STANDARD OPERATING PROCEDURE

No. 8110.01A
Responding to Freedom of Information Act Requests in EPA Region 7

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Emily Albano
RGAD/OPA

APPROVED:

LaDonya E. Sanders	3-31-15
Peer Reviewer	Date
Kathleen L. [illegible]	3/31/15
OPA Director	Date
Diane Harris	03/31/2015
Regional Quality Assurance Manager	Date

Recertified:

Reviewer					
Date					

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TABLE OF CONTENTS

1. PURPOSE AND APPLICABILITY 3
2. AUDIENCE 3
3. BACKGROUND 3
4. AUTHORITY 4
5. PROCEDURAL STEPS 4
   1) Receive, Review, and Acknowledge Incoming Requests 5
   2) Determine if the Request is in the Correct FOIA Office 5
   3) Determine the Fee Category 6
   4) Process Fee-Waiver (FW) and Expedited Processing (EP) Requests 6
   5) Assign the Request to Staff 6
   6) Processing the Request in Program Offices 6
   7) Determine Search Parameters 7
   8) Determine if Additional Records are in Other Agency Organizations 7
   9) Estimate Processing Fees 7
   10) Determine Response Time 8
   11) Collect and Review the Records 9
   12) Determine Which Records (or Portions) May Be Released 9
   13) Prepare Response Letter 10
   14) Finalize Processing Fees 10
   15) Obtain Approval … to Release or Withhold Records 11
   16) Respond to Request 11
   17) Finalize Actions 11
6. RECORDS MANAGEMENT 12
7. QUALITY ASSURANCE AND QUALITY CONTROL 12
8. PERSONNEL QUALIFICATIONS 12
9. DEFINITIONS 14

1. PURPOSE AND APPLICABILITY

These procedures provide basic instructions for responding to Freedom of Information Act (FOIA) requests submitted to EPA Region 7. They address statutory, regulatory, policy, procedural and processing requirements to be followed by all EPA Region 7 organizations and must comprise the core of all division- and office-specific FOIA processing procedures.

2. AUDIENCE

The audience for these procedures includes all EPA Region 7 organizations, officials, and employees. The audience for these procedures is also contractors or grantees and others operating on behalf of the EPA.

3. 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. Broadly they are:

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 must maintain the records and make them readily available for responding to future requests according to the applicable Record Schedule(s) (i.e.: the FOIA records need only be kept for a certain period of time; however the original records may need to be kept longer, indefinitely, permanently and/or may be subject to a litigation hold.)

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 Region 7 responds to FOIA requests in accordance with statutory requirements, the EPA's implementing regulations, and open government and transparency policies.

These FOIA procedures were developed to conform to the EPA's Agency-wide FOIA regulations and statutory requirements.

4. 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

5. PROCEDURAL STEPS

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 Office 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 the Region 7 FOIA Officer.

The FOIA process officially begins when a request is received by Region 7. Requesters may request a fee waiver and/or expedited processing at the time they submit their request.

1) **Receive, Review, and Acknowledge Incoming Requests.** The public may submit requests to the Agency via FOIAonline, postal mail, email, or hand delivery. The Region 7 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).

   a) 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 Officer 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.

      i) ***Improper FOIA requests include:***
         - *Requests that do not reasonably describe the records sought;*
         - *Requests that pose questions, rather than seek documents.*

      ii) ***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.*

2) **Determine if the Request is in the Correct FOIA Office.** The Region 7 FOIA Officer will determine where responsive records are most likely located in the Region. When a request is received and all responsive records are determined to be located in another Region or Headquarters, the Region 7 FOIA Officer will assign the request in FOIAonline to the appropriate FOIA Office for processing. If the Region regionm7 FOIA Officer does not know where responsive records are located, the Region 7 FOIA Officer will consult with the Headquarters FOIA Office. See also, 40 C.F.R. § 2.103(a).

   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 a programmatic office other than a FOIA Office are also misdirected and must be immediately sent to the local FOIA Office.

b) After steps 1 and 2 are complete, the request is considered "perfected." Requests should be "perfected" on the same day they are received by the correct FOIA Office. The Region 7 FOIA Officer will enter the "perfected" status in FOIAonline to initiate the 20 day working period.

c) 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.

3) **Determine the Fee Category**. The Region 7 FOIA Officer 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 9 below for information on calculating fees.)

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(I) (5) and 2.104(e), respectively. FW and EP requests submitted to the Region 7 FOIA Office will be transferred by the Region 7 FOIA Officer to the Headquarters FOIA Office through FOIAonline for processing.

a) Whether a request is likely billable or unbillable will be communicated to the Headquarters FOIA Office by the Region 7 FOIA Officer 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.)

b) 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.

c) 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 responding staff 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.

5) **Assign the Request to Staff.** In most cases, the FOIA Office will assign tasks in FOIAonline to the FOIA Coordinator in the program divisions, offices and/or branches believed to house responsive records. The FOIA Coordinators will task responding staff outside of FOIAonline. If more than one Region 7 division or branch has responsive documents, each division or branch responds separately unless a lead office has been identified for a consolidated response. 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 have responsibility for processing the request.

6) **Processing the Request in Program Offices.** When a task is received from a FOIA Office, a FOIA Coordinator will determine which of the staff in their organization (e.g., offices, divisions, or branches) are likely to have records responsive to the request. The FOIA Coordinator(s) will assign

the request to the appropriate staff member using FOIAonline. If the description of the records requested is not sufficient for the FOIA Coordinator to assign the request, the FOIA Coordinator or assigned staff 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.

a) For large and/or complex FOIA requests, the Region 7 FOIA Officer will convene meetings with all parties involved in compiling the response in order to clarify responsibilities, methods to be used for collection, and similar issues. Those meetings will include programmatic experts, the Region 7 Records Liaison Officer, information technology specialists, and legal counsel, as appropriate. At these meetings, the staff member primarily responsible for coordinating the regional response is selected. In cases where there are active enforcement activities, the site or case attorney may be selected. When there is no active enforcement, the subject matter expert may be more appropriate.

7) **Determine Search Parameters.** The lead responding staff 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 responding staff will usually include only those records in its possession as of the date the request was received by the Region 7 FOIA Office, unless the request specifically seeks a more limited scope. If a different date is used, the lead responding staff will inform the requester of that date.

a) 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.

b) 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.

8) **Determine if Additional Responsive Records are in Other Agency Organizations.** When additional responsive records are determined to be located in other Agency or Regional organizations, or the request is incorrectly assigned, the Region 7 FOIA Officer should be notified by the FOIA Coordinator or the responding staff/subject matter expert within two working days of receiving the assignment. Misdirected requests should be returned to the local FOIA office for reassignment within two working days. The Region 7 FOIA Officer will create a task in FOIAonline to request additional records from another EPA organization.

9) **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 responding staff 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.

a) 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:

- COMMERCIAL USE REQUEST: Requestor charged for all search, review and duplication costs.
- EDUCATIONAL & NON-COMMERCIAL SCIENTIFIC INSTITUTIONS: Requestor charged for duplication costs excluding first 100 pages. No charge for record search and/or review time.
- REPRESENTATIVE OF THE NEWS MEDIA: Requestor charged for duplication costs excluding the first 100 pages. No charge for record search and/or review time.
- ALL OTHER REQUESTS: Requestor charged for search and duplication time excluding the first two hours of search time and the first 100 pages of duplication. No charge for record review time.

10) **Determine Response Time.** The FOIA requires agencies to provide a substantive response within 20 working days. In such instances when the responding staff 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.

a) 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.

b) If unusual circumstances exist and there is a need to extend the due date for 10 working days or less, the lead responding staff 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 lead responding staff 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.

c) 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 lead responding staff should seek a reasonable extension from the requester. To aid the requester, Region 7 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 responding staff 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 FOIA Fee Policy, RMDS 2540-04-P2. In any event, the lead responding staff should communicate any extensions and expected completion dates with the requester and the Region 7 FOIA Officer. All communications must be documented for the

official record and entered into FOIAonline by a FOIA Coordinator or the Region 7 FOIA Officer.

d) The lead responding staff also coordinates with the Region 7 FOIA Officer or the appropriate FOIA Coordinator to enter the new requested due date and the justification for the extension into FOIAonline. The system generates a notice to the Headquarters or Region 7 FOIA Office for approval. The Headquarters 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 responding staff. The lead responding staff will communicate the new due date to the requestor.

11) **Collect and Review the Records.** The responding staff and each contributing Office are responsible for identifying, collecting and reviewing records within the scope of the request as discussed in Step 7 that provides a description of how to collect and review documents, emails, and other electronically stored information. This includes the responsibility for consultation and referral with other federal agencies. Where multiple Region 7 offices have responsive records, those offices must coordinate responsive activities as appropriate. The responding staff should also assure that protected information has been redacted from records before they are released. The responding staff 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. For instructions on how to redact using redaction software, please consult Lucretia Myers in the Office of Regional Counsel. 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.

12) **Determine Which Records (or Portions) May Be Released.** After thorough review, and with consultation from the Office of Regional Counsel as necessary regarding the proper application of any FOIA exemptions, the responding staff will prepare to release responsive, non-exempt records or portions of records.

a) 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. Responding staff may consult with the Agency FOIA Officer, the Office of Regional Counsel, or Office of General Counsel for questions regarding withholding of records under a FOIA exemption.

b) If a discretionary FOIA exemption (Exemptions 2, 5, 7 (excluding 7(c)), 8 and 9) is implicated, responding staff 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.

c) Responsive records that have been properly reviewed and redacted (if necessary) will be subject to one of the following outcomes:

- Release in Full. The record, in its 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.
- Withhold in Full. 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.
- 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.
- 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 Responding staff must obtain approval from the Office of Regional Counsel prior to issuing a Glomar response.

13) **Prepare Response Letter.** The Region 7 FOIA Officer 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.

a) 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 15 below for list of Authorized Officials).

Full denials must include a list or index of documents being withheld. The list or index for withheld documents must:

- Identify the records being withheld, including the author's name, to/from information, date and subject or title (unless the title or subject line itself is exempt);
- Briefly state the reason(s) for withholding;
- Identify the FOIA exemption(s) applied; and
- Estimate the volume of records being withheld.

14) **Finalize Processing Fees.** The Region 7 FOIA Officer 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.

a) 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.

15) **Obtain Approval from an Authorized Official to Release or Withhold Records.**[1] 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.

a) Initial determinations (both release and withholding determinations) may be redelegated only to persons occupying positions not lower than division director or equivalent.

b) For FOIA requests involving more than one division and the responsive records are fully releasable, the Region 7 Office of Public Affairs Director will provide the final review and signature for the response letter. For FOIA requests that only involve one division and the responsive records are fully releasable, the Region 7 Division Director for that division will provide final review and signature for the response letter.

c) For FOIA responses that include a partial or full denial, the Region 7 Regional Counsel will issue the initial determination.

16) **Respond to Request.** The Region 7 FOIA Officer 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.

[1] As of the date of this Standard Operating Procedure – Responding to Freedom of Information Act Requests in EPA Region 7, EPA Region 7 is in the process of revising Regional Delegations R7-1-030.

17) **Finalize Actions.** The responding staff will work with their FOIA Coordinator to ensure all supporting documentation is entered in FOIAonline (e.g., records of conversations or notes to the record, etc.).

a) 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 Region 7 FOIA Officer will ask the Agency FOIA Officer to 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 responding staff 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.

b) The Region 7 FOIA Officer will close the request in FOIAonline.

6. RECORDS MANAGEMENT

FOIAonline serves as the primary repository for FOIA records. However, for responsive documents that were either withheld or redacted, a copy of unredacted version must be kept in the Regional Records Center and dispositioned according to the appropriate records schedule.

- 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

7. QUALITY ASSURANCE AND QUALITY CONTROL

In addition to the QA and QC provided through peer, supervisory, and QA review, as described in Section 5, Step 12, the records management activities summarized in this SOP work to ensure all Regional activities are documented in compliance with this SOP and remain current.

8. ROLES AND RESPONSIBILITIES

Action Office or Lead Responding Staff– The organizational unit or staff 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.

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 Regional FOIA Officer. Training will be provided as required.

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 Procedures for Responding to Freedom of Information Act Requests 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. Training will be provided as required.

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.

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 nonexistence 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.