OFFICE OF AIR AND RADIATION
FREEDOM OF INFORMATION ACT (FOIA)
STANDARD OPERATING PROCEDURES (SOP)

1. PURPOSE

This Standard Operating Procedure (SOP) provides basic instructions for responding to Freedom of Information Act (FOIA) requests assigned to the Office of Air and Radiation (OAR). The SOP addresses statutory, regulatory, policy, procedural and processing requirements outlined in Federal and Agency policies and procedures, including, but not limited to:

a. EPA Policy CIO-2157.1, Freedom of Information Act (FOIA) Policy, CIO Approval: 09/30/2014 at http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/CIO_2157.1.pdf.
b. EPA Procedure CIO-2157-P-01.1, Procedures for Responding to Freedom of Information Act (FOIA) Requests at http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/CIO_2157-P-01.1.pdf.

This internal SOP is intended to supplement these policies and procedures, not replace or supersede them.

2. SCOPE AND APPLICABILITY

The audience for these procedures is all OAR employees, including contractors, grantees, and interns who support FOIA administration activities in OAR. These procedures apply to OAR employees, grantees, contractors, interns, and others who support the Agency's FOIA administration activities.

3. BACKGROUND

The Freedom of Information Act (FOIA) is a federal law that gives the public the right to make requests for federal agency records. All federal agencies, including EPA, are required to make requested records available unless the records are protected from disclosure by certain FOIA exemptions. More information about EPA's FOIA process and the nine exemptions can be found in EPA Procedure CIO-2157-P-01.1, Procedures for Responding to Freedom of Information Act (FOIA) Requests.

4. ROLES AND RESPONSIBILITIES

OAR FOIA Coordinators: FOIA coordinators are located in OAR's Immediate Office (OAR-IO), the Office of Air Quality Planning and Standards (OAQPS), the Office of Atmospheric Programs (OAP), the Office of Radiation and Indoor Air (ORIA) and the Office of Transportation and Air Quality (OTAQ). The OAR FOIA Coordinators work under the general direction of the Agency FOIA Officer and are responsible for checking FOIAonline each working day to:

- Route requests to the appropriate Action Office or subject matter expert within OAR;
- Track FOIA requests to ensure timeliness and remind Action Offices of impending due dates;
- Complete the FOIA process by ensuring all requests are closed out in the FOIAonline system;
- Monitor the quality of the responses; and
- Provide information to OAR personnel on any issues or concerns that may arise, such as closing out requests and status of overdue items. Work in collaboration with the Agency FOIA Officer to resolve any issues.

Back-up OAR FOIA Coordinator: The Back-up OAR FOIA Coordinator is responsible for carrying out the responsibilities of the OAR FOIA Coordinator during his or her absence, and for assisting the OAR FOIA Coordinator to carry out those responsibilities during periods of peak workload.

Action Office: The Action Office is the OAR organization that maintains the majority of records responsive to a FOIA request and/or is responsible for coordinating the process to collect responsive records and reply to the requestor. The Action Office is the OAR organization to which a FOIA request or task has been assigned. The FOIA Coordinator, Office Director or Division Director for the Action Office is responsible for assigning the request or task to the appropriate Subject Matter Specialists for action.

Subject Matter Specialists: Subject matter specialists identify and locate records requested under the FOIA. These individuals are located in all OAR organizations and include a variety of professional disciplines. If permitted under the applicable delegation and after obtaining any necessary concurrences, the subject matter specialist 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 Agency and OAR policies and procedures.

Authorized Official: EPA Procedure CIO-2157-P-01.0 requires that all responses be reviewed and approved by an appropriate management official before being sent to the requestor. This authority may not be delegated below the Division Director-level. In OAR, the authority to review and approve FOIA responses has been delegated from the Assistant Administrator, through the Office Directors, to the Division Directors.

More information on FOIA roles and responsibilities can be found in EPA Procedure CIO-2157-P-01.1, Procedures for Responding to Freedom of Information Act (FOIA) Requests.

5. OAR FOIA POLICY

In accordance with EPA Policy CIO-2157.1, Freedom of Information Act (FOIA) Policy, all FOIA requests received in OAR will be managed throughout their life cycle **in FOIAonline**, the Agency's new FOIA processing and records repository tool. All records provided by OAR in response to a FOIA request must be entered into FOIAonline unless subject to special handling requirements or policies.

6. OAR FOIA PROCEDURES

Step 1 – Receive and Review Incoming Requests. Each workday, the Primary OAR FOIA Coordinator (or the Back-up Coordinator as appropriate) will check FOIAonline throughout the day to:

- Identify new FOIA requests or tasks assigned to OAR;
- Review new FOIA requests or tasks to verify whether they belong to OAR or should be reassigned;
- Using FOIAonline, assign the requests or tasks to the appropriate OAR Action Office; and
- Reassign tasks that do not belong to OAR.

The FOIA Coordinator will assign, or reassign, the request or task **within one workday** of being received in FOIAonline. If the description of the records requested is not sufficient for the FOIA Coordinator to assign the request to an office, s/he will consult with OAR management and or ask the Agency FOIA Office Specialist to contact the requester for additional information. The FOIA Coordinator and or the Agency FOIA Office Specialist will document all communications, including verbal conversations with the requester, for the official record and enter them into FOIAonline.

Step 2 – Determine Search Parameters. The Action Office will:

- Determine the cut-off date for records subject to the request in accordance with EPA Procedure CIO-2157-P-01.1, Procedures for Responding to Freedom of Information Act (FOIA) Requests;

- Review the request to determine the subject matter of the records the requester is seeking, and obtain clarification or information from the requester if necessary.

NOTE: The time necessary to reformulate the request will be excluded from the statutory 20 working day period (or any authorized extension of time) that EPA has to respond to the request. The FOIA permits the Agency to toll or "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 is 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 3 – Determine if Additional Responsive Records are in Other Agency Organizations.

Within two working days of receiving the assignment in FOIAonline, the subject matter expert within the Action Office will notify their FOIA Coordinator who in turn will contact the OAR FOIA Coordinator when:

- Additional responsive records are determined to be located in other Agency organizations and require cross-Agency collection, or

- The request or task is incorrectly assigned.

The OAR FOIA Coordinator will:

- Create tasks in FOIAonline to request additional records from other Headquarters organizations;

- Contact the Agency FOIA Office Specialist to create tasks in FOIAonline to request additional records from the Regional Offices; or

- Reassign the request or task to the appropriate organization.

Step 4 – Estimate Processing Fees. The Action Office will estimate the processing fee which will be charged as specified in 40 C.F.R. § 2.107, unless a waiver of fees has been granted by the Agency FOIA Officer.

NOTE: FOIAonline will reflect whether a fee waiver was granted.

ANOTHER NOTE: 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. Search fees may apply even when no responsive records are identified or no responsive records are disclosed to the requester. Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. For more information on calculating fees, refer to EPA Procedure CIO-2157-P-01.1, Procedures for Responding to Freedom of Information Act (FOIA) Requests.

Step 5 - Determine Response Time. The Action Office will determine whether:

- The response can be completed within 20 working days, or
- "Unusual circumstances" exist, as defined by the FOIA, necessitating more time to complete the request.

If unusual circumstances exist, the Action Office should refer to EPA Procedure CIO-2157-P-01.1, Procedures for Responding to Freedom of Information Act (FOIA) Requests, on the steps to take to obtain an extension.

Step 6 – Collect and Review the Records. The Action Office will:

- Identify, collect, and review records within the scope of the request;
- Consult with other federal agencies as required;
- Coordinate responsive activities with the lead office (i.e., the office that is determined to have the majority of responsive records) when more than one office has responsive records;
- Assure that protected information has been redacted from records before they are released.

More about protecting information can be found in EPA Procedure CIO-2157-P-01.1, Procedures for Responding to Freedom of Information Act (FOIA) Requests.

Step 7 – Determine Which Records (or Portions) May Be Released. The Action Office will:

- Prepare to release responsive, non-exempt records or portions of records;
- Ensure that all records to be released in response to a FOIA request have been reviewed by at least two knowledgeable individuals, including one OAR supervisor to ensure openness, transparency, consistency, and the appropriate application of FOIA exemptions;
- If your response includes a link to a website, include a screen shot of that website in the records section in FOIAonline.
- Consult with the Agency FOIA Officer or Office of General Counsel (OGC) for questions regarding withholding of records under a FOIA exemption.

Step 8 – Prepare Response Letter. The Action Office will:

- Prepare the response letter to the requestor and obtain necessary concurrences in accordance with EPA Procedure CIO-2157-P-01.1, Procedures for Responding to Freedom of Information Act (FOIA) Requests.

  NOTE: The subject matter specialist may respond to requests directly. However, the response must first be on official EPA letterhead, reviewed, approved, and signed by the appropriate designated Authorized Official which is an OAR Division Director or above. The response must then be documented in FOIAonline.

  ANOTHER NOTE: The response letter must include a description of the information withheld either by category and volume, or by a list. The response letter must also include the standard administrative appeal language in all cases.

- Upload the response letter and any responsive records into FOIAonline and route the letter to the Authorized Official for review and approval prior to release to the requester.

Step 9 – Finalize Processing Fees. The Action Office will:

- Inform the requesters in the response letter if fees for processing the request are billable or not. The requester is not billable if the amount is less than $14.00. The requester is billable if the amount is greater than $14.00.

- Complete the "Administrative Cost" section in FOIAonline to document billable and unbillable costs (time spent processing requests). If there is a billable amount, FOIAonline will generate an invoice.

Step 10 – Obtain Approval from an Authorized Official (Division Director or higher-level supervisor). The Action Office will:

- Ensure the response has been reviewed and approved by an OAR Division Director or higher-level supervisor.

- Ensure the supervisory review and approval has been documented in FOIAonline. This can be done in either of two ways:

  1. If s/he has access to FOIAonline, the Authorized Official can enter FOIAonline and complete the review in the system.

  2. If the Authorized Official does not have access to FOIAonline, s/he can:

     a. Provide documentation of the review/approval via email or correspondence to the Action Office's FOIA Coordinator or an individual in the Action Office who does have access, and request that individual to upload the documentation and complete the review in the system as the Authorized Official's proxy.

     b. If no individual with system access is available in the Action Office, provide documentation of the review/approval via email to OAR FOIA Coordinator and ask them to upload the documentation and complete the review in the system as the Authorized Official's proxy. *Per the OAR Immediate Office, this option should be a "last resort."*

     If either of these options is elected, the documentation must make it clear that the Authorized Official has reviewed/approved the response.

Step 11 – Respond to Request. The Action Office will:

- Provide the response letter, responsive records and invoice (when applicable) to the requester through FOIAonline. If the requestor provided an e-mail address, s/he will be notified via a system-generated email that the responsive records are available in FOIAonline.

- If an email address is not provided, after the response letter, responsive records and invoice are uploaded to FOIAonline, send the requestor a hard copy via postal mail.

Step 12 – 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 if all responsive records are entered into FOIAonline.

- If any portion of the response is not entered into FOIAonline, maintain a copy of all responsive records located and provided in response to the request according to applicable records schedules.

- Close the request in FOIAonline.

7. TRACKING AND REPORTING

Weekly Reviews. Every Friday the OAR FOIA Coordinator or Back-up Coordinator will:

- Generate a FOIA report showing the status of each pending and overdue FOIA request;

- Ensure the report is transmitted to OAR Senior Managers, with copies to the OAR Special Assistants, and OAR FOIA Coordinators.

- If necessary, meet with OAR management to review the status, identify potential problems, and develop courses of action to address those problems.

Quarterly Reviews. Upon request by the Agency FOIA Officer, the Primary OAR FOIA Coordinator (or the Back-up Coordinator as appropriate) will review the quarterly FOIA "scorecard" and list of overdue FOIA responses and:

- Notify the Agency FOIA Office of any discrepancies or errors;

- Give a heads up to OAR management of any discrepancies, errors, trends, or other concerns.

Approved: Elizabeth A. Shaw Date: 3/30/15

Elizabeth A. Shaw
Senior Information Official
Office of Air and Radiation