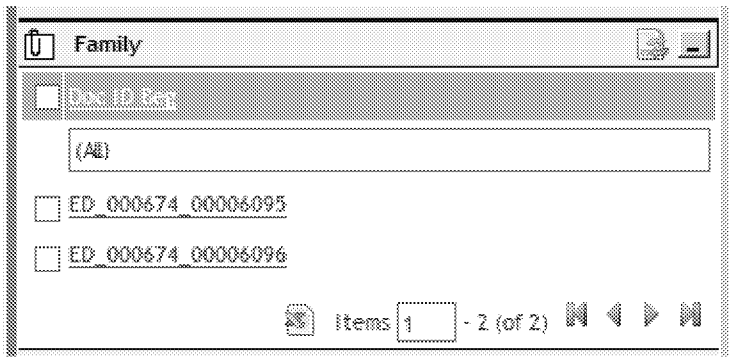
When looking at an attachment, it can be helpful to view the parent email to gain important context. When looking at an email communication, it may be helpful to view the attachments that are referenced. To view a document's family, follow the steps below.

1. FAMILY MEMBERS

    a. Find the paperclip icon in the bottom right corner of your screen. Click it.



b. This will provide you with a small viewing pane that contains list of documents, likely titled with a series of Doc ID numbers. Each number is a hyperlink to a document.

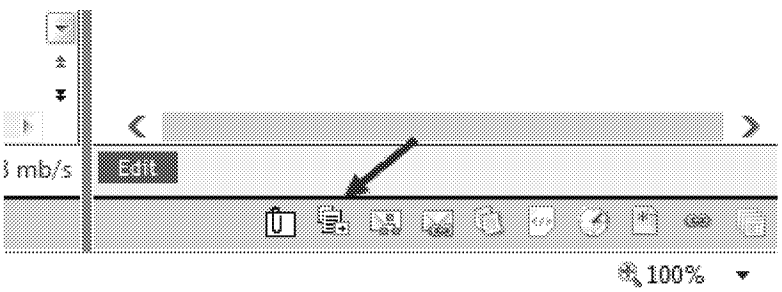



c. The uppermost document will be the parent email. The descending documents are attachments.

d. After clicking through the family and making coding changes or gathering information, to return to your original document, look to the upper left of your screen and click *Return to review queue*.

2. DUPLICATES

a. The Duplicates Icon should be located next to the paperclip icon,



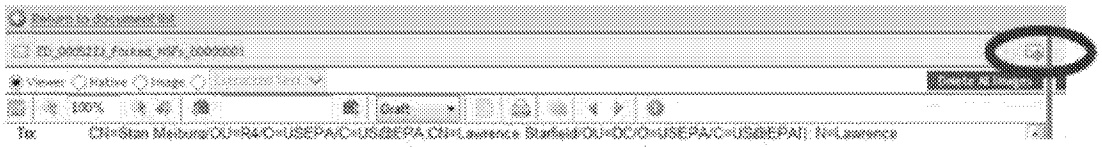

b. Just like with family members, you will see a small viewing pane that will display any duplicates. It can be navigated similarly, and when you are finished coding any duplicates, you can return to your initial document by selecting return to review queue.

## EMAILING A DOCUMENT TO YOUR CASE MANAGER

If you have a question about a document, it is often easiest to send a link to the case manager.

Relativity has an easy tool to help with this.

1. Locate the email icon with the green arrow in the upper right of your viewing pane



2. Click the icon, this will open up an outlook message with a direct link to the document. Send the document to your case manager with a note about your question and they will be able to open up the document themselves to help with your issue.

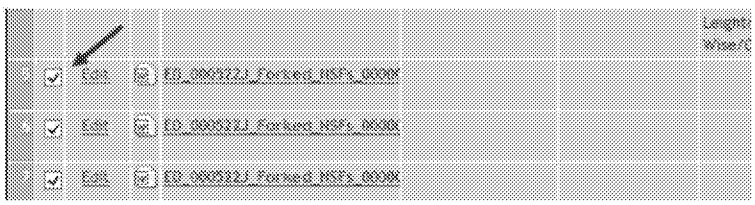
## GETTING DOCUMENTS OUT OF RELATIVITY

If you are a first line reviewer, there is likely no reason for you to print or produce documents from Relativity. If you are helping with case management, you may need to get documents out of the database for a number of reasons.

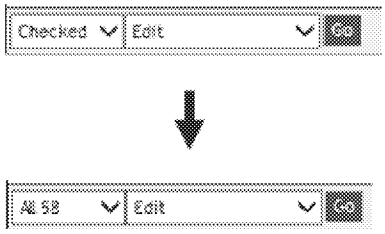
1. *Running a Production*: You may be at the end of your review and ready to deliver your final product to a requester. This will require the help of the e-discovery team in OEI. When you are ready to run a production, send an email to [ HYPERLINK "mailto:ediscovery@epa.gov" \h ] You should describe which documents need to be produced, if you would like them to be produced as images or in native format, and how you would like the documents to be stamped. The E-discovery team may follow up to clarify those and other details. If you know that you are going to request a large production, it can be helpful to reach out in advance.

2. *Printing Images*: If you are not running a final production, but rather need copies of one or more documents for some internal review, you can print images of your documents with or without redactions. Follow the steps below.

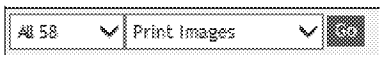
    a. Check the boxes of the documents that you would like to produce.



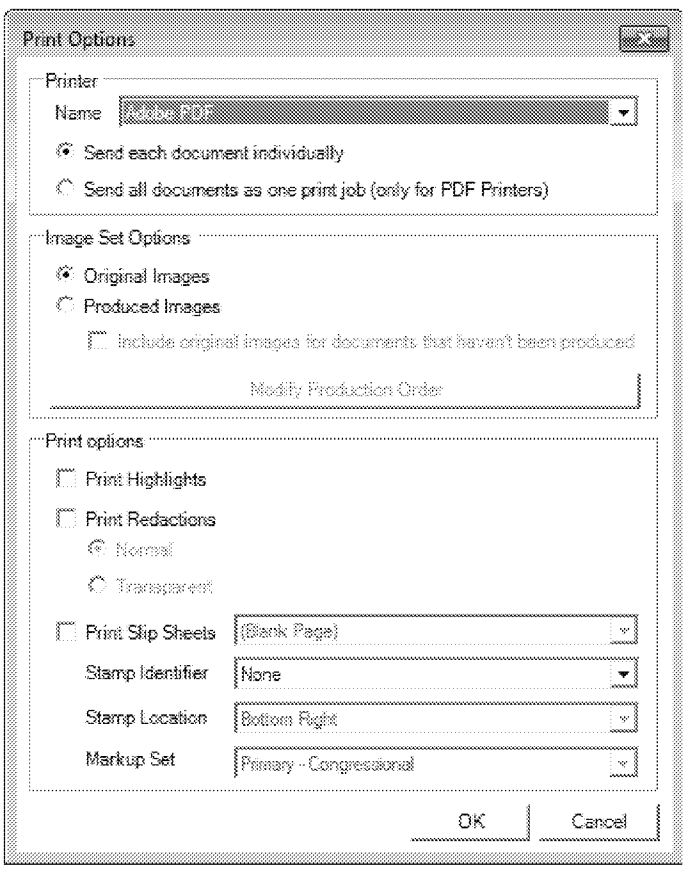
b. Alternatively, if you would like to print all of the documents in a particular saved search or folder, you can select "All" documents from the drop down in the lower left of your screen.



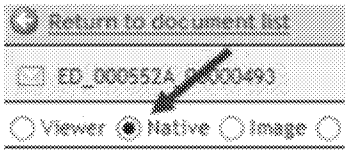

c. Using the second drop down menu, select "Print Images" and then press "Go".




d. You will be prompted with a number of choices. If you are trying to create a PDF, select a PDF printer. You have the options to send multiple documents as a group, print highlights or redactions, and select markup sets. Once you have set up your print job, press "OK" and Relativity will print your images. If you are printing to PDF, you wil be prompted to save the PDF.



3. *Opening in Native*: If you need to view or circulate a native file, open it using the native viewer and proceed from there.



# Redacting in Adobe Acrobat Pro DC

Use these instructions to redact content in Adobe Acrobat Pro DC

(1) Choose **Tools** > **Redact**. The Redact toolset is displayed in the secondary toolbar.

(2) In the secondary toolbar, choose **Mark for Redaction** > **Text & Images**.

(3) (Optional) To set the appearance of redaction marks, click **Properties** in the secondary toolbar. (See Change the look of redaction markers.)

Note: The FOIA requires that the Agency provide an estimate of the volume of redacted information to the requester. This includes redaction marks within documents. Therefore, you must always use redaction marks or borders that are visible. In other words, never place a white redaction mark on a white background.

(4) Mark items you want to remove by doing any of the following:

- Double-click to select a word or image.
- Drag to select a line, block of text, object, or area.
- Press Ctrl as you drag to select areas of a page in a scanned document.

**Note:** To preview how your redaction marks appear, hold the pointer over the marked area.

(5) To apply multiple code entries to a single redaction, right-click a redaction mark and select an option. For more information, see Apply multiple code entries to a redaction. Tip: Use the **Find Text** tool to find and remove words or phrases in one or more PDFs that contain searchable text. (see below)

(6) (Optional) To repeat a redaction mark, right-click it and choose **Repeat Mark Across Pages**. This feature is convenient if a particular header, footer, or watermark appears in the same location on many pages.

(7) When you have finished marking the items you want to redact, click **Apply** in the secondary toolbar to remove the items, then click **OK**. The items aren't permanently removed from the document until you save it.

(8) If you want to search for and remove hidden information in the document by using the **Remove Hidden Information** feature, click **Yes** in the dialog box. Otherwise, click **No**.

(9) Choose **File** > **Save**, and specify a filename and location. The suffix **"_Redacted"** is appended to the filename. If you don't want to overwrite the original file, save the file with a different name, at a different location, or both.

Tip: Use the **Find Text** tool to find and remove words or phrases in one or more PDFs that contain searchable text. (see below)

Search and Remove Text

**Note:** The **Find Text** tool doesn't search secured (encrypted) PDFs.

(1) Choose **Tools** > **Redact**.
The Redact toolset is displayed in the secondary toolbar.

(2) In the secondary toolbar, choose **Mark For Redaction** > **Find Text**.

(3) In the **Search** dialog box, specify if you want to search the current PDF or all PDFs in another location.

(4) Do one of the following:

- To search for only one word or phrase, choose **Single Word Or Phrase** and type the word or phrase in the text field.
- To search for multiple words, select **Multiple Words Or Phrase**, and then click **Select Words**. Type each word in the **New Word Or Phrase** text field and click **Add**. You can also import a text file with the list of words or phrases to search for.
- To search for a pattern (for example, phone numbers, credit card numbers, email addresses, social security numbers, or dates), click **Patterns**. Choose one of the available patterns. You can change the language version of the patterns. (See Select a different language version for patterns.)

(5) Click **Search & Remove Text**.

(6) In the search results, click the plus sign (+) next to the document name to see all occurrences of the word or phrase. Then, select the occurrences you want to mark for redaction:

- To select all occurrences in the list, click **Check All**.
- To select individual occurrences, click the check box for each one you want to redact. Click the text next to a check box to view the occurrence on the page.
- To mark none of the occurrences, close the **Search** dialog box or click **New Search** to start over.
- To mark whole words or partial words (characters) for redaction, select the option under **Redaction Mark Options**. For partial words, select **Mark Partial Word (s) For Redaction** the **Settings** dialog box appears. In the **Settings** dialog box, specify the number and location of the characters for redaction. Character redaction is useful if you're searching for a pattern, like credit card numbers, and want to leave part of the number visible for identification purposes.

(7) If you selected occurrences that you want to mark for redaction, click **Mark Checked Results For Redaction**. The items you selected in the list are shown marked for redaction.

**Note:** If you haven't saved the file, you can select redaction marks in the document and press **Delete** to remove the redaction mark. The redaction marks become permanent after you save the file.

(8) To remove the marked items, click **Apply** in the secondary toolbar, and then click **OK**. The items aren't permanently removed from the document until you save it.

(9) If you want to search for and remove hidden information in the document by using the **Remove Hidden Information** feature, click **Yes**. Otherwise, click **No**.

(10) Choose **File** > **Save**, and specify a filename and location. If you don't want to overwrite the original file, save the file with a different name, at a different location, or both.

Find and remove hidden content

Tip: Use the **Remove Hidden Information** feature to find and remove content from a document that you don't want, such as hidden text, metadata, comments, and attachments. When you remove items, additional items are automatically removed from the document. Items that are removed include digital signatures, document information added by third-party plug-ins and applications, and special features that enable Adobe Reader users to review, sign, and fill PDF documents.

**Note:** To examine every PDF for hidden content before you close it or send it in email, specify that option in the **Documents** preferences using the **Preferences** dialog box.

(1) Choose **Tools** > **Redact**.
The Redact toolset is displayed in the secondary toolbar.

(2) In the secondary toolbar, click **Remove Hidden Information**.
If items are found, they are listed in the **Remove Hidden Information** panel with a selected check box beside each item.

(3) Make sure that the check boxes are selected only for the items that you want to remove from the document. (See Remove Hidden Information options.)

(4) Click **Remove** to delete selected items from the file, and click **OK**.

(5) Choose **File** > **Save**, and specify a filename and location. If you don't want to overwrite the original file, save the file with a different name, at a different location, or both.
The selected content is permanently removed when you save the file. If you close the file without saving it, repeat this process, making sure to save the file.

## Tip: Use this function to take file attachments you intend to withhold based on a FOIA exemption out of Adobe documents.

**<u>Note: When marking documents for redactions in Adobe, always save 2 versions of the document</u>:**

- One version with the redaction marks unapplied
  - This version will be the "review" version. The redaction marks will be visible along with the content you intend to apply the redaction mark to.
  - This version will also be uploaded to FOIAonline but not released to the requester.
- One version with the redaction marks applied
  - This will be your production version that will be released to the requester.

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# STEP 5: Production of Responsive Records

**[ TOC \o "1-3" \h \z \u ]**

# Checklist: What to Include in a Final Response Letter

The checklist below details items to be included in a final response letter and provides sample language that may be useful. Draft your closeout letter to fit the particular needs of a request, but be sure it includes the key components below. Following signature of the letter, the letter should be scanned into FOIAonline even if it is not being delivered electronically.

***Print on Agency Letterhead***
***[Date Stamp]***

***[Name***
***Organization***
***Street***
***City, State Zip Code]***

Re: Freedom of Information Act Request No. EPA-*[XX-XXXX-XXXXXX]*, Final Response

Dear ***Mr./Ms. [Last name]:***

1. *SUMMARY OF REQUEST*
   - *Your letter should begin with the request number and summary of the request*
   - *Sample language:*

   This letter concerns the above-referenced FOIA request, received by the U.S. Environmental Protection Agency (EPA or Agency) on ***[Month, Day, Year]***, in which you requested, ***[INSERT a description of the FOIA request. If the request has been clarified, include the most recent clarification and note when it was clarified. Note key correspondence or communication with the requester, provide a timeline of EPA's response.]***.

2. DISPOSITION
   - *State which one of the following dispositions applies:*
     - *Granted. The records, in their entirety, may be released to the requester.*
     - *Partial Grant/Partial Denial. Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester.*
     - *Denial. The record, in its entirety, will be withheld from the requester if covered by either one or multiple FOIA exemptions.*
     - *No Record. If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester will be informed in writing.*

3. DESCRIPTION OF RECORDS

   - *Next, if the request is being granted in full, describe the records being provided*
   - *Sample language:*

The Agency has concluded its search for records responsive to your request and is providing the requested records in full. ***[INSERT a description of the records that are being provided]***.

   - *If records are being withheld in full or in part, describe the records. If there is a large volume of records that are being withheld, include an index of those records.*
   - *Sample language:*

The Agency has concluded its search for records responsive to your request and is ***[providing a portion of the requested records, [INSERT a description of the records that are being provided] / withholding all responsive records].*** The EPA is withholding # records in full and # records in part.

   - *If records are being withheld in whole or in part, you must note which FOIA exemptions are the basis for the withholding(s).*
   - *Sample language:*

Records are being withheld pursuant to: 5 U.S.C. § 552(b)***(#), [shorthand description of applicable exemption, such as: 552(b)(5), the Deliberative Process Privilege / 552(b)(5), the Attorney Client Privilege/552(b)(5), the Attorney Work Product Privilege / 552(b)(6) Personal Privacy].*** The records are exempt from disclosure because they ***[briefly describe reason for withholding such as: are predecisional and deliberative and would harm agency decision making if released (DPP)/ are confidential communications between an agency attorney and client concerning legal advice (ACP)/ are documents prepared by, or at the direction of, an attorney in contemplation of litigation(AWP)/ contain personal information which would be an unwarranted invasion of personal privacy if released (PP)].*** The attached index of withholdings provides further information concerning the withheld records ***[or if voluminous – "The attached appendix contains a categorical description of withholdings and a volume estimate."]***.

4. COST INFORMATION

   - *Inform the requester of the fees that are being assessed for the request and how to pay them.*
   - *Sample language:*

The cost to process your request was $***[#]***. Please see the attached invoice for billing and payment instructions.

5. FINAL APPEAL RIGHTS AND CONTACT INFORMATION

   - *Inform the requester that they may appeal the request, and provide them contact information for the appeal, the FOIA Public liaison, and OGIS. Also include the relevant staff person's contact information. The requester may want to simply seek clarification about something they don't understand rather than go through the appeals process.*
   - *Sample language (NOTE: THE FOLLOWING APPEAL LANGUAGE HAS BEEN RECENTLY UPDATED CONSISTENT WITH THE FOIA IMPROVEMENT ACT OF 2016):*

*APPEAL LANGUAGE FOR ALL FINAL FOIA RESPONSES, EXCEPT AS NOTED BELOW:*

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8610 Adelphi Road, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

If you have any questions concerning this response, please contact ***[Staff contact]*** of my staff at ***[###-###-####]***.

*APPEAL LANGUAGE IF THERE IS AN INITIAL WITHHOLDING BASED ON EXEMPTION 4:*

This letter concludes our response to your request. As noted above, the information withheld under Exemption 4 will be reviewed by the appropriate legal office, which will issue a final confidentiality determination. Therefore, you do not need to appeal the withholding of information under Exemption 4. Once the legal office issues a final confidentiality determination, EPA will notify you whether the information qualifies for confidential treatment or may be released. To the extent you would like to appeal any other issue, including any non-Exemption 4 withholdings, you may appeal this response

by email at hq.foia@epa.gov or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service or overnight delivery you must address your correspondence to 1301 Constitution Avenue, N. W., Room 6416J, Washington, DC 20004. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. Appeals received after 5:00 pm EST will be considered received the next business day. The Agency will not consider appeals received after the 90-calendar-day limit. The appeal letter should clearly identify the determination being appealed, including the assigned FOIA tracking number shown above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail to the Office of Government Information Services, National Archives and Records Administration, 8610 Adelphi Road, College Park, MD, 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

If you have any questions concerning this response, please contact ***[Staff contact]*** of my staff at ***[###-###-####]***.

6. SIGNATURE

   - *Be sure your letter is signed at the Division Director level or above.*

# Interim Response Letter Template

The below template is one way to correspond with a requester concerning an interim production. You may send an email, letter, or message through FOIA Online, and there are many different ways to communicate about an interim response. Just be clear that the production is interim and ensure that you are including the following components in your correspondence:

- Request information (number, date received, summary)
- Description of the interim production (number of records, general description)
- Anticipated closeout date/upcoming productions
- Notice that appeal information will be provided at close out
- Contact information

***[Print on Agency Letterhead]***

***[Date Stamp]***

***[Name***
***Organization***
***Street***
***City, State Zip Code]***

Re: Freedom of Information Act Request No. EPA-***[XX-XXXX-XXXXXX]***

Dear ***Mr./Ms. [Last Name]***:

This letter concerns the above-referenced FOIA request, received by the U.S. Environmental Protection Agency (EPA or Agency) on ***[Month, Day, Year]***, in which you requested, ***[INSERT a description of the FOIA request. If the request has been clarified, include the most recent clarification and note when it was clarified.]*** . The Agency is now releasing records in response to your request. Please note that this is an interim response, and the EPA continues to work on your request.

The records EPA is releasing include ***[INSERT a brief description of the records that are being produced]***.

The Agency expects to complete its response to your request by ***[Month, Day, Year]***. ***[OPTION: INSERT a description of a rolling production schedule or when the next interim production is expected if there will be additional interim productions.]***

Again, your request is not being closed at this time. When your request is closed, you will receive information concerning your appeal rights for any part of EPA's response. If you have

any questions about this interim production or your request generally, please contact ***[First Name Last Name]*** at [***xxxxxxx]***@epa.gov or by phone at [***XXX-XXX-XXXX]***. Additionally, you may seek assistance from EPA's FOIA Public Liaison at [ HYPERLINK "file:///C:/Users/JMoumble/Desktop/hq.foia@epa.gov" \h ] or call (202) 566-1667. Last, you may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8610 Adelphi Road, College Park, MD 20740-6001; email: [ HYPERLINK "file:///C:/Users/JMoumble/Desktop/ogis@nara.gov" \h ]; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

*[NAME]*
*[TITLE]*

# The Life Cycle of a FOIA – The Key Steps to Processing Any FOIA Request

The Office of General Counsel
In conjunction with the Office of Environmental Information

September 2017

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# INTRODUCTION

The Freedom of Information Act (FOIA) provides that any person, with a few narrow exceptions (*e.g.,* a fugitive), has a right, enforceable in court, to obtain access to agency records, except to the extent that such records (or portions of them) are protected from public disclosure by an applicable FOIA exemption. EPA receives thousands of FOIA requests a year, many of which are complex requests that seek records from multiple EPA offices. The Agency's response to FOIA requests is guided by the statute, 5. U.S.C. § 552, EPA's implementing FOIA regulations, 40 C.F.R. § 2.100 *et seq.*, EPA's FOIA procedures, http://intranet.epa.gov/foia/docs/FOIA-Proc_August2014-09-30FINAL(with-electronic-signature).pdf, and individual office's FOIA procedures, http://intranet.epa.gov/foia/FOIA-Procedures.html.

This document follows the lifecycle of a FOIA request and contains tips to help you successfully address any FOIA request, complex or otherwise. The document is intended for the internal use of staff and contains best practice guidelines and suggestions only. While the document and Appendix are intended to help staff comply with EPA policies, they are not themselves official EPA policy. Further, the document does not change, modify, or supersede applicable legal obligations, including obligations imposed by regulation or statute, nor is it a regulation itself.

Your use of this document is voluntary. The document is not legally enforceable and does not confer legal rights or impose legal requirements upon any member of the public, States or any other federal agency. The word "should" in this document does not connote a requirement but rather indicates a strong recommendation in terms of a best practice.

Furthermore, the suggestions in this document may not apply in a particular situation based upon the circumstances, and EPA retains the discretion to adopt approaches on a case-by-case basis that differ from this document. Finally, this is a "living document," and EPA may revise it from time to time.

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# Appendix

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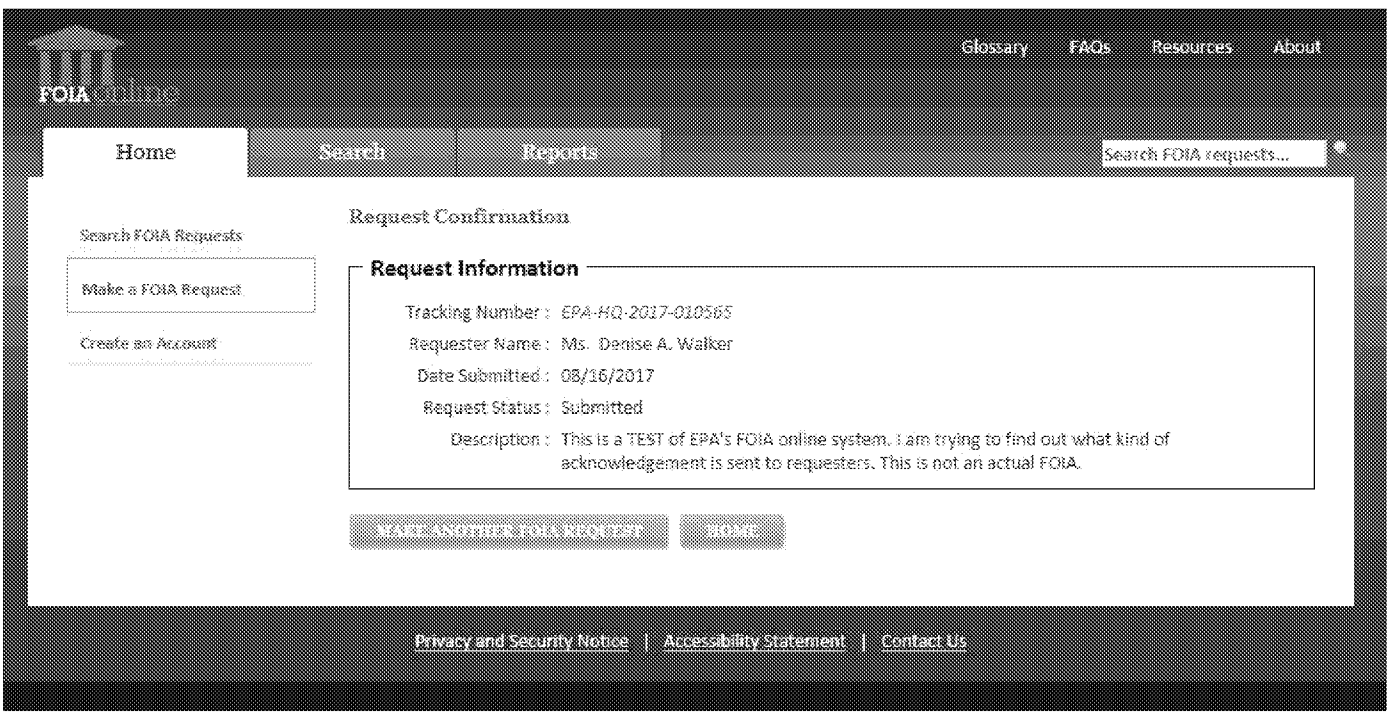
# Step 1: Acknowledge Receipt of FOIA Request and Understand Your Statutory Deadlines

## A. How do I acknowledge receipt of the FOIA Request?

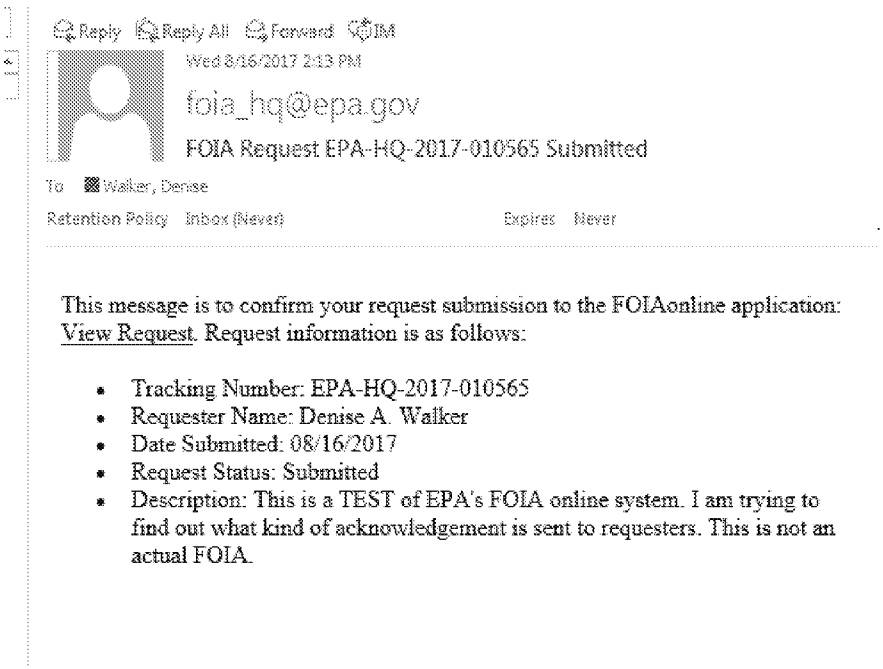
### 1. FOIAonline

FOIA requesters can submit their written FOIA requests to EPA electronically via FOIAonline. FOIA requesters can also submit written requests to EPA's Headquarters or Regional FOIA Officers, in which case the National FOIA Program Office, or Regional Office, if applicable, will input the request into FOIAonline. All requests are processed through FOIAonline.

Once a request is submitted to FOIAonline, the requester receives notification immediately via the FOIAonline website confirming submission of a request. In this request confirmation, the requester is provided with a tracking number, the date submitted, and a brief description of the request as provided by the requester in the submission. An example of the response a FOIA requester receives upon submission of a request via FOIAonline is as follows:



FOIAonline then automatically generates an acknowledgement e-mail to the requester such as the following:


Reply Reply All Forward IM

Wed 8/16/2017 2:13 PM

foia_hq@epa.gov

FOIA Request EPA-HQ-2017-010565 Submitted

To Walker, Denise

Retention Policy Inbox (Never) Expires Never

This message is to confirm your request submission to the FOIAonline application: View Request. Request information is as follows:

- Tracking Number: EPA-HQ-2017-010565
- Requester Name: Denise A. Walker
- Date Submitted: 08/16/2017
- Request Status: Submitted
- Description: This is a TEST of EPA's FOIA online system. I am trying to find out what kind of acknowledgement is sent to requesters. This is not an actual FOIA.

The submission confirmation and the acknowledgment email are the first communication the requester receives from the Agency. The acknowledgment email also appears as the first correspondence entry as a system-generated email, which appears under the correspondence tab in FOIAonline.

☆ **Be sure to turn on the notification feature under the "My Account" tab in FOIAonline, as the system will then generate e-mails to your Outlook account notifying you to check FOIAonline for requests or tasks that have been assigned to you. Be sure also to check regularly the "My Cases" tab in FOIAonline, as you will find all pending requests and tasks listed here.**

## 2. Initial communication from Action Office

When you or your office is assigned as the lead (also known as the Action Office) on a FOIA request, you should immediately review the request and ensure that assignment to your office is appropriate. If you believe that your office should not be the Action Office for a particular FOIA request, immediately notify the FOIA Coordinator or FOIA Officer in the office that you believe should be the appropriate Action Office. If there is agreement, the FOIA request should immediately be reassigned via FOIAonline to the correct office. If you are unsure of the appropriate Action Office, you should immediately work with your office's FOIA Coordinator or FOIA Officer to resolve the issue in conjunction with the National FOIA

Program Office. Be sure to communicate with the FOIA Coordinator or FOIA Officer in the other office before re-assigning the matter in FOIAonline.

After ensuring that the request is properly assigned to your office as the Action Office, as a best practice you should reach out to the requester by sending a short note through FOIAonline, letting the requester know your contact information, that you are reviewing the request and that you will be back in touch promptly once you have had a chance to review the request fully. This can be accomplished by clicking the "Create Correspondence" in FOIAonline. The note might look like this:

> *Subject: [FOIA ID # XXX-XXXX]*
> *Dear [FOIA Requester]:*
> *My office has received your FOIA request. I will contact you again after we have had an opportunity to review the request fully. I will be your point of contact. Please feel free to contact me directly with any questions or concerns. Additionally, at any point in time, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail at: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; by email at: ogis@nara.gov; by telephone at: (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769*
>
> *Sincerely,*
>
> *[Your Name]*
> *[Your Phone Number]*

☆ **Regular communication with the requester is fundamental to good FOIA processing. Start early!**

OGIS, which is referenced in the sample noted above, is a FOIA resource for the public and the government. https://www.archives.gov/ogis. The FOIA Improvement Act of 2016[1] (hereinafter referred to as "the 2016 Amendments to FOIA") requires agencies to notify requesters of their right to pursue alternative dispute resolution through OGIS at certain points in the FOIA process, as explained below.

[1] https://www.justice.gov/oip/oip-summary-foia-improvement-act-2016

## B. How much time do I have to respond to a FOIA request?

### 1. Statutory and regulatory time limits

Under FOIA, you have 20 working days to process a request. 5 U.S.C. § 552(a)(6)(A)(i) (2006 & Supp. IV 2010). FOIAonline has a clock in the upper right hand corner that will help you keep track of how many days have passed since the National FOIA Program Office perfected the request. If you believe you can complete the request in 20 working days, let the requester know. If the request is not clear, you should seek clarification of the request.

### 2. Tolling time limits

You can stop the clock one time while you are waiting for clarification from a requester. 5 U.S.C. § 552(a)(6)(A)(ii). To do this, select "Stop the Clock" in FOIAonline and select the appropriate reason. Although you can only stop the clock once to clarify a request, you can stop the clock as many times as you need for fee-related reasons, including when the requester is required to provide an assurance of payment and has failed to do so. Fees are addressed more fully in Step 2.

Once the request is clarified or the fee issue is resolved, be sure to go back into FOIAonline and select "Start the Clock."

### 3. How do I get more time to respond to a FOIA request?

***a. Unusual Circumstances and the 10-day extension.*** 5 U.S.C. § 552(a)(6)(B)(i). If you think you will need additional time beyond the 20 working days, you can provide the requester with a notice that you are invoking a 10-day extension for "unusual circumstances" per 5 U.S.C. § 552. This will give you a total of 30 days to respond to the request. This notice must: (1) be in writing; (2) include information on how to contact OGIS (as required by the 2016 Amendments to FOIA); (3) provide the requester with an opportunity to narrow the request (5 U.S.C. § 552(a)(6)(B)(ii)); and (4) be for one of the following reasons:

- the request requires EPA to collect responsive records from a field office or other entity separate from the office processing the request;
- the request involves a "voluminous" amount of records that must be located, compiled, and reviewed; or
- the request requires EPA to consult with another federal agency or other EPA components that have a substantial interest in the responsive information. 5 U.S.C. § 552(a)(6)(B)(iii).

***b. Extension of time beyond 30 days.*** If there are unusual circumstances and the request cannot be processed in 30 working days, you must provide the requester an opportunity to modify the request so that it can be processed within 30 working days

or arrange for an alternative timeframe for completion of processing. 5 U.S.C. § 552(a)(6)(B)(ii). This notice must: (1) be in writing; (2) include information on how to contact OGIS (as required by the 2016 Amendments to FOIA); (3) provide the requester with an opportunity to narrow the request; and (4) be for one of the unusual circumstances set forth in section 3.a. above. Requests that require the assistance of the Office of Environmental Information's (OEI) Discovery Services Division will likely exceed the 30-day limit. Please see Step 3 for additional information on how to submit search requests to the Discovery Services Division.

**4. Consequences of not responding to a FOIA within time limits**

While many requests will take longer than 20 working days to complete a response, it is important to pay attention to statutory deadlines. Failing to respond to a FOIA within the statutory timeframe enables requesters to go directly to district court for relief. 5 U.S.C. § 552(a)(6)(C)(i). Failing to respond within statutory timeframes can also preclude the Agency from being able to charge fees. 5 U.S.C. § 552(a)(4)(A)(viii).

**Practice Tip: Be sure to think about whether you will need additional time beyond the statutory 20 working days when you receive the request. Do not wait! Most complex FOIA requests cannot be processed in 30 working days (*i.e.*, 20 working days plus 10 days for unusual circumstances), so take appropriate steps to notify the requester and arrange for additional time as soon as possible.**

# Step 2: Evaluate the FOIA Request and Determine Fees to be Charged, if Any

## A. What is a proper FOIA request?

Before commencing a search for records pursuant to the FOIA, evaluate the FOIA request and confirm that it is proper. A proper FOIA request is one that sufficiently describes the records sought, *i.e.* it enables an Agency employee familiar with the subject area to locate the records with a reasonable amount of effort.

The FOIA was not intended to make government agencies full-time investigators on behalf of requesters or to allow requesters to conduct fishing expeditions through Agency files. The FOIA is about access to Agency records, but does not require the Agency to answer questions or create records to respond to a request. However, the breadth of the FOIA request or its burden on the Agency alone does not make a request improper – requests can be very large, yet still be proper. Instead, the key inquiry is whether the request sufficiently describes the records sought such that you have enough information to begin a search.

### 1. Applicable legal requirements

EPA's regulations at 40 C.F.R. § 2.102(c) state that the "request should reasonably describe the records you are seeking in such a way that will permit EPA employees to identify and locate them." Further, the regulations state "when possible, your request should include specific information about each record sought." Finally, the regulations state that this specific information should include (whenever possible):

- Date
- Title or name
- Author
- Recipient
- Subject

Requests do not need to have ALL of these elements to be proper requests; however, requests that contain none of these pieces of information (or only one) likely require clarification.

#### *a. FOIA does not require EPA to do the following:*

i. FOIA does not require EPA to create new records by compiling data or manipulating existing records, nor does it require the Agency to re-create records that were properly disposed of. Examples of this type of improper request include:
   - "Make me a list of all Agency actions that . . . ."
   - "I want to know what the Agency is doing about . . . ."
   - "Provide me with information about who is working on . . . ."

ii. EPA does not have to produce records over which it retains no control. An example of this type of improper request includes:
   - "Provide me emails and communications between staff at XX Contractor" (if Agency employees are not included).

iii. EPA does not have to answer questions, interrogatories, or perform research to answer requests. Examples of this type of improper request include:
   - "What files does EPA have on . . . ."
   - "What did the EPA consider or rely on to. . . ."
   - "How does EPA justify. . . ."
   - "Produce any documents that prove or disprove (statement or argument)."

iv. EPA does not have to produce purely personal records. Recall that the FOIA only requires the release of "agency records," *i.e.*, records that are created or obtained by an agency and under the agency's control at the time of the request. An example of this type of improper request includes:
   - "Please provide me EPA employee John Smith's recent home appraisal."

**Practice Tip: More information on what constitutes an "agency record" vs. a "personal record" is available at: https://www.justice.gov/oip/blog/foia-update-oip-guidance-agency-records-vs-personal-recordshttps://www.justice.gov/oip/blog/foia-update-oip-guidance-agency-records-vs-personal-records**

v. EPA does not have to explain or justify Agency decisions. Examples of this type of improper request:
   - "Provide the basis for the Agency's decision to . . . ."
   - "Provide any records supporting the statement that . . . ."

vi. EPA does not have to "hold" a request open for FOIA requests that seek records that EPA may create at some point in the future (*i.e.* records that do not exist at the time the request is received). Example of this type of improper request:
   - "Provide the final XYZ Report when it is finished next month."

**Practice Tip: If, when reading the request, you think, "I don't even know how we would begin to search for this," you may have an improper request. Don't guess what the requester might be looking for – contact the requester to clarify! See Section 2B for more information on reaching out to the requester for clarification.**

*b.* ***Requests that only seek information already publicly available on EPA websites.*** These types of requests can be closed once you respond to the requester and direct the requester to the specific location where EPA has made the information publicly available. Locations may include the following:

- EPA's website
- EnviroFacts
- ECHO
- MyProperty
- FOIAonline
- ChemView

See also Appendix, Step 1, Template Letter for requests that seek information that EPA has made publicly available.

## 2. Perfecting Requests

*a.* ***Under current EPA procedures***, the National FOIA Program Office documents the date on which the request is received as both the "submitted" date and "perfected" date in FOIAonline.

*b.* ***Because the request will be assigned to the Action Office as "perfected,"*** it is that office's responsibility to determine if the request is proper and, if necessary, to seek clarification. Again, you can only stop the clock once to clarify the request during the first 20 working days.

*c.* ***If you determine a request is not proper***, below are the steps to take:

i. Prepare the Improper Request/ Seeking Clarification Letter (See The Initial Detailed Response Template in Appendix, Step 1, or http://intranet.epa.gov/foia/FOIA-letters.html).

ii. Send the letter through FOIAonline or regular mail to the requester, as appropriate. If the letter is sent through regular mail, ensure that a copy is included in FOIAonline under the "correspondence" tab, so all communications can be kept as part of the FOIAonline case file.

iii. In the FOIAonline case file, click the "Stop the Clock" button on the Left Navigation.

iv. Select "Clarification" in the Reason drop down menu.

v. Explain the reason for stopping the clock in the Notes field. Also, to avoid confusion later, be sure to type in the Notes field the date by which you expect a response from the requester.

vi. Click the "Stop the Clock" button on the left side of the page in FOIAonline.

vii. Wait for the requester to respond or the due date to pass. When the requester responds and clarifies the request, click the "Start the Clock" button on the left side of the page in FOIAonline.

viii. Once you are on the "Start the Clock" screen, press the "Start the Clock" button on the bottom of the page.

ix. If the requester does not respond by the due date or fails to provide a clarification that sufficiently describes the records sought, begin the close-out process using the Closure for Failure to Modify Template (Appendix, Step 1) or http://intranet.epa.gov/foia/FOIA-letters.html).

x. If the requester responded or you were able to clarify over the phone, confirm the modification or clarification in writing. (For template, see Confirmation of Clarification Template Appendix, Step 2).

xi. Once confirmed, go to the "Submission Details" tab in FOIAonline and click the box saying "Has Description Been Modified?"

xii. Type the modified description in the box.

xiii. Click "Save Changes" button at the bottom of the page.

xiv. Process the request according to the modified description.

**Practice Tip: If you determine that the FOIA request constitutes an improper request, per EPA's regulations, you must contact the requester and ask them to clarify or modify the request. Note that under the FOIA, you have one opportunity to "stop the clock" to clarify an improper request. For more information on request parameters, see EPA regulations at 40 C.F.R. § 2.102(c) ("Procedures for making requests").**

## B. Evaluate the FOIA Request with your FOIA Team and Clarify, as needed

### 1. Who is on my FOIA team?

*a.* ***Simple, non-voluminous Requests:*** Generally, as the Action Office, your FOIA team will be: (1) your office's FOIA Coordinator or FOIA Officer; (2) relevant office staff; and (3) subject-matter expert(s) (SMEs) of the requested records. A SME is someone who has expertise in the subject matter of the FOIA.

**Practice Tip: Be sure to coordinate with your subject-matter expert(s) (SME) early and often, even on simple requests! SMEs will be a great resource for identifying whether, where, and what records exist that may be responsive to the FOIA request.**

*b.* ***Complex or voluminous requests****:* Generally, as the Action Office, your FOIA team will be: (1) Action Office; (2) any Contributing Office(s); (3) SMEs; (4) FOIA Coordinator(s) or FOIA Officer(s); and (5) FOIA analyst(s), where applicable.

*c.* ***Identifying the correct Contributing Office(s)*** at the beginning of the request will save you time and hassle later! Coordinating all Contributing Offices at the outset is critical for efficient FOIA processing across the Agency. Upfront coordination helps to avoid multiple offices reaching out to the same requester(s) and clarifying the request(s) in different ways.

*d.* ***The most important question*** you should keep asking as you identify the correct Contributing Office(s): *Are there any other program office(s) or custodian(s) that are likely to have responsive records?* Remember, the Action Office is responsible for clarifying the FOIA request in a way in which all affected offices agree.

**2. Discuss the FOIA request with the team**, See Appendix, Step 2, at 12.

***a. Often, a request meets all the requirements of a proper request***, but the team might still be unsure of where to begin a records search, the request is very broad, or the requester uses a word or phrasing that might have certain significance within the Agency that is different from common usage. To ascertain the need for clarification, consider:

- Does the request sufficiently describe the records sought such that you or your subject matter expert know where to search for records?
- Is the following provided: date range, program office(s), custodian(s), search terms?
- Can you, as the Action Office, articulate a search plan of action for the records sought?

If the answer to any of these questions is "No" or "I'm not sure," reach out to the requester and seek clarification of the request!

***b. Other questions for the team to consider may include****:*

- Has this information been requested through FOIA previously?
- What, if anything, could be a hurdle to efficient processing of the request?
  - Are there any sensitive issue(s)? (*e.g.,* litigation, on-going rulemaking)
  - Potential resource concerns? (Is your team in the middle of another large project?)

c. ***From these discussions, the team should have:***
- A common understanding of the request;
- A plan of action if the team determines the request is improper or requires clarification;
- A sense of any obstacles/hurdles going forward that may need to be addressed as a team; and
- An idea of what needs to be discussed with the requester.

d. ***Prepare for your communication with the requester.*** Upfront preparation is imperative regardless of whether you will make contact by email or telephone.

i. If you seek clarification on the type(s) of records sought, gather information about the types of records the custodians create, the record systems, how the records are organized, and how the records are maintained.

**Practice Tip: Want to know where to find information about EPA's record systems? A great place to start is EPA's Privacy Act System of Records Notices (SORNs)! These notices are published in the Federal Register and provide information to the public about the categories of records kept in the system, the categories of information that can be searched, and the point of contact responsible for the maintenance of the Privacy Act System. If you don't feel like perusing the Federal Register, EPA's Federal Information Systems can be found here: https://www.epa.gov/privacy/epa-federal-information-systems.**

ii. If you seek clarification on the topic(s) of records sought, gather information about the issue(s) on which the relevant office(s) is focused. Consider any relevant/timely issue(s) affecting the office(s), recent or upcoming projects, and similar issues.

- Sometimes the requester deliberately submits a very broad request without much direction about a topic because, while they have an idea in their mind about the topic, the requester does not know quite how to couch the request to capture the information they seek. Having current topics on hand when contacting the requester can be useful, so you can ask questions like, "You mention X in your request, but X is a very broad topic. Our office is working on a rulemaking related to issues like X, are you interested in documents about the rulemaking?"

iii. If you seek clarification regarding custodian(s), consider who are the individuals in your program office most likely to have relevant records. While the entire program office might have responsive emails, for example, helping the requester to nail down the custodian list to the primary individuals with

relevant responsive documents increases the likelihood that the requester will receive the relevant information they seek.

3. **Reaching Out to the Requester**

   a. ***Call or at least email the requester.*** Most requesters are glad to hear from the Agency about their FOIA requests, even if the discussion might require giving the requester "bad news," such as the length of time needed to process the request. Consider making a regular practice to reach out to a requester to discuss the request, even if the scope of the request seems clear.

      - Communication with the requester is very important because the Agency can help manage the requester's expectations. Most requesters are not familiar with EPA records, organizational structure, or technical capabilities. Educating requesters about EPA is often productive for the FOIA requester and helps inform the public about the Agency.

**Practice Tip: If you are managing multiple requests on a similar topic, and another requester submits a narrower request or you have worked with another requester to clarify/narrow a request, consider proffering those ideas to the other requesters. The more similar you can get related requests, the more straightforward your management of the FOIA project will be.**

   b. ***Engage in an open discussion with the requester***. An adversarial approach will not go far. Requesters are more likely to participate in some give and take if they trust that the Agency staff want to assist them in fulfilling their FOIA requests.

   c. ***Document your communication with the requester***. If communication occurs via email, be sure to upload all email communications to FOIAonline. If communication occurs via telephone, be sure to memorialize your discussion in an email to the requester, and upload the email to FOIAonline. You may also communicate with the requester directly through the correspondence tab in FOIAonline. If for some reason you are unable to document your communications via email with the requester, at the very least, create a comment in FOIAonline recording the details of your communication.

☆ **If you need to contact multiple requesters, make sure to reach out to the requesters with expedited FOIA requests first, and document your communication!**

**Practice Tip: If at any point in processing the request, the team is unsure or feels a sense of hesitation about how to resolve a question about the scope of the request, it is best to reach out to the requester for clarification and discussion. Such an approach**

**will go far in establishing a positive relationship with the requester and is good customer service.**

### *d. What if the Requester Does Not Want to Clarify?*

i. The Office of Government Information Services (OGIS) provides mediation services to resolve disputes between FOIA requesters and Federal agencies. FOIA requesters and agencies may request OGIS's assistance in resolving a dispute at any point in the FOIA process. OGIS works with the parties to attempt to reach a mutually agreeable resolution.

ii. Remember, under the 2016 Amendments to FOIA, the Agency must notify requesters of their right to pursue alternative dispute resolution through OGIS at three points in the FOIA process in response to:
- Initial determination letters;
- Appeal response letters; and
- Letters regarding requests in which unusual circumstances allow for 10 additional working days to respond.

iii. Below is the language regarding OGIS to include in letters to the requester:

*You may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.*

☆ **Remember to document the efforts you have taken to get the requester to narrow/clarify the request and to identify any aspects of the request that are improper/unclear.**

**Practice Tip: We still have an obligation to respond to the parts of the request that are unambiguous! One imperfect part of a FOIA request does not permit the Agency to fail to respond to the entire request!**

## C. FOIA Fees and Fee Waivers

The FOIA allows agencies to charge certain fees to requesters to process their FOIA requests. Requesters are placed into one of three fee categories. Which types of fees an agency may charge is based on the fee category in which a requester falls. Further, in some circumstances, the FOIA allows for a waiver or reduction of fees. Certain restrictions apply to an agency's ability to charge fees, as discussed below.

### 1. Types of fees

The FOIA allows agencies to charge three types of fees for processing FOIA requests: search, review, and duplication.

*a.* ***Search fees:*** Search fees may be charged for the time spent looking for responsive documents. Note that search fees may be charged even if the Agency does not locate any responsive documents or if the documents are withheld under a FOIA exemption. Examples of actions that are chargeable as "search fees" include time spent for meetings to discuss search strings/how to conduct searches, time spent searching one's computer and hard copy files, and time spent looking at the records to see if they are responsive.

*b.* ***Review fees:*** Review fees may be charged for "direct costs incurred during the initial examination of a document for the purposes of determining whether [it] must be disclosed [under the FOIA]." This includes reviewing documents to determine which, if any, exemptions apply. Review fees may *not* be charged for subsequent levels of review.

*c.* ***Duplication fees:*** Duplication fees include the direct costs of making copies of the documents. They also include, if documents are scanned, the staff time spent scanning the documents. For paper copies, EPA currently charges 15 cents per page. For electronic copies, you may charge for a physical medium, such as a CD, but not for uploading documents into FOIAonline.

> **Note**: Some FOIA requesters may also ask that the records be "certified." This is a special service for which the OMB Fee Guidelines allows agencies to charge fees. EPA charges $25 to certify records. For certification requests, contact the Program Assistant in the General Law Office in the Office of General Counsel.

### 2. Categories of requesters

Which types of fees an agency may charge for processing a FOIA request depends on the category into which the requester falls. The FOIA provides three fee categories: (1) Commercial use requesters, (2) Educational institutions, noncommercial scientific

institutions, and representatives of the news media; and, (3) Other (requesters who do not fall into either category above). While the HQ FOIA office makes initial determinations on fee categories, you should work with your FOIA Coordinator along with the National FOIA Program Office if you believe a different fee category is more appropriate.

***Category 1- Commercial Use Requesters:*** According to the OMB Fee Guidelines, "commercial use" requesters are those who ask for records for "a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made." The focus is how the requested information will be used, not the identity of the requester. Accordingly, the fact that a requester has been placed in a "commercial use" category in the past does not mean that the requester will be similarly placed in the future. When the intended use of the records is not clear from the wording of the request, an agency can seek additional information from the requester to make a fee category determination. Common uses of the requested records that result in a "commercial use" fee categorization include using the documents in litigation. Commercial use requesters are charged all three types of fees (search, review and duplication).

***Category 2- Educational institutions, noncommercial scientific institutions, and representatives of the news media:*** Educational Institutions include schools such as universities and vocational institutions. The requirement is that the institution must operate a program of scholarly research. The OMB Fee Guidelines specify that to qualify for this fee category, the purpose of the request must relate to the goal of the educational institution, not the goal of the individual requester. For example, a requester asking for documents to write a term paper would not qualify for the "educational institution" fee category. However, a professor requesting records related to her field of study for use in instructing students might qualify.

Noncommercial scientific institutions are defined by the OMB Fee Guidelines as simply a noncommercial institution that is "operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry."

The FOIA defines a "representative of the news media" as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." The FOIA also explains that this category includes news agencies as well as freelance journalists if they "can demonstrate a solid basis for expecting publication through [a news media] entity, whether or not the journalist is actually employed by the entity."

Requesters in the Category 2 fee category are only charged duplication fees, but receive the first 100 pages of paper copies for free.

***Category 3- Other Requesters:*** The "other" category is simply a catchall category for any requester that does not fall into either of the other two categories. Requesters in

this fee category are charged search fees and duplication fees; however, they receive the first two hours of search time and the first 100 pages of paper copies for free.

The table below summarizes which fees an agency can charge for the processing of a FOIA request based on the fee category of the requester.

| | Search | Review | Duplication |
|---|---|---|---|
| Commercial Use | Yes | Yes | Yes |
| Educational/Scientific/News | No | No | Yes* |
| Other | Yes** | No | Yes* |

* Requesters in the "Educational/Scientific/News" category and requesters in the "Other" category receive the first 100 pages free of charge
** Requesters in the "Other" category receive the first two hours of search time free of charge.

**Practice Tip: FOIAonline will automatically calculate the fee total when you enter the type of fee and hours spent under the "Admin Costs" tab. Note that FOIAonline will not allow a request to be closed unless time spent processing the request is accounted for in the "Admin Costs" tab. However, when entering time, you can select "No" in the "Billable?" drop down menu if such costs are not billable to the requester.**

### 3. Fee waivers

The National FOIA Program Office processes initial fee waiver requests. The FOIA provides that agencies should waive or reduce fees "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

Any FOIA requester may request that EPA waive all fees associated with the request, but the request for a waiver of fees must be submitted with the accompanying FOIA request. The initial fee waiver determination is made by the National FOIA Program Office and may be directly appealed by the requester to the Office of General Counsel by filing an administrative appeal.

Fee waiver determinations are made on a case-by-case basis using the information accompanying the FOIA request and are made based on six factors outlined by the Department of Justice in its January 1, 1987 Fee Waiver Policy Guidance. Those factors take into account the following considerations:

***Factor 1. The subject of the request:*** Whether the subject of the requested records concerns "the operations or activities of the government."

***Factor 2. The informative value of the information to be disclosed:*** Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records are meaningfully informative about government operations or activities and are "likely to contribute" to an increased public understanding of those operations or activities.

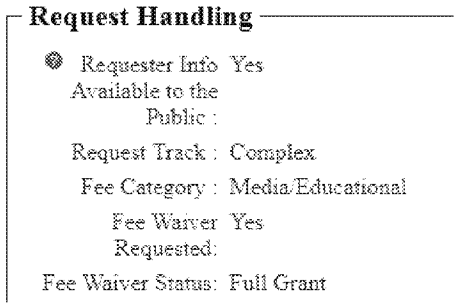
***Factor 3. The contribution to an understanding of the subject by the public is likely to result from disclosure:*** Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.

***Factor 4. The significance of the contribution to public understanding:*** Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

***Factor 5. The existence and magnitude of a commercial interest:*** Whether the requester has a commercial interest that would be furthered by the requested disclosure.

***Factor 6. The primary interest in disclosure:*** Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

**Practice Tip: The main request page in FOIAonline indicates whether a fee waiver has been granted.**




## 4. Advanced payments and assurances of payment

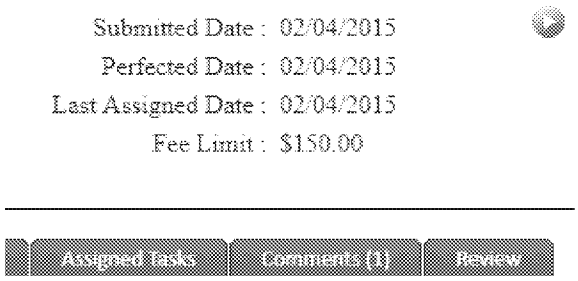
EPA can ask for an advance payment of fees from the requester in two circumstances: (1) when the fees will exceed $250, or (2) when the requester has previously failed to pay fees in a timely fashion. If you are working with a requester who has a history of prompt payment, you may simply ask for an assurance of payment, discussed below. If you are working with a requester with no history of payment, you may either ask for an assurance

of payment or an advance payment. For requesters who have failed to pay in a timely fashion in the past, you should ask for an advance payment.

Per EPA regulations, you must provide written notice to requesters of anticipated fees more than $25 if the requester did not agree to pay a higher amount in the initial FOIA request or subsequently. EPA then requires a written assurance of payment from the FOIA requester, unless an advance payment was received.

A requester can also designate a fee limit with its FOIA request. An assurance of payment is required if the estimated costs of processing the request exceeds the fee limit.

**<u>Practice Tip</u>: The main request page in FOIAonline indicates whether a fee limit has been set by the requester.**



**Note that if a FOIA requester is delinquent in paying fees, it is placed on a "Do Not Serve" list. Your FOIA Coordinator or FOIA Officer has access to that list, which is located at the link below. Ensure that you do not process requests for any requester included on that list. The list can be found at:** https://usepa.sharepoint.com/sites/oei_Work/FOIA%20Invoices/SitePages/Home.aspx

## 5. <u>Changes to Fees after the 2016 Amendments to FOIA</u>

The 2016 Amendments to FOIA added a new limitation to the ability of agencies to charge search fees. Generally, agencies can no longer charge search fees if the response is beyond the 20-day deadline (or 30-day in the case of "unusual circumstances"), even with an agreement from the requester.

The exception to this rule is that agencies may charge search fees (or duplication fees for "news media" or "educational" requesters) if:

- "unusual circumstances" apply; and,
- "more than 5,000* pages are necessary to respond to the request," if:
  - timely written notice has been made to the requester; and,

- "the agency has discussed with the requester how the requester could effectively limit the scope of the request." The agency must make at least three good-faith attempts to discuss limiting the scope of the request with the requester and the communication must be by written mail, electronic mail, or telephone.

*Note: "5,000 pages" refers to the number of pages in the total universe of documents required for review (*i.e.*, "collected" documents), *not* the number of pages that will be ultimately released to the requester.

**Practice Tip: If you expect the final FOIA response to occur beyond the 10-day extension and more than 5,000 pages are necessary to respond, notify the requester *before* the 10 days expires and discuss how it can limit the scope of the request.**

- **If you know that unusual circumstances will apply when you receive the request, invoke the additional 10 days in your acknowledgement letter and invite the requester to narrow.**
  - **This will satisfy the "timely notice" requirement and will qualify as your first attempt to discuss with the requester how to limit the scope of the request.**
- **If a fee assurance letter is sent later, include another opportunity for the requester to discuss how to limit the scope.**
  - **This will qualify as your second attempt to discuss with the requester how to limit the scope of the request if the first attempt went unanswered. If the requester has not responded to either attempt, you will only need to make one additional attempt to contact the requester before satisfying the requirement that the Agency make three good-faith attempts.**
  - **If in response to any attempt to discuss how to limit the scope of the request, the requester refuses to limit the scope, it is not necessary to make additional attempts.**

## 6. Fee tips for complex FOIAs

As with processing any FOIA request, when processing complex FOIA requests, you should be aware of the requester's fee category (or whether the requester has been granted a fee waiver) when evaluating the request. When you receive the request, consider whether the fee limit is reasonable considering what's requested. If the fee limit is not reasonable, consider preparing a fee estimate and reaching out to the requester to discuss the issue.

☆ **If you have unusual circumstances and followed the steps to extend the due date an additional 10 working days, but you are not confident you can process the request within 30 working days, give notice to the requester before the 30th working day of the unusual circumstances! Otherwise, *you forfeit the ability to charge certain fees* to the requester.**

- Consequences for failing to assert unusual circumstances:
  - If a Commercial requester, Agency cannot charge search fees.
  - If a Media/Educational or Noncommercial Scientific Institution, Agency cannot charge for duplication fees.
  - If Other requester, Agency cannot charge search fees.
- For more information, see the National FOIA Program Office's FOIA Fees Decision Tree: http://intranet.epa.gov/foia/docs/Fee-decision-tree.pdf

# Step 3: Plan and Conduct a Search for Responsive Records

It is important to understand the roles and responsibilities of each office in processing a FOIA request. The Action Office, which is the office that has been assigned the FOIA request, is responsible for taking the lead in developing and implementing the search plan. The Action Office needs to identify the other offices, if any, where responsive records may reasonably be located. If the Action Office determines that other offices may have potentially responsive documents, the Action Office needs to work with those Offices (called Contributing Offices), as discussed below, to develop and implement a search plan.

Throughout this section, we will refer to the Action Office and Contributing Office(s) and discuss each office's role in the search process. To ensure efficient processing and avoid duplication, the Action Office should take the lead in developing the agreed-upon search plan and disseminating clear, consistent direction to the Contributing Offices. You want to avoid situations where Contributing Offices have different interpretations of a FOIA request and thus use different search strategies or terms in processing the request. An effective search is the natural byproduct of proper planning and coordination.

## A. Legal Requirements for a Search under the FOIA

The FOIA requires federal agencies to make available to a requester any agency record that is responsive to a proper request. See 5 U.S.C.§ 552(a)(3)(A). To locate responsive records, agencies must conduct a *reasonable* search for records, *i.e.* a search that is reasonably calculated to uncover all relevant documents. A "reasonably calculated" search does not require a "perfect search," and failure to produce "one specific document" does not deem a search inadequate. See e.g., Defenders of Wildlife v. Dep't of Agric., 311 F. Supp. 2d 44, 54 (D.D.C. 2004); Iturralde v. Comptroller of Currency, 315 F.3d 311, 315 (D.C. Cir. 2003).

Rather, the adequacy of the search is examined based on the reasonableness of the search given the totality of the circumstances. Weisberg v. U.S. Dep't. of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The Action Office needs to ensure that the Agency makes a good faith effort to conduct a search through methods that can be reasonably expected to produce the information requested. See Oglesby v. U.S. Dep't of Army, 920 F.2d 57, 67-68 (D.C. Cir. 1990).

## B. Develop and Implement a Search Plan

### 1. Develop the Search Plan

By the time you get to Step 3 (Plan and Conduct a Search for Responsive Records), you should have already confirmed that the FOIA request is a proper request and, if it is not, sought clarification from the requester. See Step 2 above. Before you start to develop your search plan, review the request again and remind yourself what the request seeks.

Regardless of whether your FOIA involves a request for records in a single office or multiple offices, you need to: (1) identify where to search; (2) determine who should search; and (3) determine how the search should be conducted. These three items represent the core elements of your search plan.

You might be thinking – where do I, as the lead for the Action Office, start? As always, start with the FOIA request, and any modifications. If the request seeks only Outlook emails, then your search should be focused accordingly on Outlook emails. Frequently, however, FOIA requests are broad and seek, for example, documents regarding a particular topic during a particular time-frame.

In formulating an effective search plan, the Action Office considers the following:

**a. *Where to search***

i. What offices might have documents?

- Are the records requested located solely in one office?
- If not, the Action Office should identify the offices (both Headquarters and Regional offices) where responsive records may reasonably be located. If responsive documents are located in more than one office, the Action Office needs to identify those offices (Contributing Offices) and ensure that those offices understand the scope of the FOIA request.

☆ **Key Point: If multiple offices are involved, then the Action Office takes the lead in developing the search plan, in coordination with the Contributing Offices.**

ii. Where are the documents?

Once the Action Office has identified whether records are located in one or multiple offices, it next evaluates where to search for records within each office, *e.g.* repositories for paper files, emails, electronic documents. In doing this, again refer back to the FOIA request. If the FOIA request asks for documents in only one repository – *e.g.*, Outlook emails – the search can be tailored accordingly. If the request is not limited to emails but rather seeks documents on a topic in a particular time-frame, be sure to evaluate the locations where responsive records are likely to be located.

Potential locations include, for example:

- Outlook email, calendars
- Skype/Lync Chats
- Lotus Notes mailboxes or calendars, other Lotus Notes databases
- Enterprise Content Management System (ECMS or EZ-records)
- Correspondence Management System (CMS)

- Local or shared computer drives (*e.g.*, C:, F:, G:)
- SharePoint sites
- OneDrive
- Mobile devices (*e.g.*, text messages and photographs)
- External drives and discs
- Hard-copy files
- And other locations reasonably likely to contain responsive records.

See Appendix, Step 3 at 16-18 for a list of non-Outlook search locations in the "Search Instruction Template."

**b. *Who may have responsive documents***

**i.** Once the Action Office identifies which offices potentially have responsive documents and where to search for those documents, the Action Office next needs to identify who would have potentially responsive documents. In identifying this list of individuals (referred to as custodians or individuals likely to have responsive records), include any custodians who are specifically named in a FOIA request or whose positions at the Agency suggest that they are reasonably likely to possess responsive records. Also, consult with subject-matter experts (SMEs) to determine which other custodians may have potentially responsive documents.

**ii.** *Tips for working with Contributing Offices in identifying potential custodians*: To ensure efficient processing of the FOIA request, work to ensure that you have identified a complete list of custodians. Below are some practice tips that may be helpful in working with Contributing Offices:

- The Action Office, via FOIAonline, tasks the Contributing Offices and asks the Contributing Offices: (a) to identify a subject matter expert that will serve as the point of contact for the Action Office. (That individual should contact the lead for the Action Office so that they can discuss the FOIA request and ensure a common understanding of the information requested); and (b) to identify a list of potential custodians (individuals who may have potentially responsive documents).
- In issuing the task, provide information on the FOIA, including any clarifications or modifications provided by the requester.

**iii.** Once the Action Office has coordinated with the Contributing Offices and has received the lists of potential custodians from Contributing Offices, the Action Office should compile the complete list of custodians and document that list in the search plan.

Before moving on to the next step in developing the search plan, take a moment and document in FOIAonline: (1) which offices beyond the Action Office may contain potentially responsive documents; (2) where to search for those documents; and (3) the list of custodians (including custodians from the Action Office and all Contributing Offices).

☆ **In evaluating which custodians may have responsive documents, remember to consider <u>former employees, employees who transferred to a different office, and contractors</u> and assess whether any of these individuals would be potential custodians based on the information requested.**

**<u>Practice Tip</u>: If more than one office has potentially responsive documents to a FOIA request, the Action Office and Contributing Offices should communicate regularly to ensure that the search plan is complete before moving forward with implementation of that plan.**

**c. *<u>How to search</u>***

Once you identify the locations of potentially responsive documents and the custodians of those documents, it is time to evaluate how to search. The first section below addresses centralized searching in EPA's Microsoft Office 365 system. The next sections address how to search for items not located on EPA's Microsoft Office 365 system.

**i. Centralized Searching: Outlook Email, Outlook Calendar, & Skype/Lync Chats**

Searches for information in EPA's Microsoft Office 365 system are generally conducted by OEI's centralized search service. This service can centrally search for records located in: (1) Outlook email messages, (2) Outlook calendar entries, and (3) Skype/Lync Chats.[2] The Action Office should evaluate the request carefully and determine whether a centralized search is warranted. For example, if a FOIA request seeks a specific document, the document can be retrieved and produced without a centralized search. By contrast, if the FOIA request seeks all communications between two EPA individuals for a one-year period, the Action Office would pursue a centralized search request

The Action Office is responsible for submitting the centralized search request to its Search Point of Contact (SPOC), who, in turn, will submit the request to OEI's Discovery Service Division for processing. Each organization has a

[2] If there is pending litigation on a FOIA, or if the request has been referred to the FEAT, consult with OGC before initiating a centralized search for the FOIA.

SPOC, and that SPOC works directly with OEI's Discovery Services Division in processing search requests. The Contributing Offices should not submit any search requests to OEI. For each FOIA request, only one search request should be submitted to OEI, and that request should be submitted by the Action Office. If this does not occur, OEI is left in the untenable position of trying to consolidate search requests on a single FOIA. The Action Office should consult with the Discovery Services Division about the estimated timeframes for beginning and completing a requested search/collection, so other steps in the process can be planned accordingly.

- Instructions on how to submit a centralized search request through your SPOC are located at: http://intranet.epa.gov/ediscovery/MSOutlookEmailSearch/.

> ***Wait! Before the Action Office Initiates the Centralized Search…***
>
> - The Action Office should ensure that the information provided to the SPOC, who, in turn, will provide it to OEI's Discovery Services Division, includes: (1) all custodians (by name and email address) from both the Action Office and all Contributing Offices; and (2) search terms reasonably likely to yield responsive records. It is important for the Action Office to coordinate effectively with the Contributing Offices to ensure that the search terms capture the scope of records sought.

ii. **Searching Non-Outlook Document Repositories when a Centralized Search is Conducted**

OEI runs the centralized search for Outlook records for EPA, including Outlook emails, calendar entries, and Skype For Business chat messages. For routine FOIAs requests, the Discovery Services Division will **not** search Lotus Notes mailboxes or calendars, other Lotus Notes databases, the Enterprise Content Management System (ECMS), the Correspondence Management System (CMS), local or shared computer drives, SharePoint sites, OneDrive, external drives, hard-copy files, and other locations where you may find responsive records, as outlined above.[3] As a result, potential locations that are not captured by OEI's centralized search service should be searched manually by the custodian.

[3] For the Agency's most complex, high-profile FOIA requests supported by OGC's FOIA Expert Assistance Team (FEAT), the Discovery Services Division may provide searches of additional information sources, if needed (*e.g.*, Lotus Notes emails, Enterprise Content Management System, network drives, hard drives, and other external devices).

It is important for custodians to evaluate all repositories that are reasonably likely to contain responsive records. This could include a personal email account if that account was used to conduct Government business and if the email has not yet been forwarded into the Agency's system. Consistent with the Federal Records Act Amendments of 2014 and the Agency's Records Policy, any employee who uses a personal messaging system, such as email, to conduct government business has 20 days to forward that information into the Agency's Outlook system. Once forwarded into EPA's email system, the information can be captured via the centralized search.

OEI's centralized search also does not extend to data that are uniquely retained on mobile devices, such as text messages, photos, or notes that are unique to the mobile device. Custodians should be reminded of the Agency's guidance regarding forwarding text messages into the Agency's Outlook system, as such messages can be captured via the centralized search once the messages are in Outlook.[4]

- Instructions on how to forward text messages to EPA email accounts are located at: http://intranet.epa.gov/mobiledevices/pdf/Instructions-Saving-Text-Messages.pdf (See Appendix, Step 3 at 39-40)

Consistent with its search plan, the Action Office should develop an email to all custodians providing specific search instructions to be followed regarding all non-Outlook document repositories. The instructions to the custodians should explain that the Agency has received a FOIA request for which he/she may have responsive documents and that a centralized search for his/her Outlook emails is already being conducted. The instructions should further explain that the custodian should conduct a manual search for non-Outlook documents potentially responsive to the FOIA request. The search instructions should include:

- The FOIA request number;
- A clear description of the FOIA request (and any narrowing/clarification);
- A copy of the FOIA request and any relevant correspondence with the requester;
- Recommended search locations and instructions to search all non-Outlook repositories where responsive documents may be held;

[4] EPA *discourages* the use of text messages for transmitting substantive (or non-transitory) federal records. In accordance with the Agency's policy, if a substantive (or non-transitory) text message is sent or received on your mobile device, it should be forwarded into the Agency's email system within 20 days.

- Recommended search terms;
- Recommended document collection method (*i.e.,* where responsive documents should be provided); and
- Date by which documents collected are to be transferred to the Action Office.

To provide custodians ample time to search for non-Outlook documents, it is recommended that the Action Office provide custodians the search instructions for non-Outlook documents at or shortly after the Action Office submits the Outlook centralized search request. In the search instructions, ask custodians to document, with as much specificity as possible, how they conducted their search. See Appendix, Step 3, "Search Instruction Template," which can serve as a useful guide when developing search instructions.

After distributing the search instructions, and before the collection period ends, the lead contact for the Action Office should touch base with the custodians to ensure that they understand their responsibilities and how to conduct the search.

Below are tips the Action Office may want to consider as it develops search instructions to custodians to search for non-Outlook responsive records.

**Lotus Notes**

If a FOIA request seeks emails or information located in Lotus Notes, the Action Office should:

- Contact EZ Tech to set up a collection database. EZ Tech will send the lead contact for the Action Office a link to the database that the lead can then circulate to custodians via email. Custodians will then use this database to upload responsive documents.

- As noted above, identify in the search instructions, keywords and search terms for the custodians' use during the search of Lotus Notes.

- Provide custodians the step-by-step instructions for searching Lotus Notes. (See Appendix, Step 3, for "Instructions for Searching & Collecting Lotus Notes Email.")

**EZ Email Records (Also known as the Electronic Content Management System or ECMS)**

Even though emails saved through EZ Email Records are archived into ECMS as Agency records, they are not captured by OEI's centralized search. So, if a responsive outlook email message was saved to ECMS

and then deleted from the user's Outlook account, a centralized search will not retrieve that record in Outlook. Thus, it is important to remind custodians to search manually ECMS for any non-duplicative emails that may be responsive to the request.

➢ Detailed search instructions for ECMS are available at: http://intranet.epa.gov/ecms/guides/search/

*Note:* Depending on the office, the Records Liaison Officer (RLO) may be able to conduct a centralized ECMS search for the RLO's office. If there are multiple offices, you may need to coordinate with RLOs from each office. Contact your RLO or the RLO from the relevant office(s) for more information.

**Correspondence Management System (CMS)**

CMS is an electronic document management system that captures, stores, and tracks correspondence that is addressed to EPA or any of its employees in their official capacity. Some offices may use CMS, for example, to document correspondence received, including responses to such correspondence. If a custodian determines that CMS may contain records responsive to the request, CMS should be searched.

Custodians may not have used CMS previously and may not have access to the system. In this case, the custodian can identify the individual in the office responsible for maintaining CMS and work with that person to complete the search. All CMS records are full-text indexed and searchable by any data element.

**Other Locations**

For all other locations, including, for example, local or shared computer drives, OneDrive, SharePoint sites, external drives and discs, and hard-copy files, custodians should conduct a reasonable search of these locations based on the request for records, as described in the FOIA request and any subsequent communications with the requester. (See Appendix, Step 3, "Instructions for Searching & Collecting Other Electronic Files").

**Access to Separated Employee Records**

The Action Office and Contributing Offices should work together to ensure that custodians' files are searched, even if those custodians are on-leave and not in the office when the request is received, or if they have separated from the Agency. (See Appendix, Step 3, "Access to Absent and Separated Employee Records").

iii. **Searching Document Repositories when a Centralized Search is Not Conducted**

If a centralized search is not conducted, the custodian would need to search manually the locations where potentially responsive documents may be located. The Action Office, consistent with its search plan, should develop an email to all custodians providing specific search instructions to be followed. See Step 2 above for guidance in preparing and disseminating search instructions.

## C. Tips on Documenting Search and Completing Implementation of Search

It is important to document the search that was conducted. It is recommended that the lead for the Action Office develop a memorandum or checklist to track the search. Specifically, the lead for the Action Office would note: the Contributing Offices searched; the locations within those offices and the Action Office searched; the list of custodians and whether the custodians have completed their search; and the number of responsive records. The Appendix includes a sample memorandum that offers an example of what information you may want to track and how you might consider organizing this information. (See Appendix, Step 3, "Search Tracking Memo). Once the search is complete, proceed to Step 4, which is developing and implementing the review plan.

## D. Periodic updates to the requester

As a best practice, you should periodically contact the requester to provide updates on the status of the Agency's processing of the request, particularly if it will take longer than 20 working days to issue a final response. Communication with the requester is important so that the requester understands that the Agency is actively working to complete its response to the request.

Consider providing interim or partial releases to demonstrate to requesters that you are actively processing the request. Such releases also give the requester insight into the types of records responsive to the request and may result in the requester narrowing the request.

**As a best practice, document your search plan and update it as you implement the search. This will enable you to track the process and build a strong administrative record, which is important if the requester appeals and/or later sues EPA challenging the adequacy of the Agency's search. Check out Appendix, Step 3, for other best practices.**

# Step 4 – Develop and Implement a Plan for the Review of Potentially Responsive Documents

## A. Develop your Review Plan

### 1. Identify the levels of review

The Agency's FOIA procedures call for Division Director or equivalent approval of FOIA responses. The approval applies to both withholdings and releases. Before you begin to review the records, review your office's FOIA procedures at http://intranet.epa.gov/foia/FOIA-Procedures.html and think through who will likely need to review the records.

Depending on the size and complexity of the FOIA request, it may be just you doing first level review and your manager completing the second level review of the records, or it could involve multiple levels of review.

**Practice Tip: If there are multiple offices involved or if you are working on a FEAT FOIA, individual office procedures may need to be adapted to accommodate overall processing of the request.**

Regardless of the complexity of your FOIA, the review cycle of a FOIA should include consideration of all the steps below. Bear in mind that not every review will include documents that will require review at each of these steps; however, be mindful of these steps as you plan your review process.

☆ **It is imperative that you plan your review process early so reviewers at every step have adequate time to review the materials.**

*a.* ***During first level review***, you (and your team if you have one) take the first step to review the records. In doing so, evaluate the following:

i. **Responsiveness**: Responsive documents are those documents that match the description in the request. Be sure you clearly understand what the requester wants. Non-responsive records do not need to be produced.

ii. **Disposition:** If the record is responsive, the first level reviewer then evaluates the documents to determine what, if any, FOIA exemptions apply and based

on that analysis, whether a document should be released in full, withheld in full, or released with redactions.

iii. **Exemptions:** If the record is responsive and should be withheld or redacted, identify the exemption(s) that applies(apply) and redact the document consistent with the claimed exemption(s).

iv. **Equities of other EPA offices**: If the record is responsive and contains discussions or information from another EPA office, identify those records for internal equity review, as described below.

v. **Equities of other federal agencies or the White House**: If the record is responsive and contains discussions or information from another federal agency or involving the White House, you will need to identify those records for external equity review, as described below.

vi. **Documents that upper management should be aware of prior to release:** During first level review, you should mark for further review any documents you think management may have a specific interest of being aware of prior to release.

***b. Second level review***

i. Consistent with EPA's procedures, all FOIA responses in which documents are released or withheld must have approval of someone at least at the Division Director level or equivalent.

ii. For many FOIAs, particularly those that are complex or voluminous, there may be other layers of review prior to the final management review. For example, your office may decide that a particular project warrants a second level review at the staff level prior to documents going through management review. Second level review can take many forms. This should be discussed with the FOIA team in conjunction with your management.

***c. Equity review***

An office other than the office that conducted the first-level review may have an interest, or equity, in certain documents. Many factors go into determining when an office has "equity" in a document. In general, an office has equity in a document when the document includes information of substantive interest to that office. This includes documents that were created in that office, emails involving personnel from that office, and opinions or advice given by an attorney in a legal office. In general,

any office with equity in the document should have the opportunity to review the document, and weigh in on whether they agree with the determinations made with respect to responsiveness and FOIA exemptions.

**Practice Tip: If there is another agency or EPA office involved, notify that agency or office early and find out where to send the records for review. If the request involves only a few documents, you may consider discussing the records over the phone.**

The following provides some general guidelines to follow when developing instructions for reviewers on how to determine which offices may have equity in a document:

- OEX - Office of the Executive Secretariat (Administrator's Office)
  - Any document containing the Administrator's primary or secondary email address.
  - Any document generated by a senior member of the Administrator's staff: Deputy Administrator, Chief of Staff, Deputy Chief of Staff, political appointees in the AO.
  - Prior Administrators.

- Public Affairs office
  - Any document to or from a member of the press, or discussing a media or press inquiry.
  - Any document related to the drafting of press releases or other press materials.

- Congressional affairs office
  - Interactions between EPA employees and elected officials (or their staff). This includes mayors, governors, and members of Congress.
  - Interactions between congressional affairs staff and other arms of the government, including internal communications related to these interactions.
  - Congressional hearing preparation.
  - Development of responses to formal correspondence from Congress.
  - Development of responses to Questions for the Record.
  - Substantive input from an OCIR employee.

- OGC/ORC - Offices of General Counsel/ Regional Counsel
  - Any document generated by OGC/ORC attorneys, except scheduling documents.
  - Any document containing non-public information discussing litigation or legal strategy.

- Any communication between an attorney and program client containing legal advice.

- Program offices
  - Documents created or originating from that office.
  - Substantive emails involving personnel from that office.

☆ **When in doubt about another office's interest in conducting an internal equity review or reviewing a specific document, call and ask.**

**Practice Tip: If your request has significant attention or you anticipate the release of records will generate media attention, reach out to your public affairs office and congressional affairs offices early in the review process to discuss what role they would like in the document review.**

### *d. Other federal agencies*

i. If another federal agency has equities in a document in an EPA FOIA review, we need to give that agency the opportunity to consult on EPA's disposition of the document or refer the document to the other agency for processing. It is ultimately the Action Office's responsibility to ensure this coordination occurs; however, when document review is tasked to a Contributing Office, the offices may agree that the Contributing Office is the one to reach out to the other agency.

ii. For assistance in determining whom to contact at another agency, please reach out to the National FOIA Program Office or the General Law Office or FEAT in OGC. Staff in those offices often have established FOIA contacts with other agencies. Other options are to check with your fellow FOIA Officers/Coordinators or to check the agency's website.

iii. Consult or referral – what is the difference?

| Interagency Consult | Interagency Referral |
|---|---|
| Another agency has a significant interest in a record, like an email exchange between EPA and another agency.<br><br>EPA may ask for that agency's recommendation as to how to treat the record. | A record was created by another agency but is in EPA's possession.<br><br>EPA may refer the record to the relevant agency for them to process. |
| Communicate with other relevant agencies about your request. They may not want to review records, but they should be aware of them. | The other agency will be responsible for responding directly to the requester. Notify the requester that the documents have been referred. Provide the point of contact for the other agency. |

**Practice Tip: If you have a large volume of records to share with other agencies, consider using the free platform OMB Max: https://max.omb.gov/maxportal/home.do**

*e.* ***White House***

The FEAT Office in OGC coordinates all White House equity reviews. If you have documents in which the White House has equities, you should contact the Director of the FEAT Office.

*f.* ***Awareness review***

Awareness review is one of the final steps before documents are released. Awareness review is a "heads up" to upper management, the press office and the congressional affairs office that documents are about to be released to the public. Whether and to what extent an awareness review may be necessary in a production should be discussed with your management.

### *g. Final approval*

Consistent with the Agency's FOIA Procedures, after all necessary review is complete, a Division Director (or equivalent) should approve and sign off on the release and/or withholding of any documents under FOIA.

## 2. Identify technology options for review

The Agency has two primary tools for reviewing documents and those include:

- Relativity
- Adobe Pro DC

Adobe Pro DC is generally used only in cases where there is a small number of responsive documents. Relativity is used in most other cases.

## 3. Ensuring consistency in review among your review team

For complex or even straightforward requests, a memorandum with review instructions (known as a "coding memo") can help your team achieve consistency in its document review. The coding memo serves as a protocol for how reviewers make determinations on documents, whether reviewing in Adobe Pro DC or Relativity. A coding memo can include, for example:

- Responsiveness
    - Describe the scope of the FOIA request.
    - Include a list of key words and acronyms that can help reviewers identify responsive material--use this list to help develop your persistent highlighting set for Relativity.
    - Include a list of key events and/or background on the issue that can help put the documents in context.
    - Include a list of key custodians and their roles in the issue.
    - Identify names of key attorneys (for attorney-client and attorney work product designations) -- consider including these names in your Relativity persistent highlighting set as a unique color.
    - Identify names of key people outside the Agency to assist with identifying records that are internal vs. external, and records that would need consultation from the White House or other agencies.
    - Explain whether non-responsive material may be redacted. Remember, you may only redact non-responsive material contained within a responsive FOIA record if you have an agreement with the requester.

- FOIA Exemptions
  - Describe the FOIA exemptions, and provide any key information specific to the FOIA request that will benefit reviewers in applying exemptions properly.
  - If a FOIA Exemption is not applicable to the FOIA request, do not include in the memo.

- Equity Review
  - Describe the EPA offices and/or other agencies for which review is needed.

- Upper Management Review
  - Documents may need to be flagged for upper management review. Providing this review enables management to be aware of documents that will be released and that may garner public or media attention.

## B. Review the potentially responsive records

Once you have collected potentially responsive records, you must review the records to determine whether they are *actually* responsive to the request and you must review the records to determine which, if any, FOIA exemptions apply.

For most FOIAs, responsiveness review and the FOIA exemption review are done concurrently during the first level review. During first level review, reviewers will determine if documents are responsive to the request (as narrowed or modified), if any FOIA exemptions apply, whether other EPA offices need to review the documents ("EPA Equity Review"), whether other Federal agencies or the White House need to review the documents ("Interagency Equity Review"), and whether any documents should be flagged for upper management awareness.

The levels of additional review beyond the first level of review will depend upon the scope of the FOIA and the need for equity reviews as set forth above. The review process should be set forth in the Review Plan, as explained in Step 4A.

**Practice Tip: Don't Forget About the Requester!**

**Manage expectations! Contact the requester right before you begin the Review Phase and discuss the results of your document collection. You can discuss the number of documents collected, your review process, and give candid time estimates for production. This gives the requester another opportunity to narrow their request or steer the review if they are unsatisfied with the time to complete review.**

**As you progress through the Review Phase, consider scheduling standing updates with the requester to discuss the status and progress of the request. For voluminous records requests, it can be very valuable to have the requester weigh in on how they would like the review of records to be prioritized. For example, perhaps the universe of documents to review includes 25,000 emails from 35 custodians. Ask the requester if there are custodians or timeframes the requester would like reviewed and released first; this is good customer service, and you know your review time is well spent.**

**As always, document these communications and upload any written communication with the requester into FOIAonline.**

1. **Are the documents responsive to the request?**

Once you have collected documents potentially responsive to a FOIA request, you must make sure that all reviewers have a single unified interpretation of the request. This ensures consistent responsiveness calls throughout the review process. If multiple people are reviewing documents to determine whether they are responsive to the request, consider having an initial meeting to discuss the FOIA request and what constitutes a responsive document.

***a.*** Occasionally, you may come across documents that are technically responsive (*e.g.*, one of the search terms appears in an email) but that might have little to no informative value to the requester. Under the FOIA, agencies may not make value judgments on the utility of documents to the requester. Accordingly, such documents should be considered responsive. However, you may ask the requester whether it wants certain categories of minimally-informative documents (*e.g.*, newspaper clips) to be processed. If you come across large numbers of such documents, the requester may want to narrow its request to exclude those documents, which may enable the Agency to process the FOIA more quickly with fewer fees.

***b.*** You also may come across documents that discuss several different subjects in a single document, only some of which are responsive to the FOIA request. An example could include a staff meeting agenda addressing multiple topics. Under the

FOIA and consistent with recent case law, if a FOIA record contains information responsive to the FOIA, the entire record is responsive, including the arguably non-responsive information. Information in the record can, however, be withheld based on one of the FOIA exemptions. If you identify large portions of material that are not responsive to the FOIA, consider meeting with the requester to determine if the requester is interested in narrowing the scope of the FOIA request to remove that material.

## 2. Do any of the FOIA Exemptions apply to your documents?

The FOIA provides for nine exemptions that agencies may use to protect specific types of information.

**Exemption 1: Classified Information**
Exemption 1 applies only to information that has been properly classified according to criteria established by an Executive Order. This exemption is rarely asserted by the EPA.

**Exemption 2: Personnel Rules and Practices**
Exemption 2 of FOIA exempts from mandatory disclosure records that are "related solely to the internal personnel rules and practices of an agency." The Supreme Court has held that Exemption 2 covers only records "relating to issues of employee relations and human resources" and that such records must be internal and relate solely to those personnel rules and practices. Exemption 2 is narrow in scope and, thus, is rarely used.

**Exemption 3: Federal Statute Prohibits Disclosure**
Exemption 3 protects from disclosure information that is prohibited from disclosure by another federal statute, provided that the other federal statute explicitly requires matters to be withheld from the public. Statutes found to qualify under Exemption 3 include, for example, FIFRA, the Internal Revenue Code, and the Patent Act. Note that if you withhold information under Exemption 3, you must identify the statute under which you are withholding information in your response letter.

**Exemption 4: Trade Secrets and Confidential Business Information (CBI) (also referred to as Proprietary Business Information (PBI))**
Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." Based on this wording, the exemption covers two distinct 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. For purposes of Exemption 4, "trade secret" is defined as "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end-product of either innovation or substantial effort."

*See Subsection 3 below for further information about reviewing documents that may contain CBI.*

**Exemption 5: Privileged Communications**

Exemption 5 protects "inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency." In simpler terms, Exemption 5 protects those documents that are normally privileged in the civil discovery context. This includes memoranda and letters but extends to many other types of documents as well. The three most common types of privilege asserted with Exemption 5 are the Deliberative Process Privilege, the Attorney-Client Privilege, and the Attorney Work Product Privilege.

- Deliberative Process Privilege (DPP)
  - Internal: communication must be internal to the executive branch (*e.g.,* EPA, WH, DOT);
  - Pre-decisional - prepared to assist an Agency decision maker in arriving at his decision, rather than to support a decision already made;
  - Deliberative - Reflects the give-and-take discussion of the consultative process;
  - Privilege exists to: (1) encourage open, frank discussions; (2) protect against premature disclosure of proposed polices; and (3) protect against public confusion;
  - Apply DPP redaction "only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption."

  - Some common examples include:
    - Draft documents, staff analysis, recommendations, advice, or opinions, internal e-mail discussions of potential courses of action, internal discussions about how to respond to a public inquiry, comments on draft rule-making documents, and e-mails or memos discussing Agency options.

- Attorney-Client Privilege (ACP)
  - Internal: communication must be internal to the executive branch (EPA, WH, DOT, etc.);
  - Legal advice is sought or relates to legal advice;
  - Communication between an attorney(s) and client(s);
  - Made in confidence; and
  - May have to show disclosure restricted to those who need to know within the Agency/Executive branch.

- Attorney Client Work Product (AWP)
  - Internal to the executive branch (EPA, WH, DOT, etc.);
  - Prepared or obtained by or at the direction of an attorney;
  - In reasonable anticipation of litigation or active litigation; and

- Extends to documents prepared by or for a representative of a party, including an agent

**Exemption 6: Personal Privacy**
Exemption 6 protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." When considering whether to assert Exemption 6, balance the privacy interest of the individual against the public interest in disclosure. Common examples of content to withhold include private home addresses, personal phone numbers, personal email addresses, and medical information.

**Exemption 7: Law Enforcement**
Exemption 7 protects from disclosure certain types of "records or information compiled for law enforcement purposes." This exemption is comprised of six subsections, as described below. When asserting Exemption 7, remember to specify which subsection you are using.

Exemption 7(A) protects records that "could reasonably be expected to interfere with enforcement proceedings." This includes information that would hinder the government's ability to control or shape the investigation, enable targets of the investigation to elude enforcement or suppress or fabricate evidence, or prematurely reveal the government's evidence or strategy. Note that this exemption is "temporary" because it is applicable only for the duration of the investigation.

Exemption 7(B) is aimed at preventing prejudicial pretrial publicity that could impair a court proceeding, protects "records or information compiled for law enforcement purposes [the disclosure of which] would deprive a person of a right to a fair trial or an impartial adjudication."

Exemption 7(C) protects information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption is like Exemption 6 except that it requires EPA to meet a lower standard ("reasonably expected to" under exemption 7(C) vs "clearly unwarranted" for Exemption 6) and is applicable only in the law enforcement context. For example, Exemption 7(C) is sometimes used to protect identities of employees working on sensitive cases.

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

Exemption 7(E) affords protection to law enforcement information that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law."

Exemption 7(F) protects law enforcement information that "could reasonably be expected to endanger the life or physical safety of any individual." Courts have routinely upheld the use of Exemption 7(F) to protect the identities of law enforcement agents. EPA has also used this exemption to protect the identities of members of security details and to withhold schematics detailing drinking water sources.

**Exemption 8: Financial Institutions**
Exemption 8 protects certain information related to financial institutions, but is only applicable for agencies responsible for regulating or supervising financial institutions. Accordingly, EPA does not assert Exemption 8.

**Exemption 9: Wells**
Exemption 9 exempts from disclosure "geological and geophysical information and data, including maps, concerning wells." This exemption can be applied to any type of well, including gas or water. An example of information withheld under Exemption 9 would be maps showing the exact locations of wells.

## 3. Do your documents contain Confidential Business Information or Trade Secrets?

FOIA Exemption 4 covers two categories of information, (1) trade secrets and (2) confidential Business information (CBI).

CBI is commercial or financial information obtained from a person that is privileged or confidential. (See 5 U.S.C § 552(b)(4)).

Trade secrets are a "secret, commercially valuable plan, formula, process, or device that is used in making, preparing, compounding or processing of a trade commodity, and that can be said to be the end product of either innovation, or substantial effort." (See Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983)).

- Trade secret data may be found in contracts, manufacturing descriptions, schematics, product formulas, software, or quality control data/quality assurance procedures.

A business may explicitly assert a CBI claim, such as by marking or stamping a document with a confidential or proprietary business information label. Even if no explicit claim was made, the information can still be potential CBI. If no claim was made,

EPA regulations require the reviewer to apply the following standard to the business information: "[A]lthough [the business] has not asserted a claim, [it] might be expected to assert a claim if it knew EPA proposed to disclose the information." (See 40 C.F.R. § 2.204(c)(2)(i)). If you have identified potential CBI, you must ask the affected business if they claim the information as CBI, via telephone, email, or letter. The affected business has three working days to respond to your inquiry pursuant to EPA's regulations. (See 40 C.F.R. § 2.204(c)(2)(ii)). Please note that this standard does not apply in some circumstances. Specifically, if EPA follows the notice requirements of 40 C.F.R. § 2.203(b) when it collects the information (such as including the required notice on a form), EPA may make the information available to the public without further notice to the business. (See 40 C.F.R. §§ 2.203(b), 2.204(c)); see also Appendix, Step 4 (relevant template letters relating to CBI).

**Practice Tip: Look for labels on documents that indicate that a business intended for information to remain confidential, such as "trade secret," "proprietary," or "confidential." Also, a coversheet may contain a CBI claim for the attached material. Examples of information typically determined to be CBI include pricing information, information related to production, volume, and the manufacturing process, and customer lists.**

Note that an affected business may waive its right to assert a CBI claim in which case you may release the information. You may always check with an affected business to see if the business will waive its claim.

**If an affected business claims, or waives, confidentiality verbally, follow up in writing.**

When potential CBI is identified, the Action Office must include the appropriate language in the initial denial letter and follow the proper procedures for tracking and processing a request for CBI as outlined in PBI Case Tracking Procedures. After the creation of the PBI case in FOIAonline, the Action Office works with OGC/ORC to send affected businesses substantiation requests, draft program recommendations, and revise the treatment of responsive records where necessary due to the final confidentiality determination. See Appendix, Step 3.

☆ EPA's CBI Regulations are accessible at https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=40:1.0.1.1.2.

- **Class Determination 1-95.** If you have documents containing contractors' information, consult with an attorney in OGC or ORC regarding the potential applicability of Class Determination 1-95.

4. **Segregate non-exempt information and redact exempt information**

The FOIA requires that "any reasonably segregable portion of a record" must be released "after deletion of the portions which are exempt" under the Act's nine exemptions. This requires you to redact the exempt information while producing the non-exempt information.

The FOIA states "[t]he amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made." Redaction marks should be visible and the exemption under which you are withholding information should be indicated. Note that judgment calls about what may be "helpful" to the requester are inappropriate when analyzing what, if any, information in a document can be segregated and released. If information does not fall within one of the nine exemptions, it should be released.

Once you have determined which FOIA exemptions apply to a document and what information needs to be redacted, use the redaction tools in Adobe Pro DC or Relativity to "black out" the content subject to a FOIA exemption, as discussed below.

**Practice Tip: Redact the exempt information in the document and release the remainder.**

☆ **The two most commonly-used review platforms at EPA are Relativity and Adobe Pro DC. See Appendix, Step 4, FEAT Relativity Guidance, which includes instructions on how to redact in Relativity and the Instructions on How to Redact in Adobe Pro DC.**

5. **Quality Assurance/Quality Control (QA/QC)**

Throughout the review process, you will need to ensure that responsiveness determinations, FOIA exemption determinations, and redactions are made consistently. This is called quality assurance/quality control (QA/QC). Below are some Adobe and Relativity Practice Tips for smoother, more efficient QA/QC process.

**Practice tips: Review QA/QC in Adobe Pro DC**

By using the "Create Comment Summary" option in the Comment tool, you can more easily spot redaction issues such as redactions with improper or missing exemption or overlay text.

You can also use the search tool to conduct searches using relevant search terms to locate pages in responsive documents that may require review by other EPA offices

or other agencies. You can even export the results to PDF or CSV. Some examples of search terms are below:

- White House equities
  - "WH" or "POTUS" or "White House" or "EOP" or "CEQ" or "OMB"
- Congressional relations equities
  - "Senate" or "Senator" or "Congress" or "Representative" or "Congressional" or "Hill"
- Union equities
  - "Union" or "NTEU" or "AFGE" or "280" + any union officials or topic words that may be relevant.
- OEX equities
  - Include current administrator's name and e-mail domains and any other relevant people in the Administrator's office.

Note that these search terms can also be used for "batch-tagging" in Relativity, as discussed below.

**Practice tips: Review QA/QC in Relativity**

Saved Searches: In Relativity, saved searches can be set up to capture common coding inconsistencies and/or missed equities. The documents can be batched for review and errors corrected. Contact the Discovery Services Division at ediscovery@epa.gov for help with setting up saved searches.

When setting up a search to catch coding inconsistencies, the search should capture documents in the following categories:

- Release with redaction and no exemption selected
- Release with redaction and no redactions applied
- Release in full and exemption selected
- Release in full and redactions applied
- No disposition and exemption selected
- Withhold in full and no exemption selected
- Responsive and no disposition selected
- Not responsive and exemption selected
- Not responsive and has disposition selected
- Anything marked "additional review required" or similar

Batch Tagging: Additionally, you can "batch tag" items in Relativity for easy retrieval when handling equities. Batch tagging, or "mass coding," allows you to apply a specific coding choice to an entire set of documents that share a common term. Examples of terms that should be batch tagged are the same as those that should be searched for in Adobe, as mentioned above.

## 6. Awareness Reviews

For many FOIA requests, the last step in the document review process prior to final approval for production is an "awareness review" for upper Agency management. This final step is for upper management, including public affairs and congressional relations staff, to have a "heads up" as to what is being released to the public. This allows the public affairs staff to be prepared for any media inquiries that may be received following the release of documents. It also ensures coordination between productions of documents under FOIA and congressional oversight requests received by the Agency. You should always discuss with your management as to the appropriate awareness reviews for a particular FOIA request.

# Step 5: Production of Responsive Records

## A. Interim Release

### 1. Importance of Interim Releases

Requesters are less likely to seek litigation to get the records they want if they know you are actively working on their FOIA request. In addition to regular contact and a relationship with your requester, interim or partial releases demonstrate progress to the requesters because actions (disclosing records) speak louder than words ("We are actively working on your request.").

Interim responses can also be a valuable tool for narrowing requests. When requesters receive a partial release of records, they will have an opportunity to review them and identify the records or types of records in which they are not interested. You can then narrow the request to exclude those records going forward. In some cases, you may produce the record or records in an interim production, and the requester may determine, after review of the documents, that it needs nothing further from the Agency and that the request can be closed. It is sometimes helpful to ask the requester if there are particular records or custodians in which he/she is most interested to increase the possibility that the requester may be satisfied with an interim production as a conclusion to the request.

### 2. Required Elements of Interim Release Letter

When making an interim production, it is important to accompany the records you are producing with correspondence that clearly explains to the requester what is being delivered and the status of the request. Below are five key elements to include in an email or letter to the requester when making an interim production.

**a.** ***Information about the Request***
Make sure to reference the request by number and provide a brief summary of what is sought. If the requester has clarified the request or you have had other significant communication, note it in the summary of the request.

***b.*** ***Description of the Records***
Provide information about the records themselves. This will vary depending on the records, it may make sense to provider the total number of documents, the total number of pages, the total file size, or some other description.

***c.*** ***Schedule Going Forward***
Include the anticipated date that the request will be closed out, and if you will be making additional interim productions, inform the requester as to when it can expect the next interim production(s).

**d.** ***Appeal information***
Make clear that the request is not being closed now. Inform the requester that when the request is closed, information will be provided about appeal rights for any part of EPA's response, including all interim productions. The goal is to make sure the requester understands that this is an initial release and that the clock does not start on the appeal period until after the request is closed.

**e.** ***Contact Information***
In addition to the FOIA Public Liaison, make sure the requester has the direct contact information for someone who knows substantively about the request, such as the project lead or the FOIA Coordinator or FOIA Officer. The requester may be confused or have questions about the interim production or the status of the request going forward and should be provided with an Agency point of contact.

## B. Final Release and Response to Requester

When all responsive records have been uploaded to FOIAonline, you will be ready to close out your request. It is important to follow your office's FOIA procedures which can be found on the intranet: http://intranet.epa.gov/foia/FOIA-Procedures.html.

### 1. Required Elements of Final Release Letter

The closeout letter for a request should clearly inform the requester of the Agency's response and the requester's appeal rights. There is no one way to write a closeout letter. The best letters should be tailored to the particular request. Each letter should contain the following elements:

***a.*** ***Information about the Request***
Make sure to reference the request by number and provide a brief summary of what is sought. If the requester has clarified the request or you have had other significant communication, describe it. It is particularly important to describe any agreed-upon modification or other narrowing of the FOIA request. The closeout letter memorializes the Agency's actions and serves as an important piece of the FOIA record if an administrative appeal or litigation is filed.

***b.*** ***Disposition***
There are four possible responses the Agency may provide. Inform the requester which applies to the request.

- *Full Grant*. The records, in their entirety, are released to the requester.
- *Partial Grant/Partial Denial*. Portions of the record are withheld from the requester if covered by one or more FOIA exemptions. The portions of the record that are not redacted are released to the requester.
- *Denial*. The records, in their entirety, are withheld from the requester if covered by one or more FOIA exemptions.

- *No Records*. If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester must be informed in writing to that effect.

c. ***Identification of Withheld Records***

If any records are being withheld in whole or in part, provide the requester with (1) an index or description of the records being withheld and (2) a summary of the FOIA exemptions that are being applied.

d. ***Final Appeal Rights***

The following paragraph includes the information required to be conveyed to the requester regarding its appeal rights:

> *This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90 calendar day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.*

e. ***Contact Information***

The requester should be informed of a contact who can help if there are questions about the request. Additionally, consistent with the 2016 Amendments to FOIA, the requester should be provided contact information for the FOIA Public Liaison

and the Office of Government Information Services. See the sample language below:

> *Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or call (202) 566-1667. You may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.*

***f. Final Bill***

Inform the requester what fees are being assessed and how they should be paid.

***g. Signature***

Final closeout letters must be signed by the Action Office at the Division Director level or higher.

## 2. Disclosure through FOIAonline

FOIAonline is more than a convenient way to disclose records to a requester. Disclosure of records through FOIAonline is required under EPA policy and procedures. See EPA FOIA Policy, CIA 2157.1, and EPA FOIA Procedures, CIO 2157-P-01.1.

## 3. Recordkeeping Requirements for FOIA Requests

FOIAonline is used to maintain records related to a FOIA request in accordance with records management requirements and as a record of how a request was processed should it be appealed or litigated. Before closing a request, upload (1) all key correspondence and (2) all responsive records.

Uploading key correspondence is vital to preserving the record of how a FOIA request was processed. Any interactions with the requester that did not occur through FOIAonline should be documented and uploaded. For email correspondence, create a PDF of the email and upload it as "other" correspondence. Key internal correspondence such as communications requesting electronic searches or describing document collection should be uploaded as "other" correspondence as well.

It is important to upload all responsive records to FOIAonline, including those that are not releasable. Uploading records that will be withheld preserves the entire record so that it can be reviewed in full on appeal or during litigation. Be sure when uploading records to designate the proper release type for each record.

**Practice Tips for Complex FOIAs**

- **When multiple requesters are seeking the same or similar records, use a single FOIA tracking number as a repository for the records and direct other requesters to that account.**
- **When a particular topic is expected to generate many requests, make use of proactive disclosures.**
- **When closing out many requests on the same topic, be mindful of expedited processing and the order in which requests were submitted.**
- **Communication is important. If you are having technical problems that may delay a production or closing out a request, let your requesters know.**
- **Be sure when uploading records to FOIAonline to designate the proper release type for each record.**

# Step 6 –Administrative Appeals

## A. What is an Administrative Appeal?

The FOIA and EPA's implementing regulations provide FOIA requesters the right to appeal any "adverse determination" that the Agency makes regarding a FOIA request. EPA's FOIA regulations, at 40 C.F.R. § 2.104(g), include the following list of "adverse determinations" that are subject to appeal:

- a determination to withhold any requested record in whole or in part;
- a determination that a requested record does not exist or cannot be located;
- a determination that what has been requested is not a record subject to the FOIA;
- a determination on any disputed fee matter, including a denial of a request for a fee waiver; and
- a denial of a request for expedited treatment.

Within 90 days of an adverse determination by the Agency, requesters may submit appeals, in writing, either through FOIAonline, by email to hq.foia@epa.gov, or by U.S. Mail to EPA Headquarters, National FOIA Program Office. An appeal should identify the Agency determinations being appealed and include the assigned FOIA request number.

## B. What happens if the Agency's final FOIA response is appealed?

Administrative appeals are routed, via FOIAonline, to EPA's Information Law Practice Group, General Law Office, Office of General Counsel. Shortly after receipt, the requester is sent an acknowledgement letter and the appeal is assigned to an OGC attorney for processing. The OGC attorney will then contact the relevant program or regional staff to address any questions concerning the record.

EPA has 20 working days by statute to process an appeal, but this deadline can be extended for "unusual circumstances" pursuant to the same rules applicable to extension of FOIA request deadlines. Once the appeal determination is completed, the OGC attorney contacts the relevant office(s) that processed the request, notifies the office(s) of the decision, and issues the decision to the requester through FOIAonline.

## C. What is your role in the administrative appeal process?

You may be notified by your FOIA Officer that an appeal relating to the FOIA request you handled has been received. As noted above, you will be contacted by the OGC attorney handling the appeal, as the attorney will likely have questions relating to the file and/or need additional information. Your FOIA Coordinator or Officer should also be able to review in FOIAonline who in OGC is assigned to an appeal so you can always reach out to the attorney to provide any context or other information that may be helpful for processing the appeal.

Please follow the instructions provided by the attorney concerning what action or information is needed. When contacted by OGC, please be sure to have the following information available:

- A complete set of the documents withheld in full, in unredacted form;
- A complete set of documents withheld in part (redacted documents) (ideally a markup copy of the redactions not yet applied, to review what material was redacted);
- The complete organized file relevant to the FOIA, including communications with the requester;
- Points of contact for staff in the Contributing Offices who worked on the request; and
- All communication regarding the processing of the FOIA, as well as all documents responsive to the FOIA (released, withheld in full and withheld in part), should be included in FOIAonline.

Pursuant to the 2016 Amendments to FOIA, the period to appeal an adverse determination is 90 days from the date of issuance of the adverse determination. As such, it is important to keep the above-noted information readily accessible in case an appeal is filed.

- For large volume responses, keep an organized electronic copy of the relevant materials to provide to OGC in the event of an appeal. FOIAonline currently does not permit bulk downloads of large volumes of documents, which complicates an expeditious review of a file.

Common issues on appeal relate to the adequacy of the Agency's search, the propriety of the Agency's withholdings, the propriety of denying a fee waiver, and the adequacy of the Agency's description of withholdings.

## D. <u>What are the potential outcomes in resolving an administrative appeal</u>?

- <u>Appeal is Denied in Full</u>: OGC determines that all challenged actions were performed in compliance with statutory and regulatory requirements. No further action is needed.
- <u>Appeal is Granted in Full or In Part</u>: OGC determines that one or more challenged actions were not performed in full compliance with statutory and regulatory requirements in all aspects of the response.
    - *Without Remand*: OGC determination will complete the corrective action by attaching the releasable records or portions of records, or otherwise complete the corrective action for the Agency.
    - *With Remand*: Pursuant to 40 C.F.R. § 2.104(k), OGC determination will provide instructions for completing corrective action by remanding the request to the Action Office (the program office assigned to the request). That office should then address the instructions on remand.
        - Timing on remand: the instructions will either include a) a timeframe for completing the corrective action(s), or b) a timeframe for the program office to communicate a schedule for completion to the requester.

- If you are instructed to release additional information to the requester, OGC advises that you re-open the FOIAonline case file for the request and upload the new responsive information to that case file.
- In most cases, you should issue a new determination letter. OGC recommends that you do not include appeal rights if you were directed to re-review withholdings or to conduct a new search and no additional material was withheld. Please contact OGC if you have questions about whether to include appeal rights after a remand. Be sure to upload any correspondence to the requester to FOIAonline before closing the request again.

# Step 7 – Litigation

FOIA requesters can initiate litigation if the Agency denies their administrative appeal, or if the Agency fails to respond to their FOIA request within the statutory time frame. The attorneys in OGC's General Law Office handle all FOIA litigation filed against EPA. These attorneys work directly with Department of Justice (DOJ) attorneys to litigate the cases.

For a court to have jurisdiction to hear a case, the FOIA requester must allege that the agency has improperly withheld records. Allegations that an agency "improperly withheld records" may include:

1. Failing to respond to a FOIA request within the statutory timeframe;
2. Improperly withholding records, or portions of records, under a FOIA exemption;
3. Not conducting a reasonable search for records;
4. Denying a fee waiver or expedited processing; or
5. Challenging a fee category designation.

## A. General Overview of the Litigation Process

If the Agency is sued over a FOIA request, an attorney from OGC's General Law Office will reach out to the lead contact for the Action Office to discuss the administrative record supporting the FOIA action. If EPA has not provided a response to the FOIA requester, the OGC attorney will discuss with the lead contact for the Action Office where the Action Office is in the search and collection process and develop a production schedule.

The following provides a general overview of the primary steps in litigation:

1. **The Complaint:** A FOIA requester initiates litigation by filing a Complaint. In the Complaint, the plaintiff (FOIA requester) will identify the FOIA request(s) at issue and the bases for filing suit (*e.g.,* agency's failure to respond to the FOIA, or a challenge to the agency's search and/or withholdings).

2. **The Answer:** EPA has 30 days (from the date the plaintiff serves the United States Attorney's Office) to respond to the Complaint in the form of an Answer. An Answer is generally EPA's first pleading and it responds, point by point, to the allegations in the Complaint. The Answer also includes any affirmative defenses or counterclaims EPA may have.

3. **Schedule for the Production of Documents (failure to respond cases):** If the case concerns EPA's failure to respond to a FOIA request, OGC and DOJ will initiate discussions with the plaintiff regarding a production schedule for any documents remaining to be produced. Once documents are produced, the plaintiff has an opportunity to review the documents to determine if the case can be resolved without

further briefing. If the plaintiff reviews the documents and seeks to litigate any issue, such as the Agency's withholdings, the case proceeds to substantive briefing.

4. **Substantive Briefing:** If the plaintiff challenges the Agency's search or withholdings or raises any other issues, the case will proceed to briefing. Generally, FOIA cases are resolved when one or both parties file Motions for Summary Judgment. A Motion for Summary Judgment is a motion whereby the party filing the motion (the movant) asks the court to rule in its favor and dismiss all, or part, of the litigation. A Motion for Summary Judgment includes a motion asking the court to rule in the moving party's favor and a brief called a Memorandum in Support of the Motion for Summary Judgment. The Memorandum in Support of the Motion for Summary Judgment is the Agency's opportunity to make its case and explain why the Agency met the relevant requirements in processing the FOIA request in dispute. In support of a Motion for Summary Judgment, EPA will file a declaration and *Vaughn* Index.

   a. ***Declaration:*** The content of the declaration depends on the issues plaintiff has raised. A declaration contains factual statements and the declarant attests to the facts in the declaration under **penalty of perjury**. For example, in a case challenging the Agency's search, the declaration would address how the Agency searched for responsive records. The Agency's brief would, in turn, cite to the declaration and explain why the Agency's search was reasonable. In a case challenging the application of the FOIA exemptions to certain documents, the declaration would explain the nature of the documents at issue and the basis for the claimed exemption(s). The declaration assists the court in resolving the case without the need to review the documents in question in the underlying FOIA. (See Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973)).

      *Who can be a declarant?* The declarant must have "personal knowledge" of the facts presented. (See Fed. R. Civ. P. 56(e)(1)). Personal knowledge includes information provided to the declarant by co-workers or subordinates. Generally, the declarant is an individual in management who has personal knowledge of the processing of the FOIA request at issue.

      Briefing in a FOIA case may occur several months after the case is filed, especially in cases alleging a failure by EPA to respond to the FOIA request. It is important to maintain a well-documented case file, as that file will be useful in preparing the declaration.

   b. ***Vaughn Index:*** Generally, the declaration references the Agency's *Vaughn* Index. A *Vaughn* Index is an index that describes the records withheld and the basis for the withholdings. There are different formats for a *Vaughn* Index, including, for example, an itemized description of each document, and a categorical approach, where similar documents are described together (as opposed to the itemized document-by-document approach).

      An example of an excerpt from a *Vaughn* Index is below.

| | | | | | | |
|---|---|---|---|---|---|---|
| 345OneDrive2_00013175 | ED_000434 | Withhold in Entirety | | | | Ex. 5 - Deliberative Process |

Document 345OneDrive2_00013175 is a draft contract document for a statement of work between EPA and an unidentified contractor. This draft contract document was withheld in full under FOIA Exemption 5.

Exemption 5, Deliberative Process Privilege

The withheld information is protected under Exemption 5's deliberative process privilege because it is a draft of a statement of work between to SwRI and EPA. The document was circulated for review within OTAQ/ASD. The draft statement of work reflects pre-decisional deliberations between EPA employees about the work required under an EPA contract with SwRI who conducting testing for the EPAct Study/V2/E-89 Tier 2 Gasoline Fuel Effects Study. At the time the document was created, EPA had not finalized the statement of work, and EPA was still deliberating on the best approach to the contract. The withheld draft statement of work does not reflect an official Agency decision. The withheld information is deliberative because EPA employees and managers were still internally discussing issues related to contract requirements and testing parameters. This draft statement of work was circulated for review and comment, and it was not the final document. The document reflects recommendations and opinions that are considered as part of the EPA's decision-making process for finalizing contract documents. The draft statement of work does not represent a final agency action. Release of this information would discourage open and frank discussions among its staff and would also have a chilling effect on agency decision-making processes, and on the EPA's ability to have internal discussions and consultations concerning EPA's contracts. Furthermore, release would cause public confusion by disclosing rationales and reasons that were not in fact ultimately incorporated into the final statement of work and the final contract.

Segregability

There is no reasonably segregable information in this draft contract document, no meaningful portion could reasonably be released. To the extent there are facts in this document, the selection of those facts are an integral part of the deliberations in developing the final contract document and the facts selected may have varied between the draft and the final document, and the factual information contained therein is inextricably intertwined with the deliberative discussion concerning this document.

## B. What is the role of the Action Office and Contributing Offices in Litigation?

The Action Office and Contributing Offices are responsible for:

1. Ensuring that the OGC attorney assigned to the case has a copy of the entire FOIA file, including information about the search (*e.g.,* dates, terms, custodians, repositories, scope etc.); information related to the Agency's collection efforts; emails and other correspondence with the FOIA requester; and copies of the responsive records (both with and without redactions applied);
2. Responding to any questions OGC has regarding the record;
3. Completing the document production, which is relevant in cases involving a failure to produce records; and
4. Reviewing all draft pleadings in the case and preparing the declaration in support of the Motion for Summary Judgment.

☆ **Litigation is time-consuming. EPA is also under court-ordered deadlines to submit briefs. As such, it is important that the FOIA team works together closely to ensure the deadlines are met.**

## C. Potential Outcomes

Courts generally dispose of FOIA cases based on Motions for Summary Judgment. If a court rules for EPA by granting the Agency's Motion for Summary Judgment, in full, the case will be dismissed. If the Court rules against EPA, in whole, or in part, there are different potential outcomes. For example, the court could ask EPA to submit the documents withheld under FOIA for *in camera* inspection so the court can assess the Agency's withholdings. EPA would then submit the documents at issue for the court to review. *In camera* inspection is not common. During *in camera* inspection, plaintiff and plaintiff's counsel are not allowed to view the records; only the court views the records. If the court rules against EPA, another potential outcome is for the court to order the Agency to release some or all of the withheld records. If the court finds that the Agency failed to conduct a reasonable search, it could order the Agency to conduct a new search.

## D. Attorney's Fees – What you need to know

A party seeking attorney's fees and costs in a FOIA action must show that it is both eligible for, and entitled to, such fees. The plaintiff also bears the burden of demonstrating the reasonableness of its fees. In assessing whether a plaintiff is eligible for attorney fees, the evaluates whether the plaintiff "substantially prevailed." If a plaintiff is eligible for attorney's fees, the court must then determine if the plaintiff is entitled to fees by evaluating four factors:

i. the public benefit derived from the case;
ii. the commercial benefit to the plaintiff;
iii. the nature of the plaintiff's interest in the records sought; and
iv. whether the government's withholding had a reasonable basis in law.

Under FOIA, if payment of attorney's fees is required, those fees are paid by EPA. See OCFO's Procedure 3 (http://intranet.epa.gov/fmdvally/policies/direct/2540/2540-08-p3_payment_of_eaja.pdf), which provides that payment of FOIA attorney's fees is made from funds appropriated to the Responsible Planning and Implementation Office (RPIO) involved in the FOIA judgment. The RPIO is generally the regional or program office designated by the FOIA Coordinator or FOIA Officer as the lead office (Action Office) for the FOIA request.

# APPENDIX

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# Initial Short FOIA Response Template

*This template is a short initial note that you can send via FOIAonline, letting the requester know your contact information, that you are reviewing the request and that you will be back in touch promptly once you have had a chance to review fully the request. This can be accomplished by clicking the "Create Correspondence" tab in FOIAonline or by sending via e-mail and then uploading into FOIAonline.*

Subject: [FOIA ID # XXX-XXXX]
Dear [FOIA Requester]:

My office has received your FOIA request. I will contact you again after we have had an opportunity to review the request fully. I will be your point of contact. Please feel free to contact me directly with any questions or concerns. Additionally, at any point in time, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

[Your Name]
[Your Phone Number]

# Initial Detailed Response Template

*This template provides optional sections and language to fit the circumstances of any particular request. If the requester provides telephone contact information, it is always a* ***best practice*** *to accompany the initial response letter with a telephone call to the requester. When using this template, read the sections below carefully and edit the bracketed portions consistent with the request at issue. Send via regular mail on Agency Letterhead and upload correspondence in FOIAonline or send as an email via FOIAonline.*

[DATE STAMP]

*[Name*
*Organization*
*Street*
*City, State Zip]*

Re: Freedom of Information Act Request No. EPA-*XX-XXXX-XXXXXX*, Initial Response

Dear Mr./Ms. *[Last name]*:

Thank you for your Freedom of Information Act request. This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on *[MONTH DAY, YEAR]*, in which you requested

> *[INSERT directly what the FOIA request stated or accurately paraphrase description of requested records].*

**Opportunity to Discuss and Modify** *(if needed)*

> *[Edit as appropriate]*

Your request is *[too broad to be completed within 20 days and/or does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them.]*

For example, we would like to discuss the types of records you are interested in, and the possible locations of these records. We would like to further understand the specific subject matter of the records so that we are able to craft a search and provide you with the records you seek. *[EXPLAIN WHY YOU CANNOT IDENTIFY AND LOCATE THE RECORDS].*

In addition, requests phrased as legal discovery, e.g., for all records "including but not limited to" and "pertaining to" a subject with no further limitation, do not provide adequate information to allow a professional employee to determine which records you wish EPA to provide.

EPA's FOIA regulations state:

> "Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request." 40 C.F.R. § 2.102(c).

We would like to provide you the opportunity to discuss the request with us and clarify the records that you are seeking so that EPA can process your request. As indicated in 40 C.F.R. § 2.102(c), please include or be prepared to discuss any specific information about the records you seek, including time period, authors, or a more detailed description of the records' subject matter.

**Unusual Circumstances and Extension of Time** *(if needed)*

*[Edit as appropriate]*

Pursuant to 40 C.F.R. § 2.104(d), an extension of time to respond to your request is necessary. Given the scope of the request, EPA anticipates that

*[...the response will require significant amount of EPA's resources and time to search for, and appropriately examine the voluminous amount of records to complete this request and/or*

*...to search for and collect the requested records from multiple EPA offices that are separate from the office processing the request" and/or*

*...the need for consultation with another agency having a substantial interest in the determination of the request."]*

EPA has initiated the coordination of and search for responsive records in our files. Because of the circumstances described above, it is difficult to predict with certainty how many records may be involved. [Optional: *Nonetheless, at this time, EPA estimates the Agency will be able to complete this request by [DATE, MONTH, YEAR]. We appreciate your patience.*]

[*Only if Relevant: Since the time of your request and as of today's date, EPA has received additional FOIA requests about [Topic] including several requests that were approved for expedited processing. These expedited requests will be processed before your request. However, many of the documents that are responsive to those requests will also be responsive to your request. These documents will be made publicly available on a rolling basis as they are produced.]*

**Processing Fees** *(if needed)*

*[Edit as appropriate]*

*[Option 1: On [DATE], the EPA's National Freedom of Information Office granted the fee waiver request that accompanied the FOIA request. Therefore, you will not be assessed fees.*

*Option 2: On [DATE], the EPA's National Freedom of Information Office denied the fee waiver request that accompanied the FOIA request. Therefore, we must receive an assurance of payment before processing the request.*

*Option 3: You were placed in the "other" fee category, which means you will be charged for search, and duplication costs in accordance with the Agency's regulations under 40 C.F.R. Part 2, Subpart A. Therefore, we must receive an assurance of payment before processing the request.*

*Option 4: You were placed in the commercial fee category, which means you will be charged for search, review, and duplication costs in accordance with the Agency's regulations under 40 C.F.R. Part 2, Subpart A. Therefore, we must receive an assurance of payment before processing the request.*

*Option 5: You were placed in the "media/educational" fee category, which means you may be charged for duplication costs in accordance with the Agency's regulations under 40 C.F.R. Part 2, Subpart A.*]

**Publicly Available Information** *(if needed)*

The following are sources of publicly available information that you can access immediately:
*[ Edit as appropriate to your request. You may include fire links to other relevant FOIA responses, your Program specific website, and any of the links below]:*

- Our website: https://www.epa.gov/home/advanced-search
- FOIAonline for records previously released through FOIA requests: https://foiaonline.regulations.gov/foia/action/public/search/
- Frequently requested records: https://www.epa.gov/foia/national-online-foia-library#request
- Environmental Topics Information repositories: https://www.epa.gov/environmental-topics/z-index
- Technical/scientific/educational publications: https://www.epa.gov/nscep
- Administrative and Environmental Appeals Board cases: https://www.epa.gov/foia/national-online-foia-library#opinions
- Staff Manuals and Guidance: https://www.epa.gov/foia/national-online-foia-library#admin
- Policy Statements: https://www.epa.gov/foia/national-online-foia-library#statement
- Superfund sites and data: https://www.epa.gov/foia/national-online-foia-library#superfund

**Next Steps**

*[Edit as appropriate]*

The processing clock is stopped for your FOIA request until we receive *[your assurance of payment [and/or] your clarification or modification.]*

Please respond within ten calendar days from the date of this letter to arrange a time to discuss your [*request and fees]*.

You may contact *[Program Contact]* at (*email address)* or at *(telephone number)* with your response or if you have any further questions. If we do not receive a response from you *[By X Date (at least 20 days from date of letter)]*, we will consider your request to be voluntarily withdrawn. [*Edit as appropriate: Once the request is clarified and we receive a written assurance of payment, we will continue processing your FOIA request*] and provide you with an estimated timeframe for completion. If you wish to request information connected to this request in the future, please reference the FOIA request number.

Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

*[NAME]*
*[TITLE]*

# Closure for Failure to Modify FOIA Request Template

*This template is for correspondence to a requester who has failed to modify an improper request. This should be used only after it is clear that the requester will not modify a request. Send via regular mail on Agency Letterhead and upload correspondence in FOIAonline or send as an email via FOIAonline.*

[DATE STAMP]

*[Name*
*Organization*
*Street*
*City, State Zip]*

Re: Freedom of Information Act Request No. EPA-*XX-XXXX-XXXXXX*, Closure For Failure to Modify

Dear Mr./Ms. *[Last name]*:

Thank you for your Freedom of Information Act request. This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on *[MONTH DAY, YEAR]*, in which you requested

*[INSERT directly what the FOIA request stated or accurately paraphrase description of requested records].*

Your request does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them. The EPA's FOIA regulations explain:

"Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request." 40 C.F.R. § 2.102(c).

We sent you a letter dated *[DATE]* providing you the opportunity to clarify the records that you are seeking so that EPA can process your request. We asked that you contact us by *[DATE]*, with your clarification, and we have not received additional information from you, so we are administratively closing your request.

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are

submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

*[NAME]*
*[TITLE]*

# Requests Seeking Only Information Publicly Available on EPA's Website Template

*This template can be used for responding to requests that seek only information publicly available on EPA's website. Send via regular mail on Agency Letterhead and upload correspondence in FOIAonline or send as an email via FOIAonline.*

Subject: *[FOIA ID # XXX-XXXX]*

Dear *Mr./Ms. [Last name ]:*

This is in response to your Freedom of Information Act (FOIA) request, identified above, dated *[Month, Day, Year],* that you submitted to the U.S. Environmental Protection Agency (EPA). Your request seeks the following documents:

> *[INSERT directly what the FOIA request stated or accurately paraphrase description of requested records].*

The information that you are seeking is publicly available on EPA's website at *[describe where on EPA's website material can be found and insert link to that location].* Because this information is publicly available, your FOIA request for this information is being administratively closed, in accordance with EPA's FOIA regulations. See 40 C.F.R. Part 2, Subpart A.

If you consider this response to be a denial of your request, you may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Thank you for your interest in this information.

Sincerely,

*[NAME]*
*[TITLE]*

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# Checklist for Clarifying Requests

*This checklist is a quick reference for things to consider when attempting to identify components of a request that may be missing or ambiguous and for which clarification is needed.*
*While EPA's regulations cite the categories below as items that should be included in a request, failure to include one or more of these categories* ***does not*** *automatically make the request improper or not reasonably described.*

**Categories of Information to Discuss with Requester for Clarification:**

*The more categories on which you and the requester can agree, the more straightforward processing the request will be.*

- ☐ **Type(s) of Records**: Emails, Documents, Memoranda, Notes, Presentations, Text Messages, Schedule, Voicemail, Data, Logs, etc.
- ☐ **Subject Matter/Topic/Search Terms**
- ☐ **Date Range**
- ☐ **Specific Departments/Custodians/Positions**

# New Complex FOIA Project: Initial Meeting with Team Checklist

*This checklist may assist the Action Office in coordinating the initial meeting with the Contributing Offices and any other necessary parties and begin meaningful collaboration on the FOIA request. This checklist assumes the request has been clarified with the requester.*

**Participants for an initial discussion**: Lead contact and Subject Matter Experts from Action Office and FOIA Coordinator and Subject Matter Experts from Contributing Office(s).

- ☐ Identify and Clarify the following roles:
  - FOIA Coordinator for each office; and
  - Lead contact in the Action Office and any other lead contact(s) from Contributing Office(s) to include on all internal correspondence.

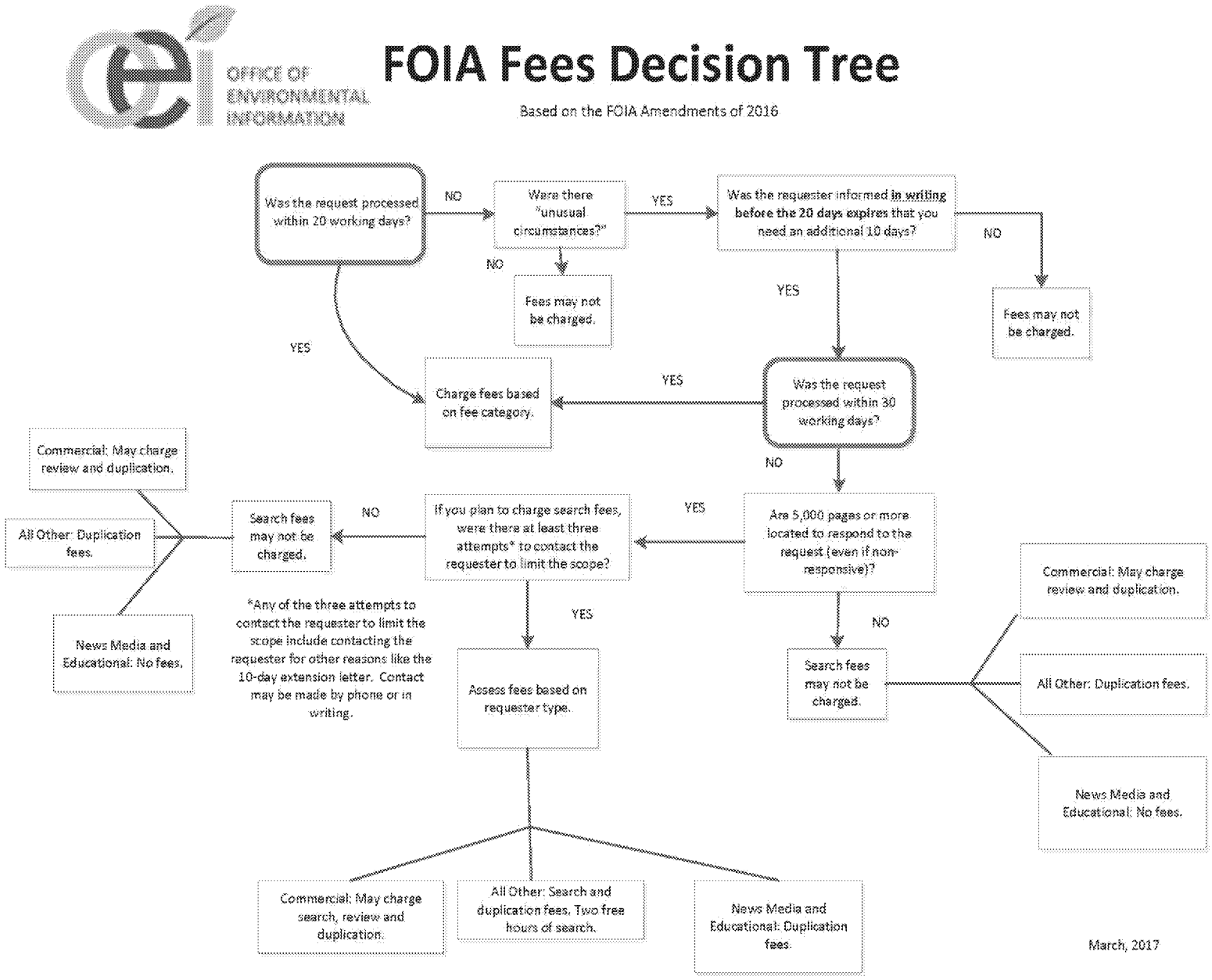
- ☐ Listen carefully and ask questions. Think through:
  - Scope;
  - Time Period;
  - Potential Custodians;
  - Record Types, Locations, and Systems; and
  - Potential Search Terms.

- ☐ Timing
  - FOIA Clock
    - How many days remain on the FOIA clock? and
    - Are there unusual circumstances permitting the Agency to extend the due date?

  - Potential Resource Concerns
    - What do the team's resources look like?
    - Any upcoming large projects?
    - Emergency Project or anticipated resource issues?
    - Familiarity with Relativity?

# FOIA Fees Decision Tree

*The following flow chart can assist with determining which fees should be charged to the requester.*



# ***Confirmation of Clarification Template***

*This template is to document any clarification that the requester has made regarding a pending FOIA request. It is a best practice to document any modification of the request in writing. Send via regular mail on Agency Letterhead and upload correspondence in FOIAonline or send as an email via FOIAonline.*

[DATE STAMP]

*[Name*
*Organization*
*Street*
*City, State Zip]*

Re: Freedom of Information Act Request No. EPA-*XX-XXXX-XXXXXX*, Confirmation of Clarification

Dear Mr./Ms. *[Last name]*:

Thank you for your Freedom of Information Act request. This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on *[MONTH DAY, YEAR]*, in which you requested

*[INSERT directly what the FOIA request stated or accurately paraphrase description of requested records].*

**Clarification**

On *[DATE]* you spoke to *[CONTACT]* regarding the scope of your request. During the conversation you clarified your request as follows:

[*Edit as appropriate to reflect your conversation and the needs of the request… you may wish to include information about:*

**Type(s) of Records**: *Emails, Documents, Memoranda, Notes, Presentations, Text Messages, Schedule, Voicemail, Data, Logs, etc.*
**Subject Matter/Topic/Search Terms:**
**Date Range:**
**Specific Departments/Custodians/Positions:**

**Estimated Date of Completion and Fee Estimate**

*[Provide an estimated date of completion and appropriate information regarding fees]***Next Steps**

*[Edit as appropriate]*

EPA has initiated the coordination of and search for responsive records in our files. During the call, we agreed to set up regular check-in calls to keep you updated. **Our next call is scheduled for *[insert date]*.**

Please contact [Contact] if you have any questions about your request. Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (301) 837-1996 or (877) 684-6448; or fax, (301) 837-0348.

If you wish to request information connected to this request in the future, please reference the FOIA request number.

Sincerely,

*[NAME]*
*[TITLE]*

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Access to Absent and Separated Employee Records ..... 37
Quick Reference Guide: How to Save Text Messages ..... 39
FOIA Search Guide: Best Practices ..... 41

# Search Instruction Template for Potential Custodians

*These are model search instructions for the Action Office to provide to potential record custodians, both in the Action Office and Contributing Offices. These instructions should be customized to reflect the search plan that the Action Office and Contributing Office develop to search for and collect all non-Outlook records.*

*As part of the Search Plan, the Action Office should identify a Point of Contact (POC) who will collect all responsive and nonresponsive records and upload releasable, responsive records to FOIAonline. Each Contributing Office should also identify a POC who will collect records from Contributing Office custodians, propose redactions where appropriate, and transfer both unresponsive records and responsive records to the Action Office POC through an agreed-upon method of transfer.*

## Search Instructions

You have been identified as a potential custodian of responsive records to a Freedom of Information Act (FOIA) request. The request ***[FOIA Request Number]*** concerns ***[describe the request and any modification agreed upon with the requestor].*** A copy of the request and any relevant communication with the requester is attached for your reference.

*Reminder*: In accordance with EPA's FOIA Procedures, you should track and record the time spent searching for responsive records.

### STEP 1: CONDUCT THE SEARCH

Please search the following locations for responsive records: [*The Action Office should select the appropriate locations from the list below.]*

- Lotus Notes mailboxes or calendars, other Lotus Notes databases*
- Enterprise Content Management System (ECMS)
- Local or shared computer drives (C:, F:, G:, etc.);
- SharePoint sites
- OneDrive
- Mobile devices (e.g., text messages and photographs)
- Voicemail
- External drives and discs
- Hard-copy files
- Other

* Please use the following key words in your Lotus Notes search or other non-Outlook electronic search:

- *[The Action Office should provide search terms here.]*

Attached for your reference are step-by-step instructions for conducting a search of *[Lotus Notes]/ [ECMS]/ [Other Electronic Files]. The Action Office should select and attach applicable instructions.*

**STEP 2: CONFIRM THE SEARCH IS COMPLETE**

When you have completed your search, please send an email, with the subject line: "Search Response for [FOIA Request Number]" to Action Office Point of Contact@epa.gov. In your email, including the following information:

- The number of records located each search location [If you did not locate any records, please note this in your email];
- The time spent searching for responsive records

**STEP 3: TRANSFER SEARCH RESULTS FOR REVIEW**

***[For Action Office Custodians]*:** Once you have completed your search of all non-Outlook records, in accordance with Step 1, above, and confirmed that your search is completed (Step 2), you will need to review those records for responsiveness. For both responsive and nonresponsive records, please collect the records in accordance with the instructions below. You may also be asked to review the responsive records for potential FOIA exemptions, once all responsive records are collected.

***[For Contributing Office Custodians]*:** Once you have completed your search of all non-Outlook records, in accordance with Step 1, above, and confirmed that your search is completed (Step 2), you will need to review those records for responsiveness. For both responsive and nonresponsive records, please collect the records in accordance with the instructions below. Contributing Office POC will review responsive records for potential redactions and may seek your input before providing both responsive records and nonresponsive records to the Action Office.

*[For Lotus Notes]*: As described in the attached Lotus Notes Search Instructions, all Lotus Notes records should be uploaded to the Lotus Notes Collection Database. You will receive an email with a hyperlink that allows you to access the database.

All other records: *[The Action Office Point of Contact (POC) should select from sample instructions provided below]*

*For collection via Lotus Notes Collection Database:* Please include all other electronic files in the Lotus Notes Collection Database as described in Step 6 of the Lotus Notes Search Instructions.

*For collection via email*: Consolidate all responsive records in a folder on your computer, labelled as "Your Name, FOIA Request Number, Folder # of #_Responsive" and all non-responsive records in a folder labelled "Your Name, FOIA Request Number, Folder # of #_Nonresponsive." You will send these folders via email to [For Action Office custodians: Action Office POC@epa.gov] or [For Contributing Office custodians: Contributing Office POC@epa.gov]. Due to limitations on file size, you may need to compress the folder(s) and/or send multiple emails. For each email, use the folder label as the subject line.

*For collection via OneDrive:* Action Office POC and/or Contributing Office POCs will need to create "responsive" and "unresponsive" folders for each custodian on OneDrive. Using the following link: [link to OneDrive folder], upload all responsive and unresponsive records into the corresponding folders.

*For collection via thumb drive:* Create a folder on the thumb drive titled "Your Name, FOIA Request Number" and separate subfolders for responsive and nonresponsive records. Upload all responsive records and nonresponsive records to corresponding subfolders and save on a thumb drive. Please deliver this drive to Action Office POC or Contributing Office POC.

Note: All hardcopy documents should be scanned into an electronic document and transferred to Action Office POC or Contributing Office POC in accordance with the instructions above.

# Search Tracking Memo

*This memo provides an example of how the Action Office may document the search plan and track the search process.*

Action Office:
***Point of Contact:***

Contributing Offices or Regions:
***Point(s) of Contact:***

Requester:

FOIAonline Number(s):

Subject of Request:

Date Range:

Custodians:

| Name | Office (If separated N/A) | Tasked (Date) | Completed (Date) |
|---|---|---|---|

The following databases were searched:

| Repository | Repository |
|---|---|
| □ Outlook | □ SharePoint Sites |
| □ Lotus Notes | □ OneDrive |
| □ ECMS | □ Mobile Devices |
| □ CMS | □ Voicemail |
| □ Local or shared computer drives | □ External Drives and Discs |
| □ Hard-copy files | □ Other: |

Search Terms Used:

_____

_____

**Total Number Responsive Records:** _____

# Instructions for Searching & Collecting Other Electronic Files

*These instructions are for custodians who may be searching and collecting electronic files. If applicable, please include this as an attachment to your Search Instructions for custodians.*

Using the search terms provided in the Search Instructions, search for responsive records located in the other computer drives to which you have access. This includes, but is not limited to, your C: drive and your F: drive on your EPA computer. Unless you are designated by the Action Office/ Contributing Office Point of Contact to search a shared drive, such as the G: drive, you should limit your search to those drives to which you have sole access.

Note: Computer drives cannot be collectively searched. For each search term, you will need to conduct a separate search within each drive that you have identified as containing potentially responsive records.

Below are detailed instructions that will guide you through the following steps:

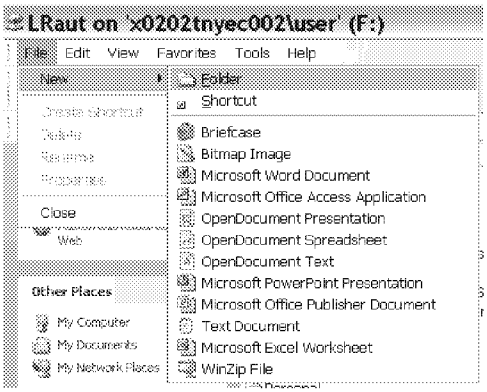
(1) Create search folders to collect search results and final collection folders for responsive and nonresponsive records
(2) Conduct term-specific searches of a single drive, and repeat for each drive
(3) Copy search results into a search folder
(4) Consolidate all search results into the final collection folders and search for duplicates
(5) Review files for responsiveness and sort into subfolders
(6) Optional: upload files to the Lotus Notes Collection Database.

## Step 1. Create Search Folders

Before you begin your search for records, you will need to create folders to store the records from each search. You will then consolidate these folders into a "Final Collection" folders for responsive and nonresponsive records. To create and name the "Search Results" folders and "Final Collection" folder, do the following:

- ✓ Select the "**File Explorer**" located on your desktop or on the task bar at the bottom of your screen.

- ✓ Create a folder either by selecting ***Home > New Folder*** or ***File > New > Folder*** as shown below. [How to create the folder may vary depending on the computer system]




- ✓ Name the folder using a simple convention, such as "Search Results [insert # of search]." Do NOT use the case name or any search term in the folder name.

- ✓ Repeat this process for each search, and to create a "Final Collection" folder where you will copy all of the records from the search folders.

- ✓ In the "Final Collection" folder, create two subfolders, one for "responsive" records and the other for "nonresponsive" records.

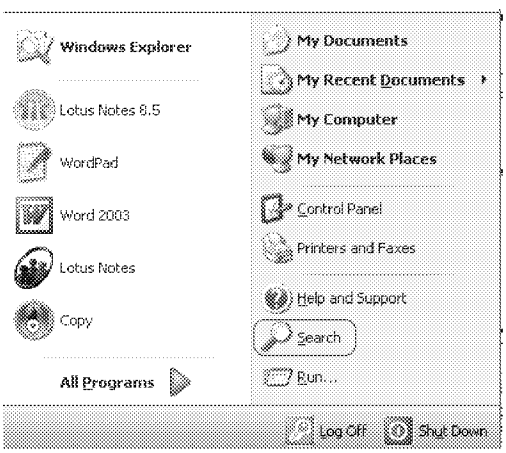
## Step 2. Conduct the Search

Below are some tips to assist with your electronic document search. These tips would apply to searches for files located, for example, in Word, Excel, PowerPoint, WordPerfect, Adobe, and .tif documents, saved in your C:drive, F:drive, and G:drive (if applicable).

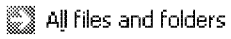
One place to start is with a Windows Search of an entire drive, such as the C:Drive. To perform such a search, follow the steps below.

### Windows Explorer Search for Entire Drive

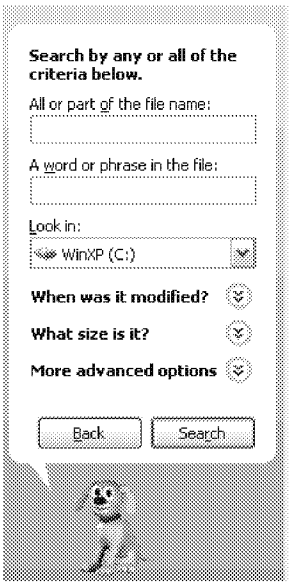
- ✓ From the "Start" menu, select "Search." *Start > Search*



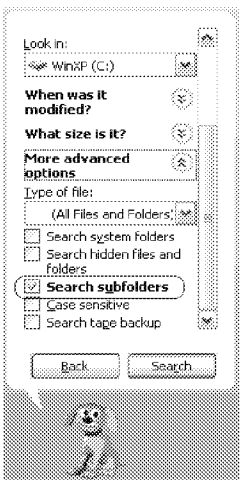
- ✓ Select "**Files and Folders**" (3rd option from the top) from the list at the left side of the screen.




- ✓ Identify the drive that you want to search (C:, F:, etc.).
- ✓ Type the search term in the box entitled "**A word or phrase in the file.**"




- ✓ Click on "**More Advanced Options**" at the bottom of the search menu. Make sure that only "**Search Subfolders**" is checked.
- ✓ Click "**Search.**"




Depending upon the number of files, the search may take anywhere from 5 minutes to 40

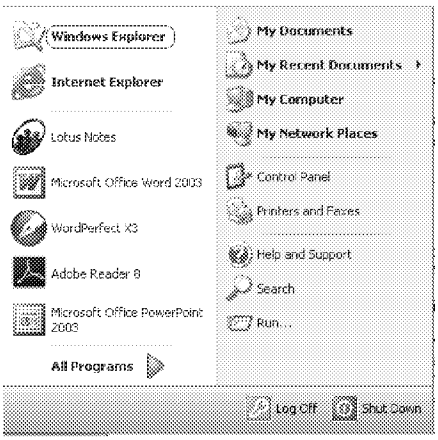
minutes. If the search completes successfully, the search companion will indicate that the search is done and that the search has found a specific number of documents.

- ✓ Record this number for later reference.

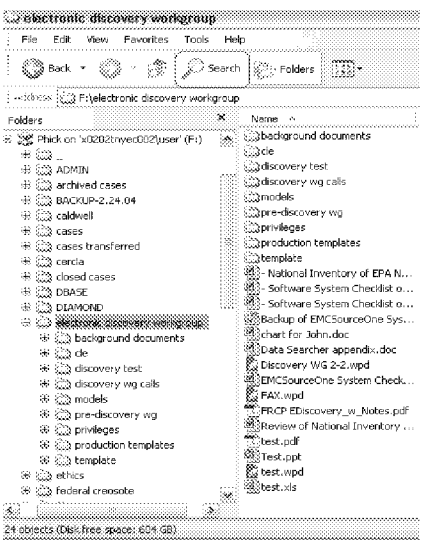
If when searching, the search unexpectedly stops running, the green "progress" bar stops moving, or the search gets stuck in one folder, consider searching each subfolder within a drive separately per the instructions below.

**Windows Explorer Search for Subfolders within a Drive**

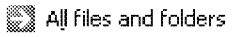
- ✓ Select *Start > Windows Explorer*




- ✓ Highlight the subfolder that you would like to search and click "Search."



- ✓ Select "**All Files and Folders**,"




- ✓ Type the search term into the box entitled "**A word or phrase in the file**"
- ✓ Select "**More Advanced Options**" and select *only* "**Search Subfolders**"
- ✓ Click "**Search**"

Depending upon the number of files, the search may take anywhere from 5 minutes to 40 minutes. If the search completes successfully, the search companion will indicate that the search is done and that the search has found a specific number of documents.

- ✓ Record this number for later reference.

If when searching, the search unexpectedly stops running, the green "progress" bar stops moving, or the search gets stuck in one folder, proceed with a manual search. The instructions below may assist you with performing that search.

**Manual Search**

In conducting a manual search, review those locations in the drive that are reasonably likely to contain responsive records.

**Step 3. Copy Records to Search Folders**

- ✓ As you complete each search, go to the Toolbar, click *Edit > Select All*. Right click and drop down to **Copy**.
- ✓ Go to the Search folder created to hold documents pulled from that specific search, open it, right click, and select "**Paste**" from the drop-down menu. The documents will appear in that folder.

**Repeat Steps 1 through 3 for each of the drives to which you have sole access.**

**Step 4. Copy Records from the Search Results Folders to the "Final Collection" Folder**

- ✓ Once you have completed your search, you should consolidate all documents collected in your Search Results folders into a Final Collection Folder. Open one Search Folder so that you can see all of the files inside the folder. Go to the Toolbar, click *Edit > Select All*. Right click and drop down to **Copy**.
- ✓ Go to the Final Collection folder created to hold all documents. Open the folder, right click, and select "**Paste**" from the drop-down menu.

- ✓ Repeat for all Search Folders until all files are located in the Final Collection Folder.

Because you will need to search each drive for every search term, it is likely that a file will respond to more than one search and that you will have the same file saved in more than one Search Folder. To eliminate duplicates in your Final Collection Folder, do the following:

- ✓ When you open the Final Collection folder and paste the highlighted documents into that folder, if the document is a duplicate of a document already in the folder you will get a dialog box "**Confirm File Replace**." Click "**No**" for each document for which such a box appears because it is a duplicate.

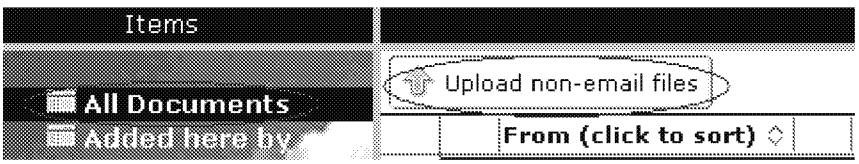
**Step 5. Sort Responsive Records from Nonresponsive Records**

Review documents in the Final Collection folder for each drive to make sure that they are actually responsive to the FOIA request and were not captured because of the presence of a search term used in another context. All responsive records should be separated into a "Responsive" Subfolder; all nonresponsive records should be separated into a "Nonresponsive" Subfolder.

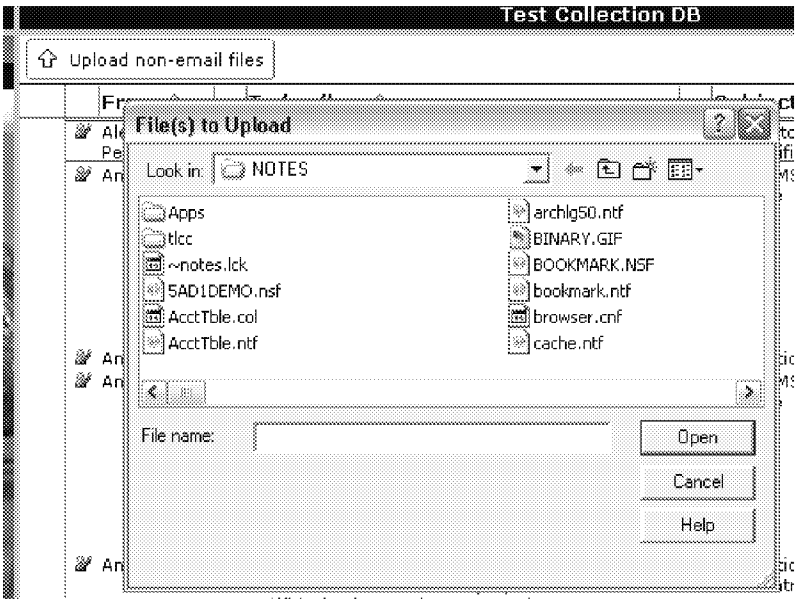
**OPTIONAL: Step 6. Upload Documents to Collection Database**

Please refer to the Search Instructions for guidance on how to transmit your files to the Action Office/Contributing Office Point of Contact. If the Search Instructions direct you to use the Lotus Collection Database to receive all electronic files, please follow the instructions below.

- ✓ Open the All Documents view of the Collection Database and click on the green button at the top of the view labeled "**Upload non-email files**".




A new box will appear from which you must select your file.




- ✓ Go to the location where you have saved the search results and open that folder.
- ✓ To select more than one file, simply hold down the <Shift> key and click on the first desired filename and then click on the last one. All the files between those will automatically be chosen.
- ✓ If the desired files are not sequential, press <Ctrl> and click on each filename that you wish to include.

<u>If you receive an execution security alert, click on the third option under the "What to Do" heading that says: Start Trusting the Signer to execute this action.</u>

After the files are uploaded you will get the following notice:

Please make note of the confirmed number of items since default setup for a collection database is a "ballot box" style collection where you cannot see any items in the collection, including your own. Refer to Step 3 of the Search Instructions for details on how to transfer your results to the appropriate Point of Contact.

# Instructions for Searching & Collecting Lotus Notes Email

*These are instructions for custodians who may be searching and collecting electronic Lotus Notes files. If applicable, please include this as an attachment to your Search Instructions for custodians. Note that any request seeking emails sent/received prior to February 2013 require a Lotus Notes search.*

***Note: These instructions are subject to change as of January 2018. OEI will provide additional guidance on searching Lotus Notes at that time.***

To fulfill your responsibility under the FOIA, you will need to manually search your Lotus Notes Email for any potentially responsive records and collect these records in the Collection Database(s). Search terms have been provided to you in the Search Instructions, and you have received an email with the link(s) to the Collection Database(s). If you have not received the link(s) or misplaced the email that includes the link(s), please contact the Action Office/Contributing Office Point of Contact responsible for overseeing this FOIA request in your office.

Below are detailed instructions to guide you through the following steps:

(1) Index your Inbox emails
(2) Access the Collection Database(s)
(3) Create a folder to organize your search results by responsiveness
(4) Perform the search for emails
(5) Review the search for responsiveness and sort into subfolders
(6) Upload records to the Collection Database(s)
(7) Repeat Search, Review, and Collection for Archived emails
(8) Search and print ECMS (EZ Record) emails
(9) Delete indexes

## Step 1. Index Your E-mail

Before you search for and collect emails, you *must* index your emails. Indexing your emails ensures that e-mail attachments are included in the search.

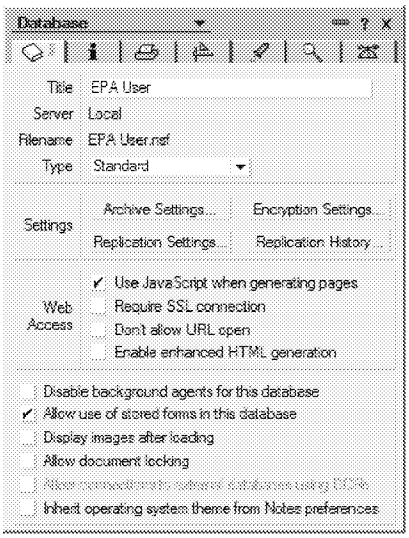
Indexing a large mail file will take several hours. (Most e-mail files are large!)

However, you can continue to use your email normally while the indexing process is running. You may also close your email and/or turn off your computer. This will not interrupt the indexing. Here's how it works:

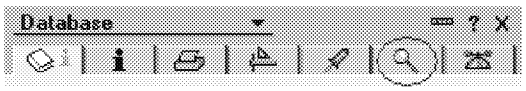
- ✓ Open your Lotus Notes Email Inbox

✓ On the menu bar in the upper left corner of your Notes screen select:

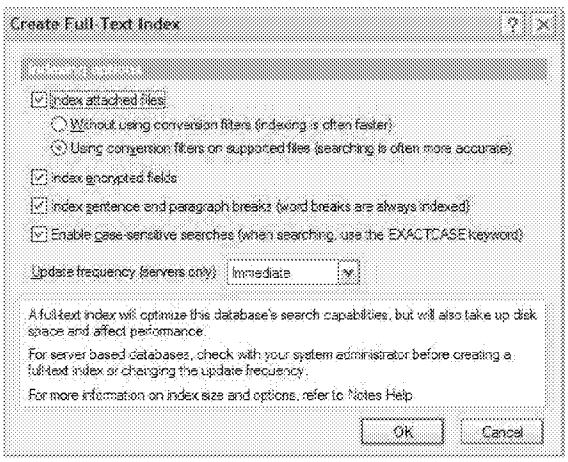
*File > Application > Properties* in Notes 8




✓ Select the tab with the magnifying glass icon.




✓ Click the **Create Index** button, make the selections below (or follow local instructions), and click **OK.**



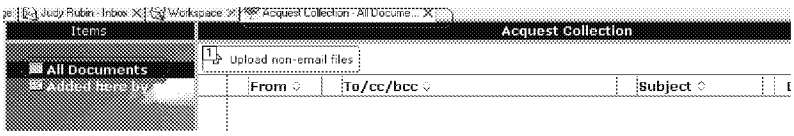

✓ Close the Database Properties box

## Step 2. Open the Collection Database(s)

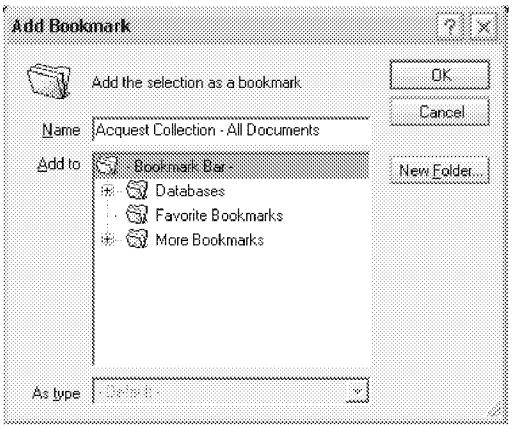
By this point, you should have received an email containing a link to the Collection Database. Follow the instructions below:

- ✓ Click on the link to open the database. For easy access to the database, you will create a bookmark by following the steps below.

- ✓ Right click on the database tab at the top of your screen




- ✓ Select **Create Bookmark.** The following screen will appear:




- ✓ Make sure that "Bookmark Bar" is highlighted and press **OK**. The "Tree" icon will now appear at the bottom of your bookmark bar on the left side of your email Inbox screen.

Both your Email Inbox and the Collection Database(s) are now open, so you can easily switch between your mailbox and the database(s) by selecting the desired tab.

## Step 3. Create a "Search Results" Folder and Final Collection Folder

Before you upload emails to the Collection Database, you will transfer the emails from your inbox into a separate "search results" folder and into "responsive" and "nonresponsive" subfolders. To create these folders, do the following:

- ✓ In your Inbox select *Actions > Folder > Create Folder*

- ✓ Name the Folder "Search Results," and click **OK**

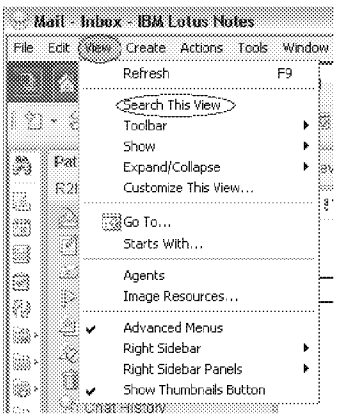
- ✓ Within the "Search Results" Folder, select *Actions > Folder > Create Folder* to create "Responsive" and "Nonresponsive" subfolders.

## Step 4. Perform Search for Emails

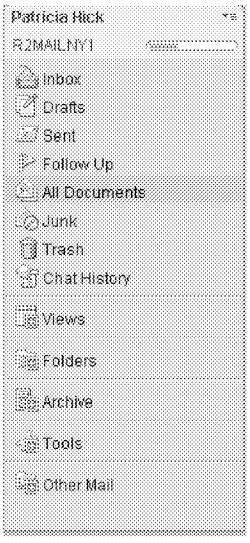
**NOTE: Make sure that your e-mail is indexed prior to conducting the search.** When indexing has completed, you should see a green ball ● and "Indexed" to the right of the search function.

If you do not see the search box:

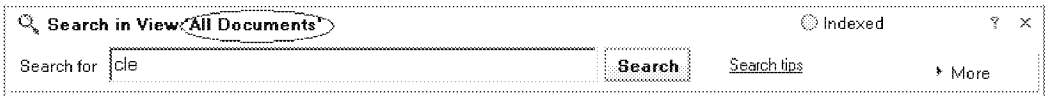
- ✓ Click *View > Search this View* from the menu bar at the top of your Notes screen.




- ✓ On the listings at the left side of your Inbox select *All Documents*. This will capture all potentially responsive documents, even if emails are stored in folders.

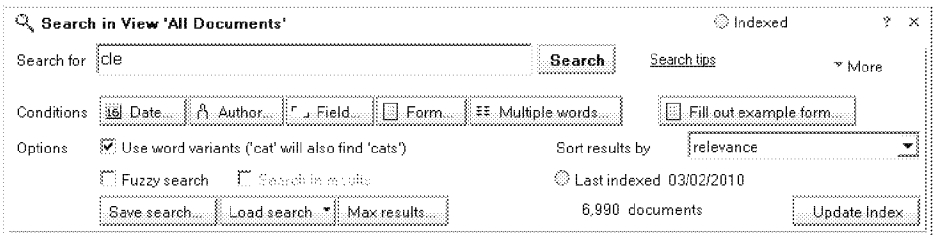


The "Search in View" will now indicate that the search will consider "All Documents."




✓ Click on **More** at the right side of the screen to reveal additional options.

The screen should now look like the snapshot below:




Clicking on the **Multiple words** box will allow you to choose up to eight words for your search.

✓ Enter the search terms provided in the Search Instructions and click **Search**. Your search results will appear below the Search window.

> Note: Lotus Notes has a search limit of 5,000 documents. If your search returns "5,000" documents, there are probably more potentially responsive emails that were not captured. You will need to do one of the following to address this issue:
>
> - Refine your research terms (talk with your POC prior to doing this)
> - Conduct multiple searches using fewer terms
> - Contact your local help desk to request removal of the search limit.

✓ Select ***Edit > Select All***, then click ***Actions > Folder > Move to Folder*** and select the "Search Results" Folder and click the **Add** button.

**Do NOT copy and paste search results into the folder.** This creates duplicates and will overwhelm future searches.

Repeat these steps above until you have searched for all relevant search terms and have deposited potentially responsive emails in the "Search Results" folder.

✓ Click **<Ctrl A>** to reveal the number of documents collected in the "Search Results" folder in the lower left of the Notes screen. Tip: Record this number so that you can later verify that you have transferred all documents from your Notes to the Collection Database.

Note: The "Search Results" folder will only contain an unduplicated collection of documents. Even if an email responded to multiple searches, it will only appear once in the folder.

**Step 5. Review Search Results for Responsiveness**

Once you have completed the search, you should review emails and attachments to make sure that they are actually responsive to the FOIA request. It is possible for a search to collect documents that use a search term in context that is outside the scope of the request and are therefore not responsive.

- ✓ On the left side of your in-box in Notes select *Folders > Search Results*
- ✓ If an item is clearly not responsive, select the document and sort into "Nonresponsive" subfolder. Sort responsive records into the "Responsive" subfolder. You will upload all search results into the collection database, but indicate to the document reviewer which records are nonresponsive.

  **Do NOT delete any items from folders.** Either follow the instruction above or drag and drop documents between folders.

**Step 6. Upload Responsive Search Results into Collection Database(s)**

After you have reviewed the records in Lotus Notes, you will need to copy them into the Collection Database(s). Depending on the number of records, you may need to copy them in several batches (of no more than 100); copying and pasting a large batch may also take several minutes.

- ✓ Open the "Responsive" and "Nonresponsive" subfolders in the "Search Results" folder and select *Edit > Select All* from the menu bar (at the very top left of your Notes screen)
- ✓ Select *Edit > Copy* from the menu bar
- ✓ Select *Edit > Deselect All* from the menu bar. Do NOT skip this step.
- ✓ Open the Collection Database by selecting the bookmark that you created in Step 2.
- ✓ Open the "**All Documents**" folder
- ✓ Select *Edit > Paste* from the menu bar at the very top left of your Notes screen

Repeat these steps until you have copied all of your search results from your e-mail to the Collection Database.

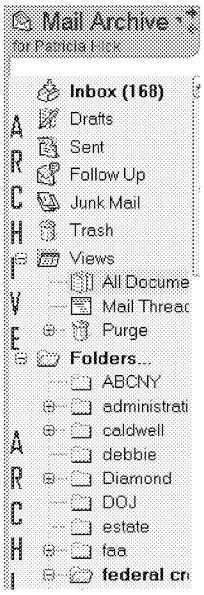
You will receive a dialog box confirming the number of items you pasted. This number should match the number of search results recorded in Step 4.

## Step 7. Repeat Search, Review, and Collection for Archived Emails

The search described above will not capture emails that were archived and deleted from the inbox. You will need to repeat Steps 1-5 for emails that you have saved in your Lotus Notes Archive.

- ✓ Access your Archive from your Notes inbox by clicking *Archive > R2 etc. Archive.*
- ✓ Repeat Step 1 to index your Archive.
- ✓ Repeat Step 2 to open the Collection Database.
- ✓ Repeat Step 3 to create a "Search Results" folder.

Before you begin the search, make sure that you are in the All Documents view in Archive, as shown below:




- ✓ Follow the directions in Step 4 to conduct the search(es) using the search terms provided.
- ✓ Repeat Step 5 to review the search results, if applicable.
- ✓ Repeat Step 6 to upload records to the Collection Database(s)

## Step 8. Search and Print EZ Record Emails

You will need to manually search ECMS for responsive emails that are not already captured in your Inbox and Archive search. Please visit the following site for further instructions: http://intranet.epa.gov/ecms/guides/search/

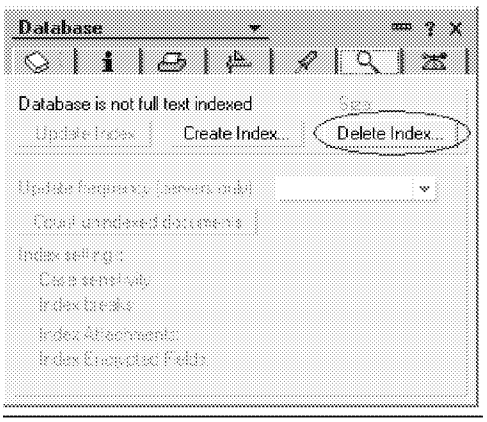
Any responsive emails should be printed and either provided to your FOIA coordinator in hard-copy form or scanned and uploaded/emailed in accordance with Search Instructions.

**Step 9. Delete Indexes**

Mailboxes that are indexed use substantially more space than an un-indexed mailbox, so you should remove the index once you have completed your search for records.

- ✓ Open your Lotus Notes Email Inbox
- ✓ On the menu bar in the upper left corner of your Notes screen select:

*File > Application > Properties* in Notes 8 > *Delete Index*




**Your Lotus Notes Email Collection is now complete. Please notify the Action Office/Contributing Office Point of Contact.**

# Access to Absent and Separated Employee Records

*This document provides additional guidance for the Action Office for custodians who have departed the agency or who are otherwise unable to conduct their own search.*

**Access to an Absent or Separated Employee's Email and Data**

If a potential custodian of responsive records is on scheduled leave from the Action Office or a Contributing Office during the time of the search, the Action Office must ensure that the employee's records are searched in their absence. The Office of Environmental Information has a procedure on accessing the email and electronic records of separated or absent employees.

To request access, the Action Office processing the request must send an email, requesting access, to the custodian's manager (or former manager, in the case of separated personnel). If the manager approves the request, they then forward the request, via email, to their Information Resources Management Branch Chief (IRM BC) or Information Management Official (IMO). If the IRM BC or IMO approves the request, they forward the request to OEI FILE ACCESS REQUEST@epa.gov.

The email requesting access should include the information in the table below. The email subject line should include the nature of the request (i.e. Access to email). Please note that access to the OEI File Access Request mailbox includes federal and contractor email staff necessary to support the request.

| **Table must be completed by the Approver (IRM BC or IMO) and submitted in the Email to OEI FILE ACCESS. Email Subject must include the nature of the request (i.e. email access)** | |
|---|---|
| Role | Name |
| Approver | John Doe (IMO, IRM BCs or their designee whose name has been provided as authorized approvers) |
| Mail Box Name<br>Employee's full name<br>Employee's LAN ID<br>Telephone number | Doe.Jane@epa.gov<br>Jane Any Doe<br>Jdoe<br>111-222-3333 |
| Person Receiving Access (Include email address) | Steven Jones (Jones.StevenT@epa.gov) |

| | |
|---|---|
| Access Needed for the Following Applications (as applicable): | o Legacy Notes<br>o Office 365 (Including OneDrive)<br>o Data Files (network drives, (F: and/or G:)(EZ Tech)<br>o HQ Voice mail files<br>o HQ VoIP Call logs<br>o Mobile device data<br>o Login Events (EZ Tech) |

Managers may request access to an absent or separated employee's email files (Legacy Notes and Office 365), data files contained on OneDrive or network drives, voice mail files, call logs, and mobile devices by contacting the Office of Environmental Information (OEI). Once the manager has received access to these files, the manager is responsible for manually searching these files. OEI will not perform searches, nor is OEI responsible for data contents of any files. Moreover, OEI will not sign affidavits pertaining to the search or acquisition of files.

The table below depicts the type of information available and the time limit for requesting access to the related data.

| **Electronic Activities** | **Content** | **Request Time Limit** |
|---|---|---|
| Legacy Notes | Emails, Calendars | Unlimited |
| Office 365 | Email, Calendar, OneDrive | 2/29/2013 - Forward |
| Data Files (network drives, (F: and/or G:) – EZ Tech Users | File and Folders | Unlimited |
| HQ Voice mail files | Voice mails | 20 days |
| HQ VoIP Call logs | Outbound call/inbound calls | 01/01/2014 - Forward |
| Mobile device data | Call Detail Reports (including text messages logs) | 7 years |
| Login Events – EZ Tech Users | Login activities | 30 days |

As each access request is completed, the Action Office requesting the information will be notified and any instructions, if necessary, provided through the IRM BC or IMO. A list of IRM BCs and IMOs, by office, is available at the "SIO Corner" Sharepoint site, accessible through the EPA Intranet.

# Quick Reference Guide: How to Save Text Messages

*This document offers guidance on how to forward text messages from a mobile device to the EPA email system. These instructions are originally located at: http://intranet.epa.gov/mobiledevices/pdf/Instructions-Saving-Text-Messages.pdf.*

EPA discourages the use of text messages for transmitting substantive (or non-transitory) federal records. (Wait, what is a "non-transitory" or "substantive" record?) If a substantive (or non-transitory) text message is sent or received on your government-issued mobile device, it must be saved into an EPA-approved records management system. If you follow the steps below, you can forward the text message into the EPA email system and then later save it as a record using EZ Email Records or another approved recordkeeping system. When forwarding the text message from the mobile device to the EPA email system, you must include contextual information such as the time, date, subject, and sender/recipient of the message. Please follow the instructions below to manage text messages that are substantive (or non-transitory) records.

**How to Forward Text Messages to Email from an iPhone**

1. Tap the "***Messages***" icon on the device.
2. Find the text message conversation that you need to save as a record.
3. Tap and hold one of the text messages in the conversation.
4. Tap the "***More***" option that appears above the text message.
5. Put a check mark in the circle beside any or all of the text messages that you want to save as records.
6. Tap the blue arrow icon in the lower right corner of the screen.
7. Type your EPA email address in the "***To***" field.
8. After the text message, enter contextual information about the message including: to, from, date, time, and a relevant subject, then tap "Send." For example, add "(To: Susan Employee, From John Worker, Date: 01.01.15, Time: 6:35 PM, Subject: Project Y)." Press ***"Send".***
9. After receiving the email containing the text message, follow the EZ Email Records process in Outlook to save the email as a record. After following these instructions, you may also notice that a copy of the message containing the contextual information created in step 8, appears in your list of messages in the Messages app on your phone.

**Note:** If you have problems forwarding text messages to email using the above instructions, please try the below options, starting with Option 1, below.

**Option 1:**

1. Tap the Settings App > Messages > Send & Receive
2. If your email address is listed with a checkmark next to it, tap on it to uncheck.
3. Exit out of Settings and try to forward a text message to your email. If you don't have an email listed or it still doesn't work, try Option 2.
   **Be sure to check your Junk Email folder to ensure it did not route there.*

**Option 2:**

1. Tap the Settings App > iTunes & App Store > Apple ID > Sign Out
2. Re-enter your Apple ID (work email address) and Apple ID password.
3. Exit out of Settings and try to forward a text message to your email.

**How to Forward Text Messages to Email from a Windows Phone**

1. On ***Start***, tap "***Messaging***", then tap the thread that contains the text message you want to save as a record.
2. Open the text message, press and hold the message to be forwarded, then click "***Forward***".
3. Type your EPA email address in the "***To***" field.
4. After the text message, enter contextual information about the message including: to, from, date, time, and a relevant subject, then tap . For example, add "(To: Susan Employee, From John Worker, Date: 01.01.15, Time: 6:35 PM, Subject: Project Y)."
5. After receiving the email containing the text message, follow the EZ Email Records process in Outlook to save the email as a record.

*Note*: This approach for saving text messages on a Windows phone can only be used for forwarding individual text messages. If multiple messages need to be stored as records, forward each message and the related contextual information to EPA's email system individually.

**Technical Assistance**

If you have questions about managing records on your mobile or portable devices, contact the Records Help Desk, and refer to the Frequent Questions about Mobile and Portable Devices, and Records for more information.

# FOIA Search Guide: Best Practices

*This document offers simple, take-away tips for conducting a search.*

As you oversee the search for records responsive to a FOIA request, keep in mind the following recommended best practices:

- ✓ Do NOT conduct a search for an improper request.
  Before you plan your search, make sure that the request "reasonably describes the records sought." If the request is overly broad, poses questions, or seeks records not yet in existence, contact the requester to modify the request.
- ✓ Document the process from start to finish.
  Any external communications that you have with the requester, as well as any notable intra-agency communication pertaining to the request, should be memorialized in writing. Documented changes to the request and any correspondence that you have with the requester should be uploaded to FOIAonline.
- ✓ Keep an eye on the clock.
  Unless you can identify "unusual circumstances," you will have 20 working-days to conduct a reasonable search and provide the requester with responsive records. Remember, you can stop the clock ***once*** to seek clarification from the requester, but remember to re-start the clock once the request is clarified and keep track of the amended due date on FOIAonline.
- ✓ Planning your search is essential.
  Before you begin your search, you should compile a search plan that identifies the relevant offices, repositories, and custodians. Do not forget about absent or former employees!
- ✓ Maximize the Centralized Search.
  OEI's Centralized Search will only capture records in EPA's Microsoft Office 365 system, including Outlook email/calendar and Skype/Lync Chats. As soon as you distribute the Search Instructions, remind custodians to transfer any potentially responsive records from, for example, mobile devices (e.g. text messages and photos) to Outlook Email so that they will be captured in the centralized search.
- ✓ Remember to Conduct a Defensible Search.
  Remind Custodians to search all locations where they are reasonably likely to find responsive records. This may include lesser-used locations, including CMS and external drives.
- ✓ Prepare for Collection.
  Once custodians complete their search, you will need to collect and review records. Consider using a cloud-based collection option, such as OneDrive, for the collection of documents that are not sourced from Lotus Notes and not captured in OEI's centralized search.

✓ When in Doubt, Ask.

The General Law Office's Information Law Practice Group, the FOIA Expert Assistance Team within the Office of General Counsel, the Office of Regional Counsel, if the matter concerns a Regional FOIA, and the National FOIA Program Office are available to assist you.

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# Proprietary Business Information (PBI) Case Tracking Standard Operating Procedures (SOP)

**PROPRIETARY BUSINESS INFORMATION CASE TRACKING**

A. Purpose:

a. Ensure proper tracking in FOIA Online of all Freedom of Information Act (FOIA) requests for records containing PBI.

B. Procedures:

**Headquarters Request where program withholds information under FOIA Ex. 4:**

1. Include the following language in the initial denial letter:

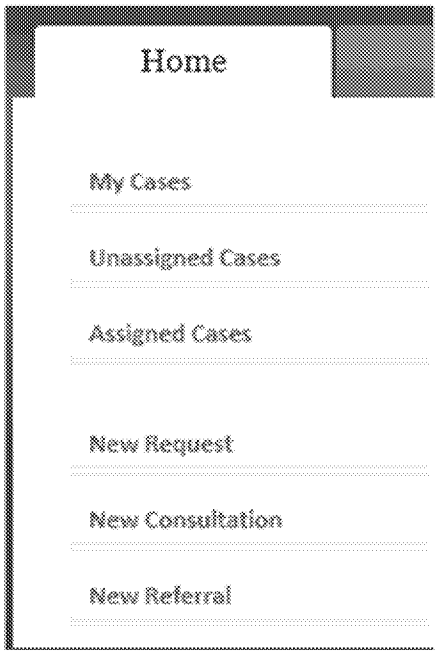
> The information withheld under Exemption 4 will be sent to the appropriate legal office to issue a final confidentiality determination. The appropriate legal office will contact you to confirm your continued interest in receiving a final confidentiality determination and provide you with a fee estimate, where appropriate. Therefore, you do not need to appeal the information withheld pursuant to Exemption 4. To the extent you would like to appeal any other issue, including any non-Exemption 4 withholding, you may appeal this response… [FOLLOWED BY APPEAL LANGUAGE]

2. Notify the National FOIA Office to create a PBI tracking number in FOIAonline:

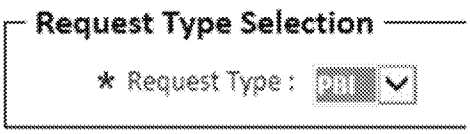
a. Email FOIA_HQ@epa.gov
b. Email Template:
Subject: PBI Case Tracking number for **[EPA-HQ-20XX-XXXXXX]**
Please create a PBI case tracking number for the following initial FOIA request:
Initial Request Number: **[EPA-HQ-20XX-XXXXXX]**
Requester Name: **[NAME]**
Requester Address: **[ADDRESS]**
Requester Email Address: **[EMAIL]**

3. National FOIA Office creates PBI case and assigns to OGC/GLO:

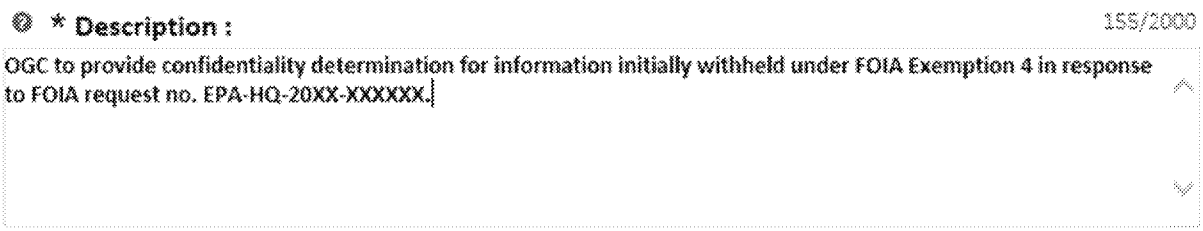
   a. Select "New Request"




   b. Agency and Submitted Date is pre-populated -> Select "Headquarters" as Sub-Agency
   c. Select "PBI" as Request Type:




   d. Fill in contact information as provided by program
   e. Processing Fees information pre-populated
   f. Fill in Description (OGC to provide confidentiality determination for information initially withheld under FOIA Exemption 4 in response to FOIA request no. EPA-HQ-20XX-XXXXXX.):




   g. Select Preview -> Submit

4. National FOIA Office assigns PBI Case to OGC

5. ILPG Appeal Team Leader or Assistant General Counsel will assign PBI Case to ILPG Attorney

6. ILPG Attorney is responsible for:

a. Contacting requester to:

1. Confirm continued interest in receiving a final confidentiality determination;
2. Closing out PBI request if requester fails to confirm interest or is not interested in receiving a final confidentiality determination;
3. Providing an estimate of fees where appropriate;
4. Closing our PBI request if requester fails to assure payment of fees;
5. Notifying program office of need to request substantiation from affected business(es) and provide program recommendation where appropriate;
6. Issue final confidentiality determination;
7. Provide updated response/records to requester;
8. Close our PBI appeal.

**Regional Request where regional program withholds information under FOIA Ex. 4:**

1. Include Initial Denial language in decision:

   The information withheld under Exemption 4 will be sent to the appropriate legal office to issue a final confidentiality determination. The appropriate legal office will contact you to confirm your continued interest in receiving a final confidentiality determination and provide you with a fee estimate, where appropriate. Therefore, you do not need to appeal the information withheld pursuant to Exemption 4. To the extent you would like to appeal any other issue, including any non-Exemption 4 withholding, you may appeal this response… [FOLLOWED BY APPEAL LANGUAGE]

2. Notify the Region FOIA Coordinator to create a PBI tracking number in FOIAonline:

   a. Email FOIA_HQ@epa.gov

   b. Email Template:

   Subject: PBI Case Tracking number for **[EPA-RX-20XX-XXXXXX]**

   Please create a PBI case tracking number for the following initial FOIA request:

   Initial Request Number: **[EPA-RX-20XX-XXXXXX]**

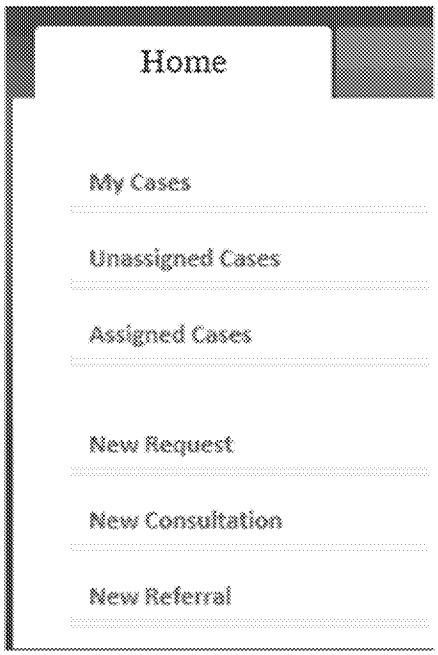
   Requester Name: **[NAME]**

   Requester Address: **[ADDRESS]**

Requester Email Address: **[EMAIL]**

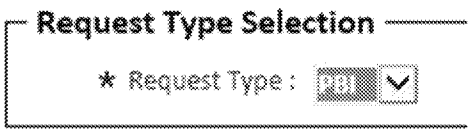
3. Region FOIA Coordinator creates PBI case and assigns to appropriate ORC contact

   a. Select "New Request"




   b. Agency and Submitted Date is pre-populated -> Select appropriate Region as Sub-Agency

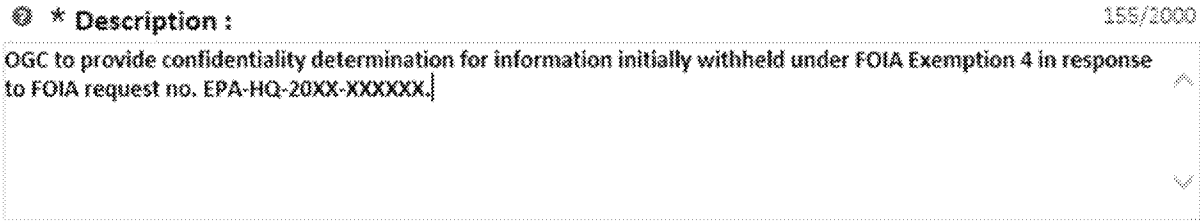
   c. Select "PBI" as Request Type




   d. Fill in contact information as provided by program

   e. Processing Fees information pre-populated

f. Fill in Description (ORC to provide confidentiality determination for information initially withheld under FOIA Exemption 4 in response to FOIA request no. EPA-RX-20XX-XXXXXX.)




g. Select Preview -> Submit

# Substantiation Request Letter Sample A- Generic CBI Substantiation, FOIA

Approved OMB 2020-0003
Approval expires 05-31-2020

**Request for Substantiation in Response to a Request Under the Freedom of Information Act**

**By Certified U.S. Mail; Return Receipt Requested**

(*Name, title, and address of the [designated] representative of the affected business*)

Re: Freedom of Information Act (FOIA) Request [INSERT FOIA #]

Dear [*Addressee*]:

The U.S. Environmental Protection Agency ("EPA" or "Agency") has received a request under the FOIA for certain records [*if submitted by the business whose information it is:* that you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* in EPA's possession] pertaining to [*a detailed description of the information or specific list of documents that is/are the subject of the advance or final confidentiality determination*]. [*If information has been claimed as CBI:* You have claimed (all *or* part) of this information as confidential business information ("CBI").] [*If no claim has been made:* In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [*if submitted by the business whose information it is:* the information you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* this information in EPA's possession] is confidential business information ("CBI").] Under the EPA regulations at 40 C.F.R. Part 2, Subpart B, the FOIA request has been initially denied to afford you an opportunity to provide comments to [*If no claim has been made:* claim this information as CBI and] substantiate your claim(s) as described below.

The purpose of this letter is to notify you that the EPA (*appropriate legal office*) will be making a(n) (*advance* or *final*) confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that

you claim to be CBI. Please note that if a page, document, group, or class of documents claimed by you to be CBI contains a significant amount of information which (*appropriate legal office*) determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed to the requester without further notice to you.

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is

voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

10. If you believe any information to be (a) trade secret (s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret (s).

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

[*For contract-related CBI:* Enclosed is the EPA Class Determination 1-95 entitled, Confidentiality *of Certain Business Information Submitted by Contractors and Prospective Contractors,* which addresses the treatment of different types of information related to contracts. You may consider reviewing Class Determination 1-95 as you develop your response.]

[*If applicable to another EPA class determination*: Enclosed is the EPA Class Determination [*class determination number*] entitled, [*name of the class determination*], which addresses the treatment of [*description of class determination*]. You may consider reviewing Class Determination [#] as you develop your response.]

Please note that *you bear the burden of substantiating your confidentiality and trade secret claim(s).* Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your comments must be postmarked or hand delivered to this office, or emailed to [*email address*], by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved without the consent of the FOIA requester. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call me at [*telephone number*].

Sincerely,

[NAME]
[Title]
[Office Name and Address]

[Enclosure]

# Substantiation Request Letter Sample B-Generic CBI Substantiation, Non-FOIA

Approved OMB 2020-0003
Approval expires 05-31-2020

**Request for Substantiation from an Affected Business**

**By Certified U.S. Mail; Return Receipt Requested**

[*Name, title, and address of the [designated] representative of the affected business*]

Re: _____

Dear [*Addressee*]:

The U.S. Environmental Protection Agency ("EPA" or "Agency") is seeking to determine the entitlement to confidentiality of [*description of the information that is the subject of the advance or final confidentiality determination*] [*if submitted by the business whose information it is:* that you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* in EPA's possession.] [*If information has been claimed as CBI:* You have claimed (all *or* part) of this information as confidential business information ("CBI").] [*If no claim has been made:* In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [*if submitted by the business whose information it is:* the information you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* this information in EPA's possession] is confidential business information ("CBI").]

The purpose of this letter is to notify you that the EPA [*appropriate legal office*] will be making a(n) [advance *or* final] confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group or class of documents claimed by you to be CBI contains a significant amount of information which our [*appropriate legal office*] determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed without further notice to you.

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

[*For contract-related CBI:* Enclosed is the EPA Class Determination 1-95 entitled, Confidentiality *of Certain Business Information Submitted by Contractors and Prospective Contractors,* which addresses the treatment of different types of information related to contracts.

You may consider reviewing Class Determination 1-95 as you develop your response.]

[*If applicable to another EPA class determination*: Enclosed is the EPA Class Determination [*class determination number*] entitled, [*name of the class determination*], which addresses the treatment of [*description of class determination*]. You may consider reviewing Class Determination [#] as you develop your response.]

Please note that *you bear the burden of substantiating your confidentiality and trade secret claim(s).* Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your comments must be postmarked or hand delivered to this office, or emailed to [*email address*], by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call me at [*telephone number*].

Sincerely,

[NAME]
[TITLE]
[Office Name and Address]

[Enclosure]

# CBI Substantiation Request Letter Sample C- FIFRA, FOIA

OMB 2020-0003
Expires: 05-31-2020
Inert Ingredients

**Request for Substantiation from an Affected Business**

**By Certified U.S. Mail; Return Receipt Requested**

[*Name, title, and address of the [designated] representative of the affected business*]

RE: Confidential Business Information Determination

Dear [*Addressee*]:

The U.S. Environmental Protection Agency ("EPA") Office of Pesticide Programs has received a request under the FOIA for certain records [*if submitted by the business whose information it is:* that you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* in EPA's possession] pertaining to [*a detailed description of the information or specific list of documents that is/are the subject of the advance or final confidentiality determination*]. [*If information has been claimed as CBI:* You have claimed (all *or* part) of this information as confidential business information ("CBI").] [*If no claim has been made:* In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [*if submitted by the business whose information it is:* the information you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* this information in EPA's possession] is confidential business information ("CBI").] Under the EPA regulations at 40 C.F.R. Part 2, Subpart B, the FOIA request has been initially denied to afford you an opportunity to provide comments to [*If no claim has been made:* claim this information as CBI and] substantiate your claim(s) as described below.

The purpose of this letter is to notify you that the EPA Office of General Counsel will be making a(n) [advance *or* final] confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that

you claim to be CBI. Please note that if a page, document, group, or class of documents claimed by you to be CBI contains a significant amount of information which the Office of General Counsel determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed to the requester without further notice to you.

1. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

4. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

5. Is the information contained in any publicly available material such as promotional publications, annual reports, articles, etc.? Is there any means by which a member of the public could obtain access to the information?

6. For each category of information claimed as confidential, discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is "voluntarily submitted" as defined at 40 C.F.R. § 2.201(i)? If so, explain why and how disclosure would tend to lessen EP A's ability to obtain similar information in the future.

8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality and trade secret claim(s) pursuant to 40 CFR § 2.208(e). Generalize or conclusory allegations will be given little or no weight in EPA's determination on the confidentiality of information you claim to be CBI.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar

designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Your reply can be mailed to the following address:

Or your reply can be delivered to the following address:

Your comments must be postmarked or hand-delivered by the 15th working day after your receipt of this letter. If you intend to submit timely comments, please notify by phone at [TELEPHONE NUMBER], by email at or by mail at the address above. Failure to submit timely comments will be regarded as a waiver of your confidentiality claim and EPA will release the information. You may request an extension of the 15-day deadline. Except in extraordinary circumstances, no extension will be granted without the permission of the requestor.

Should you have any questions in this matter, please contact [CONTACT NAME].

Sincerely,

[NAME]
[TITLE]

Enclosures

# CBI Substantiation Request Letter Sample D- FIFRA, Non-FOIA

OMB 2020-0003
Expires 05-31-2020

**Request for Substantiation from an Affected Business**

**By Certified U.S. Mail; Return Receipt Requested**

[*Name, title, and address of the [designated] representative of the affected business*]

Re: Freedom of Information Act Request [INSERT NUMBER]

Dear [*Addressee*]:

The U.S. Environmental Protection Agency ("EPA") Office of Pesticide Programs is seeking to determine the entitlement to confidentiality of [*description of the information that is the subject of the advance or final confidentiality determination*] [*if submitted by the business whose information it is:* that you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* in EPA's possession.] [*If information has been claimed as CBI:* You have claimed (all *or* part) of this information as confidential business information ("CBI").] [*If no claim has been made:* In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [*if submitted by the business whose information it is:* the information you submitted to the EPA] [*if submitted by an entity other than the business whose information it is:* this information in EPA's possession] is confidential business information ("CBI").]

The purpose of this letter is to notify you that the EPA Office of General Counsel will be making a(n) [advance *or* final] confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group, or class of documents claimed by you to be CBI contains a significant amount of information which the Office of General Counsel determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a

confidentiality claim and substantiated as such in your response to this letter may be disclosed to the requester without further notice to you.

Questions 1-7 must be answered with respect to any confidentiality claims pertaining to the enclosed product chemistry information.

1. What value can your competitors derive from knowing the identity, percent by weight, certified limits, or parent process of each impurity? Is this impurity unique to your manufacturing process? Why would your competitors find this impurity preferable over whatever impurity results from their equivalent process?

2. Does published analytical methodology exist that could identify and quantify this impurity? If so, why do you believe that your competitors have not already performed such analysis?

3. What value can your competitors derive from knowing the description of materials used to produce the product, the description of the production process, or the preliminary production analysis? Why would your competitors find these processes preferable over their equivalent processes?

Questions 4-7 must be answered with respect to any confidentiality claims pertaining to the inert ingredients. Each question must be answered separately with respect to each inert ingredient:

4. What is the value that this inert ingredient brings to the product formulation? What characteristics of this ingredient are unique such that competitors might prefer it over whatever ingredients perform the equivalent function in their formulations? Is the use of this ingredient limited to your product, or does it have broader applications?

5. Why is it unlikely that your competitors have not already discovered the value of this ingredient? Are you aware of the use of this ingredient as an inert by your competitors?

6. To your knowledge, has the use of this inert ingredient in a pesticide been disclosed in a patent? If so, how would disclosure of the identity of the ingredient assist your competitors beyond what is already available through a patent?
7. Can the identity of this inert ingredient be determined by product sample analysis? If so, why do you believe that your competitors have not already performed such analysis?

Question 8 must be answered with respect to any confidentiality claims pertaining to the enclosed records:

8. For each category of information claimed as confidential, discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

Questions 9 through 15 must be answered for each type of information that you claimed as confidential:

9. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

10. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question number 9?

11. What measures have you taken to protect the information? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose it further? If so, why should it still be considered confidential?

12. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

13. Is the presence of this information disclosed in any publicly available material such as Material Safety Data Sheets, promotional publications, annual reports, articles, etc.? Is there any means by which a member of the public could obtain access to the information?

14. Do you assert that the information is "voluntarily submitted" as defined at 40 CFR § 2.201(i)? If so, explain why, and how disclosure would tend to lessen EPA's ability to obtain similar information in the future.

15. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality and trade secret claim(s) pursuant to 40 CFR § 2.208(e). Generalize or conclusory allegations will be given little or no weight in EPA's determination on the confidentiality of information you claim to be CBI.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Be advised that information described by Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") section 10(d)(l)(A), (B), and (C) is not automatically entitled to confidential treatment. Disclosure of such information would only be prohibited, by FIFRA section (b), if the information is eligible for confidential treatment as described by 40 CFR 2.208.

Your reply can be mailed to the following address:

Or your reply can be delivered to my attention at the following address:

Your comments must be postmarked or hand-delivered by the 15th working day after your receipt of this letter. If you intend to submit timely comments, please notify by phone: [TELEPHONE], by email: [EMAIL ADDRESS], or by mail at the address above. Failure to submit timely comments will be regarded as a waiver of your confidentiality claim and EPA will release the information. You may request an extension of the 15-day deadline. Except in extraordinary circumstances, no extension will be granted without the permission of the requester.

Should you have any questions in this matter, please contact [CONTACT PERSON].

Sincerely,

[NAME]
[TITLE]

Enclosures

# CBI Substantiation Request Letter Sample E- TSCA

OMB 2020-0003
Approval expires 05-31-2020

**By Certified U.S. Mail; Return Receipt Requested**

**MAY CONTAIN CONFIDENTIAL BUSINESS INFORMATION**

[*Technical Contact Name, title, Company, and Address*]

Re: Notice of Review and Request for Substantiation of Confidential Business Information Claim(s)

Document Type:
Document Identifying Number:
Date of Submission:
Type of claim(s) to be reviewed: ☐ specific chemical identity
☐ all other CBI claims

Dear [*Addressee*]:

Under the Toxic Substance Control Act (TSCA) most confidential business information (CBI) claims for chemical identity and at least 25% of other CBI claims are subject to a review and final determination. TSCA section 14(g). 15 U.S.C. § 2613(g).

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of General Counsel will be making a final confidentiality determination concerning information you have claimed as CBI, as identified above. All non-exempt CBI claims must be substantiated.

If you feel that some or all of the information checked above is entitled to confidential treatment, you must substantiate as described below with specific reference to those portions of the information you consider confidential.

Note that TSCA section 14(c)(2) generally exempts certain information types from the requirement to substantiate. 15 U.S.C. § 2613(c)(2). *See* EPA webpage [INSERT WEBPAGE] for more guidance on information exempt from substantiation. To the extent that you believe the information that you have claimed as CBI is one of these exempt information types, you may make this assertion in your response by identifying the specific section 14(c)(2) exemption, in lieu of substantiating the CBI claim for that information. If the Agency disagrees with this assertion, you may be asked to provide additional information to support your claim.

**Substantiating a CBI Claim.**

There are two different sets of substantiation questions for CBI claims: (I) questions for all CBI claims in the submission; and (II) questions for chemical identity CBI claims. Please use the appropriate question set. In some instances, your TSCA submission may contain both types of CBI claims or a CBI claim may require completing both sets of substantiation questions. For example, if you assert a CBI claim to protect a chemical substance's identity, then you must answer both question sets. EPA has identified the appropriate question set(s) via the checkboxes at the top of this letter. In some instances, for example TSCA section 8(a) Chemical Data Reporting (CDR) Rule submissions, you may have already provided up-front substantiations for some of the CBI claims. If you have already substantiated your CBI claim at the time of submission, please refer to or preferably physically attach your substantiation to your response to this letter.

Note also that the providing of incorrect information in this substantiation request may be a failure to comply with TSCA, specifically 15 U.S.C. § 2614.

## I. REQUIRED FOR ALL CBI CLAIMS.

**If you are asserting ANY information in the submission as CBI, please answer the following questions.**

In supporting your CBI claim(s), please be specific by page, paragraph, sentence, or by data element when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI.

In some cases, it may be appropriate to group the information into a class of information rather than responding to each item claimed as CBI. *See* EPA webpage [INSERT WEBPAGE] for suggested approaches to providing substantiations of materials grouped. For any information that is not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter, it shall be determined that you have waived your CBI claim, pursuant to 40 C.F.R. § 2.205(d).

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your substantiation response to these questions will be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

A. Do you believe that any of the information claimed as CBI is exempt from substantiation pursuant to TSCA section 14(c)(2)[1]? Yes/No.

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[1] TSCA Section 14(c)(2) states:

If you answered yes, please identify the information, provide the specific exemption and answer no further questions related to that information.

If you answered no, please respond to the questions below.

B. Will disclosure of the information likely result in substantial harm to your business competitive position? Yes/No.

If you answered yes, please describe with specificity the substantial harmful effects that would result to your competitive position if the CBI information is made available to the public. In your answer, explain the causal relationship between disclosure and any resulting substantial harmful effects. Consider in your answer such constraints as capital and marketing cost, specialized technical expertise, or unusual processes and your competitor's access to your customers.

C. To the extent you have disclosed information to others (both internally and externally), what precautions has your business taken? Please identify any measures or internal controls your business has taken to protect the information claimed as confidential.

1. Non-disclosure agreement required prior to access. Yes/No
2. Access is limited to individuals with a need-to-know. Yes/No
3. Information is physically secured (e.g. locked in room or cabinet) or electronically secured (encrypted, password protected, etc.). Yes/No
4. Other internal control measure(s). If so, please explain.

D. Does the information claimed as confidential appear in any public documents, including (but not limited to) safety data sheet, advertising or promotional material, professional or

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**(2) Information generally not subject to substantiation requirements**

Subject to subsection (f), the following information shall not be subject to substantiation requirements under paragraph (3):

(A) Specific information describing the processes used in manufacture or processing of a chemical substance, mixture, or article.

(B) Marketing and sales information.

(C) Information identifying a supplier or customer.

(D) In the case of a mixture, details of the full composition of the mixture and the respective percentages of constituents.

(E) Specific information regarding the use, function, or application of a chemical substance or mixture in a process, mixture, or article.

(F) Specific production or import volumes of the manufacturer or processor.

(G) Prior to the date on which a chemical substance is first offered for commercial distribution, the specific chemical identity of the chemical substance, including the chemical name, molecular formula, Chemical Abstracts Service number, and other information that would identify the specific chemical substance, if the specific chemical identity was claimed as confidential at the time it was submitted in a notice under section 2604 of this title.

trade publication, or any other media or publications available to the general public? Yes/No.

If you answered yes, please explain why the information should nonetheless be treated as confidential.

E. Does the information claimed to be CBI contain (a) trade secret(s)[2] ? Yes/No

If yes, please explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

F. If you assert a claim of confidentiality that is less than 10 years (see TSCA section 14(e)(1)(B)), then please indicate the number of years (between 1-10 years) or specific date of which the claim is withdrawn.[3]

G. Has EPA, another federal agency, or court made any confidentiality determination regarding information associated with this substance? Yes/No.

If yes, please explain the outcome of that determination and provide EPA with a copy of the previous confidentiality determination or any information that will assist the Agency in identifying the prior determination.

## II. REQUIRED FOR ONLY CHEMICAL IDENTITY CBI CLAIMS.

**If you are claiming a specific chemical identity as CBI, please answer the additional following questions.** If you are not substantiating a chemical identity CBI claim, then you do not need to respond to the questions below.

A. Is the chemical substance on the confidential portion of the TSCA Inventory? Yes/No.

B. Commerce:
   1. Has the chemical substance (or mixture) been offered for commercial distribution? Yes/No.

   2. Is the chemical substance known to be in U.S. commerce? Yes/No.

   If you answered yes, please explain why the information should nonetheless be treated as confidential.

C. Disclosure of the specific chemical name would release:

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[2] "Trade secret" is defined as "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." Pub. Citizen Health Research Grp. v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

[3] Information with withdrawn CBI claims will be made available to the public without further notice.

1. Confidential process information. Yes/No.
2. Confidential portion of a mixture information. Yes/No.

If you answered yes to either question, please explain

**Asserting a CBI claim in your substantiation response.**

Businesses may claim their substantiation response as CBI. Information claimed as confidential should be clearly marked by bracketing, circling, or underlining. All pages containing such information must also be stamped "CONFIDENTIAL BUSINESS INFORMATION" or with similar designation in order to assert a confidentiality claim. Care should be taken to ensure that these markings do not obscure the text.

If you claim your substantiation response as CBI, you must include the following statement in the submission.

> I hereby certify to the best of my knowledge and belief that all information entered on this form is complete and accurate.
> I further certify that, pursuant to 15 U.S.C. § 2613(c), for all claims for confidentiality made with this submission, all information submitted to substantiate such claims is true and correct, and that it is true and correct that
> (i) My company has taken reasonable measures to protect the confidentiality of the information;
> (ii) I have determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;
> (iii) I have a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of my company; and
> (iv) I have a reasonable basis to believe that the information is not readily discoverable through reverse engineering.
>
> Any knowing and willful misrepresentation is subject to criminal penalty pursuant to 18 U.S.C. § 1001.

**Timely Responses and Postal Requirements**

Your substantiation response must be postmarked or hand delivered to this office **by the 15th working day after your receipt of this letter**. While it is anticipated that there will be a means for sending these to the Agency electronically in the future, at this point substantiations should be sent via US Mail or courier.

**Filings should be directed to the below address.**

TSCA Confidential Business Information Center (7407M)
WJC East; Room 6428; Attn: TSCA CBI Substantiations
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

Courier Deliveries:

U.S. EPA
Office of Pollution Prevention and Toxics
Confidential Business Information Center (CBIC)
Attn: TSCA CBI Substantiations
1201 Constitution Avenue, NW
WJC East; Room 6428
Washington, DC 20004-3302
(202) 564-8930

You may seek an extension of time to submit your substantiation response to this office, but the request must be made before the end of the 15-day period. Requests for an extension may be directed to Ms. Quoc Nguyen, Office of General Counsel, Nguyen.Quoc@epa.gov.

**Failure to timely submit your substantiation response will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.**

Should you have any questions concerning this matter, please contact Mr. Scott Sherlock at (202) 564-8257 or Sherlock.Scott@epa.gov; or Ms. Jessica Barkas at (202) 250-8880 or Barkas.Jessica@epa.gov.

Sincerely,

[NAME]
[TITLE]
[Office Name and Address]

# OGC Relativity Guidance

*Use this guidance to familiarize yourself with the Relativity platform, including how to redact documents. Remember that before you can use Relativity for the first time, you need to contact EZ-tech (or technical support for your office) to install the Relativity Web Viewer Plugin.*

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## ONLINE RESOURCES

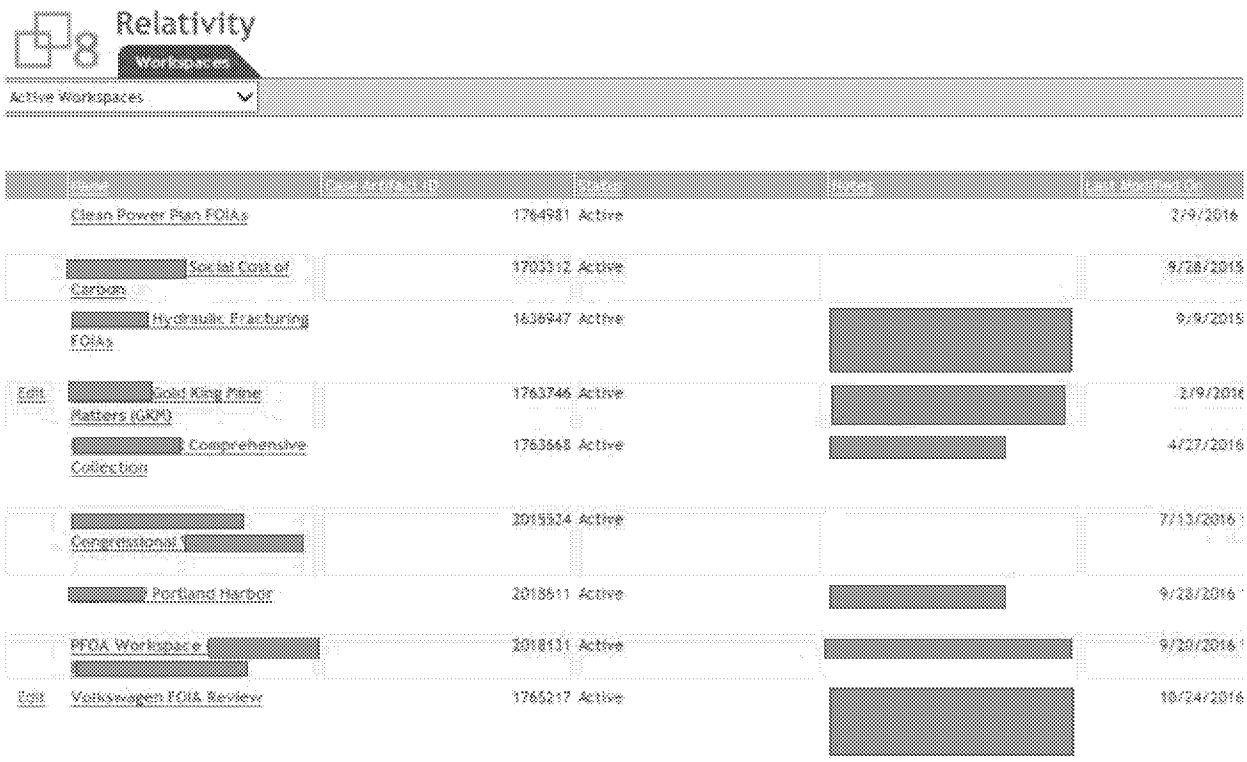
EPA uses Relativity version 8.2. There are a number of video trainings and other resources available here: https://www.kcura.com/relativity/ediscovery-resources/training/. Below are some tutorials that you may find useful.

1. Getting Started (3:41): https://www.kcura.com/relativity/ediscovery-resources/training/on- demand/getting-started/
2. Redactions and Annotations (6:46): https://www.kcura.com/relativity/ediscovery- resources/training/on-demand/adding-redactions-and-annotations-8-2/
3. Coding and Tagging Documents (5:15): https://www.kcura.com/relativity/ediscovery- resources/training/on-demand/coding-and-tagging-documents/

4. Reviewer Training (36:33): https://www.kcura.com/relativity/ediscovery-resources/training/on- demand/reviewer-training/

## SIGNING IN, FINDING YOUR WORKSPACE

If you are a first-time user, your sign in credentials will be emailed to you along with a link to EPA's Relativity viewer. It is a good idea to save or bookmark this link. If you have password issues or cannot find the link, email your case manager. Once you sign in, you will see the workspace list. Click on the name of your case to enter your workspace.




(sample screenshot of a Workspace List, some information removed)

## BATCHES

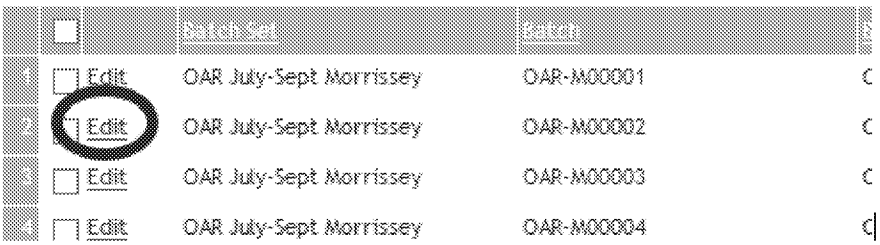
Documents are organized into groups called batches. To review documents, you must have a batch assigned to you. No one else will work on documents in your batch while they are assigned to you. To check out a batch, follow the instructions below. If you are done working, your batch will remain assigned to you unless you check it back in, even if you sign out of Relativity and sign back in later.

1. At the top of your screen, you will see tabs. Every database is different, but you will likely have a *Documents* tab and a *Review Batches* tab. Click the *Review Batches* tab.

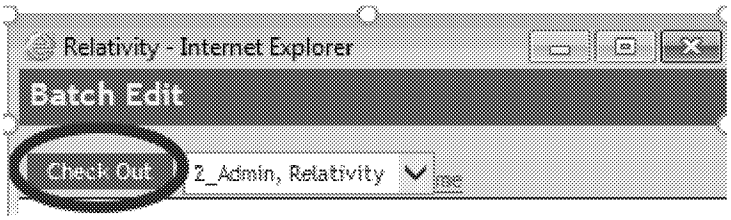
2. This will bring you to a list of batches. There will be several fields of information displayed in the columns.

    a. The *Batch Status* column will tell you whether a batch has been completed, is in progress, or if the field is blank, the batch is open and may be checked out.
    b. If a batch is assigned to a reviewer, their name will be displayed in the *Assigned To* column.
    c. The columns should display how many documents have been reviewed in a batch as well as the total size of the batch.

3. To check a batch out, look to the left of the screen. Next to the batch names, there will be a blue hyperlink *Edit* button. Once you have selected your batch, click this edit button to begin the checkout process.

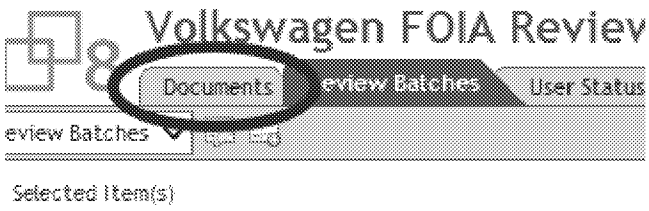



4. Click the "Check Out" button to check the batch out to yourself.

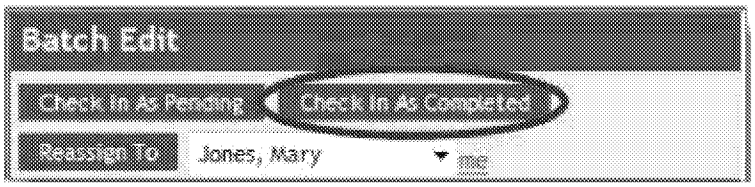



5. Once a batch is checked out, you will notice that it is assigned to you in the *Assigned To* column.

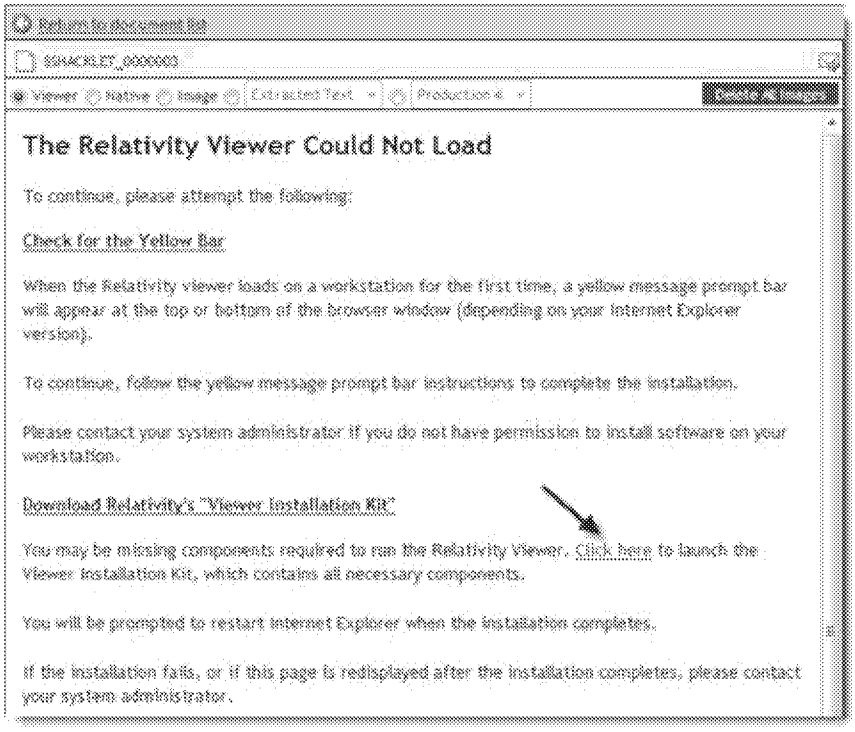
6. To view the documents in the batch you have checked out, you must look again to the tabs at the upper left of your screen. Click back to the documents tab to view the documents.




7. Follow the same steps to check a batch back in. (Go to the batches tab, find your batch, press the *Edit* button). You may check the batch back in as *Pending* if it is not complete. But if all documents have been reviewed, check it back in as *Completed*.



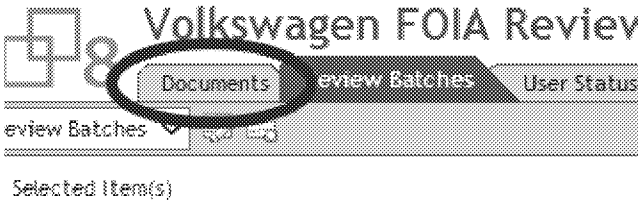

# INSTALLING THE WEB VIEWER



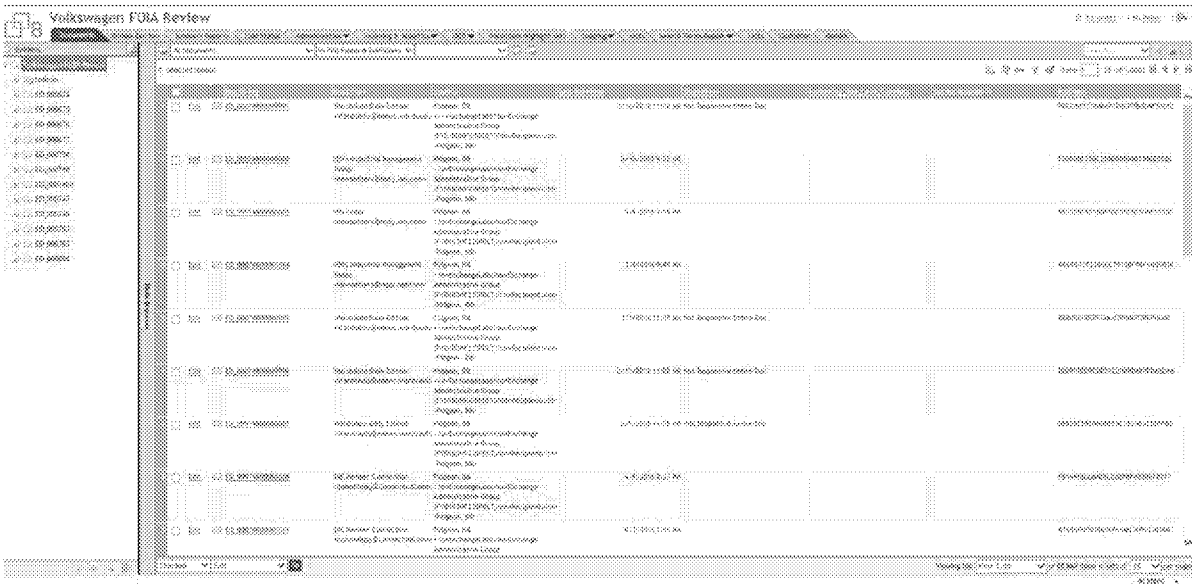

If this is the first time you are using Relativity on your machine, you will likely need to install a plugin before being able to view documents. If you are prompted with the below error or a similar message when you try to open a document, then you will need someone with administrator rights to download the Relativity Viewer and install it. Call your technical support line and ask for assistance installing the Relativity Viewer plugin. Your technician will be able to remotely download and install the plugin, usually in a matter of minutes. This should only need to be done once.

# OPENING AND VIEWING A DOCUMENT

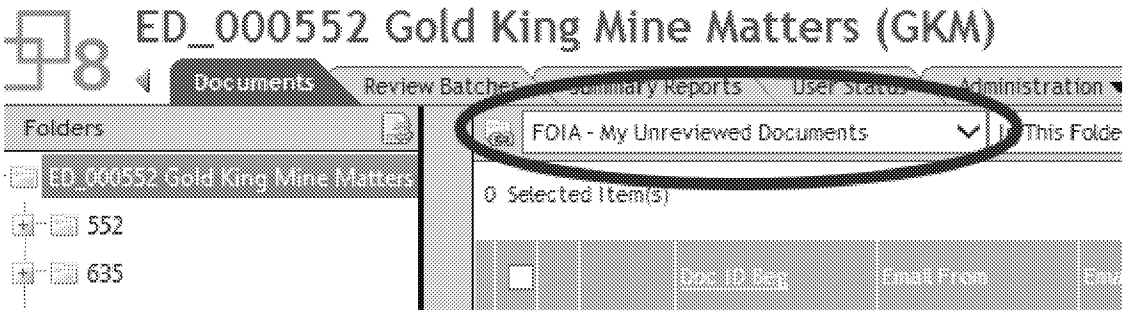
1. Make sure you are in the *Documents* tab.



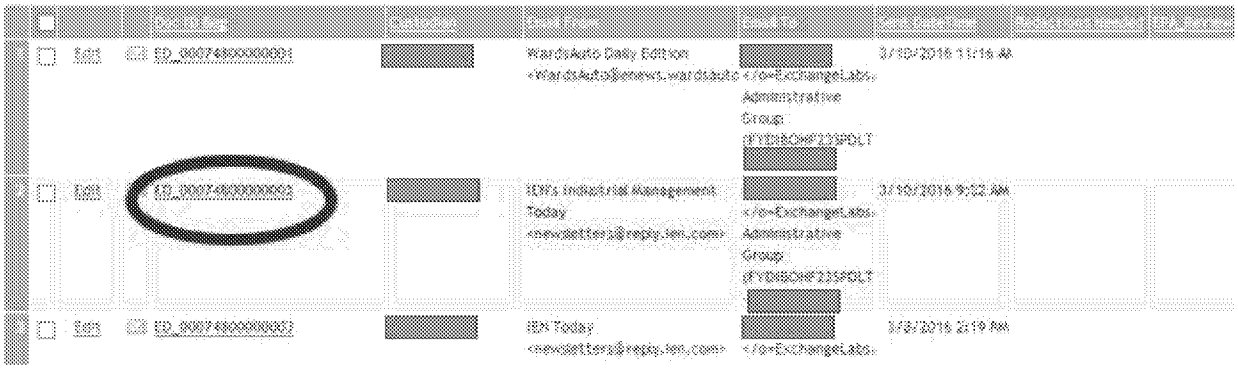

2. Your screen should look something like this:



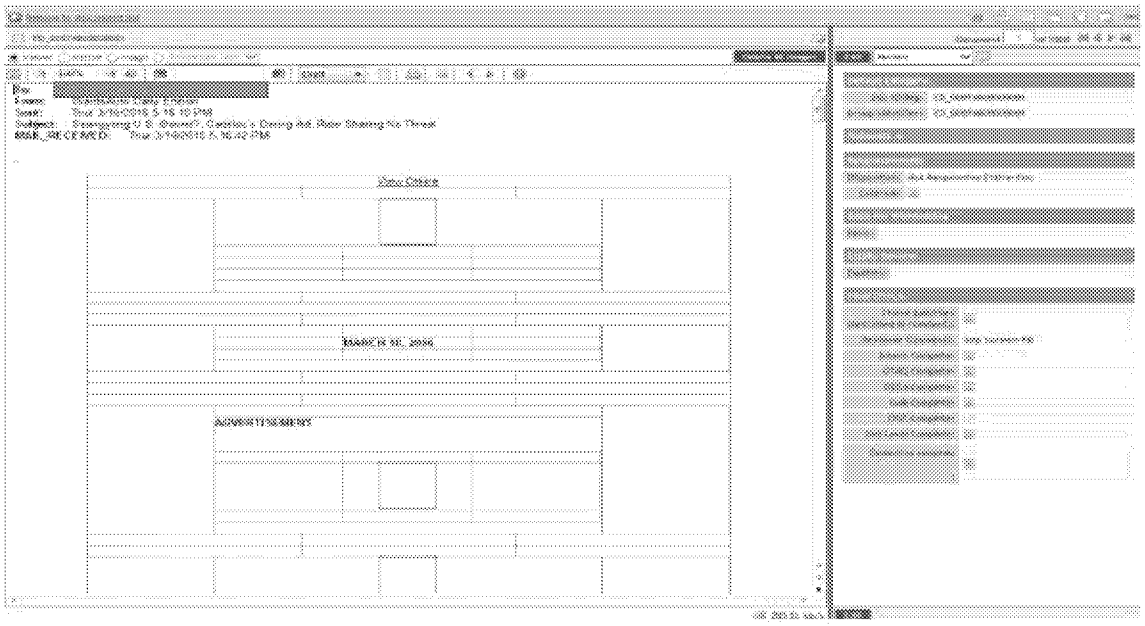

3. Look at the drop down menu towards the upper left of your screen. It will likely say "All Documents" or "unreviewed documents" or have similar choices. Your case manager should give you guidance as to what view to use, or they may limit your access to a single useful view.



4. You will see a list of documents with columns of information. One of the leftmost columns will contain links to the documents themselves. Click the blue hyperlink Doc ID number of the document you would like to open.



5. Opening a document will take you to the reviewer interface, it should look like this:



6. You should have access to three views depending on the type of document you are looking at and how it has been processed. To change to a different view, click the radial button.

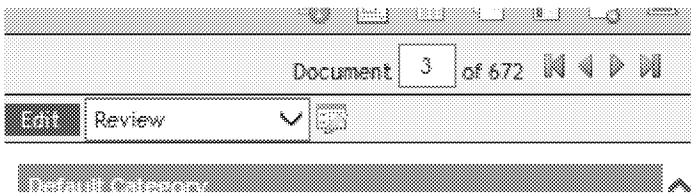
   a. Viewer Mode: Default view which contains the rendered version of the native file. This view will display the entire content of the document in one continuous view. If persistent highlighting is used, certain terms may be

highlighted to aid in your review.

b. Native Mode: Clicking on the native viewer will open the file in a separate window in its native form. If you are looking at an email, it will open the file in outlook, if you are looking at a spreadsheet, excel will open. This can be useful for certain file types, but should generally be avoided.

c. Image Mode: This view will only be available if the document set you are working with has been processed to be "imaged." If you need to use image mode but your documents are not imaged, talk to your case manager. Image mode shows you the document as it will be produced to the requester. The document may contain several pages that you will need to click through. This is the view you will use to make redactions.

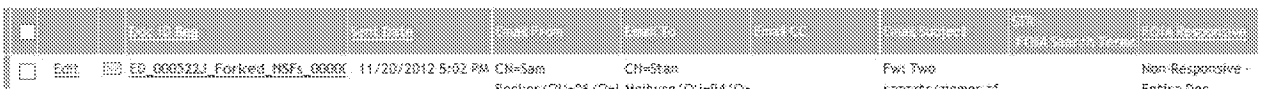
7. To move on to the next document in your list automatically, or back to a previous document, use the navigation arrows in the upper right corner of your screen.



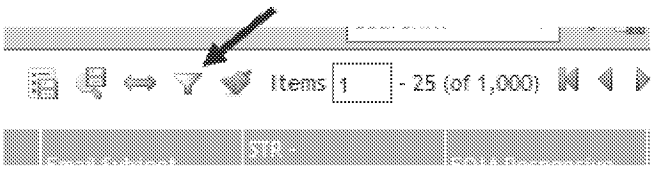

8. To return to your document list from a document view, look to the upper left of your screen and select *Return to document list*.

## SORTING AND FILTERING DOCUMENTS

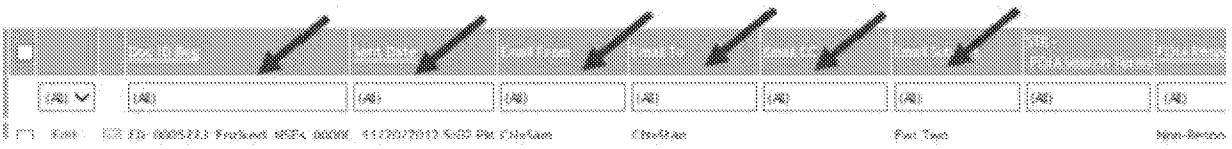
1. Your document list should have several columns. If a column title is underlined, like *Sent Date* is in the image below, you can slick on the title and your documents will be sorted by that column.



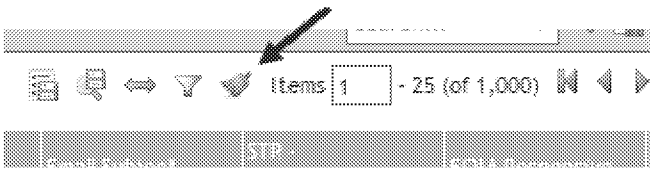

2. Clicking on the filter icon above your document list will allow you to filter the documents you are viewing. For example, you could limit your view to only documents from a particular sender.



3. Text boxes will appear below the headings of each column. Type the terms you want to use to filter in the text box of the relevant column.

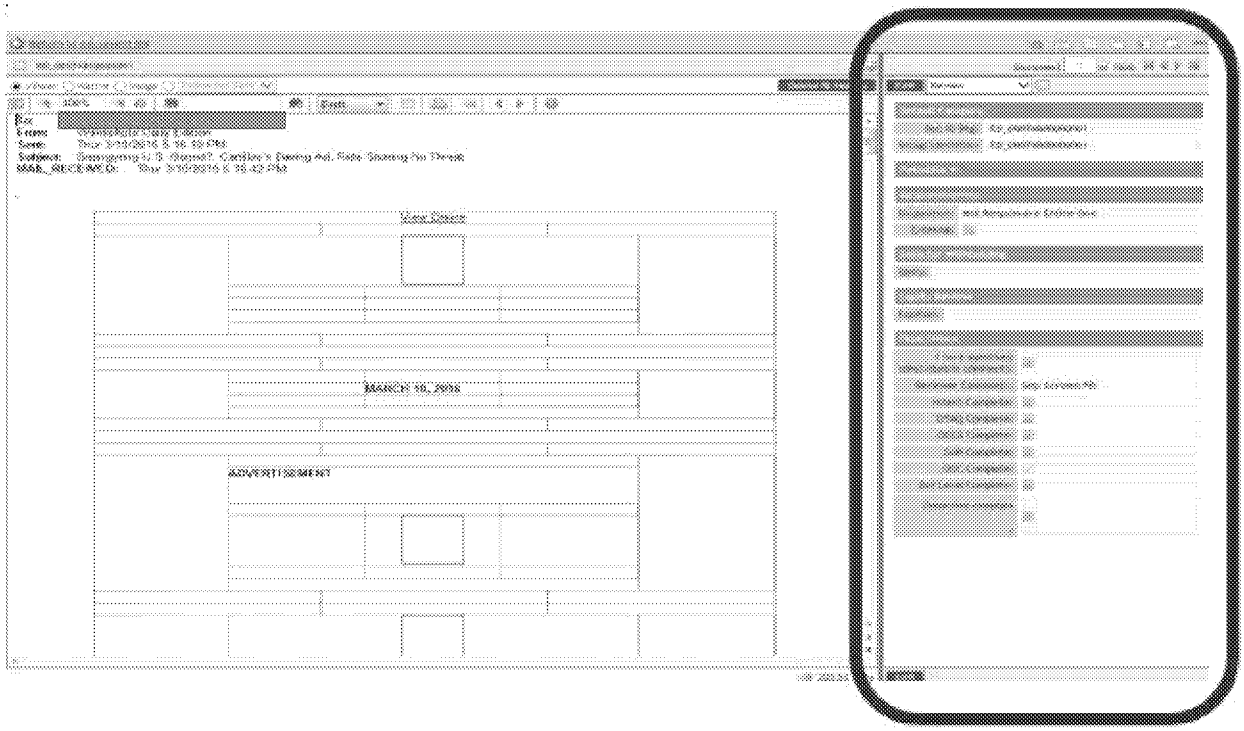


4. To clear your filters, click the sweep icon next to the filter icon.

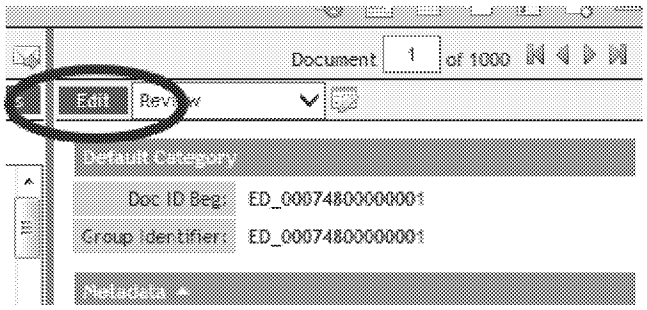



## CODING A DOCUMENT

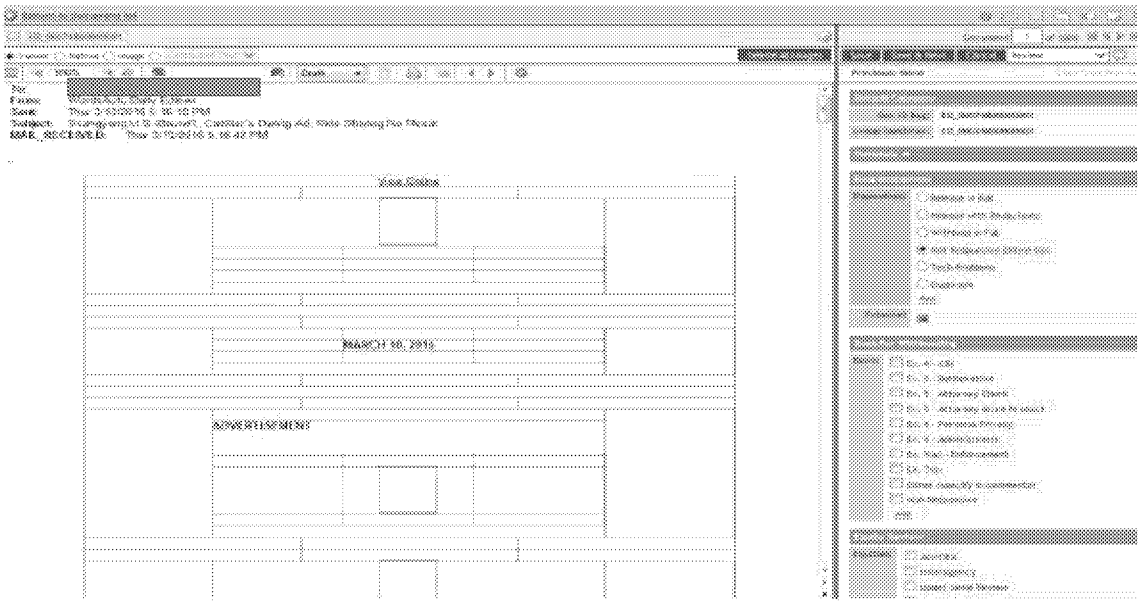
"Coding" is a term we use to describe the process of adding information to the documents that you review. To do this, when viewing a document, use the coding pane on the right side of your reviewer interface.



1. To begin coding, you must select the edit button in the upper left of your coding pane.

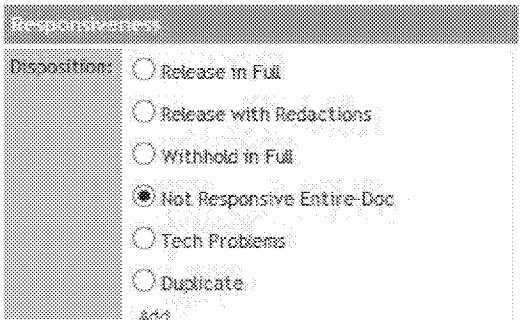



2. This will bring your coding pane to life and allow you to make edits. Your reviewer interface should now look like this:



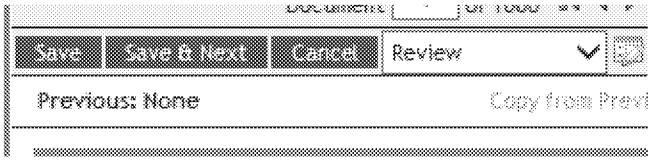
3. Follow the instructions provided by your case manager for coding your documents. You will find that some fields of information use radial buttons that only allow you to make one choice, and other fields use check boxes which allow you to select more than one item.

Radial Buttons:




Check Boxes:

4. After you have finished coding a document, remember to save. If you plan to move on to the next document in your set, clicking "Save and Next" will save and take you there automatically. The save buttons are located above and below your coding pane.

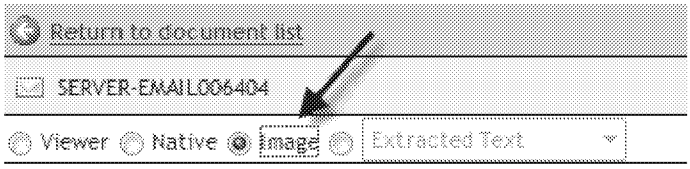



5. When you move onto another document, your coding pane will remain in edit mode, and you should be able to begin coding right away.

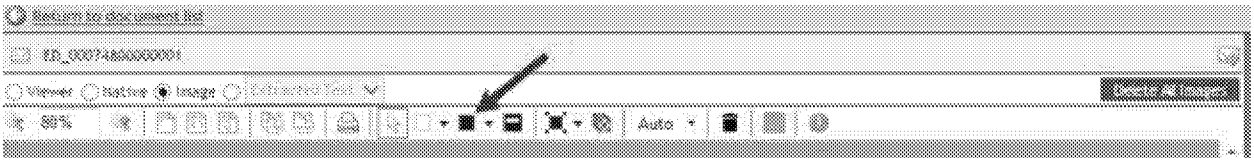
## REDACTING

In general, when a FOIA exemption applies to part of a document, we have an obligation to release reasonably segregable material within that document. This is accomplished by redacting the exempt part of the document. You should redact as needed according to the instructions below. Redactions are automatically saved.

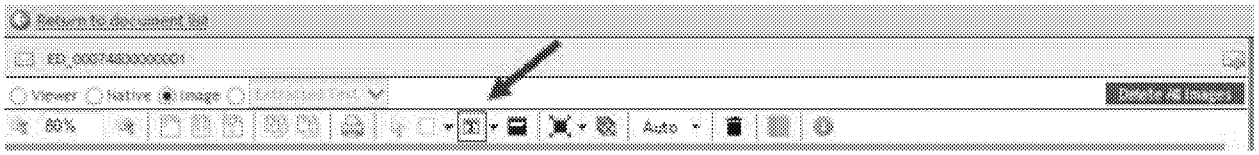
1. To create a redaction, make sure you are in Image mode in the Document viewer.




2. Look to the toolbar at the top of your screen. See the solid black square with the drop down menu. If you hover your cursor over it, it will display "*Redact*".



3. The drop down options when you click on the down arrow will be *Black, Cross, Text, or White*. Always select *Text*. When you have *Text* selected, the icon will look like below. Once this is selected, it will remain in *Text* mode unless you change it or sign out.



4. To make a redaction, click on your document and drag to create a square text

box. You will be able to resize or move this text box so that it conceals the information that is exempt from disclosure.

5. To change the text that is displayed in the box, right click on the box. This will allow you to select the appropriate basis for withholding from a series of drop down choices.

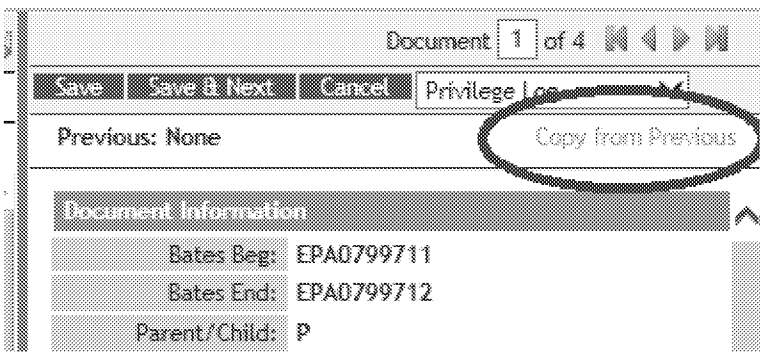
6. To delete a redaction, right click on the redaction and select delete.

7. Remember that the coding pane will not be automatically updated when you make a redaction. Be sure to code which exemptions you are asserting.

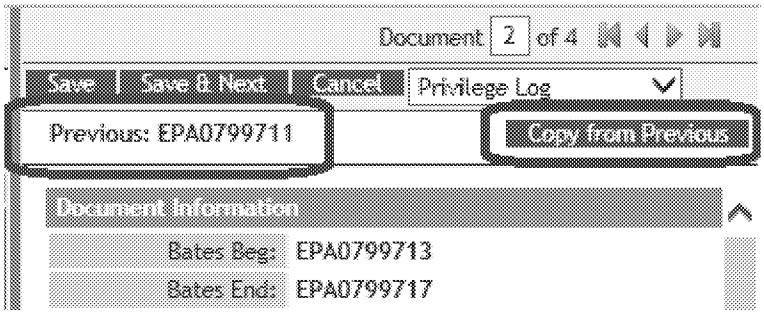
## COPY FROM PREVIOUS

At the top right-hand side of the coding pane, there is a "Copy from Previous" button on the Relativity review screen, which will allow you to copy the coding from the most recently coded document in your current review session. This button may save time if you are working in a sequence of similar documents.

1. To use Copy from Previous, you must first code at least one document. If you have not yet coded a document in your current session, or if you click Save (as opposed to Save & Next) or Cancel after reviewing a document, the layout is displayed as read-only and the Copy from Previous button is disabled:




2. Once you have coded a document in the current session and hit Save & Next, the Previous field will show the document identifier of the document that you last coded, and the Copy from Previous button will be enabled:




3. Relativity will also display a gray arrow icon next to the fields with values that will be copied from the previous document when you use Copy from Previous (Document Status, Privilege Basis, and Reviewer Comments). After you click Copy from Previous, the gray arrow icon will be replaced with a green arrow icon. The icon redisplays next to a copied field that you have modified. You must still click Save or Save & Next to apply the changes that you have copied into the document.

*How to effectively use Copy from Previous*

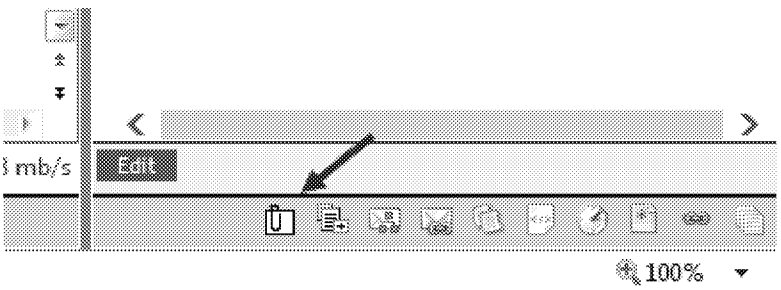
Use the Copy from Previous function when you want to copy the coding values of the designated fields from the last-saved document to the current one, like in cases where you have a series of similar documents one after another. After Relativity populates the layout with these coding values, you can still modify them (as you might need to, for instance, when copying a Privilege Basis description from an email into one of its attachments). After making any necessary changes, click the Save & Next button to save your changes and review a new document.

## REVIEWING FAMILY MEMBERS AND DUPLICATES

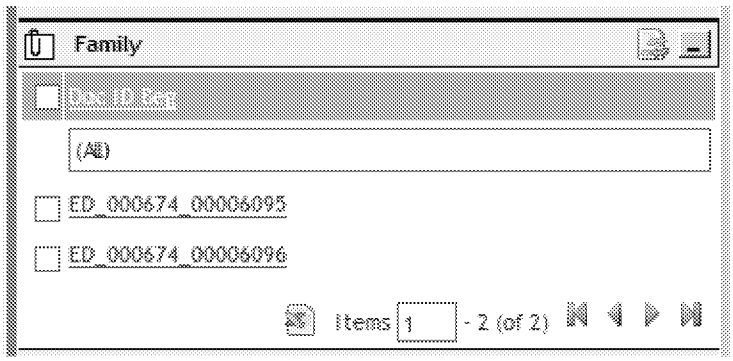
When looking at an attachment, it can be helpful to view the parent email to gain important context. When looking at an email communication, it may be helpful to view the attachments that are referenced. To view a document's family, follow the steps below.

1. FAMILY MEMBERS

    a. Find the paperclip icon in the bottom right corner of your screen. Click it.



b. This will provide you with a small viewing pane that contains list of documents, likely titled with a series of Doc ID numbers. Each number is a hyperlink to a document.

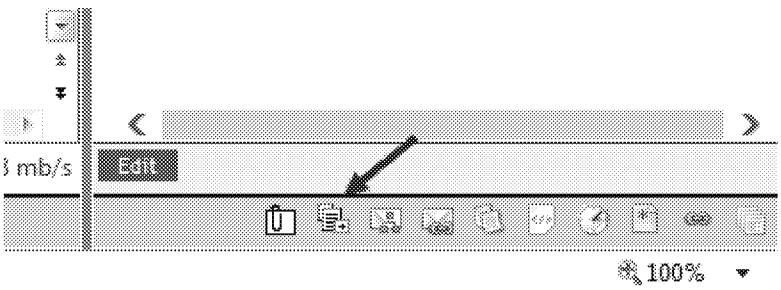



c. The uppermost document will be the parent email. The descending documents are attachments.

d. After clicking through the family and making coding changes or gathering information, to return to your original document, look to the upper left of your screen and click *Return to review queue*.

2. DUPLICATES

a. The Duplicates Icon should be located next to the paperclip icon,



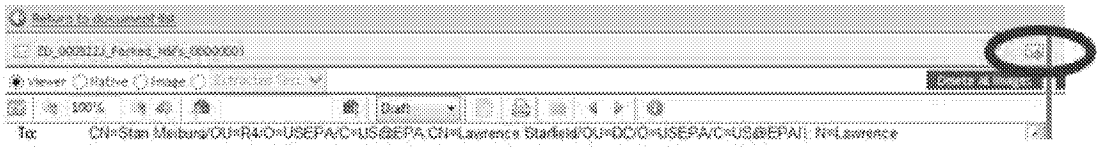

b. Just like with family members, you will see a small viewing pane that will display any duplicates. It can be navigated similarly, and when you are finished coding any duplicates, you can return to your initial document by selecting return to review queue.

## EMAILING A DOCUMENT TO YOUR CASE MANAGER

If you have a question about a document, it is often easiest to send a link to the case manager.

Relativity has an easy tool to help with this.

1. Locate the email icon with the green arrow in the upper right of your viewing pane



2. Click the icon, this will open up an outlook message with a direct link to the document. Send the document to your case manager with a note about your question and they will be able to open up the document themselves to help with your issue.

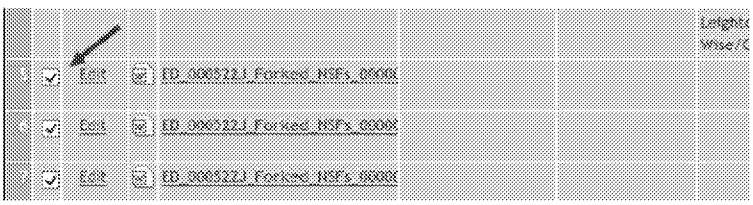
## GETTING DOCUMENTS OUT OF RELATIVITY

If you are a first line reviewer, there is likely no reason for you to print or produce documents from Relativity. If you are helping with case management, you may need to get documents out of the database for a number of reasons.

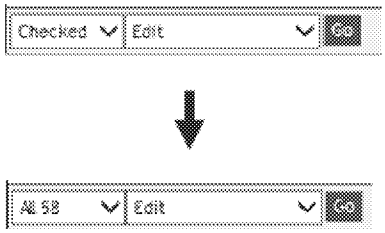
1. *Running a Production*: You may be at the end of your review and ready to deliver your final product to a requester. This will require the help of the e-discovery team in OEI. When you are ready to run a production, send an email to ediscovery@epa.gov. You should describe which documents need to be produced, if you would like them to be produced as images or in native format, and how you would like the documents to be stamped. The E-discovery team may follow up to clarify those and other details. If you know that you are going to request a large production, it can be helpful to reach out in advance.

2. *Printing Images*: If you are not running a final production, but rather need copies of one or more documents for some internal review, you can print images of your documents with or without redactions. Follow the steps below.

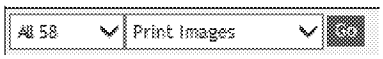
    a. Check the boxes of the documents that you would like to produce.



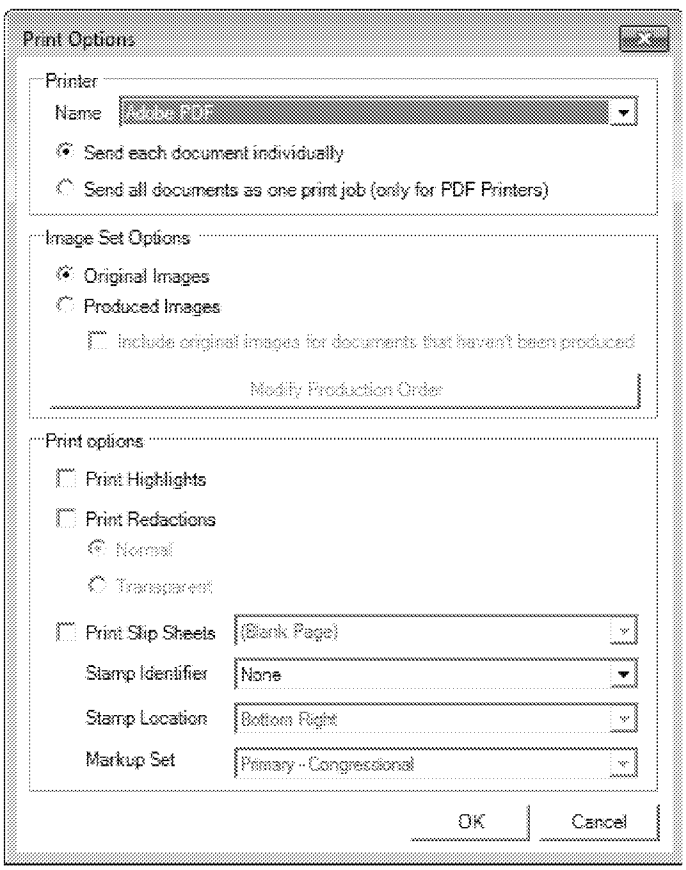
b. Alternatively, if you would like to print all of the documents in a particular saved search or folder, you can select "All" documents from the drop down in the lower left of your screen.



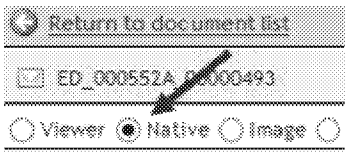

c. Using the second drop down menu, select "Print Images" and then press "Go".




d. You will be prompted with a number of choices. If you are trying to create a PDF, select a PDF printer. You have the options to send multiple documents as a group, print highlights or redactions, and select markup sets. Once you have set up your print job, press "OK" and Relativity will print your images. If you are printing to PDF, you wil be prompted to save the PDF.



3. *Opening in Native*: If you need to view or circulate a native file, open it using the native viewer and proceed from there.



# Redacting in Adobe Acrobat Pro DC

Use these instructions to redact content in Adobe Acrobat Pro DC

(1) Choose **Tools** > **Redact**. The Redact toolset is displayed in the secondary toolbar.

(2) In the secondary toolbar, choose **Mark for Redaction** > **Text & Images**.

(3) (Optional) To set the appearance of redaction marks, click **Properties** in the secondary toolbar. (See Change the look of redaction markers.)

Note: The FOIA requires that the Agency provide an estimate of the volume of redacted information to the requester. This includes redaction marks within documents. Therefore, you must always use redaction marks or borders that are visible. In other words, never place a white redaction mark on a white background.

(4) Mark items you want to remove by doing any of the following:

- Double-click to select a word or image.
- Drag to select a line, block of text, object, or area.
- Press Ctrl as you drag to select areas of a page in a scanned document.

**Note:** To preview how your redaction marks appear, hold the pointer over the marked area.

(5) To apply multiple code entries to a single redaction, right-click a redaction mark and select an option. For more information, see Apply multiple code entries to a redaction. Tip: Use the **Find Text** tool to find and remove words or phrases in one or more PDFs that contain searchable text. (see below)

(6) (Optional) To repeat a redaction mark, right-click it and choose **Repeat Mark Across Pages**. This feature is convenient if a particular header, footer, or watermark appears in the same location on many pages.

(7) When you have finished marking the items you want to redact, click **Apply** in the secondary toolbar to remove the items, then click **OK**. The items aren't permanently removed from the document until you save it.

(8) If you want to search for and remove hidden information in the document by using the **Remove Hidden Information** feature, click **Yes** in the dialog box. Otherwise, click **No**.

(9) Choose **File** > **Save**, and specify a filename and location. The suffix **"_Redacted"** is appended to the filename. If you don't want to overwrite the original file, save the file with a different name, at a different location, or both.

Tip: Use the **Find Text** tool to find and remove words or phrases in one or more PDFs that contain searchable text. (see below)

Search and Remove Text

**Note:** The **Find Text** tool doesn't search secured (encrypted) PDFs.

(1) Choose **Tools** > **Redact**.
The Redact toolset is displayed in the secondary toolbar.

(2) In the secondary toolbar, choose **Mark For Redaction** > **Find Text**.

(3) In the **Search** dialog box, specify if you want to search the current PDF or all PDFs in another location.

(4) Do one of the following:

- To search for only one word or phrase, choose **Single Word Or Phrase** and type the word or phrase in the text field.
- To search for multiple words, select **Multiple Words Or Phrase**, and then click **Select Words**. Type each word in the **New Word Or Phrase** text field and click **Add**. You can also import a text file with the list of words or phrases to search for.
- To search for a pattern (for example, phone numbers, credit card numbers, email addresses, social security numbers, or dates), click **Patterns**. Choose one of the available patterns. You can change the language version of the patterns. (See Select a different language version for patterns.)

(5) Click **Search & Remove Text**.

(6) In the search results, click the plus sign (+) next to the document name to see all occurrences of the word or phrase. Then, select the occurrences you want to mark for redaction:

- To select all occurrences in the list, click **Check All**.
- To select individual occurrences, click the check box for each one you want to redact. Click the text next to a check box to view the occurrence on the page.
- To mark none of the occurrences, close the **Search** dialog box or click **New Search** to start over.
- To mark whole words or partial words (characters) for redaction, select the option under **Redaction Mark Options**. For partial words, select **Mark Partial Word (s) For Redaction** the **Settings** dialog box appears. In the **Settings** dialog box, specify the number and location of the characters for redaction. Character redaction is useful if you're searching for a pattern, like credit card numbers, and want to leave part of the number visible for identification purposes.

(7) If you selected occurrences that you want to mark for redaction, click **Mark Checked Results For Redaction**. The items you selected in the list are shown marked for redaction.

**Note:** If you haven't saved the file, you can select redaction marks in the document and press **Delete** to remove the redaction mark. The redaction marks become permanent after you save the file.

(8) To remove the marked items, click **Apply** in the secondary toolbar, and then click **OK**. The items aren't permanently removed from the document until you save it.

(9) If you want to search for and remove hidden information in the document by using the **Remove Hidden Information** feature, click **Yes**. Otherwise, click **No**.

(10) Choose **File** > **Save**, and specify a filename and location. If you don't want to overwrite the original file, save the file with a different name, at a different location, or both.

Find and remove hidden content

Tip: Use the **Remove Hidden Information** feature to find and remove content from a document that you don't want, such as hidden text, metadata, comments, and attachments. When you remove items, additional items are automatically removed from the document. Items that are removed include digital signatures, document information added by third-party plug-ins and applications, and special features that enable Adobe Reader users to review, sign, and fill PDF documents.

**Note:** To examine every PDF for hidden content before you close it or send it in email, specify that option in the **Documents** preferences using the **Preferences** dialog box.

(1) Choose **Tools** > **Redact**.
The Redact toolset is displayed in the secondary toolbar.

(2) In the secondary toolbar, click **Remove Hidden Information**.
If items are found, they are listed in the **Remove Hidden Information** panel with a selected check box beside each item.

(3) Make sure that the check boxes are selected only for the items that you want to remove from the document. (See Remove Hidden Information options.)

(4) Click **Remove** to delete selected items from the file, and click **OK**.

(5) Choose **File** > **Save**, and specify a filename and location. If you don't want to overwrite the original file, save the file with a different name, at a different location, or both.
The selected content is permanently removed when you save the file. If you close the file without saving it, repeat this process, making sure to save the file.

## Tip: Use this function to take file attachments you intend to withhold based on a FOIA exemption out of Adobe documents.

**<u>Note: When marking documents for redactions in Adobe, always save 2 versions of the document</u>:**

- One version with the redaction marks unapplied
  - This version will be the "review" version. The redaction marks will be visible along with the content you intend to apply the redaction mark to.
  - This version will also be uploaded to FOIAonline but not released to the requester.
- One version with the redaction marks applied
  - This will be your production version that will be released to the requester.

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# Checklist: What to Include in a Final Response Letter

The checklist below details items to be included in a final response letter and provides sample language that may be useful. Draft your closeout letter to fit the particular needs of a request, but be sure it includes the key components below. Following signature of the letter, the letter should be scanned into FOIAonline even if it is not being delivered electronically.

***Print on Agency Letterhead***
***[Date Stamp]***

***[Name***
***Organization***
***Street***
***City, State Zip Code]***

Re: Freedom of Information Act Request No. EPA-***[XX-XXXX-XXXXXX]***, Final Response

Dear ***Mr./Ms. [Last name]:***

1. *SUMMARY OF REQUEST*
   - *Your letter should begin with the request number and summary of the request*
   - *Sample language:*

   This letter concerns the above-referenced FOIA request, received by the U.S. Environmental Protection Agency (EPA or Agency) on ***[Month, Day, Year]***, in which you requested, ***[INSERT a description of the FOIA request. If the request has been clarified, include the most recent clarification and note when it was clarified. Note key correspondence or communication with the requester, provide a timeline of EPA's response.]***.

2. DISPOSITION
   - *State which one of the following dispositions applies:*
     - *Granted. The records, in their entirety, may be released to the requester.*
     - *Partial Grant/Partial Denial. Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester.*
     - *Denial. The record, in its entirety, will be withheld from the requester if covered by either one or multiple FOIA exemptions.*
     - *No Record. If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester will be informed in writing.*

3. DESCRIPTION OF RECORDS

   - *Next, if the request is being granted in full, describe the records being provided*
   - *Sample language:*

The Agency has concluded its search for records responsive to your request and is providing the requested records in full. ***[INSERT a description of the records that are being provided]***.

   - *If records are being withheld in full or in part, describe the records. If there is a large volume of records that are being withheld, include an index of those records.*
   - *Sample language:*

The Agency has concluded its search for records responsive to your request and is ***[providing a portion of the requested records, [INSERT a description of the records that are being provided] / withholding all responsive records].*** The EPA is withholding # records in full and # records in part.

   - *If records are being withheld in whole or in part, you must note which FOIA exemptions are the basis for the withholding(s).*
   - *Sample language:*

Records are being withheld pursuant to: 5 U.S.C. § 552(b)***(#), [shorthand description of applicable exemption, such as: 552(b)(5), the Deliberative Process Privilege / 552(b)(5), the Attorney Client Privilege/552(b)(5), the Attorney Work Product Privilege / 552(b)(6) Personal Privacy].*** The records are exempt from disclosure because they ***[briefly describe reason for withholding such as: are predecisional and deliberative and would harm agency decision making if released (DPP)/ are confidential communications between an agency attorney and client concerning legal advice (ACP)/ are documents prepared by, or at the direction of, an attorney in contemplation of litigation(AWP)/ contain personal information which would be an unwarranted invasion of personal privacy if released (PP)].*** The attached index of withholdings provides further information concerning the withheld records ***[or if voluminous – "The attached appendix contains a categorical description of withholdings and a volume estimate."]***.

4. COST INFORMATION

   - *Inform the requester of the fees that are being assessed for the request and how to pay them.*
   - *Sample language:*

The cost to process your request was $***[#]***. Please see the attached invoice for billing and payment instructions.

5. FINAL APPEAL RIGHTS AND CONTACT INFORMATION

   - *Inform the requester that they may appeal the request, and provide them contact information for the appeal, the FOIA Public liaison, and OGIS. Also include the relevant staff person's contact information. The requester may want to simply seek clarification about something they don't understand rather than go through the appeals process.*
   - *Sample language (NOTE: THE FOLLOWING APPEAL LANGUAGE HAS BEEN RECENTLY UPDATED CONSISTENT WITH THE FOIA IMPROVEMENT ACT OF 2016):*

*APPEAL LANGUAGE FOR ALL FINAL FOIA RESPONSES, EXCEPT AS NOTED BELOW:*

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8610 Adelphi Road, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

If you have any questions concerning this response, please contact ***[Staff contact]*** of my staff at ***[###-###-####]***.

*APPEAL LANGUAGE IF THERE IS AN INITIAL WITHHOLDING BASED ON EXEMPTION 4:*

This letter concludes our response to your request. As noted above, the information withheld under Exemption 4 will be reviewed by the appropriate legal office, which will issue a final confidentiality determination. Therefore, you do not need to appeal the withholding of information under Exemption 4. Once the legal office issues a final confidentiality determination, EPA will notify you whether the information qualifies for confidential treatment or may be released. To the extent you would like to appeal any other issue, including any non-Exemption 4 withholdings, you may appeal this response

by email at hq.foia@epa.gov or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service or overnight delivery you must address your correspondence to 1301 Constitution Avenue, N. W., Room 6416J, Washington, DC 20004. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. Appeals received after 5:00 pm EST will be considered received the next business day. The Agency will not consider appeals received after the 90-calendar-day limit. The appeal letter should clearly identify the determination being appealed, including the assigned FOIA tracking number shown above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail to the Office of Government Information Services, National Archives and Records Administration, 8610 Adelphi Road, College Park, MD, 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

If you have any questions concerning this response, please contact ***[Staff contact]*** of my staff at ***[###-###-####]***.

6. SIGNATURE

   - *Be sure your letter is signed at the Division Director level or above.*

## Interim Response Letter Template

The below template is one way to correspond with a requester concerning an interim production. You may send an email, letter, or message through FOIA Online, and there are many different ways to communicate about an interim response. Just be clear that the production is interim and ensure that you are including the following components in your correspondence:

- Request information (number, date received, summary)
- Description of the interim production (number of records, general description)
- Anticipated closeout date/upcoming productions
- Notice that appeal information will be provided at close out
- Contact information

***[Print on Agency Letterhead]***

***[Date Stamp]***

***[Name***
***Organization***
***Street***
***City, State Zip Code]***

Re: Freedom of Information Act Request No. EPA-***[XX-XXXX-XXXXXX]***

Dear ***Mr./Ms. [Last Name]***:

This letter concerns the above-referenced FOIA request, received by the U.S. Environmental Protection Agency (EPA or Agency) on ***[Month, Day, Year]***, in which you requested, ***[INSERT a description of the FOIA request. If the request has been clarified, include the most recent clarification and note when it was clarified.]*** . The Agency is now releasing records in response to your request. Please note that this is an interim response, and the EPA continues to work on your request.

The records EPA is releasing include ***[INSERT a brief description of the records that are being produced]***.

The Agency expects to complete its response to your request by ***[Month, Day, Year]***. ***[OPTION: INSERT a description of a rolling production schedule or when the next interim production is expected if there will be additional interim productions.]***

Again, your request is not being closed at this time. When your request is closed, you will receive information concerning your appeal rights for any part of EPA's response. If you have

any questions about this interim production or your request generally, please contact ***[First Name Last Name]*** at [***xxxxxxx]***@epa.gov or by phone at [***XXX-XXX-XXXX]***. Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or call (202) 566-1667. Last, you may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8610 Adelphi Road, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

*[NAME]*
*[TITLE]*

Message

**From:** Creech, Christopher [Creech.Christopher@epa.gov]
**Sent:** 6/4/2019 11:07:18 PM
**To:** Bermes, Peter [Bermes.Peter@epa.gov]; Bhatt, Krishna [bhatt.krishna@epa.gov]; Collazo, Beatriz [collazo.beatriz@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Green, LindaE [Green.LindaE@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Lewis, Judith [Lewis.Judith@epa.gov]; Lewis, Monica [lewis.monica@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Person, Linda [Person.Linda@epa.gov]; Rementer, Nicole [rementer.nicole@epa.gov]; Schumacher, Wendy [schumacher.wendy@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Thompson, Heather [Thompson.Heather@epa.gov]; Vander Naald, Breanne [vandernaald.breanne@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]
**Subject:** Feedback Requested - EPA FOIA Reg Announcement
**Attachments:** DRAFT Messaging for FOIA Regulations Update (06.04.2019).docx

Hello Team,

I am requesting a quick review and edits from the group on the attached draft message regarding the updates to the FOIA regulations. We hope to provide these tomorrow at the Reg Review, so please provide me with any feedback by 12 noon tomorrow. Thank you in advance for your help and thoughtfulness.

Best,

**Christopher T. Creech**
Attorney–Adviser, National FOIA Office
Office of General Counsel, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A), Washington, DC 20460
WJCN 7353E | (202) 564-4286 | creech.christopher@epa.gov

National FOIA Office
EPA Office of General Counsel

Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 8/15/2019 5:02:03 PM
**To**: Thompson, Heather [Thompson.Heather@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; Powell-Dickson, Antoinette [Powell-Dickson.Antoinette@epa.gov]; Ingram, Earl [Ingram.Earl@epa.gov]; Info Attys [Info_Attys@epa.gov]; Bloom, David [Bloom.David@epa.gov]; Armstrong, Kathy [Armstrong.Kathy@epa.gov]; Bigioni, Neil [bigioni.neil@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]
**CC**: Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; OGC NFO [OGC-NFO@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Clausen, Rebecca [Clausen.Rebecca@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Zipf, Lynn [Zipf.Lynn@epa.gov]; Woodard-Burrell, Gwendolyn [Woodard-Burrell.Gwendolyn@epa.gov]; Cruver, Melvin [Cruver.Melvin@epa.gov]; Cody, Karen [Cody.Karen@epa.gov]; Robinson, Donna [Robinson.Donna@epa.gov]; Pearce, Jennifer [Pearce.Jennifer@epa.gov]; Pressley, Miriam [Pressley.Miriam@epa.gov]; Johnson, Priscilla [Johnson.Priscilla@epa.gov]; Barnett-Owens, Inga [Barnett-Owens.Inga@epa.gov]; Blackburn, Elizabeth [Blackburn.Elizabeth@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Kennedy, Chandra [Kennedy.Chandra@epa.gov]; Tonic, Ingrid [tonic.ingrid@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Palomaki, Ashley [Palomaki.Ashley@epa.gov]; Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]; Almazan, Christina [almazan.christina@epa.gov]; Hauser, Mitchell [hauser.mitchell@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Collazo, Beatriz [collazo.beatriz@epa.gov]; Coogan, Daniel [Coogan.Daniel@epa.gov]; Gupta, Kaushal [Gupta.Kaushal@epa.gov]; McLendon, Wanda [McLendon.Wanda@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Calvo, Kathy [Calvo.Kathy@epa.gov]; Latham, John [Latham.John@epa.gov]; Richmond, Jonah [Richmond.Jonah@epa.gov]; Murdock, James [Murdock.James@epa.gov]; Langley, Shirley [Langley.Shirley@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Donaldson, Yerusha [donaldson.yerusha@epa.gov]; Ford, Mark [Ford.Mark@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Jones, Knolyn [Jones.Knolyn@epa.gov]; Brockett, Aretha [Brockett.Aretha@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Stoy, Alyse [Stoy.Alyse@epa.gov]; Campbell, Rich [Campbell.Rich@epa.gov]; Le, Kathryn [le.kathryn@epa.gov]; MacDonald, Jennifer [Macdonald.Jennifer@epa.gov]; Newman, Maya [Newman.Maya@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Clark, Jacqueline [clark.jacqueline@epa.gov]; DeBell, Kevin [debell.kevin@epa.gov]; Newton, Jonathan [Newton.Jonathan@epa.gov]; Levine, Scott [Levine.Scott@epa.gov]; Connery, Shannon [Connery.Shannon@epa.gov]; Hines, Andrea [hines.andrea@epa.gov]; Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]; Bhatt, Krishna [bhatt.krishna@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Kaminer, Joan [Kaminer.Joan@epa.gov]; Malloy, Marilyn [Malloy.Marilyn@epa.gov]; Debes, Alison [Debes.Alison@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Bossard, Justin [bossard.justin@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; Boydston, Michael [Boydston.Michael@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]; Stilp, Mark [Stilp.Mark@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]; Kudarauskas, Paul [Kudarauskas.Paul@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Swanson, Amy [Swanson.Amy@epa.gov]; Noga, Vaughn [Noga.Vaughn@EPA.GOV]; Nishida, Jane [Nishida.Jane@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Stanich, Ted [Stanich.Ted@epa.gov]; Conway, Timothy [Conway.Tim@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]; Starfield, Lawrence

[Starfield.Lawrence@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; Payne, James [payne.james@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]; Pirzadeh, Michelle [Pirzadeh.Michelle@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Mugdan, Walter [Mugdan.Walter@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Attachments**: Proposal on FOIA Consultations rt2 9.5.19.docx
**Location**: WJC North 6013 Skype Meeting

**Start**: 9/10/2019 5:00:00 PM
**End**: 9/10/2019 7:00:00 PM
**Show Time As**: Tentative

This is the third and final general listening session scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019.

Region 3 has drafted the attached proposal describing the consultation process and outlining NFO and Responding Office roles for consultations. We will discuss this proposal during this listening session.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

In addition, the NFO invites you to provide written comments on these updates. Please submit any written comments to Heather Thompson at thompson.heather@epa.gov and Krishna Bhatt at bhatt.krishna@epa.gov by COB Friday, September 20, 2019. Each FOIA Program should coordinate within their office and provide a consolidated response wherever possible.

You can access the draft FOIA Policy, draft FOIA Procedures, Listening Session Notes, and the written comments submitted from the following link:

Draft FOIA Policy and Procedures

Please use the conference line below to connect to audio if you are participating remotely.

Conference Lin Ex. 6
Conference ID:

Join Skype Meeting

Trouble Joining? Try Skype Web App

Help

Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 8/15/2019 4:58:14 PM
**To**: Thompson, Heather [Thompson.Heather@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; Powell-Dickson, Antoinette [Powell-Dickson.Antoinette@epa.gov]; Ingram, Earl [Ingram.Earl@epa.gov]; Sheehan, Charles [Sheehan.Charles@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]
**CC**: Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; OGC NFO [OGC-NFO@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]; Kennedy, Chandra [Kennedy.Chandra@epa.gov]; Tonic, Ingrid [tonic.ingrid@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Clausen, Rebecca [Clausen.Rebecca@epa.gov]; Barnett-Owens, Inga [Barnett-Owens.Inga@epa.gov]; Blackburn, Elizabeth [Blackburn.Elizabeth@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Kudarauskas, Paul [Kudarauskas.Paul@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Bigioni, Neil [bigioni.neil@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]; Brown, Sineta [Brown.Sineta@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Almazan, Christina [almazan.christina@epa.gov]; Hauser, Mitchell [hauser.mitchell@epa.gov]; Swanson, Amy [Swanson.Amy@epa.gov]; Zipf, Lynn [Zipf.Lynn@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Pirzadeh, Michelle [Pirzadeh.Michelle@epa.gov]; Collazo, Beatriz [collazo.beatriz@epa.gov]; Weyer, Erica [weyer.erica@epa.gov]; Coogan, Daniel [Coogan.Daniel@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]; Noga, Vaughn [Noga.Vaughn@EPA.GOV]; Gupta, Kaushal [Gupta.Kaushal@epa.gov]; McLendon, Wanda [McLendon.Wanda@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Newman, Maya [Newman.Maya@epa.gov]; Smith, Susan [Smith.Susan@epa.gov]; Brooks, Becky [Brooks.Becky@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Stanich, Ted [Stanich.Ted@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]; Latham, John [Latham.John@epa.gov]; Calvo, Kathy [Calvo.Kathy@epa.gov]; Richmond, Jonah [Richmond.Jonah@epa.gov]; Armstrong, Marilyn [Armstrong.Marilyn@epa.gov]; Bell-Anderson, Marie [Bell-Anderson.Marie@epa.gov]; Commodore, Carolin [Commodore.Carolin@epa.gov]; Fredericks, Sharon [Fredericks.Sharon@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Jones, Knolyn [Jones.Knolyn@epa.gov]; Reynolds, David [Reynolds.David@epa.gov]; Silver, Edna [silver.edna@epa.gov]; Ward, Valerie [Ward.Valerie@epa.gov]; Minor-Gordon, Jerry [Minor-Gordon.Jerry@epa.gov]; Newton, Jonathan [Newton.Jonathan@epa.gov]; Langley, Shirley [Langley.Shirley@epa.gov]; Murdock, James [Murdock.James@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Levine, Scott [Levine.Scott@epa.gov]; Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]; Conway, Timothy [Conway.Tim@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Bhatt, Krishna [bhatt.krishna@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Hines, Andrea [hines.andrea@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]; Bossard, Justin [bossard.justin@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; Rementer, Nicole [rementer.nicole@epa.gov]; Cunningham, Dennis [Cunningham.Dennis@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Donaldson, Yerusha [donaldson.yerusha@epa.gov]; Ford, Mark [Ford.Mark@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; R10 ORC FOIA [R10-ORC-FOIA@epa.gov]; MacDonald, Jennifer [Macdonald.Jennifer@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 4530 and Skype Meeting

**Start**: 8/28/2019 2:00:00 PM
**End**: 8/28/2019 4:00:00 PM
**Show Time As**: Tentative

Link to folder with Listening Session slides, draft FOIA Policy, draft FOIA Procedures and related documents:

Draft EPA FOIA Policy and EPA Procedures and Related Documents

This is the second of three general listening sessions scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019. Additional general listening sessions are scheduled for:

Tuesday, August 20, 2019 from 1-3pm
Tuesday, September 10, 2019 from 1-3pm

The National FOIA Office (NFO) encourages you to participate in at least one of these general listening sessions.

The NFO has also scheduled a focused listening session on Wednesday, August 21, 2019 from 10am – noon to seek input on Lead FOIA Office and Contributing Office search and first-level review responsibilities.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

In addition, the NFO invites you to provide written comments on these updates. Please submit any written comments to Heather Thompson at thompson.heather@epa.gov and Krishna Bhatt at bhatt.krishna@epa.gov by COB Friday, September 20, 2019. Each FOIA Program should coordinate within their office and provide a consolidated response wherever possible.

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Conference Line
Conference ID: 2 **Ex. 6**

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Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 8/15/2019 4:53:15 PM
**To**: Thompson, Heather [Thompson.Heather@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]
**CC**: OGC NFO [OGC-NFO@epa.gov]; Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Kennedy, Chandra [Kennedy.Chandra@epa.gov]; Tonic, Ingrid [tonic.ingrid@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Bermes, Peter [Bermes.Peter@epa.gov]; Barnett-Owens, Inga [Barnett-Owens.Inga@epa.gov]; Armstrong, Kathy [Armstrong.Kathy@epa.gov]; Woodard-Burrell, Gwendolyn [Woodard-Burrell.Gwendolyn@epa.gov]; Cody, Karen [Cody.Karen@epa.gov]; Cruver, Melvin [Cruver.Melvin@epa.gov]; Pearce, Jennifer [Pearce.Jennifer@epa.gov]; Pressley, Miriam [Pressley.Miriam@epa.gov]; Johnson, Priscilla [Johnson.Priscilla@epa.gov]; Robinson, Donna [Robinson.Donna@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]; Furey, Eileen [furey.eileen@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Clausen, Rebecca [Clausen.Rebecca@epa.gov]; Blackburn, Elizabeth [Blackburn.Elizabeth@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Bigioni, Neil [bigioni.neil@epa.gov]; Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]; Almazan, Christina [almazan.christina@epa.gov]; Hauser, Mitchell [hauser.mitchell@epa.gov]; Powell-Dickson, Antoinette [Powell-Dickson.Antoinette@epa.gov]; Newman, Maya [Newman.Maya@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Levine, Scott [Levine.Scott@epa.gov]; Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]; Newton, Jonathan [Newton.Jonathan@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Hines, Andrea [hines.andrea@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bhatt, Krishna [bhatt.krishna@epa.gov]; Bossard, Justin [bossard.justin@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; DeBell, Kevin [debell.kevin@epa.gov]; Cunningham, Dennis [Cunningham.Dennis@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Rementer, Nicole [rementer.nicole@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Malloy, Marilyn [Malloy.Marilyn@epa.gov]; Collazo, Beatriz [collazo.beatriz@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Gupta, Kaushal [Gupta.Kaushal@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]; Heckman, Deborah [Heckman.Deborah@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]; McLendon, Wanda [McLendon.Wanda@epa.gov]; Zipf, Lynn [Zipf.Lynn@epa.gov]; Kudarauskas, Paul [Kudarauskas.Paul@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Swanson, Amy [Swanson.Amy@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Location**: WJC North 6013 and Skype Meeting

**Start**: 8/20/2019 5:00:00 PM
**End**: 8/20/2019 7:00:00 PM
**Show Time As**: Tentative

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Conference Line Ex. 6
Conference ID: Ex. 6

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Appointment

**From**: Walker, Denise [Walker.Denise@epa.gov]
**Sent**: 4/11/2019 4:49:18 PM
**To**: Walker, Denise [Walker.Denise@epa.gov]; Person, Linda [Person.Linda@epa.gov]; Lewis, Judith [Lewis.Judith@epa.gov]; Lewis, Monica [lewis.monica@epa.gov]; Schumacher, Wendy [schumacher.wendy@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
**CC**: Bhatt, Krishna [bhatt.krishna@epa.gov]

**Subject**: Enhancing Intake SOP Workshop
**Attachments**: National FOIA Office Operations Manual 4 10 19.docx
**Location**: 5317

**Start**: 4/16/2019 6:00:00 PM
**End**: 4/16/2019 7:30:00 PM
**Show Time As**: Tentative

Changing location to 5317

Appointment

**From**: Bigioni, Neil [bigioni.neil@epa.gov]
**Sent**: 7/26/2018 11:48:46 AM
**To**: Bigioni, Neil [bigioni.neil@epa.gov]; OGC NFO [OGC-NFO@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]
**CC**: Clarke, Victoria [clarke.victoria@epa.gov]; Rementer, Nicole [rementer.nicole@epa.gov]; Schumacher, Wendy [schumacher.wendy@epa.gov]; OGC GLO ILPG [OGC_GLO_ILPG@epa.gov]; Kaminer, Joan [Kaminer.Joan@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Buchsbaum, Seth [buchsbaum.seth@epa.gov]

**Subject**: FOIA Best Practices Brainstorming Session
**Attachments**: Draft email from Matt FOIA best practices 07252018.docx
**Location**: Call in Number: Ex. 6 Code: Ex. 6 NFO "Bridge" in First Floor Library

**Start**: 7/26/2018 2:00:00 PM
**End**: 7/26/2018 3:00:00 PM
**Show Time As**: Tentative

Anyone who wants to join me on the bridge to help brainstorm for the document I sent last night (attached). GLO folks- please distribute to ILPG staff as you deem appropriate.

Neil

Message

**From:** Epp, Timothy [Epp.Timothy@epa.gov]
**Sent:** 5/3/2019 7:10:00 PM
**To:** OGC NFO [OGC-NFO@epa.gov]
**Subject:** Update -- Regional FOIA Standard Functions
**Attachments:** FOIA Standard Functions for Matt 5.3.19.docx

Hi NFO folks,

This is an update on the status of the Regional FOIA Standard Functions document. The attached is a draft that has been sent to Matt for his review and decision, with a suggestion that a decision in two weeks would be valuable.

Let me know if you have any questions.

Tim

**Timothy R. Epp**
Acting Director | National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309B
Phone (202) 564-2830| epp.timothy@epa.gov

National FOIA Office
EPA Office of General Counsel

**To:** OGC NFO[OGC-NFO@epa.gov]
**From:** Epp, Timothy[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=46B70972E0C7421A9A922EEAB6280211-TEPP]
**Sent:** Tue 12/11/2018 8:12:40 PM (UTC)
**Subject:** FW: NFO Hot Topics Agenda & Attachments
NFO Hot Topics Agenda 12-12-18.docx
Options for Projects to Improve NFO Service Delivery v2.docx
DRAFT MEMO Policy and Procedure Update 11.19.2018 .docx

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

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**From:** Epp, Timothy
**Sent:** Tuesday, December 11, 2018 3:12 PM
**To:** Veney, Carla <Veney.Carla@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>
**Cc:** Miller, Tia <Miller.Tia@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>
**Subject:** NFO Hot Topics Agenda & Attachments

Hi Carla and Rob,

For Matt's overnight binder, here are the NFO Hot Topics Agenda & Attachments.

Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

Appointment

**From**: Thompson, Heather [Thompson.Heather@epa.gov]
**Sent**: 9/6/2019 8:03:43 PM
**To**: FOIA Officers [FOIAOfficers@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; Powell-Dickson, Antoinette [Powell-Dickson.Antoinette@epa.gov]; Ingram, Earl [Ingram.Earl@epa.gov]; Info Attys [Info_Attys@epa.gov]; Bloom, David [Bloom.David@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Armstrong, Kathy [Armstrong.Kathy@epa.gov]
**CC**: Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; OGC NFO [OGC-NFO@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Clausen, Rebecca [Clausen.Rebecca@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Zipf, Lynn [Zipf.Lynn@epa.gov]; Woodard-Burrell, Gwendolyn [Woodard-Burrell.Gwendolyn@epa.gov]; Cruver, Melvin [Cruver.Melvin@epa.gov]; Cody, Karen [Cody.Karen@epa.gov]; Robinson, Donna [Robinson.Donna@epa.gov]; Pearce, Jennifer [Pearce.Jennifer@epa.gov]; Pressley, Miriam [Pressley.Miriam@epa.gov]; Johnson, Priscilla [Johnson.Priscilla@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]; Barnett-Owens, Inga [Barnett-Owens.Inga@epa.gov]; Blackburn, Elizabeth [Blackburn.Elizabeth@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Kudarauskas, Paul [Kudarauskas.Paul@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Kennedy, Chandra [Kennedy.Chandra@epa.gov]; Tonic, Ingrid [tonic.ingrid@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Palomaki, Ashley [Palomaki.Ashley@epa.gov]; Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Almazan, Christina [almazan.christina@epa.gov]; Hauser, Mitchell [hauser.mitchell@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Swanson, Amy [Swanson.Amy@epa.gov]; Collazo, Beatriz [collazo.beatriz@epa.gov]; Coogan, Daniel [Coogan.Daniel@epa.gov]; Noga, Vaughn [Noga.Vaughn@EPA.GOV]; Gupta, Kaushal [Gupta.Kaushal@epa.gov]; McLendon, Wanda [McLendon.Wanda@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Calvo, Kathy [Calvo.Kathy@epa.gov]; Latham, John [Latham.John@epa.gov]; Richmond, Jonah [Richmond.Jonah@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]; Murdock, James [Murdock.James@epa.gov]; Langley, Shirley [Langley.Shirley@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Donaldson, Yerusha [donaldson.yerusha@epa.gov]; Ford, Mark [Ford.Mark@epa.gov]; Stanich, Ted [Stanich.Ted@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Jones, Knolyn [Jones.Knolyn@epa.gov]; Brockett, Aretha [Brockett.Aretha@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Conway, Timothy [Conway.Tim@epa.gov]; Stoy, Alyse [Stoy.Alyse@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]; Campbell, Rich [Campbell.Rich@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]; Le, Kathryn [le.kathryn@epa.gov]; MacDonald, Jennifer [Macdonald.Jennifer@epa.gov]; Newman, Maya [Newman.Maya@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Clark, Jacqueline [clark.jacqueline@epa.gov]; DeBell, Kevin [debell.kevin@epa.gov]; Newton, Jonathan [Newton.Jonathan@epa.gov]; Levine, Scott [Levine.Scott@epa.gov]; Connery, Shannon [Connery.Shannon@epa.gov]; Hines, Andrea [hines.andrea@epa.gov]; Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]; Bhatt, Krishna [bhatt.krishna@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Kaminer, Joan [Kaminer.Joan@epa.gov]; Malloy, Marilyn [Malloy.Marilyn@epa.gov]; Debes, Alison [Debes.Alison@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Bossard, Justin [bossard.justin@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; Boydston, Michael [Boydston.Michael@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov];

Creech, Christopher [Creech.Christopher@epa.gov]; Payne, James [payne.james@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]; Pirzadeh, Michelle [Pirzadeh.Michelle@epa.gov]

**Subject**: Listening Session - Updates to EPA FOIA Policy and EPA FOIA Procedures
**Attachments**: Proposal on FOIA Consultations rt2 9.5.19.docx
**Location**: WJC North 6013 Skype Meeting

**Start**: 9/10/2019 5:00:00 PM
**End**: 9/10/2019 7:00:00 PM
**Show Time As**: Tentative

This is the third and final general listening session scheduled to seek your input on updates to the FOIA Policy and Procedures documents. The draft FOIA Policy and Procedures documents were distributed by Timothy Epp on Monday, August 12, 2019.

Region 3 has drafted the attached proposal describing the consultation process and outlining NFO and Responding Office roles for consultations. We will discuss this proposal during this listening session.

Headquarters and Regional leadership are invited to delegate attendance to the most appropriate individual/manager. EPA FOIA Officers and Coordinators are included in the invite.

In addition, the NFO invites you to provide written comments on these updates. Please submit any written comments to Heather Thompson at thompson.heather@epa.gov and Krishna Bhatt at bhatt.krishna@epa.gov by COB Friday, September 20, 2019. Each FOIA Program should coordinate within their office and provide a consolidated response wherever possible.

You can access the draft FOIA Policy, draft FOIA Procedures, Listening Session Notes, and the written comments submitted from the following link:

Draft FOIA Policy and Procedures

Please use the conference line below to connect to audio if you are participating remotely.

Conference Lin
Conference ID:

Ex. 6

Join Skype Meeting

Trouble Joining? Try Skype Web App

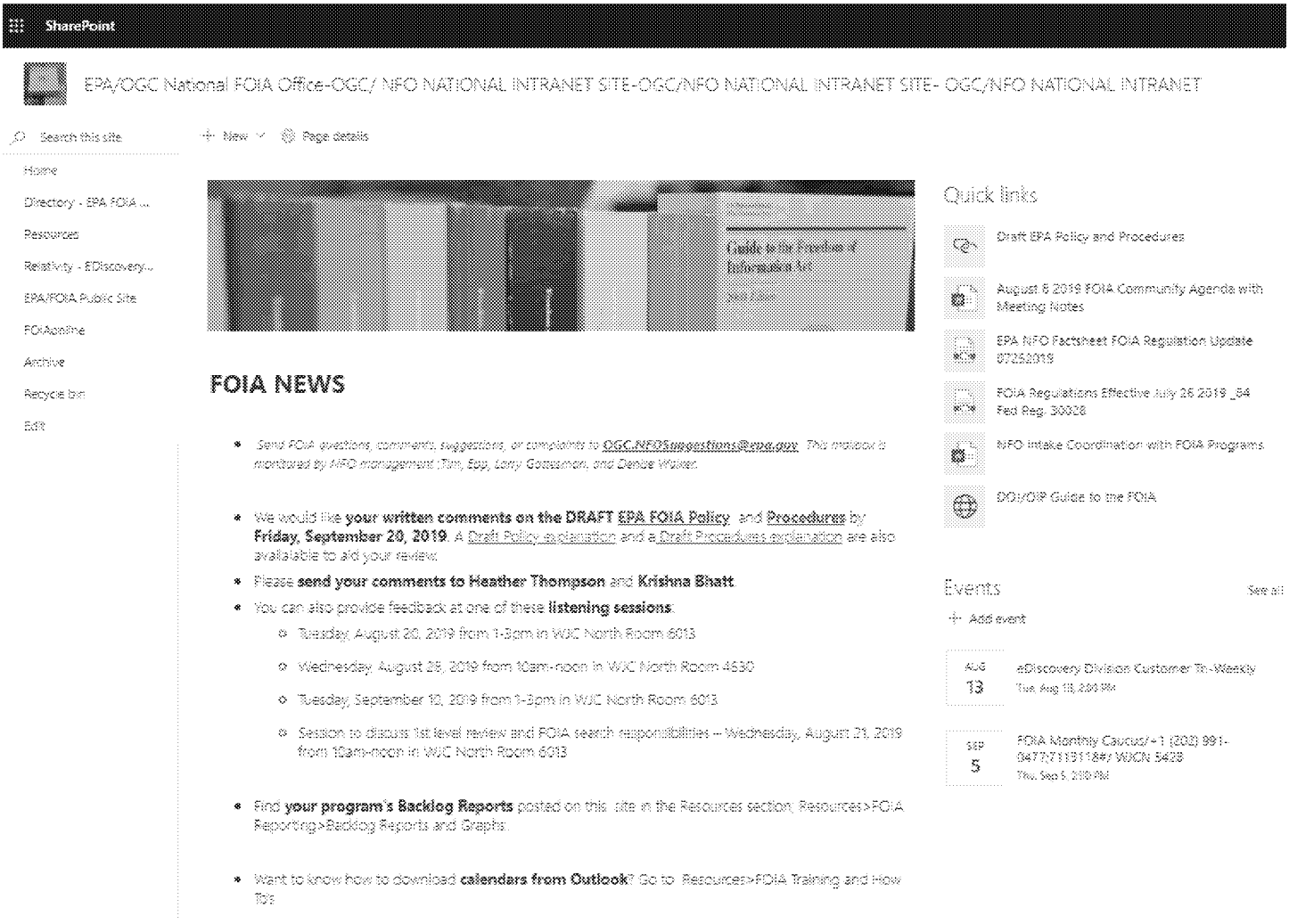
Help

Message

**From:** Moumbleaux, Joan [moumbleaux.joan@epa.gov]
**Sent:** 8/13/2019 3:04:44 PM
**To:** OGC NFO [OGC-NFO@epa.gov]
**Subject:** Draft EOA FOIA Policy and Procedures posted on our OGC NFO Intranet Site > FOIA News

We did not have time to mention in today's meeting that the **Draft FOIA Policy and Procedures documents** that are now out for comment.

Please know that the documents are linked in FOIA News, Quick Links and in the Resources Library: https://usepa.sharepoint.com/sites/EPA_OGC_NFO




**Joan Moumbleaux**
Government Information Specialist I National FOIA Office
U.S. Environmental Protection Agency I Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC2310A)
Washington, D.C. 20460 I WJCN 7426L
Phone (202) 564-7872 I Cell (202) 573-1835 I moumbleaux.joan@epa.gov

National FOIA Office
EPA Office of General Counsel

Message

**From:** Epp, Timothy [Epp.Timothy@epa.gov]
**Sent:** 8/12/2019 9:34:15 PM
**To:** Schena, Cristeen [Schena.Cristeen@epa.gov]; Smart, Mark [smart.mark@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Ferrara, Helen [Ferrara.Helen@epa.gov]; D'Andrea, Michael [DANDREA.MICHAEL@EPA.GOV]; Tate, Rita [Tate.Rita@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Daniels-Lewis, Alicia [Daniels-Lewis.Alicia@epa.gov]; Puchalski, Connie [puchalski.connie@epa.gov]; Klassman, Debra [klassman.debra@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Lupton, Jane [lupton.jane@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; busterad.gretchen@epa.gov; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Castanon, Lisa [Castanon.Lisa@epa.gov]; Leadership_Deputy_Assistant_Administrators [Leadership_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Associate_Administrators [Leadership_Deputy_Associate_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Regional Counsels [Regional_Counsels@epa.gov]; Deputy Regional Counsels [Deputy_Regional_Counsels@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]
**CC:** OGC NFO [OGC-NFO@epa.gov]
**Subject:** Request for Comments on Updates to EPA FOIA Policy and EPA FOIA Procedures
**Attachments:** DRAFT_EPA FOIA Policy_Clean (08.12.2019).docx; DRAFT_ FOIA Policy_Changes Explanation (08.12.2019).docx; DRAFT_EPA FOIA Procedures_Clean (08.12.2019).docx; DRAFT_ FOIA Procedures_Changes Explanation (08.12.2019).docx

Dear Colleagues,

The National FOIA Office (NFO) requests your feedback, including written comments by COB Friday, September 20, 2019, on draft changes to two attached documents:

1. the Agency's FOIA Policy; and
2. the Agency's FOIA Procedures.

To provide feedback on these draft documents, you may submit written comments to Heather Thompson at thompson.heather@epa.gov and Krishna Bhatt at bhatt.krishna@epa.gov. You may also provide feedback during one of the listening sessions the NFO will host (more information below). Each FOIA Program should coordinate within their office and provide a consolidated response wherever possible.

We are updating the FOIA Policy and Procedure at this time to properly reflect the following:

- amendments to the FOIA (the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016);
- the creation of the National FOIA Office;
- the designation of the General Counsel as the Chief FOIA Officer;
- the consolidation of Regional FOIA Programs into the Offices of Regional Counsel;
- the recent updates to the Agency's FOIA regulations, which became effective on July 26, 2019; and
- current Agency practices.

To aid your review, we have provided an explanation of changes for each document. Please note that these drafts are subject to additional revision based on the input we receive from each FOIA Program and additional review and comment within the Office of General Counsel.

The NFO will hold listening sessions to discuss the revisions and obtain comments on the drafts, as follows:

Call-in information will be provided for these sessions. The NFO looks forward to working with the FOIA Programs to finalize these documents.

- Tuesday, August 20, 2019 from 1-3pm in WJC North Room 6013
- Wednesday, August 28, 2019 from 10am-noon in WJC North Room 4530
- Tuesday, September 10, 2019 from 1-3pm in WJC North Room 6013
- Session to discuss 1st level review and FOIA search responsibilities – Wednesday, August 21, 2019 from 10am-noon in WJC North Room 6013

Thank you for your careful review and thoughtful comments.

Tim

**Timothy R. Epp**
|National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309B
Phone (202) 564-2830| epp.timothy@epa.gov

National FOIA Office
EPA Office of General Counsel

| **Summary of Recommended Proposed Changes** *(does not include technical corrections/typos)* | Changes Made | **Rationale** |
|---|---|---|
| Ex. 5 AC/DP | | |

| **Summary of Recommended Proposed Changes** *(does not include technical corrections/typos)* | Changes Made | **Rationale** |
|---|---|---|
| Ex. 5 AC/DP | | |

| **Summary of Recommended Proposed Changes** *(does not include technical corrections/typos)* | **Rationale** |
| --- | --- |
| **Ex. 5 AC/DP** | |

| **Summary of Recommended Proposed Changes** *(does not include technical corrections/typos)* | **Rationale** |
| --- | --- |
| **Ex. 5 AC/DP** | |

**To:** Gottesman, Larry[Gottesman.Larry@epa.gov]; Schumacher, Wendy[schumacher.wendy@epa.gov]
**Cc:** Simon, Paul[Simon.Paul@epa.gov]
**From:** Calderon, Wanda[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=693320A252774A2EA86D88D8B31B4D4C-CALDERON, WANDA]
**Sent:** Thur 6/13/2019 10:37:25 PM (UTC)
**Subject:** FW: Awareness Notification
FOIA Efficiency Memo (1).pdf
Awareness Notificiation Temp 1.docx

Thanks for sharing lulu.....JUST came across your notices!

The most respectful comment EVUH – we can't generate one without the other (i.e. TASK closures). R2 is ready to issue replies (at the very least) on the two highlighted entries....make sure they don't become part of "da list"; 6070 is in the lap of the Gods! Take care friends.....

RESPECTFULLY,

Wanda Calderon
Government Information Specialist
Office of Regional Counsel
U.S. EPA Region 2
212-637-3668
www.epa.gov/foia

---

**From:** Person, Linda
**Sent:** Thursday, June 13, 2019 10:03 AM
**To:** Mugdan, Walter <Mugdan.Walter@epa.gov>
**Cc:** Calderon, Wanda <Calderon.Wanda@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>
**Subject:** Awareness Notification

(This is being sent on behalf of Larry Gottesman.)

Dear Mr. Mugdan:

The following FOIA requests, assigned to your office, have been selected for the Awareness Notification Process set forth in the attached Chief of Staff's Memorandum.

The FOIAonline tracking number(s) for the selected FOIA requests is/are:

| OFFICE | FOIA NUMBER | SUBJECT |
|---|---|---|
| Region 2 | EPA-R2-2019-006070 | 1. All documents on the attached list.<br>2. All documents produced or relied upon by the EPA in conducting its 4th Five Year Review Report, to the extent not included in the Report. Please include all sampling data, inspection notes and memos, and correspondence with other government agencies and responsible parties relating to on and off-Site investigation, risk assessment and recommendations. |
| **Region 2** | EPA-R2-2019-006139 | all notes taken by Slawomir (Steven) Kopec from December 17, 2017 to present during internal and external meetings attended with regional administrator Peter Lopez. |
| **Region 2** | EPA-R2-2019-006143 | all notes taken by Slawomir (Steven) Kopec from December 17, 2017 to present during internal and external meetings attended with regional administrator Peter Lopez. |

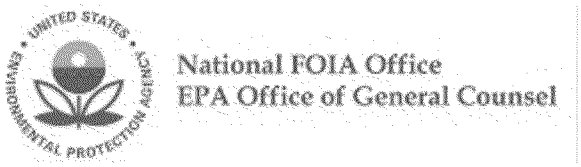
For these FOIA requests, please follow the procedures set out in the attached Chief of Staff's Memorandum. For steps 4 and 5, an email template is attached for your use.

Please contact me if you have any questions.

Thank you,

Larry F. Gottesman
Agency FOIA Officer
Office of General Counsel
U.S. Environmental Protection Agency

202-566-2162 (Direct line)
202-689-4588 (Mobile)
202-566-1667 (Main line)



**To:** OGC NFO[OGC-NFO@epa.gov]
**From:** Creech, Christopher[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=87B8993F1A0E42FCB26D654DD8F2E377-CREECH, CHR]
**Sent:** Wed 7/3/2019 2:46:58 PM (UTC)
**Subject:** Feedback Requested - Draft Implementation Messaging
Draft Summary of Changes to FOIA Regulations.docx
Draft Implementation Messaging.docx

Hello Team!

Happy almost holiday! I am requesting your feedback on the attached draft implementation messaging and the draft summary of changes to the FOIA regulations. Feedback that would be very helpful would be suggestions for clarity (*viz.* delawyer-speaking); insight into the particular efforts referenced; and, whether any information not included in the draft has been requested from the FOIA programs.

Thank you in advance for your help. Please provide me comments/edits/feedback by COB next Tuesday, July 9.

Best,

**Christopher T. Creech**
Attorney–Adviser, National FOIA Office
Office of General Counsel, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A), Washington, DC 20460
WJCN 7353E | (202) 564-4286 | creech.christopher@epa.gov

National FOIA Office
EPA Office of General Counsel

Colleagues,

Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

**To:** OGC NFO[OGC-NFO@epa.gov]
**Cc:** Thompson, Heather[Thompson.Heather@epa.gov]; Bhatt, Krishna[bhatt.krishna@epa.gov]; Person, Linda[Person.Linda@epa.gov]
**From:** Creech, Christopher[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=87B8993F1A0E42FCB26D654DD8F2E377-CREECH, CHR]
**Sent:** Mon 6/17/2019 6:12:38 PM (UTC)
**Subject:** Review Requested - Policy and Procedures Updates
DRAFT_EPA FOIA Policy_Clean (06.17.2019).docx
DRAFT_EPA FOIA Procedures_Clean (06.17.2019).docx
DRAFT_FOIA Policy_Changes Explanation (06.17.2019).docx
DRAFT_FOIA Procedures_Changes Explanation (06.17.2019).docx
CIO FOIA Policy.pdf
CIO FOIA Procedures.pdf

Hello Team,

As you know, we are working to update the Agency-wide FOIA Policy and Procedures in light of the updates to the FOIA Regulations (which were signed Friday!).

We are asking for your review on the attached Policy and Procedures by COB next Monday, June 24. For your convenience, attached are:

1. The updated FOIA Policy
2. The updated FOIA Procedure
3. An Explanation of Changes to the Policy
4. An Explanation of Changes to the Procedure
5. A Copy of the Old CIO FOIA Policy
6. A Copy of the Old CIO FOIA Procedures

Any feedback you have would be appreciated, either a redlined version of the attached "Clean" Policy and Procedures or an email with general feedback. The scope of this update is to capture changes made through the regulations, amendments to the FOIA, and the regional FOIA reorganization. We do intend to circulate this with FOIA Officers and Coordinators in the future, but please keep this internal for now (Joe and Elise have yet to review).

I look forward to seeing your comments and suggestions. Feel free to contact Heather, Krishna, Linda, or me if you have any questions.

Best,

**Christopher T. Creech**
Attorney–Adviser, National FOIA Office
Office of General Counsel, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A), Washington, DC 20460
WJCN 7353E | (202) 564-4286 | creech.christopher@epa.gov

National FOIA Office
EPA Office of General Counsel

Internal Use Only | Deliberative | Attorney-Client

# INFORMATION DIRECTIVE
# POLICY

| Freedom of Information Act Policy | | | |
|---|---|---|---|
| EPA Classification No.: | CIO 2157.1 | CIO Approval Date: | 09/30/2014 |
| CIO Transmittal No.: | 14-006 | Review Date: | 09/30/2017 |

*Issued by the EPA Chief Information Officer,*
*Pursuant to Delegation 1-19, dated July 7, 2005*

# Freedom of Information Act Policy

## 1. PURPOSE

This policy establishes EPA requirements for complying with the Freedom of Information Act (FOIA) as amended, EPA FOIA regulations, and guidance issued by the U. S. Department of Justice and the National Archives and Records Administration. This policy supports open government through transparency, proactive disclosure, and, when possible, discretionary releases of information. It also serves as a framework for the associated procedures used to process FOIA requests and promote accountability for the timeliness and quality of EPA responses.

## 2. SCOPE AND APPLICABILITY

This policy addresses statutory, regulatory, federal guidance and Agency requirements for processing FOIA requests. The policy establishes management and staffing requirements for implementing FOIA; establishes accountability for managers and FOIA professionals; and sets requirements for using the FOIA management and tracking system that has been approved by the Agency's Chief FOIA Officer for managing the lifecycle of FOIA requests.

## 3. AUDIENCE

The audience for this policy includes all EPA organizations, officials, and employees. The audience for this policy is also contractors or grantees and others operating on behalf of the EPA, as described below.

## 4. BACKGROUND

The FOIA, 5 U.S.C. § 552, was enacted in 1966. The law gives any requester the right to obtain federal agency records unless such records or portions of such records are protected from public disclosure by one or more of the nine exemptions or three law enforcement exclusions contained in the statute. The FOIA applies only to administrative agencies within the federal Executive Branch. It does not apply to records held by Congress, the courts, or

by state, local, or tribal government agencies. The FOIA has undergone several amendments since its passage, including the e-FOIA amendments of 1996 and the Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007. The e-FOIA amendments clarified how electronic records should be handled under the FOIA and extended the statutory time for agencies to respond from ten working days to twenty working days. The OPEN Government Act of 2007 made changes to promote a more open and accountable government and established a requirement for each agency to have a Chief FOIA Officer and Public Liaison Officers to assist in reducing delays, increasing transparency and resolving disputes. In conformance with the OPEN Government Act, FOIA requests and EPA decisions are now managed in a FOIA management and tracking system. With very limited exceptions all EPA FOIA responses will be available in the Agency's FOIA management and tracking system for public viewing and searching.

EPA FOIA activities are performed across the Agency under the direction of the Chief FOIA Officer and the National FOIA Program located in the Office of Environmental Information (OEI). The National FOIA Specialists support the EPA FOIA community by providing training, offering guidance, supporting fee waiver and expedited processing activities and staffing the FOIA Requester Service Center. The Office of General Counsel and Offices of Regional Counsel provide legal advice to staff in EPA's program offices who are responding to a request. The Office of Inspector General is independent and provides advice on FOIA matters pertaining to its own organization.

## 5. AUTHORITY

Freedom of Information Act , 5 U.S.C. § 552.
EPA's FOIA Regulations, Title 40, C.F.R. Part 2, Subpart A.

## 6. POLICY

It is the policy of the EPA to manage Freedom of Information Act (FOIA) requests as follows:

1. FOIA requests submitted to the Agency will be processed in accordance with the FOIA, applicable Presidential Orders and memoranda, EPA's FOIA regulations, applicable guidance issued by the Department of Justice and the National Archives and Records Administration and applicable EPA FOIA guidance and procedures.
2. FOIA requests submitted to the Agency will be processed throughout their lifecycle using the FOIA management and tracking system approved by the Agency's Chief FOIA Officer.
3. Records found to be responsive to a request will be released unless a mandatory exemption applies or, for discretionary exemptions, the Agency determines that a foreseeable harm that would result from disclosure.
4. At least two knowledgeable individuals, who may be subject matter experts and

including one manager, will review all documents before they are released to the public under the FOIA to improve accuracy and consistency in release determinations. One of the reviews may be performed by the subject-matter expert who processes the request. This is in addition to the review conducted by staff responsible for initially identifying and collecting documents.

5. Organizations will ensure that resources are allocated to comply with meeting FOIA requirements detailed in this policy.
6. Organizations will develop and maintain procedures for processing FOIA requests within their offices that document their business practices. Processing procedures will comply with this policy and with the Agency's FOIA processing procedures issued by the Chief Information Officer.
7. Organizations will identify individuals who have critical FOIA responsibilities in their organizations by name and by position, including but not limited to FOIA Officers, FOIA Coordinators, individuals who are authorized to make decisions regarding the releasability of records (see Item 8 below) and those who review documents before they are released to the public. This information will be made available to the Agency FOIA Officer and to all staff in the organization.
8. Determinations to release or withhold records will be made in accordance with the Freedom of Information Delegation of Authority, I-30. (See EPA Delegations Manual, Chapter 1, Section 30.)
9. FOIA responses will be posted to the Agency's FOIA management and tracking system unless posting the records will create a potential harm protected by a FOIA exemption or if a waiver to post records is granted by the Agency FOIA Officer.
10. FOIA professionals will have the knowledge, skills and abilities to perform their duties.
11. FOIA duties will be critical elements in the performance agreements of FOIA professionals.
12. FOIA professionals will take mandatory annual trainings identified by the Agency FOIA Officer.
13. Agency managers will have critical job elements in their performance agreements that establish accountability for ensuring their FOIA professionals have the knowledge, skills and abilities to perform their duties and respond in a timely manner to requests in accordance with the FOIA.
14. The Agency's FOIA Public Liaison will work to resolve FOIA issues with requesters and foster greater openness and transparency in the Agency's FOIA administration activities and its interactions with the public.
15. Organizations will comply with Agency procedures for processing FOIA requests, along with the guidance and direction issued by the Agency FOIA Officer.

## 7. RELATED DOCUMENTS

Freedom of Information, EPA Delegations Manual, Chapter 1, Section 30.

## 8. ROLES AND RESPONSIBILITIES

**Action Office** – The organizational unit that maintains the majority of records responsive to a FOIA request.

**Agency FOIA Officer** – The Agency FOIA Officer is the program manager for the National FOIA Program. The Agency FOIA Officer coordinates and oversees the EPA FOIA administration responsibilities; issues expedited processing and fee waiver determinations; develops and reviews FOIA policies, procedures, and guidance; provides advice to Agency FOIA personnel in the program and regional offices; prepares annual reports to the Department of Justice (DOJ); and provides FOIA training to Agency employees and other individuals covered under Section 3 of this policy. The Agency FOIA Officer is located in the Office of Environmental Information at EPA Headquarters.

**Authorized Officials** – The Deputy Administrator, Assistant Administrators, Associate Administrators, the Inspector General, the General Counsel, Heads of Headquarters Staff Offices and Regional Administrators (or their appropriate designee) are authorized under section 2.113(b) of EPA's FOIA regulations to issue initial determinations to release or withhold records in response to FOIA requests. Freedom of Information, EPA Delegations Manual, Chapter 1, Section 30, provides that this authority may be redelegated to the office director level or equivalent, who may redelegate to the division director level or equivalent.

**Chief FOIA Officer** – The designated high-level official within each federal agency who has overall responsibility for the agency's compliance with the FOIA. At the EPA, the Assistant Administrator for the Office of Environmental Information is the Chief FOIA Officer. The Chief FOIA Officer is responsible for ensuring the efficiency and effectiveness of the Agency's FOIA administration including compliance, accountability and reporting to the Administrator, the Department of Justice, and the Office of Management and Budget on the status of the Agency's FOIA program.*NOTE: This role is different from that of the Agency FOIA Officer above.*

**FOIA Coordinators** – FOIA Coordinators stay informed on requests and assignments; route requests to the appropriate Action Office or subject matter expert within the Program Office; track FOIA requests for timeliness; monitor the quality of the responses; and provide guidance to program personnel including overdue reports, in collaboration with the Agency FOIA Officer. Each Headquarters Program Office has a lead FOIA Coordinator who works under the general direction of the Agency FOIA Officer.

**FOIA Officer** – See "Agency FOIA Officer" or "Regional FOIA Officers."

**FOIA Offices** – The FOIA Office is the point of receipt for Agency FOIA requests where they are reviewed for conformance with the Act, acknowledged and assigned to the appropriate

Action Office. The locations are identified in the EPA's FOIA regulations for submitting FOIA requests. Agency FOIA Offices are located in each Region and in the National FOIA Program at Headquarters.

**FOIA Professional** – An EPA employee or contractor who directly interacts with FOIA requesters and is responsible for the day-to-day FOIA processing activities.

**FOIA Public Liaison** – The FOIA Public Liaison is the EPA point of contact for the public if they have any issues with the handling of their FOIA request by the Agency. In the EPA, the FOIA Public Liaison is the Chief of the FOIA and Privacy Branch in the Office of Information Collection within the Office of Environmental Information. The Public Liaison supervises the staff in the FOIA Requester Service Center and is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

**FOIA Requester Service Center** – The FOIA Requester Service Center (FOIA Hotline) provides the public information on the status of their requests if they do not have access to FOIAonline, general information on how and where to submit a FOIA request, or information about the types of information available on the EPA's websites. The Center is staffed by the FOIA Public Liaison, Agency FOIA Officer and National FOIA Specialists. The Hotline number is 202-566-1667.

**Managers and Supervisors** – EPA managers and supervisors oversee FOIA Officers and FOIA Coordinators to ensure that they have the knowledge, skills and ability to perform their duties and respond in a timely manner in accordance with the FOIA. They review and approve all FOIA responses before release.

**National FOIA Program** – The National FOIA Program is staffed by the Agency FOIA Officer and National FOIA Specialists who develop Agency-level policies, procedures and trainings, respond to questions, provide guidance, deliver training, and make decisions on fee waiver and expedited processing requests. The National FOIA Program is located in the Office of Environmental Information.

**National FOIA Specialists** – National FOIA Specialists manage the lifecycle of FOIA requests received at Headquarters; assign requests to Headquarters FOIA Coordinators; prepare responses to fee waiver and expedited processing requests; approve requests to extend due dates; respond to questions from Agency employees; and staff the FOIA Requester Service Center.

**Office of General Counsel (OGC)** – OGC provides legal advice on FOIA matters; issues final decisions on FOIA appeals, final confidentiality determinations for confidential business information (CBI) claims originating in HQ, and fee waiver appeal determinations, except when a conflict of interest arises; provides counsel on FOIA exemptions and exclusions; and assists the U.S. Department of Justice attorneys in FOIA litigation.

**Office of Inspector General (OIG)** – OIG and the Counsel to OIG provide advice on FOIA matters pertaining to its organization; issue initial determinations and final decisions on FOIA appeals, final confidentiality determinations, except when a conflict of interest arises; provide counsel on FOIA exemptions and exclusions; and assist the U.S. Department of Justice attorneys in FOIA litigation.

**Office of Regional Counsel (ORC)** – ORC provides legal advice on FOIA matters, final confidentiality determinations for CBI claims originating in the Region, FOIA litigation support to regional employees, and information as needed to the Agency FOIA Officer on fee waiver requests. ORC also assists OGC on appeals, as appropriate.

**Regional FOIA Officers** – Regional FOIA Officers assign requests to the appropriate Action Office within the region; track FOIA requests; provide guidance to regional personnel in collaboration with the Agency FOIA Officer; coordinate with the Agency FOIA Officer and Action Offices on initial fee waiver decisions; compile data for the annual FOIA report; and monitor the quality and timeliness of responses in the regions. Regional FOIA Officers work under the general direction of the Agency FOIA Officer.

## 9. DEFINITIONS

**Freedom of Information Act (FOIA)** – The Freedom of Information Act (FOIA) was signed into law in 1966. The law provides individuals with a statutory right of access to certain federal agency records. The FOIA requires agencies to disclose requested records unless they are protected from public disclosure by the FOIA. Congress included in the FOIA nine exemptions and three law enforcement exclusions to protect important interests such as national security, personal privacy, privileged communications, and law enforcement.

**Records** – Information in an agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, "records" includes *all* tangible documentations of information regardless of whether they are records under 44 U.S.C. § 3301. *(NOTE: This is a broader definition than that used by the EPA records program and records schedules.)*

**Requester** – Any individual (including non-U.S. citizens), corporation or association, public interest group, and state, local, tribal, or foreign government making a FOIA request. Requests from Federal agencies, the Government Accountability Office, or Congress (e.g., the Speaker of the House, the President of the Senate, or the chair of a committee or subcommittee) are not covered under this policy.

**Responsive Record** – A record falling within the scope of a FOIA request that an agency has located that may be provided or is under consideration for inclusion in a response to a FOIA request. A record may be "responsive" to a FOIA request, but may still be withheld as protected from disclosure by a FOIA exemption.

## 10. WAIVERS

No waivers will be accepted from the requirements of this policy.

## 11. RELATED POLICIES, STANDARDS AND GUIDANCE

- Procedures for Responding to Freedom of Information Act Requests, CIO 2157-P-01.
- FOIA memoranda and guidance documents (http://www.epa.gov/foia/reference.html).
- FOIA guidance issued by the Department of Justice (http://www.justice.gov/oip/foia-resources.html).

## 12. MATERIAL SUPERSEDED

Interim Freedom of Information Act Policy (CIO 2157.0/Transmittal 13-004 dated June 28, 2013)

## 13. ADDITIONAL INFORMATION

For further information, please contact the Office of Environmental Information, Office of Information Collection.

**Renee P. Wynn**
**Acting Assistant Administrator for Environmental Information**
**and Chief Information Officer**
**U. S. Environmental Protection Agency**

# INFORMATION DIRECTIVE
# PROCEDURE

| Procedures for Responding to Freedom of Information Act Requests | |
|---|---|
| EPA Classification No.: CIO 2157-P-01.1 | CIO Approval Date: 09/30/2014 |
| CIO Transmittal No.: 14-006 | Review Date: 09/30/2017 |

*Issued by the EPA Chief Information Officer,*
*Pursuant to Delegation 1-19, dated July 7, 2005*

# Procedures for Responding to Freedom of Information Act Requests

## 1. PURPOSE

These procedures provide basic instructions for responding to Freedom of Information Act (FOIA) requests submitted to EPA. They address statutory, regulatory, policy, procedural and processing requirements to be followed by all EPA organizations and must comprise the core of all office-specific FOIA processing procedures.

## 2. SCOPE AND APPLICABILITY

The scope of these procedures covers work performed by EPA employees, grantees, contractors, and interns in support of FOIA administration activities in Headquarters, regional offices, field offices and EPA laboratories.

## 3. AUDIENCE

The audience for these procedures includes all EPA organizations, officials, and employees. The audience for these procedures is also contractors or grantees and others operating on behalf of the EPA.

## 4. BACKGROUND

The FOIA, 5 U.S.C. § 552, was enacted in 1966. The law gives any requester the right to obtain access to federal agency records unless such records or portions of such records are protected

from public disclosure by one or more of the nine exemptions or three law enforcement exclusions contained in the statute. There are nine FOIA exemptions:

1) Classified national defense and foreign relations information.
2) Internal agency rules and practices.
3) Information that is prohibited from disclosure by another federal law.
4) Trade secrets and other confidential business information.
5) Inter-agency or intra-agency communications that are protected by legal privileges.
6) Information involving matters of personal privacy (protected under the Privacy Act or containing sensitive personally identifiable information).
7) Information compiled for law enforcement purposes, to the extent that the production of those records:
   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.
   e) Would disclose techniques and procedures for law enforcement, investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions.
   f) Could reasonably be expected to endanger the life or physical safety of any individual.
8) Information relating to the supervision of financial institutions.
9) Geological information on wells.

The FOIA applies only to administrative agencies within the federal Executive Branch. It does not apply to records held by Congress, the courts, or by state, local, or tribal government agencies. The FOIA has undergone several amendments since its passage, including the e-FOIA amendments of 1996 and the Open Government Act of 2007. The e-FOIA amendments clarified how electronic records should be handled under the FOIA and extended the statutory time to respond from ten working days to twenty working days. The Open Government Act of 2007 made changes to promote a more open and accountable government and established a requirement for each agency to have a Chief FOIA Officer and a FOIA Public Liaison to assist in reducing delays, increasing transparency and resolving disputes. It also established the Office of Government Information Services within the National Archives and Records Administration to provide mediation services for resolution of disputes between persons making FOIA requests and administrative agencies as well as to provide input and guidance on the effective administration of the FOIA across federal agencies.

The Open Government Act promotes the use of technology to achieve more efficient disclosure of information to the public. To improve its FOIA management and processes, the EPA deployed FOIAonline, a shared service, as its new FOIA management system in October 2012. FOIAonline automates core processing and administrative activities. All FOIA requests received at the EPA will be managed throughout their lifecycle in FOIAonline. All records provided by the EPA in response to a FOIA request will be entered into FOIAonline for public viewing and searching unless the volume of paper records is very large and conversion to electronic format is not practical or the response is subject to special handling requirements or policies (e.g., contains Confidential Business Information that is only appropriate to release to the requester/owner of the CBI and is not appropriate for public release). These exceptions will be reviewed on a case by case basis by the Agency FOIA Officer. A copy of the exception decision will be maintained in the system. If records provided in response to a request are not entered into FOIAonline because of these conditions, a placeholder document must be uploaded with contact information for obtaining a copy of the response. The organizational unit that has responsibility for responding to the request (known throughout this document as the Action Office) must maintain the records and make them readily available for responding to future requests.

This document does not provide “how-to” instructions for using FOIAonline, but does reference features of the system that help accomplish certain FOIA tasks outlined in this procedure. The Agency sponsors FOIAonline trainings for managers, supervisors and staff and has developed FOIAonline user guides that are available at https://foiaonline.regulations.gov/foia/action/public/home.

These procedures are intended to ensure that the Agency responds to FOIA requests in accordance with statutory requirements, the EPA’s implementing regulations, and open government and transparency policies.

Program Offices and Regions will develop or update organizational FOIA procedures to conform to this document within 180 days of this document being finalized. All procedures must be consistent with the EPA’s FOIA regulations and statutory requirements.

These procedures will be supplemented by role-based and general awareness trainings for the audience identified under Section 3, above.

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## 5. AUTHORITY

Freedom of Information Act , 5 U.S.C. § 552.
EPA's FOIA Regulations, Title 40, C.F.R. Part 2, Subpart A.
CIO Policy 2157.0, Freedom of Information Act (FOIA) Policy

## 6. PROCEDURES

The Agency's FOIA regulations direct the public to send FOIA requests, in writing, to EPA Headquarters, Regional FOIA Offices or through a form on the Agency's FOIA website (which provides a link to FOIAonline). Requests received in any other Agency office should be immediately forwarded to the appropriate FOIA Officer so that the requester does not incur undue processing delays. See 40 C.F.R. 2.102(a).

The actions identified in Steps 1-5, below, are performed by staff in FOIA offices. Regions and Program Offices will decide who performs the steps identified in these procedures.

### INITIATING THE PROCESS

The FOIA process officially begins when a request is received in any Agency FOIA Office. Requesters may request a fee waiver and/or expedited processing at the time they submit their request.

**Step 1 – Receive, Review, and Acknowledge Incoming Requests.** The public may submit requests to the Agency via FOIAonline, postal mail, email, or hand delivery. The FOIA Office receiving the request will verify that the request: 1) is in writing; 2) provides a mailing address; 3) asks for Agency records; and 4) reasonably describes the records sought. A description is sufficient if it enables an Agency employee familiar with the subject area to locate the record with a reasonable amount of effort. See also, 40 C.F.R. § 2.102(c).

- ***Improper FOIA requests include:***
  - *Requests that do not reasonably describe the records sought;*
  - *Requests that pose questions, rather than seek documents.*
- ***FOIA does not require EPA to:***
  - *Create new records or future records in response to a request;*
  - *Re-create records which were properly disposed of;*
  - *Produce records the Agency retains no control over;*
  - *Re-provide records which EPA already makes available to the public; or*
  - *Produce purely personal records.*

If the requestor provided an email address, FOIAonline will automatically send a receipt to the requester that includes the tracking number and submission date for all requests processed in the system. Requests received after 5 pm EST or on weekends or holidays are not considered received until the next business day. If a request is not received through FOIAonline, the FOIA Office will enter the request in the system within one working day of receipt and issue an acknowledgement through FOIAonline if an email address is provided. Postal mail will be used by the FOIA Office if an email address is not provided. The

acknowledgement letter will provide the tracking number and the date the request was received by EPA.

**Step 2 – Determine if the Request is in the Correct FOIA Office.** The receiving FOIA Office will determine where responsive records are most likely located in the Agency. When a request is received at an Agency FOIA Office and all responsive records are determined to be located in another Region or Headquarters, the receiving FOIA Office will assign the request in FOIAonline to the appropriate FOIA Office for processing. If the receiving FOIA Office does not know where responsive records are located, the FOIA Office will consult with the Headquarters FOIA Office. See also, 40 C.F.R. § 2.103(a).

The FOIA allows agencies up to 10 working days to route a misdirected request before the 20 working day period to respond begins. For the purposes of this 10 day allowance, a request is "misdirected" if it is sent to a FOIA Office that is not located with the Program or Regional Office that will have the responsive records. Requests sent by the public to an office other than a FOIA Office are also misdirected and must be immediately sent to the local FOIA Office.

After steps 1 and 2 are complete, the request is considered "perfected." Requests should be "perfected" on the same day they are receivedby the correct FOIA Office. The FOIA Office will enter the "perfected" status in FOIAonline to initiate the 20 day working period. FOIAonline will automatically initiate the 20 working day period on the 11th working day after the request was received, even if the request has not been perfected.

**Step 3 – Determine the Fee Category**. EPA FOIA Offices will determine how requesters will be charged processing fees based on their fee category. The fee categories under the FOIA are: (1) Commercial Use, (2) Educational Institution or Non-Commercial Scientific Institution, (3) Representative of the News Media and (4) Other. See also, 40 C.F.R. § 2.107. (See Step 8 below for information on calculating fees.)

**Step 4 – Process Fee-Waiver (FW) and Expedited Processing (EP) Requests.** All requests for fee waivers and expedited processing must be submitted with the initial FOIA request (see 40 C.F.R. § 2.107(l) (5)). Decisions on FW and EP requests will be made by the Agency FOIA Officer based on the factors outlined in 40 C.F.R. § 2.107(l) (5) and 2.104(e), respectively.

FW and EP requests submitted to a Regional FOIA Office will be transferred by the Regional FOIA Officer to the Headquarters FOIA Office through FOIA-online for processing. (Please note that the region retains the responsibility for responding to the request for records.)

Whether a request is likely billable or unbillable will be communicated to the Headquarters FOIA Office by the organization to which the request is assigned within 48 hours of receipt of the request. The Agency FOIA Officer will determine if fees will likely be incurred by the requester before deciding on the request. (A request for a fee waiver is moot when no fees are associated with processing the request.)

The Agency FOIA Officer will make the initial decision whether to grant or deny a FW or EP request. The individual assigned the request will be notified via an email from FOIAonline that a determination has been issued. If the FW and EP request is assigned to a group rather than to an individual, FOIAonline will not send an email, but will alternatively provide an internal system message to each group member the next time that person logs on.

The Agency must decide whether to grant or deny an EP request within 10 calendar days of receipt. If the request is granted, it must be given priority by the Action Office and be the next request in line for processing. See C.F.R. § 2.104(3) (4). However, the request itself is not required to be processed within the 10 calendar days.

**Step 5 – Assign the Request to the Action Office.** In most cases, the FOIA Office will assign the request in FOIAonline to the primary FOIA Coordinator in the Program or Regional Office believed to most likely house the majority of responsive records. The FOIA Coordinator will assign a lead office within that organization (the "Action Office"). When the requester is seeking records about or created by an individual, the organization where the individual worked at the time the records were created will become the Action Office and have responsibility for processing the request.

Often, additional Programs and/or Regions may have responsive records ("Contributing Office"). The Action Office will assign each Contributing Office a task in FOIAonline for them to provide responsive records. These Contributing Offices will coordinate the Agency's response with the Action Office, including uploading responsive records to the system.

## PROCESSING THE REQUEST IN ACTION OFFICES

An organization's[1] internal FOIA processing procedures will determine who performs steps 6-16 identified in this procedure on behalf of the Action Office and the FOIA Coordinator. However, the steps will remain the same regardless of who performs them.

At Headquarters, each Office of an Assistant Administrator and the Office of the Administrator has a primary FOIA Coordinator who receives the assignment from the Headquarters FOIA Office. FOIA requests in regions are received by the Regional FOIA Officer who selects the appropriate division, branch or individual within the organization which is known as the Action Office. Regions have a primary FOIA Coordinator and the function may be performed by various staff persons. At Headquarters, the primary FOIA Coordinator will assign the request to the Action Office. Non-primary FOIA Coordinators may also be located at the division and branch levels at Headquarters and in regions depending on the business practices of the particular organization. An organization's business practices determine the workflow and roles and responsibilities when a request is received for action. These practices will be detailed in the organization's FOIA procedures.

[1] An EPA region (e.g., Region 1) or the Office of an Assistant Administrator (e.g., OGC).

When an assignment is received from a FOIA Office, the primary FOIA Coordinator or regional person (designated by the Regional FOIA Officer) will determine which of the offices in the organization (e.g., staff offices, divisions, or branches) are likely to have records responsive to the request. The primary FOIA Coordinator or regional person will assign the request to the appropriate office or FOIA professional using FOIAonline. If the description of the records requested is not sufficient for the primary FOIA Coordinator or regional person to assign the request to an office, the primary FOIA Coordinator or regional person will contact the requester for additional information. All communications, including verbal conversations with the requester, will be documented for the official record and entered into FOIAonline. Communications may include discussion of scope, deadlines, or other issues.

*NOTE: For large, complex FOIA requests, it is suggested that the Action Office convene meetings with all interested Agency parties in order to clarify responsibilities, methods to be used for collection, and similar issues. Those meetings should include programmatic experts, Records Liaison Officers, information technology specialists, and legal counsel, as appropriate.*

**Step 6 – Determine Search Parameters.** The Action Office will determine the cut-off date for records subject to the request. Under the EPA's regulations (40 C.F.R. § 2.103 (a)) for determining what records are within the scope of the request, the Action Office will usually include only those records in its possession as of the date the request was received by the FOIA Office, unless the request specifically seeks a more limited scope. If a different date is used, the Action Office will inform the requester of that date.

The request will also be reviewed to determine the subject matter of the records the requester is seeking. If it is deemed necessary for the person processing the FOIA to obtain clarification or additional information from the requester, the time necessary to reformulate the request will be excluded from the statutory 20 working day period (or any authorized extension of time) that the EPA has to respond to the request. The FOIA permits the Agency to "stop the clock" **one** time during the first 20 days after receipt, to seek information and clarification from the requester. Although the requester may be contacted as many times as needed to clarify the scope of the request, the clock may only be stopped once. Once the clock has been stopped, it should not be restarted until the information or clarification is provided. All communications must be documented for the official record and entered into FOIAonline, and the deadlines adjusted in the system, as appropriate.

**Step 7 – Determine if Additional Responsive Records are in Other Agency Organizations.** When additional responsive records are determined to be located in other Agency organizations, or the request is incorrectly assigned, the appropriate FOIA Office should be notified by the FOIA Coordinator or the organizational subject matter expert within two working days of receiving the assignment. Action Offices should return misdirected requests to the local FOIA Office for re-assignment within two working days.

*NOTE: The FOIA Office will create a task in FOIAonline to request additional records from*

*another EPA organization.*

**Step 8 – Estimate Processing Fees.** The EPA's FOIA regulations require an assurance of payment from the requester if fees are expected to exceed $25.00 or an amount specified by the requestor. Unless a waiver of fees has been granted by the Agency FOIA Officer, the Action Office will estimate the processing fee which will be charged as specified in 40 C.F.R. § 2.107. Search fees may apply even when no responsive records are identified or no responsive records are disclosed to the requester. The EPA's FOIA Regulations (40 C.F.R. § 2.107(j)) also define circumstances where it may be appropriate to require advance payment of the estimated fees, if the fees are expected to exceed $250.

Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. Fees are calculated as follows:

| Type of Staff | Charge Per Quarter Hour |
|---|---|
| Clerical Staff | $4.00 per ¼ hr |
| Professional Staff | $7.00 per ¼ hr |
| Managerial Staff | $10.25 per ¼ hr |

| Type of Requester | Fee Category to be Charged | | |
|---|---|---|---|
| | Search | Review | Duplication |
| Commercial | Yes * | Yes | Yes |
| Educational | No | No | Yes (100 pages free)* |
| Non-commercial Scientific | No | No | Yes (100 pages free)* |
| News Media | No | No | Yes (100 pages free)* |
| All Others | Yes (First 2 hours free)* | No | Yes (100 pages free) |

*Fees shaded in grey above cannot be charged if the Agency fails to comply with time limits for response.

**Step 9 - Determine Response Time.** The FOIA requires agencies to provide a substantive response within 20 working days. In such instances when the Action Office determines the response cannot be completed within 20 working-days, the EPA may extend the due date if "unusual circumstances," as defined by the FOIA, apply.

An "unusual circumstance" exists when there is: (1) a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and (3) a need for consultation, which will be conducted with all practicable speed, with another

agency or among two or more components of the EPA having a substantial interest in the determination of the request.

If unusual circumstances exist and there is a need to extend the due date for 10 working days or less, the Action Office must, within the 20 working day time limit, notify the requester in writing that unusual circumstances exist and provide the new due date. When the unusual circumstances result in a need to extend the due date for more than 10 working days, the Action Office must also provide the requester, within the 20 working days, the contact information for the EPA's FOIA Public Liaison and an opportunity to either (a) modify the request so that it may be processed within the 10 working day extension or (b) arrange an alternative time period for processing the original or modified request.

If unusual circumstances do not exist, or if the due date has already been extended and additional time is needed to complete the response, the Action Office should seek a reasonable extension from the requester. To aid the requester, the Action Office will provide the requester the contact information for the EPA FOIA Public Liaison, who will assist in the resolution of any disputes between the requester and the EPA. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible. The requester may file an administrative appeal or may pursue litigation. For instances where the FOIA requester is the prevailing party of a litigation case and the EPA is required to pay legal fees, please refer to Office of the Chief Financial Officer's FOIAFee Policy, RMDS 2540-04-P2. In any event, the Action Office should communicate any extensions and expected completion dates with the requester. All communications must be documented for the official record and entered into FOIAonline.

The Action Office also enters the new requested due date and the justification for the extension into FOIAonline. The system generates a notice to the Headquarters or appropriate Regional FOIA Office for approval. The FOIA Office will make a decision within two working days, document the decision, with comments if necessary, in FOIAonline, and communicate the new date to the Action Office. The Action Office will communicate the new due date to the requestor.

**Step 10 – Collect and Review the Records.** The Action Office and each Contributing Office is responsible for identifying, collecting and reviewing records within the scope of the request as discussed in Step 6, and as outlined in any organization-specific procedures. This includes the responsibility for consultation and referral with other federal agencies. Contributing Offices are also responsible for coordinating responsive activities with the Action Office (i.e., the office that is determined to have the majority of responsive records) when more than one office has responsive records (see Step 5 above). The Action Office and each Contributing Office should also assure that protected information has been redacted from records before they are released.

The Action Office and Contributing Offices will: 1) ensure that redacted information cannot be read through photocopied records; 2) remove "hidden" metadata as appropriate (e.g. Microsoft Word document properties); and 3) annotate records with the applicable FOIA exemption(s) at the location of the redacted information. A copy of both the original and redacted record will be

stored in FOIAonline, unless subject to special handling requirements (e.g., large volume) or policies. Exceptions to this storage requirement are approved on a case by case basis by the Agency FOIA Officer. FOIAonline allows FOIA professionals to put records in the system that are not released to the public. This protects records that have been withheld.

If records provided in response to a request are not entered into FOIAonline because of special handling requirements or policies, or because the volume of files make it impractical to upload the complete response, a placeholder document must be uploaded with contact information for how to obtain a copy of the response that the responding office will maintain and make readily available.

*NOTE: Only records that have been: 1) marked published and 2) approved for release are available to the public in FOIAonline.*

**Step 11 – Determine Which Records (or Portions) May Be Released.** After thorough review, the Action Office will prepare to release responsive, non-exempt records or portions of records. All records released or being withheld in total in response to a FOIA request must be reviewed by at least two knowledgeable individuals, including one manager or supervisor to ensure openness, transparency, consistency, and the appropriate application of FOIA exemptions. One of the reviews may be performed by the individual who processes the request. Action Offices may consult with the Agency FOIA Officer, their Office of Regional Counsel (ORC), or Office of General Counsel (OGC) for questions regarding withholding of records under a FOIA exemption. If a discretionary FOIA exemption (Exemptions 2, 5, 7 (excluding 7(c)), 8 and 9) is implicated, Action Offices should only withhold records, or portions of records, when they reasonably foresee that disclosure would harm an interest protected by one of the exemptions or when disclosure is prohibited by law.

Responsive records that have been properly reviewed and redacted (if necessary) will be subject to one of the following outcomes:

a) Release in Full. The record, in its entirety, may be released to the requester.
b) Partial Grant/Partial Denial. Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester.
c) Withhold in Full. The record, in its entirety, will be withheld from the requester if covered by either one or multiple FOIA exemptions.
d) No Record. If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester will be informed in writing. A no records certification form must be completed for no record responses and entered in FOIAonline. Please note: This form is not sent to the requester.
e) Confidential Business Information (CBI). For records or parts of records that have been claimed as CBI or would be claimed as CBI if the business knew the EPA proposed to disclose the information, the procedures set out in 40 C.F.R. § 2.204 must be followed.

f) Glomar Response. In some instances, the EPA may expressly refuse to confirm or deny the existence of records responsive to a FOIA request; this is called a Glomar response. The response letter will inform the requester that the request is denied because "either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of FOIA." The Action Office must obtain approval from OGC or ORC prior to issuing a Glomar response.

**Step 12 – Prepare Response Letter.** The Action Office will prepare the response letter using standard language, if suitable, and obtain necessary concurrences. All response letters must include: (1) the FOIA tracking number and (2) appeal language, as appropriate. FOIA requesters have the right to appeal initial FOIA decisions made by the EPA if:

- No records were found;
- The response time has exceeded the statutory authority or documented extensions;
- The request for expedited processing was denied;
- The request for a fee waiver was denied;
- The requestor believes some records or portions of records were improperly withheld;
- The requestor believes the search was inadequate; or
- The requestor believes the fee category in which they were placed is incorrect.

In addition, response letters that withhold Agency records, in total or in part, are required to identify the:

- Records withheld individually or by category of similar documents if voluminous;
- Applicable FOIA exemption(s) under which the record is being withheld and a brief statement explaining the reason for the denial; and
- Authorizing official by name and title (see Step 14 below for list of Authorized Officials).

**Step 13 – Finalize Processing Fees.** The Action Office will inform the requesters in the response letter if fees for processing the request are not billable (i.e., equal to or less than $14.00). If the processing fees are billable (i.e., greater than $14.00), FOIAonline will generate the invoice.

*NOTE: The Administrative Cost section in FOIAonline must be completed to document billable and unbillable costs in FOIAonline. All offices working on a request will enter their administrative costs in FOIAonline. The EPA is required to document actual fees charged to the public (billable) and the administrative costs (unbillable) incurred by the agency in processing FOIA requests.*

**Step 14 – Obtain Approval from an Authorized Official to Release or Withhold Records.** The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of headquarters staff offices (or their appropriate designee) are delegated the authority to issue initial determinations

to release or withhold records in response to FOIA requests. See EPA Freedom of Information Delegation of Authority, Section 1-30.

*NOTE: Initial determinations (both release and withholding determinations) may be redelegated only to persons occupying positions not lower than division director or equivalent.*

**Step 15 – Respond to Request.** The Action Office will provide the response letter, responsive records and invoice (when applicable) to the requester through FOIAonline. If an email address is provided, the requester will be notified via email that the responsive records are available in FOIAonline. Otherwise, the response package will be provided via postal mail.

The response letter must include a description of the information withheld either by category and volume, or by a list. In all cases the response letter must also include the standard administrative appeal language.

**Step 16 – Finalize Actions.** The Action Office will ensure all supporting documentation is entered in FOIAonline (e.g., records of conversations or notes to the record). The record copy of the FOIA response will be maintained in FOIAonline, including all responsive records. Once published, these records become available for public searching and viewing.

If the volume of paper records is very large and conversion to electronic format is not practical or the response is subject to special handling requirements or policies, the Agency FOIA Officer will consider granting an exception to the requirement to load the records into FOIAonline. Reviews are made on a case by case basis. A copy of the decision by the Agency FOIA Officer will be maintained in the system. If the exception is granted, a placeholder document must be uploaded in FOIAonline with contact information for obtaining a copy of the responsive records. The Action Office that has responsibility for responding to the request must maintain the records according to applicable record schedules and make them readily available for responding to future requests.

The Action Office will close the request in FOIAonline.

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## 7. RELATED DOCUMENTS

- http://www.epa.gov/FOIA/FOIAregs.htm
- http://www.justice.gov/oip/amended-FOIA-redlined.pdf
- http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2171-p-01.pdf
- http://www.archives.gov/about/organization/summary/ogis.html

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## 8. ROLES AND RESPONSIBILITIES

**Action Office** – The organizational unit that maintains the majority of records responsive to a FOIA request.

**Agency FOIA Officer** – The Agency FOIA Officer is the program manager for the National FOIA program. The Agency FOIA Officer coordinates and oversees the EPA FOIA administration responsibilities; issues expedited processing and fee waiver determinations; develops and reviews FOIA procedures, policies, and guidance; provides advice to Agency FOIA personnel in the program and regional offices; prepares annual reports to the Department of Justice (DOJ); and provides FOIA training to agency employees and other individuals covered under Section 3 of these procedures. The Agency FOIA Officer is located in the Office of Environmental Information at EPA headquarters.

**Authorized Officials** – The Deputy Administrator, Assistant Administrators, Associate Administrators, the Inspector General, the General Counsel, Heads of Headquarters Staff Offices and Regional Administrators (or their appropriate designee) are authorized under section 2.113(b) of EPA's FOIA regulations to issue initial determinations to release or withhold records in response to FOIA requests. Freedom of Information, EPA Delegations Manual, Chapter 1, Section 30, provides that this authority may be redelegated to the office director level or equivalent, who may redelegate to the division director level or equivalent.

**Contributing Office** – Organizational units that possess responsive records in addition to the Action Office.

**Chief FOIA Officer** – The designated high-level official within each federal agency who has overall responsibility for the agency's compliance with the FOIA. At the EPA, the Assistant Administrator for the Office of Environmental Information is the Chief FOIA Officer. The Chief FOIA Officer is responsible for ensuring the efficiency and effectiveness of the Agency's FOIA administration including compliance, accountability and reporting to the Administrator, the Department of Justice, and the Office of Management and Budget on the status of the Agency's FOIA program. NOTE: This role is different from that of the Agency FOIA Officer above.

**FOIA Coordinators** – FOIA Coordinators stay informed on requests and assignments; route requests to the appropriate Action Office or subject matter expert within the Program Office; track FOIA requests for timeliness; monitor the quality of the responses; and provide guidance to program personnel including overdue reports, in collaboration with the Agency FOIA Officer. Each Headquarters Program Office has a lead FOIA Coordinator who works under the general direction of the Agency FOIA Officer. See also "Primary FOIA Coordinators".

**FOIA Officer** – See "Agency FOIA Officer" or "Regional FOIA Officers."

**FOIA Offices** – The FOIA Office is the point of receipt for Agency FOIA requests where they are reviewed for conformance with the Act, acknowledged and assigned to the appropriate

Action Office. The locations are identified in the EPA's FOIA regulations for submitting FOIA requests. Agency FOIA Offices are located in each Region and in the National FOIA Program at Headquarters.

**FOIA Professional** – An EPA employee or contractor who directly interacts with FOIA requesters and is responsible for the day-to-day FOIA processing activities.

**FOIA Public Liaison** – The FOIA Public Liaison is the EPA contact point for the public if they have any issues with the handling of their FOIA request by the Agency. In the EPA, the FOIA Public Liaison is the Chief of the FOIA and Privacy Branch in the Office of Information Collection within the Office of Environmental Information. The Public Liaison supervises the staff in the FOIA Requester Service Center and is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

**FOIA Requester Service Center** – The FOIA Requester Service Center (FOIA Hotline) provides the public information on the status of their requests if they do not have access to FOIAonline, general information on how and where to submit a FOIA request, or information about the types of information available on the EPA's websites. The Center is staffed by the FOIA Public Liaison, Agency FOIA Officer and National FOIA Specialists. The Hotline number is 202-566-1667.

**Managers and Supervisors** – EPA managers and supervisors oversee FOIA Officers and FOIA Coordinators to ensure that they have the knowledge, skills and ability to perform their duties and respond in a timely manner in accordance with the FOIA. They review and approve all FOIA responses before release.

**National FOIA Program** – The National FOIA Program is staffed by the Agency FOIA Officer and National FOIA Specialists who develop Agency-level policies, procedures and trainings, respond to questions, provide guidance, deliver training, and make decisions on fee waiver and expedited processing requests. The National FOIA Program is located in the Office of Environmental Information.

**National FOIA Specialists** – National FOIA Specialists manage the lifecycle of FOIA requests received at Headquarters; assign requests to Headquarter FOIA Coordinators; prepare responses to fee waiver and expedited processing requests; approve requests to extend due dates; respond to questions from Agency employees; and staff the FOIA Requester Service Center.

**Office of General Counsel (OGC)** – OGC provides legal advice on FOIA matters; issues final decisions on FOIA appeals, final confidentiality determinations for CBI claims originating in HQ, and fee waiver appeal determinations, except when a conflict of interest arises; provides counsel on FOIA exemptions and exclusions; and assists the U.S. Department of Justice attorneys in FOIA litigation.

**Office of Inspector General (OIG)** – OIG and the Counsel to OIG provide advice on FOIA matters pertaining to its organization; issue initial determinations and final decisions on FOIA appeals, final confidentiality determinations, except when a conflict of interest arises; provide counsel on FOIA exemptions and exclusions; and assist the U.S. Department of Justice attorneys in FOIA litigation.

**Office of Regional Counsel (ORC)** – ORC provides legal advice on FOIA matters, final confidentiality determinations for CBI claims originating in the Region, FOIA litigation support to regional employees, and information as needed to the Agency FOIA Officer on fee waiver requests. ORC also assists OGC on appeals, as appropriate.

**Primary FOIA Coordinator** – The lead FOIA Coordinator in an organization who works under the general direction of the Agency FOIA Officer.

**Regional FOIA Officers** – Regional FOIA Officers assign requests to the appropriate Action Office within the region; track FOIA requests; provide guidance to regional personnel in collaboration with the Agency FOIA Officer; coordinate with the Agency FOIA Officer and Action Offices on initial fee waiver decisions; compile data for the annual FOIA report; and monitor the quality and timeliness of responses in the regions. Regional FOIA Officers work under the general direction of the Agency FOIA Officer.

**Subject Matter Experts** – Subject matter experts identify and locate records requested under FOIA. These individuals are located in all EPA organizations and include all professional disciplines. If permitted under the applicable delegation and after obtaining any necessary concurrences, the subject matter experts may respond to requests directly or provide the responsive records to the FOIA Coordinator who facilitates the response for the Agency. They must, however, follow the review process prescribed in this procedure.

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## 9. DEFINITIONS

**Administrative Appeal** – An independent review of the initial determination made in response to a FOIA request. Requestors who are dissatisfied with the response made on their initial request have a statutory right under 40 C.F.R. § 2.104(j) to appeal the initial determination to an office in the Agency which will conduct an independent review. (*NOTE: OGC is responsible for managing all FOIA appeals at the EPA with the exception of appeals that involve FOIA requests to the OIG or FOIA requests where OGC is the Action Office on the initial response. OIG handles its own appeals. The Office of the Administrator processes appeals where the OGC is the Action Office on the initial response.)*

**Case** – All records pertaining to a FOIA request.

**Commercial Use** – A type of request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial, trade, or profit interests, which can include furthering those interests through litigation.

**Consultation** – When an agency locates a record or a record that contains information provided by or of interest to another agency, it will ask for the views of that other agency on the disclosability of the records before any final determination is made. This process is called a "consultation." (See also "referral.")

**Confidential Business Information** – Trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.

**Educational Institution** – A preschool, public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education or an institution of vocational education, which operates a program or programs of scholarly research.

**Existing records** – Agency records that exist as of the date a FOIA request is received by the EPA.

**Expedited Processing** – The processing of a FOIA request out of the order in which it was received and prioritized over other pending FOIA requests. The standards for expedited processing are set out in the FOIA and in the regulations of each federal agency.

**Fee Categories** – Categories under FOIA that determine assessments of fees to requesters. Requesters fall into one of five fee categories: (1) commercial requesters; (2) educational; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all other requesters (i.e., requesters who do not fall into any of the other four categories).

**Fee Waiver** – A request made to an agency to waive any applicable fees for its processing of a FOIA request. Fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for a fee waiver are evaluated on a case-by-case basis.

**FOIAonline** – The EPA's FOIA tracking and management system.

**FOIA Exemptions** – Contained at 5 U.S.C. § 552(b) (1)-(9). See http://intranet.epa.gov/foia/exemptions.html or the box on page 2 of these procedures.

**FOIA Time Limits** – The time period in the FOIA statute for an agency to respond to a FOIA request (ordinarily twenty working days from the day a FOIA request is received and logged in by the appropriate FOIA Office).

**Freedom of Information Act (FOIA)** – The Freedom of Information Act (FOIA) was signed into law in 1966. The law provides individuals with a statutory right of access to certain federal agency records. The FOIA requires agencies to disclose requested records unless they are protected from public disclosure by the FOIA. Congress included in the FOIA nine exemptions and three law enforcement exclusions to protect important interests such as national security, personal privacy, privileged communications, and law enforcement.

**Full Denial** – An agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located. A denial response must be signed by an Authorized Official.

**Full Grant** – An agency decision to disclose all records in full in response to a FOIA request.

**Glomar Response** – An agency's express refusal to confirm or deny the existence or non-existence of records responsive to a FOIA request.

**Initial Request** – The request submitted by an individual to a federal agency for access to agency records on any topic. A FOIA request can generally be made by any person, to any federal agency, and only requires that requesters reasonably describe the records they are seeking and comply with agency regulations for making such requests.

**Media Requester** – Any person making a FOIA request who actively gathers news for an entity that is organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use.

**Non-Commercial Scientific Institution** – An institution that is not operated on a commercial basis but operated solely for conducting scientific research, the results of which are not intended to promote any particular product or industry.

**No Records Response** – A FOIA request for which no responsive records were located.

**Partial Grant/Partial Denial** – An agency decision to disclose records or portions of records while withholding other records or portions of records that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

**Pending Request or Administrative Appeal** – A request or administrative appeal for which an agency has not taken final action in all respects.

**Perfected Request** – A request for records that clearly describes the records sought and the procedures that will be followed to develop a response.

**Processed Request or Processed Administrative Appeal** – A request or administrative appeal for which an agency has taken final action in all respects.

**Records** – Information in an agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, "records" includes *all* tangible documentations of information regardless of whether they are records under 44 U.S.C. § 3301. *(NOTE: This is a broader definition than that used by the EPA records program and records schedules.)*

**Redact** – The act of removing exempt information from responsive documents either manually or utilizing redaction software.

**Referral** – When an agency locates a record that originated with, or is of otherwise primary interest to another agency, it will forward that record to the other agency to process the record and to provide the final determination directly to the requester. This process is called a "referral." (See also "consultation.")

**Requester** – Any individual (including non-U.S. citizens), corporation or association, public interest group, and state, local, tribal, or foreign government making a FOIA request. Requests from federal agencies, the Government Accountability Office, or Congress (e.g., the Speaker of the House, the President of the Senate, or the chair of a committee or subcommittee) are not processed under these procedures.

**Responsive Record** – A record falling within the scope of a FOIA request that an agency has located that may be provided or is under consideration for inclusion in a response to a FOIA request. A record may be "responsive" to a FOIA request, but may still be withheld as protected from disclosure by a FOIA exemption.

**Unusual Circumstances** – When there is: (1) a need to search and collect documents from organizations separate from the organization processing the request; (2) a need to search and collect a large volume of records; or (3) a need to consult with another agency (or a separate subdivision of the same agency) having a substantial subject-matter interest in the request.

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## 10. WAIVERS

No waivers will be accepted from the requirements of this procedure.

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## 11. RELATED PROCEDURES, STANDARDS AND GUIDANCE

Not applicable.

## 12. MATERIAL SUPERSEDED

Interim Procedures for Responding to Freedom of Information Act (FOIA) Requests (CIO 2157-P-01-0/Transmittal 13-010 dated September 30, 2013)

## 13. ADDITIONAL INFORMATION

This document is not intended to create any rights or privileges for the public, or obligations on the part of EPA.

***Renee P. Wynn***
***Acting Assistant Administrator for Environmental Information and Chief Information Officer***
***U.S. Environmental Protection Agency***

| **Summary of Recommended Proposed Changes** *(does not include technical corrections/typos)* | Changes Made | **Rationale** |
|---|---|---|
| Ex. 5 AC/DP | | |

| **Summary of Recommended Proposed Changes** *(does not include technical corrections/typos)* | **Rationale** |
| --- | --- |
| Ex. 5 AC/DP | |

Internal Use Only | Do Not Distribute Outside of Agency | Attorney-Client | Deliberative

Appointment

**From**: Gottesman, Larry [Gottesman.Larry@epa.gov]
**Sent**: 11/29/2018 6:14:11 PM
**To**: FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Coordinators Alt [FOIA_Coordinators_Alt@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; FOIA Officers Alt [FOIAOfficers-Alt@epa.gov]; OGC NFO [OGC-NFO@epa.gov]

**Subject**: FW: FOIA meeting
**Attachments**: FOIA Efficiency Memo.pdf
**Location**: DCRoomARN6013/DC-Ariel-Rios-OGC

**Start**: 12/12/2018 6:00:00 PM
**End**: 12/12/2018 7:30:00 PM
**Show Time As**: Tentative

This month we are having a joint FOIA Officers and FOIA Coordinator's meeting. I will send out an adobe connect next week, so you can join in that way.

Call in number is:
Conf code:

Ex. 6

For those of you in the DC area please join us in WJCN 6013. This is in the connecting wing between the North and South Buildings.

New Meeting Agenda:

The topics for the meeting is the Awareness Notification Process as set out in Ryan Jackson's memorandum of November 16, 2018. We will also be providing a demonstration of how to run reports in FOIAonline using the advanced search function.

Thanks

Larry F. Gottesman
Agency FOIA Officer
Office of General Counsel
U.S. Environmental Protection Agency

202-566-2162 (Direct line)
202-689-4588 (Mobile)
202-566-1667 (Main line)

Message

**From:** Walker, Denise [Walker.Denise@epa.gov]
**Sent:** 11/19/2018 3:40:17 PM
**To:** OGC NFO [OGC-NFO@epa.gov]
**Subject:** FW: Awareness Notification Process for Select Freedom of Information Act Releases
**Attachments:** FOIA Efficiency Memo.pdf; ATT00001.htm

Good morning:

I don't believe we were included on this distribution.

Forwarding to you all now.

Best,

Denise

Begin forwarded message:

> **From:** "Jackson, Ryan" <jackson.ryan@epa.gov>
> **Date:** November 16, 2018 at 2:45:49 PM PST
> **To:** Leadership_Assistant_Administators <Leadership_Assistant_Administators@epa.gov>, Leadership_Associate_Administrators <Leadership_Associate_Administrators@epa.gov>, Leadership_Deputy_Assistant_Administrators <Leadership_Deputy_Assistant_Administrators@epa.gov>, Leadership_Deputy_Associate_Administrators <Leadership_Deputy_Associate_Administrators@epa.gov>, Leadership_Deputy_Regional_Administrators <Leadership_Deputy_Regional_Administrators@epa.gov>, Leadership_Regional_Administrators <Leadership_Regional_Administrators@epa.gov>, Regional FOIA Officers <Regional_FOIA_Officers@epa.gov>, Regional Counsel Contacts <Regional_Counsel_Contacts@epa.gov>, Deputy Regional Counsels <Deputy_Regional_Counsels@epa.gov>, FOIA Coordinators <FOIA_Coordinators@epa.gov>, FOIA Officers <FOIAOfficers@epa.gov>
> **Subject: Awareness Notification Process for Select Freedom of Information Act Releases**
>
> Colleagues –
>
> Following Acting Administrator Wheeler's memorandum earlier this week regarding Freedom of Information Act processing, please see the attached additional memorandum. Senior leadership review is necessary to ensure consistency, accuracy, and efficient production of information under FOIA.

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

Message

**From:** Epp, Timothy [Epp.Timothy@epa.gov]
**Sent:** 11/17/2018 12:58:34 PM
**To:** OGC NFO [OGC-NFO@epa.gov]
**Subject:** Fw: Awareness Notification Process for Select Freedom of Information Act Releases
**Attachments:** FOIA Efficiency Memo.pdf

Dear NFO colleagues,

We had another success on Friday -- Chief of Staff Ryan Jackson issued his memorandum providing clear instructions for the awareness notification process. This memorandum should clear up any confusion that existed regarding how the process should be efficiently run.

Tim
Timothy R. Epp
Acting Director
National FOIA Office
Office of General Counsel
Environmental Protection Agency

---

**From:** Jackson, Ryan
**Sent:** Friday, November 16, 2018 5:46 PM
**To:** Leadership_Assistant_Administators <Leadership_Assistant_Administators@epa.gov>; Leadership_Associate_Administrators <Leadership_Associate_Administrators@epa.gov>; Leadership_Deputy_Assistant_Administrators <Leadership_Deputy_Assistant_Administrators@epa.gov>; Leadership_Deputy_Associate_Administrators <Leadership_Deputy_Associate_Administrators@epa.gov>; Leadership_Deputy_Regional_Administrators <Leadership_Deputy_Regional_Administrators@epa.gov>; Leadership_Regional_Administrators <Leadership_Regional_Administrators@epa.gov>; Regional FOIA Officers <Regional_FOIA_Officers@epa.gov>; Regional Counsel Contacts <Regional_Counsel_Contacts@epa.gov>; Deputy Regional Counsels <Deputy_Regional_Counsels@epa.gov>; FOIA Coordinators <FOIA_Coordinators@epa.gov>; FOIA Officers <FOIAOfficers@epa.gov>
**Subject:** Awareness Notification Process for Select Freedom of Information Act Releases

Colleagues –

Following Acting Administrator Wheeler's memorandum earlier this week regarding Freedom of Information Act processing, please see the attached additional memorandum. Senior leadership review is necessary to ensure consistency, accuracy, and efficient production of information under FOIA.

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

Message

**From**: Walker, Denise [Walker.Denise@epa.gov]
**Sent**: 8/21/2019 6:04:56 PM
**To**: OGC NFO [OGC-NFO@epa.gov]
**CC**: Tran, Victoria [tran.victoria@epa.gov]; Kaminer, Joan [Kaminer.Joan@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]
**Subject**: Awareness notification memo- publicly available?
**Attachments**: Awareness Notification Memorandum.pdf

All:

Has anyone released the awareness notification memo through FOIA yet or is it publicly available elsewhere?

**Denise A. Walker**
Acting Assistant General Counsel| National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7308A
Phone 202-564-6520 | Cell 202-816-9872| walker.denise@epa.gov

National FOIA Office
EPA Office of General Counsel

EPA FOIA Intranet: https://usepa.sharepoint.com/sites/EPA_OGC_NFO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

November 16, 2018

OFFICE OF THE
ADMINISTRATOR

**MEMORANDUM**

**SUBJECT:** Awareness Notification Process for Select Freedom of Information Act Releases

**FROM:** Ryan Jackson
Chief of Staff

**TO:** General Counsel
Assistant Administrators
Inspector General
Chief Financial Officer
Associate Administrators
Regional Administrators
Regional Counsels
Deputy Regional Counsels
FOIA Coordinators

Earlier this week, in a November 13, 2018, memorandum to all staff, Acting Administrator Wheeler reaffirmed the agency's commitment to transparency, noting that the Freedom of Information Act is both a statutory obligation and an important tool for promoting transparency and building public trust in agency actions.

For years, spanning several Administrations, senior leaders at the U.S. Environmental Protection Agency have been notified of the imminent release of information through FOIA. This "awareness notification process" is intended to inform senior officials of the release of information through FOIA that may be of particular interest to the press, the public and/or Congress. Indeed, having such awareness has allowed agency senior leadership to respond efficiently to inquiries about such releases. In an effort to ensure consistency and provide clarity, this memorandum sets forth the awareness notification process to be followed at the agency.

This awareness notification process is not an approval process, nor does this process alter or eliminate any part of the agency's existing procedures for collecting, reviewing or redacting documents, or preparing responses to FOIA requests. Consistent with the agency's FOIA policy and procedures, FOIA staff, program staff and program managers will continue to determine whether information should be released or withheld under FOIA's exemptions. The awareness notification process described below is effective immediately and controls and supersedes any prior process, procedure, guidance or instruction, either formal or informal, to the extent such is

inconsistent with the awareness notification process described below. The aspects of the awareness notification process described in paragraphs 1 through 3 below will run concurrently with the Action Office's[1] preparation of the FOIA response.

PROCESS

1. The National FOIA Office will provide a list of select FOIA requests received that week to the Director of the Office of Executive Secretariat, the Associate Administrator for the Office of Public Affairs and the Associate Administrator for the Office of Congressional and Intergovernmental Relations, with a courtesy copy to the deputy in each of those three offices.

2. As promptly as possible but within five business days of transmittal of the list, the OEX Director and the OPA and OCIR Associate Administrators, or their designees, will notify the National FOIA Office Director, or designee, identifying any specific FOIA requests for which they would like to receive an awareness notification.

3. For those FOIA requests identified for awareness notification, the National FOIA Office Director or Assistant Directors, or their designees, will promptly indicate in FOIAonline that the FOIA response will require an awareness notification. The National FOIA Office Director, or designee, will also notify the Deputy Assistant Administrator or Deputy Regional Administrator of the Action Office by email, specifying which FOIAs have been identified for awareness notification.

4. Following Action Office management approval of the FOIA determination, in accordance with applicable authorities,[2] and prior to issuing the determination, the Action Office shall prepare an "awareness notification email" containing the following information:
   - The name of the Action Office;
   - The FOIAonline tracking number;
   - The name of the requester/organization;
   - The date the FOIA request was perfected;
   - A brief description of the request, as clarified/modified;
   - Whether the response is interim or final;
   - The number of documents and/or pages to be released;
   - An attachment of, or link to, the documents to be released;
   - A list of offices with an equity in the documents and a statement that those offices have reviewed the relevant documents; and
   - The name of the manager responsible for making the FOIA determination.

   A copy of the email will be saved in FOIAonline.

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[1] The Action Office, as defined in EPA's Procedures for Responding to Freedom of Information Act Requests CIO 2157-P-01.1, is the organizational unit that has responsibility for responding to a FOIA request.

[2] *See* 5 U.S.C. § 552(a)(6)(A)(i), 40 C.F.R. §§ 2.103(b), 2.104(h), and EPA Delegation of Authority 1-30 Freedom of Information (12/15/2016); *see also* EPA Freedom of Information Act Policy CIO 2157.1 (09/30/2014) and EPA Procedures for Responding to Freedom of Information Act Requests CIO 2157-P-01.1 (09/30/2014).

5. The Action Office will send the "awareness notification email" to the OEX Director and Deputy Director, the National FOIA Office Director and Assistant Directors, the OPA and OCIR Associate Administrator and Deputy Associate Administrator, the Deputy Assistant Administrator or Deputy Regional Administrator of the Action Office and the individual assigned to the request in FOIAonline.

6. The recipients of the "awareness notification email" will have up to three business days following transmission of that email to review the documents to be released. There is no requirement for the recipients of the awareness notification email to respond or otherwise take action. After 4 p.m. on the third business day after transmission of the awareness notification email, the Action Office shall issue the Agency's FOIA determination. The determination should be issued promptly, but in no event later than one business day following completion of the three-day awareness notification period. After issuance, the determination should be properly documented in FOIAonline.

The awareness process discussed above does not affect the statutory timelines or, when applicable, litigation deadlines facing the agency.

As Acting Administrator Wheeler shared in his November 13, 2018, memorandum, the EPA is committed to conducting its business in an open and transparent manner and will continue to take steps to improve the efficacy and efficiency of its FOIA process. I look forward to working with all of you to make the EPA a flagship example of transparent, efficient and effective government.

cc: Andrew R. Wheeler
Henry Darwin