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.

---

[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