

**Department of the Interior**  
**Departmental Manual**  
Freedom of Information Act Handbook  
(383 DM 15)

---

**Effective Date:** 4/22/04

**Chapter 3:** Processing Requests

**Originating Office:** Office of the Chief Information Officer

---

3.1 Inquiries for Information Versus Records. Upon receipt of a request, the bureau FOIA Contact should make a determination as to whether it is subject to the FOIA (i.e., a request for records) or merely a request for information. If the requester seeks an answer to a specific question, or an explanation of policy, procedures, or a Departmental action, DOI is not required to process the request under the FOIA. Nonetheless, the FOIA Contact should refer the request for information to the appropriate office for response in a timely manner.

Examples:

(1) A request that asks whether XYZ company has ever submitted a contract proposal in response to any DOI solicitation is not subject to the FOIA because it is not seeking records.

(2) A request is received that states, “What does DOI’s contract with XYZ company say?” Although this is framed as a question, it is clearly asking for the record (as that is the best evidence of what the “contract says.”) This request should be processed under the FOIA. In more questionable cases, the FOIA office may wish to contact the requester to determine whether he/she is seeking records.

3.2 Time Limits.

A. Initial Determinations. The action office will respond to an initial FOIA request no later than 20 workdays after the appropriate bureau FOIA Contact receives the request and it is perfected (i.e., all issues regarding fees and the scope of the request are resolved). See paragraph 1.5S of Chapter 1.

(1) The 20-workday time limit begins to run the workday after a request complying with the procedures in 43 CFR 2.8 and 2.10 (i.e., it is perfected) is received by the FOIA Contact at the bureau office that has the requested records. If a request is received that is unperfected, the action office or the FOIA Contact must contact the requester as soon as possible to resolve the issues and perfect the request.

(2) The time limit for an e-mail request begins the workday after a request complying with the procedures in 43 CFR 2.8 and 2.10 (i.e., it is perfected) is received in the e-mail box of the appropriate FOIA contact, not when it is opened by the FOIA contact. Normally, this should be the same day. If the request is received after normal working hours, over the weekend or on a Federal holiday, or the system is down for the day, then the date of receipt would be the next Federal workday. The same applies for requests received via the U.S. Postal Service or fax.

(3) The start of the basic time limit may be delayed under the following conditions:

(a) The requester has not stated a willingness to pay fees as high as those anticipated;

(b) The requester has sought a fee waiver and has not indicated a willingness to pay regardless of whether a fee waiver is granted. The delay applies only to the issue of providing a substantive response to the request, as the bureau must decide whether to grant the fee waiver within the statutory time limit (see paragraphs 4.9A and 4.11 of Chapter 4));

(c) The requester has not made a required advance payment (see paragraph 4.10 of Chapter 4); or

(d) The requester has not reasonably described the records sought or clarified the initial request.

(4) The 20-workday time limit, or 30 workdays if an extension has been taken (see paragraph 3.3 of this Chapter), does not apply to requests for expedited processing (see paragraph 3.4 of this Chapter).

B. Release of Records. As long as the requester has been informed of the agency's decision with respect to disclosure or nondisclosure, the Department need not release the requested records within the time limits set forth in A and C. If the records to be disclosed are not provided with the initial response, the bureau will notify the requester when and where they will be made available.

C. Appeals. After receiving an appeal, DOI has 20 workdays in which to issue a determination.

### 3.3 Extension of Time Limits.

A. Justification. In the following unusual circumstances, DOI may extend the time limits prescribed in paragraph 3.2 of this Chapter:

(1) The need to search for and collect the requested records from multiple offices;

(2) The need to search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request; or

(3) The need to consult with another agency having a substantial interest in the determination of the request or with one or more bureaus of the Department having substantial subject-matter interest in the request.

B. Limitations.

(1) If necessary, more than one extension of time may be taken. However, the total extension of time must not exceed 10 workdays with respect to a particular request.

(2) A bureau may not take an extension of time to decide whether to grant a request for a fee waiver.

(3) A bureau may not extend the time limits prescribed in paragraph 3.2 of this Chapter due to the need to consult with a submitter of commercial or financial information.

C. Notifying the Requester. If an extension is necessary, the responsible official will notify the appropriate FOIA Contact and prepare a letter to the requester informing him/her of the reason for the extension (see paragraph 3.3A, above) and the anticipated date of the response (see Appendix B, Illustration 3). The letter to the requester should be sent prior to the expiration of the basic time limit (the initial 20 workdays).

3.4 Expedited Processing.

A. When requested, a bureau will provide expedited processing if the requester demonstrates to the satisfaction of the bureau that the request involves (see 43 CFR 2.14):

(1) 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.

(2) An urgency to inform the public about an actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information. In most cases, a person primarily engaged in disseminating information will be a representative of the news media. The requested information must be the type of information which has particular value that will be lost if not disseminated quickly, and ordinarily refers to a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(3) Records that are needed in connection with a judicial or administrative proceeding when a delay in releasing the records will result in the loss of substantial due process rights.

B. The requester must explain the basis for requesting expedited processing in the FOIA request and certify that his/her need for expedited processing is true and correct to the best of his/her knowledge. For example, a requester under category 3.4A(2), if not a full time member of the news media, must establish that he/she is a person whose main professional activity or occupation is information dissemination, though it need not be his/her sole occupation.

C. The bureau will notify a requester whether it will grant expedited processing within 10 calendar days of receipt of his/her request.

(1) If expedited processing is granted, the bureau will give priority to that FOIA request and process the request as soon as practicable, ahead of other FOIA requests that do not warrant expedited processing.

(2) If expedited processing is denied, the bureau will notify the requester in writing providing the basis for the denial and a statement that the denial of expedited processing may be appealed to the FOIA Appeals Officer (see Appendix B, Illustration 18).

D. If the bureau has not responded to a request for expedited processing within 10 calendar days, the requester may file an appeal for nonresponse.

### 3.5 Describing the Requested Records.

A. The requester must describe the records sought in sufficient detail to enable an employee familiar with the subject area of the request to locate the records with a reasonable amount of effort.

B. Bureaus should interpret FOIA requests liberally when determining which records are responsive to them. Further, communication with the requester is essential when addressing any questions regarding the scope of the request. (See paragraph 3.22C of this Chapter and DOJ FOIA Update, Fall 1995, Vol.XVI, No. 3, pp. 3-5 for additional guidance.)

C. When a request is overly broad in scope, unfocused, or involves an extremely voluminous amount of records or a burdensome search (e.g., "Send me any and all documents the Department has that reference or mention the XYZ Co. or any of its officers, employees, or consultants"), the bureau should contact the requester to try to identify and clarify the records sought and to reformulate the request (see Appendix B, Illustration 4). This includes explaining how the agency's records pertinent to the request are filed, indexed, grouped, etc., so that the requester understands how to narrow the request. The individual handling the request should work with the requester to:

(1) Limit the scope of the request to specific bureaus/offices or geographical locations (e.g., headquarters or a regional/field office) of a bureau or to a single bureau;

(2) Identify the date, title or name, author, recipient, and the subject of the record; the office that created the document, and present custodian of the record;

- (3) Narrow the scope of the request to a certain timeframe; and
- (4) Clarify terms within the context of the request.

D. When a request requires substantial clarification, the bureau will ask the requester to submit an amended written request.

E. The statutory time limit for responding to a request will not start until the bureau receives a request reasonably describing the records or the initial request is clarified.

F. If the bureau asks for additional clarification and does not hear from the requester within 20 workdays, it will assume the requester is no longer interested in pursuing the request. The responsible official should advise the requester in writing that it is closing the file since it has not received a response from him/her clarifying the initial request whenever practicable.

### 3.6 Locating the Records.

A. Immediately upon receiving the initial request, the responsible official will determine whether DOI has the records. If the agency does not have the records, the requester will be advised accordingly (see Appendix B, Illustration 5).

B. If the official believes that records covered by the request are located at another bureau/office within DOI or another Federal agency, he/she will follow the procedures in paragraph 3.13 or 3.14 of this Chapter.

C. If the request involves the records of more than one office within the same bureau, the official will coordinate the request with the Bureau FOIA Officer or the appropriate FOIA contact in the field.

D. If the bureau has transferred the records to a Federal records center, the official will promptly contact the appropriate records center. If the records are still in existence, he/she will request their return or make other arrangements for them to be reviewed. If the records have been transferred to the National Archives and Records Administration (NARA), the bureau will advise the requester to send his/her request to that agency for response.

E. If the records cannot be located, the official will notify the requester in writing and send a copy of the letter to the appropriate FOIA Contact (see Appendix B, Illustration 5). The bureau should explain why there are no records whenever possible, e.g., the bureau does not maintain such records as they are related to a program the responsibility for which falls under another agency, or the records have been destroyed in accordance with NARA's records retention and disposal policy, citing the appropriate records retention schedule (a copy should be sent to the requester). The bureau will advise the requester that the matter may be appealed to the FOIA Appeals Officer within 30 workdays of the date of the response, as this constitutes a denial under Departmental regulations. (see paragraph 3.20A(8) and 3.20B of this Chapter).

3.7 Searching for Responsive Records. After all the criteria in 43 CFR 2.8 and 2.10 have been met, the bureau will make a reasonable effort to search for records responsive to the request. This means searching for records in all offices that have or are likely to have responsive records. In determining which records are responsive, the bureau will include records in its possession and control as of the date it begins its search. This will include searching for records in electronic form/format, except where it would interfere significantly with the bureau's automated information systems. The responsible official should annotate the file to show which offices conducted a search in response to the request to support any potential appeal(s) and/or litigation.

3.8 Reviewing the Records.

A. The responsible official will make a detailed review of the requested records and consult interested offices before making a decision on the request (see paragraph 3.14D of this Chapter).

B. The official will review the records and decide whether the information should be released or denied. He/she must consult the designated FOIA attorney prior to:

- (1) Withholding a requested record,
- (2) Releasing a requested record that is exempt from disclosure (a discretionary release), or
- (3) Denying a fee waiver.

C. The Department may withhold information only if one of the nine exemptions listed in paragraph 1 of Chapter 5 applies to all or part of the records requested.

3.9 Form or Format of Disclosure. In accordance with the Department's regulations (43 CFR 2.9), a bureau must provide the records sought in the requested form/format if the office responding to the request can readily reproduce the records in that form/format with reasonable efforts. However, if the process of providing the information in the requested format would damage or destroy an original document (e.g., in the case of a very old and brittle paper document), the bureau may not be able to honor the requester's format request. In this situation, the bureau should contact the requester to see if alternative arrangements can be made. A bureau must make a reasonable effort to maintain its records in forms or formats that are reproducible.

A. A bureau can charge the requester the direct costs involved in converting the information to the requested format if it does not maintain the information in that format.

B. In the event of litigation, a bureau/office may have to prepare an affidavit concerning the reproducibility of the record(s) in the requested form/format.

### 3.10 Interim Responses.

A. To avoid unnecessary appeals and litigation, bureaus will make every effort to keep requesters apprised of the status of their requests. If a decision on a request has not been made within the given time limits or an extension thereof, a requester may treat the delay or lack of response as a denial and file an appeal or sue the Department. It is essential to communicate with the requester--this shows good faith on the part of the Department.

B. When the action office is unable to respond in a timely manner, an interim response should be prepared. The letter should be brief, acknowledge receipt of the incoming correspondence, and advise the requester when he/she may expect a final response. The requester also will be advised of his/her right to treat the delay as a denial and appeal the matter (see Appendix B, Illustration 6).

3.11 Referrals from Other Agencies. Bureaus should handle referrals from other agencies (i.e., outside DOI) on the same first-in, first-out basis as their other FOIA requests using the date of the request's initial receipt at the referring agency to establish its processing priority. These requests will be logged into the EFTS as of the date they are received by the appropriate bureau FOIA Contact, and will be processed as expeditiously as possible.

### 3.12 Records of Other Agencies.

A. If, in response to a request, a bureau locates documents that originated with another Federal agency, it will refer the request and the responsive documents to that agency for a release determination and direct response (see paragraph 3.12B, below). The bureau will notify the requester of the referral in writing and, if possible, provide the name of a contact at the other agency. However, in the following situations, the bureau will make the release determination, after consulting with the originating agency:

- (1) When the record is of primary interest to DOI (a record is of primary interest to DOI if it was developed or prepared according to DOI regulations or directives or in response to a DOI request);
- (2) If DOI is in a better position than the originating agency to assess whether the record is exempt from disclosure;
- (3) If the originating agency is not subject to the FOIA; or
- (4) When it is more efficient or practical depending on the circumstances.

B. When referring documents to another agency, the responsible official will:

- (1) Inform the requester in writing that DOI is forwarding the request and the responsive record(s) to another agency for response (see Appendix B, Illustration 9);

- (2) Include the name, address, and telephone number of a contact person at the other agency;
- (3) Advise the requester that he/she may treat the response as a denial and file an appeal (see paragraph 6.1 of Chapter 6); and
- (4) Promptly send the request and record(s) to the appropriate agency (see Appendix B, Illustration 8).

C. If a bureau receives a request for records classified by another agency under Executive Order 12,958, Classified National Security Information, or a superseding Executive order, it must refer the request to that agency for response.

3.13 Consultations and Referrals with Agencies outside DOI. If a bureau receives a request for records not in its possession, but which may be in the possession of another Federal agency, the bureau will return the request to the requester and advise him/her to submit it directly to the other agency (see Appendix B, Illustration 7). The letter to the requester should:

- A. Include the name, address, and telephone number of a contact person at the other agency; and
- B. Advise the requester that he/she may treat the response as a denial and file an appeal (see paragraph 6.1 of Chapter 6).

3.14 Consultations and Referrals within DOI.

- A. If a bureau receives a request for records that are not in its possession, but which it knows another bureau has or is likely to have, it will refer the request to that bureau for response.
- B. If a request to a bureau states that it seeks records located at another specific office of the same bureau, the appropriate FOIA Contact will refer the request to the other office. If the request states that it seeks records from other unspecified offices within the same bureau, the FOIA Contact will send the request to the Bureau FOIA Officer who will refer it to those offices which, to the best of his/her knowledge, have or are likely to have responsive records.
- C. If a request to a bureau states that it seeks records of another specified bureau, the bureau will refer the request to the bureau for response. If the request states that it seeks records from other unspecified bureaus, the FOIA Contact will send the request to his/her Bureau FOIA Officer who will ensure that the request is referred to those bureaus which, to the best of his/her knowledge, have or are likely to have responsive records.
- D. If a bureau (other than the Office of Inspector General (OIG)) receives a request for records in its possession that another bureau created or is substantially concerned with, it will:

(1) Consult with that bureau before deciding whether to release or withhold the material; or

(2) Refer the request (or the relevant portion thereof) along with the records, to that bureau for direct response. Such a referral does not restart the time limit for responding to the request.

E. In accordance with 16 U.S.C. 5937 (an exemption 3 statute (see paragraph 5.5B(14) of Chapter 5), if a bureau receives a request for records concerning the nature and specific location of i) a National Park System resource that is endangered, threatened, rare, or commercially valuable; ii) mineral or paleontological objects within units of the National Park System; or iii) objects of cultural patrimony within units of the National Park System, it will:

(1) Inform the requester that the bureau must consult with the National Park Service (NPS) prior to deciding whether to release the records;

(2) Forward the FOIA request to the NPS; and

(3) Include either a) a preliminary recommendation that the information be withheld; b) a preliminary recommendation that it be released; or c) a statement that the bureau has no recommendation on whether the information should be released.

If the NPS agrees that the request seeks information covered by this paragraph, NPS will instruct the referring bureau to withhold the information unless the NPS determines that release: will further the purposes of the unit of the National Park System in which the resource is located; will not lead to an unreasonable risk of harm, theft, or destruction of the resource; and will not be inconsistent with other applicable laws.

F. If a bureau (except the OIG) locates correspondence signed at the Deputy Assistant Secretary level or above in response to a request, and it plans to make a discretionary release, the bureau will consult with the appropriate Assistant Secretary's office as well as its Designated FOIA attorney (see paragraph 5.14 of Chapter 5 regarding discretionary releases).

G. Whenever a request is referred to another bureau, the referring bureau will advise the requester of the referral in writing. The letter to the requester should include the name, telephone number, and mailing address of a contact in the other bureau(s) to which the referral was made. The FOIA Contact will send a copy of the letter notifying the requester of the referral along with the request to the appropriate FOIA Contact at the other bureau (see Appendix B, Illustration 10).

H. Whenever it is necessary for a bureau to refer a request to another bureau FOIA office for response, it will do so as expeditiously as possible. With the exception of paragraph 3.14D, above, the time limit for responding to such requests starts when the request reaches the bureau office that has the records.

3.15 Relationship of the FOIA and the Privacy Act.

A. When an individual requests records pertaining to himself/herself that are contained in a Privacy Act system of records (i.e., the information contained in the system of records is retrieved by the bureau/office using the requester's name or other personal identifier), it will be processed under both the FOIA and the Privacy Act regardless of the statute(s) cited, so that the individual is granted the greatest access to his/her records that either Act provides (see paragraph 1.12 of Chapter 1). Before the bureau begins processing a request covered by the Privacy Act, it will ensure that the requester has provided the necessary identifying information, e.g., a legible signature or photo ID (see the appropriate Privacy Act system notice and 43 CFR Subpart G).

B. If an individual submits a FOIA request for records pertaining to himself/herself that are not covered by the Privacy Act, the request will be treated as any other FOIA request.

C. A request from an individual for access to his/her records that cites neither Act will be processed under both Acts (e.g., "I would like all the records the Department of the Interior has on me...") if the information sought is contained in a Privacy Act system of records applicable to the requester.

D. When a third party (an individual other than the person who is the subject of the Privacy Act record) submits a FOIA request for information that is subject to the Privacy Act (e.g., "Send me all the records the agency has on my husband, Justin Case, an employee with DOI.") the material may not be disclosed without the prior written approval of the individual on whom the record is maintained unless—

(1) The release is permissible under one of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)), e.g., the release to the requester would be for one of the routine uses listed in the applicable Privacy Act system of records notice, or if it is required to be released under the FOIA, or

(2) The individual is deceased (see 43 CFR 2.8(d) (4)). However, if the release of the information would result in a clearly unwarranted invasion of the personal privacy of a living individual, e.g., a member of the deceased individual's family, the information must be withheld.

E. Any employee who knowingly and willfully discloses information protected by the Privacy Act may be subject to criminal penalties.

F. The Privacy Act never prohibits disclosure of material that the FOIA requires to be released, such as the grade level and salary of a Federal employee (see paragraph 3.29A of this Chapter). In order to withhold information from the subject of the file (a first party requester) both a Privacy Act and a FOIA exemption must apply.

G. The Privacy Act, unlike the FOIA, only applies to U.S. citizens or lawfully admitted aliens.

H. In handling such combined FOIA/Privacy Act requests, the fee provisions and time limits applicable to the FOIA apply. With regard to those records that are subject to the Privacy Act, DOI can charge the person who is the subject of the records only for duplicating the material and not for search or review time. There will be no charge if the fee for processing the request is \$30 or less.

I. For additional guidance regarding the handling of Privacy Act requests, refer to the appropriate Privacy Act system of records notice and DOI's Privacy Act regulations (43 CFR Subpart G, in particular 43 CFR 2.63 and 2.64) and the Departmental Manual (383 DM 6, Privacy Act Notification, Access and Amendment Procedures).

### 3.16 Preparing the Response Letter.

#### A. General.

- (1) Respond promptly to requests, telephone calls, and emails related to the FOIA.
- (2) Strive to convey a helpful, responsive attitude by the tone of voice, style, and wording chosen.
- (3) Use clear, plain language which can be understood by the recipient.
- (4) Be courteous and sensitive to the needs of the public.
- (5) Comply with the requirements in paragraphs 3.16B, 3.19, and 3.20. These requirements also apply to responses sent to the requester electronically.

#### B. Content of Letter.

- (1) Responses should open with a reference to the specific information requested, the date of the initial request, and the date of receipt if delayed. For example, "This responds to your January 7, 2003, Freedom of Information Act request (received in this office on January 16, 2003) in which you seek access to copies of travel vouchers for certain key officials."
- (2) The name, telephone number, fax number, and e-mail address (as appropriate) of a contact familiar with the request should be included.
- (3) If the records are not provided with the initial response, the requester should be advised of the circumstances of the delay and the date when he/she may expect to receive them.
- (4) If the request involves records that may be located in several bureaus, the requester should be advised that the bureau is responding for records under its purview only, or

that it is responding on behalf of DOI in the event that a consolidated response has been prepared.

(5) Fees should be addressed even when the requester is not charged.

(a) The following language may be used when a fee is not charged:

(i) The fee incurred in responding to your request is less than \$30 and is not being charged in accordance with 43 CFR 2.16(b)(2).

(ii) The bureau has reviewed your request for a fee waiver and determined that disclosure of the requested information is in the public interest consistent with the FOIA and DOI's FOIA regulations; therefore, all fees are waived. (The bureau will explain the basis for its decision, i.e., how the request meets the criteria for granting a fee waiver under DOI's FOIA regulations (43 CFR 2.19 and Appendix D).

(b) When a fee is to be charged, advise the requester as to how the fee is calculated. For example:

The fee for the enclosed documents is [insert \$ amount], calculated as follows: [insert #] hours of search/review time at [insert rate] per hour and [insert #] pages of duplication at \$.13 per page. A breakdown of these costs is included on the Bill for Collection.

(c) If fees are applicable, provide explicit instructions to the requester for submission of payment or advise him/her that a bill will follow.

"A Bill for Collection is enclosed. Please make payment by check or money order clearly marked "FOIA Fee", payable to the "Department of the Interior (or name of the bureau or office)." The term United States or the initials "U.S." should not be included on the check or money order. Send the payment to the (insert title and address where payment is to be mailed). Your payment should be received within 30 days of the date of the Bill for Collection. Interest will be charged in accordance with 31 U.S.C. 3717, as amended, if the fee is not paid within 30 calendar days of the date on the Bill for Collection."

(d) The interest requirement does not apply if the requester is a State or local government, as other authorities will be used to collect outstanding fees. Consult with the appropriate budget/finance office for exact language to be used in these cases.

3.17 Signature Authority. See paragraph 2.4 of Chapter 2.

3.18 Action Office Responsibilities. The office handling the request (in many cases this is the FOIA office) is responsible for:

- A. Acknowledging receipt of the request promptly in writing, including informing the requester of the FOIA control number and contact information.
- B. Making determinations on fee waiver and expedited processing requests within the statutory time limits.
- C. Notifying the requester of the Department's intention to disclose or withhold the requested records within the time limits specified in paragraph 3.2 of this Chapter.
- D. Ensuring that an adequate search is conducted and that any records responsive to the request are reviewed properly.
- E. Consulting with appropriate offices, including the Office of the Solicitor (SOL), if a decision is made to release a record exempt from disclosure or a denial is involved.
- F. Obtaining necessary concurrences.
- G. Following up to make sure that legible copies of the records are sent to the requester if not sent with the initial response.
- H. Keeping a record of information that has been released or withheld as a reference for future requests (to determine whether the material is in the public domain) to support any potential appeal(s) and/or litigation.
- I. Annotating the official file to show which offices conducted a search in response to the request to support any potential appeal(s) and/or litigation.
- J. Obtaining assurance of payment or advance payment as necessary and preparing the Bill for Collection when it is not prepared by the bureau's finance office (see paragraphs 4.9 and 4.10 of Chapter 4).
- K. Sending a copy of the response to the FOIA Contact who is tracking and managing the bureau's requests via the electronic FOIA tracking system.

Appendix B, Illustration 12, provides an overview for responding to a FOIA request.

### 3.19 Initial Response--Granting Access.

- A. When the action office decides to release the requested records, it will include them with the response letter or notify the requester of how, when, and where the records will be made available (see Appendix B, Illustration 11).
- B. A description and/or list of the records being provided will be included in the response letter or as an enclosure to the letter.

C. If the bureau determines that a discretionary release is appropriate consistent with Departmental policy, the action office should advise the requester that the requested information is exempt from disclosure under the FOIA, but the bureau has decided to exercise its discretion and is releasing it.

D. The response to the requester will be prepared consistent with the guidance in paragraph 3.16 of this Chapter).

### 3.20 Initial Response--Denying a Request in Part or Whole.

A. When the action office decides that all or part of a requested record should be withheld (even if one word is deleted), it will notify the requester in writing (see Appendix B, Illustration 13). The denial letter will:

- (1) Indicate the date of the initial request and the date DOI received the request if delayed.
- (2) Briefly describe the requested records including a list if practicable.
- (3) Describe the documents or parts fully withheld (if the records are voluminous, they may be categorized for description purposes) being careful not to reveal the contents of the information withheld.
- (4) Include the specific exemption(s) authorizing the withholding for each part denied and provide an explanation of the reason(s) for the denial.
- (5) Include an estimate of the volume of information being withheld. The bureau will make a reasonable effort to estimate the volume of any records denied, or portions of records (e.g., 100 pages, 4 Federal Record Center boxes, 1,000 kilobytes, etc.) unless such an estimate would harm an interest protected by the exemption used to withhold the information.
- (6) State the name and title of the person(s) responsible for the denial if it is someone other than the person who signs the letter.
- (7) State the name and title of the Office of the Solicitor attorney or any other persons consulted in the review process.
- (8) Advise the requester of his/her right to appeal in writing to the FOIA Appeals Officer. A sample paragraph follows:

"You may appeal this partial (full) denial to the FOIA Appeals Officer within 30 workdays of the date of this letter or 30 workdays after the records have been released. Your appeal must be in writing and addressed to: The Freedom of Information Act Appeals Officer, Office of the Chief Information Officer, Department of the Interior, 1849 C Street, NW, MS 5312, MIB, Washington, DC 20240. A copy

of your original request and this denial letter should accompany the appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, "FREEDOM OF INFORMATION APPEAL." Your letter should include in as much detail as possible any reason(s) why you believe the bureau's response is in error."

B. If records do not exist within DOI, cannot be located, are not reasonably described, or if a procedural issue remains unresolved (e.g., a fee issue), the bureau will notify the requester in writing (see Appendix B, Illustrations 1, 5, and 17). The letter to the requester will include the following information as applicable:

(1) An explanation of the basis of the decision;

(2) The names and titles of the person(s) responsible for the decision (the names of any individuals consulted also may be included); and

(3) A statement that the matter may be appealed within 30 workdays to the FOIA Appeals Officer (see paragraph 3.20A(8), above).

C. The bureau must inform the requester of his/her appeal rights; otherwise, the requester may sue the Department without having to first file an appeal.

D. The Office of the Solicitor will be consulted whenever a decision is made to withhold a requested record, release a record that is exempt from disclosure, or to deny a fee waiver (see paragraph 3.8B of this Chapter).

3.21 Segregating and Releasing Nonexempt Information. When a record contains both exempt and nonexempt material, the bureau will generally segregate and release reasonably segregable nonexempt information, e.g., any factual information.

A. When disclosing a record in part, the bureau will indicate on the released portion of the record how much information was deleted and the appropriate exemption, unless doing so would harm an interest protected by the exemption used to withhold the information. All deletions will be marked clearly.

B. If technically feasible, the amount of the information and the exemption used to withhold the information will be indicated where the deletion is made--this avoids confusion.

C. Before releasing records that contain exempt information, the responsible official will review the records to ensure that any redacted (deleted) information is not visible. The redacted portions of a paper document should be heavily blacked out and then photocopied at least twice (i.e., copy the redacted page and then copy the copied page). The bureau may wish to use other methods of redaction, but whichever method is used, it is critical that no exempt information is disclosed.

D. In the response to the requester, the bureau will describe in as much detail as possible the kind of material deleted, being careful not to reveal the information withheld. Deleting even one word constitutes a partial denial. Before disclosing a document, the official will keep a record of the parts withheld, either by marking the original or by keeping a page-by-page list.

E. If the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases, the entire portion may be withheld.

3.22 Releasing Information that is Outside the Scope of a Request. When a bureau locates a document that contains information that is both responsive and nonresponsive to a FOIA request, the following procedures apply:

A. If any of the information on a page of a document falls within the subject matter of a FOIA request, then the entire page should be considered subject to the request. The bureau will release all of the information on a page of a document that contains both responsive and nonresponsive information unless there is a FOIA exemption that protects any of the information on that page from disclosure. Doing so provides useful information for the requester, involves no additional duplication cost to the requester, and ordinarily does not impose an additional burden on the bureau.

B. However, if a document with responsive information contains pages with only nonresponsive information on them, then those pages that contain only nonresponsive information are outside the scope of the FOIA request and do not need to be processed. In this case, the bureau will advise the requester that it is not processing these pages as they are clearly outside the scope of his/her request.

C. If there is any question regarding what information is responsive to a given FOIA request, the bureau should contact the requester promptly (see paragraph 3.5 of this Chapter).

3.23 Consulting with Submitters of Commercial and Financial Information.

A. If a bureau receives a FOIA request for records containing commercial or financial information submitted by a person or entity outside of the Federal Government (a submitter), under Executive Order 12,600, Predisclosure Notification Procedures for Confidential Commercial Information or superseding Executive order, the bureau processing the request must provide the submitter with prompt written notice of the request, except as provided in paragraph 3.23I, below, whenever:

(1) The submitter has designated the information as confidential commercial or financial information, or

(2) The bureau has reason to believe that the information may be protected under exemption (4) or it cannot readily determine whether the information is commercially or financially sensitive.

B. The notice to the submitter will:

(1) Inform the submitter that the bureau has received a FOIA request for information or records that he/she has provided (see Appendix B, Illustration 14) and include a copy of the FOIA request.

(2) Describe the information requested or include copies of the pertinent records.

(3) Advise the submitter of the procedures for objecting to the release of the requested material and specify the time limit for responding. The responsible official may wish to meet with the submitter to review the material or to discuss any problems.

(4) Give the submitter no less than 10 workdays from receipt (the letter should be sent certified mail, return-receipt requested), or publication as set forth in paragraph 3.23C, below, of the bureau's notice to object to the release and explain the basis for the objection, if any.

(5) Advise the submitter that:

(a) Information contained in his/her objections may be subject to disclosure under the FOIA if the bureau receives a FOIA request for it; and

(b) If the submitter's objections contain commercial or financial information and a requester asks for the objections under the FOIA, the notification procedures in 43 CFR 2.23 will apply.

(6) Advise the submitter that it is the bureau, rather than the submitter, that is responsible for deciding whether the information will be released or withheld.

(7) If the submitter designated the material as confidential, commercial or financial information 10 or more years before the request, request the submitter's views on whether he/she still considers the information to be confidential.

C. Where a large number of submitters are involved, the bureau may, rather than providing written notice to each submitter, publish a notice in a manner reasonably calculated to reach the attention of the submitters (e.g., in newspapers/newsletters, the bureau's web site, or the Federal Register).

D. Whenever the bureau notifies the submitter that it may be required to disclose information that he/she provided in response to a FOIA request, the bureau also will notify the requester that it is giving the submitter an opportunity to review and comment on the material.

E. If the submitter has any objection to disclosure, he/she must submit a detailed written statement including the following:

(1) The justification for withholding any portions of the information under any exemption of the FOIA. In the case of exemption 4, he/she must provide a specific and detailed discussion of:

(a) Whether the Government required the information in question to be submitted, and if so, how substantial competitive or other business harm would likely result from the release; or

(b) Whether the submitter provided the information voluntarily and, if so, how the information in question fits into a category of information that the submitter customarily does not release to the public.

(2) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is essentially non-public because it is not routinely available from other sources.

F. The bureau will review and consider all objections to release that are received within the timeframe specified in the notice to the submitter. If the bureau has not heard from the submitter within the specified timeframe, the responsible official will telephone the submitter to check on the status of his/her response. Depending on the circumstances, the bureau may, at its discretion, allow more time for the submitter to review the material. If the bureau still has not received a response from the submitter even after contacting him/her by telephone, the bureau will presume the submitter has no objection to disclosure.

G. If the submitter's statement is not received on time, the bureau should send the requester an interim response advising him/her of the reason for the delay (see Appendix B, Illustration 6).

H. If the bureau decides to disclose any part of the information that the submitter has asked to be withheld, the responsible official will promptly:

(1) Telephone the submitter to inform him/her of DOI's decision, and;

(2) Confirm the telephone call with a letter sent certified mail, return-receipt requested (see Appendix B, Illustration 15) to the submitter's last known address (a copy also will be sent to the requester). The letter to the submitter will:

(a) Contain a complete copy of the material to be disclosed or will give the submitter an opportunity to review the material in DOI's offices;

(b) Include the bureau's reasons for deciding to release them;

(c) Advise him/her that the bureau intends to release the records 10 workdays after receipt of the notice by the submitter; and

(d) Be sent for surnaming along with the bureau's response letter to the requester and be dated and postmarked the same day as the letter to the requester (see Appendix B, Illustration 16). The records will be mailed at a later date depending on whether the submitter initiates a lawsuit to prevent the release.

I. Consultation is not required if:

(1) The bureau responsible for the decision determines prior to giving notice, that the information is exempt from disclosure;

(2) The information has been lawfully published or otherwise been made available to the public, such as in response to an earlier FOIA request or if the submitter has made the information public;

(3) Disclosure of the information is required by a statute (other than the FOIA) or regulation (other than 43 CFR Part 2, Subpart C);

(4) Disclosure of the information is prohibited by a statute; or

(5) The designation of confidentiality made by the submitter appears obviously frivolous. However, the bureau will notify the submitter of any final decision to disclose the information 15 workdays prior to releasing it.

J. If, after an independent analysis, the bureau is in agreement with the submitter's position that all or a part of a record should be withheld, the responsible official will notify the submitter. In this event, the letter to the requester should state that the bureau's decision to withhold is based on a careful, objective analysis of the requested records and not merely on the fact that the submitter objected to disclosure.

K. If a requester files a lawsuit against DOI for access to any of the withheld records, the bureau will notify the submitter within 10 workdays of the Department's receipt of the complaint. Similarly, if the submitter files a lawsuit to prohibit the bureau from disclosing the records, the bureau will notify the requester within 10 workdays of the Department's receipt of the complaint.

L. If the bureau determines that the requested information is protected from release by exemption 4, it has no discretion to release the information as doing so would violate the Trade Secrets Act (18 U.S.C. 1905).

3.24 Requests for Federally-funded Research Data in the Possession of a Private Entity. When published research findings are produced under a grant or other Federal assistance, and the findings are used by a bureau in developing an agency action that has the force and effect of law (e.g., a policy or regulation), the research data related to such findings are considered agency records even if they are in the possession of the recipient of the Federal financial assistance (recipient) (see paragraphs 1.5V and 1.5Z of Chapter 1). Consistent with OMB Circular A-110, this provision applies only to grants and Federal assistance awarded to institutions of higher

education, public and private hospitals, and other quasi-public and private nonprofit organizations. It does not apply to grants, contracts, or other agreements between the Federal Government and local and Federally-recognized Indian tribal governments covered under OMB Circular A-102.

A. If a FOIA request for such research data is received, the bureau will require the recipient to provide the information to it within a reasonable amount of time, so the bureau can consider the data for release to the public under the FOIA.

B. The bureau will notify the requester that it may charge him/her for any additional fees incurred as a result of obtaining the research data from the recipient. This fee is in addition to any fees the bureau may charge the requester to process the FOIA request.

C. The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information consistent with DOI's FOIA regulations (43 CFR Part 2, Subparts A through E). The recipient will forward a copy of any responsive records that are located, along with his/her recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data to the appropriate bureau FOIA contact.

D. The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested data. However, it is the bureau, rather than the recipient, that is responsible for deciding whether the information will be released or withheld.

3.25 Sensitive Requests. The Bureau FOIA Officer will notify its Office of Communications/Public Affairs and the Office of Congressional and Legislative Affairs promptly of any sensitive requests (e.g., those from the media) regarding issues of top priority for the bureau or the Department. The action office is responsible for ensuring that the bureau's Office of Communications/Public Affairs reviews and surnames all responses to such inquiries at headquarters. The bureau will designate an official at each field office (preferably in the Office of Communications/Public Affairs) to review and surname such requests (see paragraph 3.18F of this Chapter).

### 3.26 Requests from Members of Congress.

A. Upon receipt of a request for records from a Member of Congress, the bureau should first determine whether the request is made under the authority of a congressional committee or subcommittee on a subject within its jurisdiction (usually the letter will be signed by the chairman of the committee or subcommittee). The bureau must consult with the Office of Congressional and Legislative Affairs (OCL) to ensure proper coordination and conformity of responses. Requests from individual Members of Congress may require different types of responses. Bureaus must consult with OCL to determine the appropriate response.

B. Before denying a request from a Member of Congress, the responsible official will consult with OCL and the bureau's designated FOIA attorney (see paragraphs 3.18E and 3.20D of this Chapter).

3.27 White House Records. If White House records responsive to a FOIA request are located in agency files or if a response needs be coordinated with the White House due to the potential impact it could have on the Administration, consult the Departmental FOIA Officer. The Departmental FOIA Officer will coordinate the response with the White House.

3.28 Multitrack Processing of FOIA Requests.

A. A bureau may use two or more different processing tracks for simple and complex requests based on the amount of work and/or time needed to process the request, including the number of pages involved.

B. If a bureau uses multitrack processing, it will advise the requesters in its slower track(s) of the criteria of its faster track(s). For example, a bureau may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the bureau's faster track(s). A bureau doing so will contact the requester by telephone or in writing, whichever is more efficient in each case.

3.29 Examples of Information Frequently Releasable Under the FOIA. The following information is generally, but not always, releasable under the FOIA (see 5 CFR 293.311).

A. Personnel-related information/records.

- (1) Names of present and former employees.
- (2) Present and past position titles and occupational series.
- (3) Present and past grades.
- (4) Present and past annual salary rates--including amounts received for performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials (normally, the name of the individual, position, type of award, and the dollar amount are releasable).
- (5) Other awards and honors received in an individual's professional capacity, and membership in professional groups related to the employee's profession.
- (6) Present and past duty stations (this includes official mailing and email addresses of DOI employees) as well as telephone numbers as they appear in the DOI Telephone Directory.

(7) Position descriptions, identification of job elements and those performance standards (but not actual performance appraisals) the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

(8) Factors used in ranking job applicants (not to be confused with a crediting plan).

(9) Information regarding an employee's education when it is related to his/her profession.

(10) Prior employment in State or Federal Government positions and in the private sector when it is related to the position held by the employee.

(11) Resumes and SF 171, Application for Federal Employment, for the successful candidate only (sanitized of any exempt material--see paragraph 5.8C (1) of Chapter 5).

(12) SF 50, Notification of Personnel Action (sanitized of any exempt material--see paragraph 5.8C (1) of Chapter 5).

**B. Administrative Documents (Sanitized of any Exempt Material).**

(1) Travel Vouchers.

(2) Invoices.

(3) FOIA request letters.

(4) Frequently requested FOIA records (see paragraph 1.8 of Chapter 1).

(5) Transmittal memoranda and letters.

(6) Names of Federal employees involved in union activities during working hours.

(7) Records about deceased persons, unless exemption 6 is applicable (see paragraph 5.8B (7) of Chapter 5).

**C. Contract Information.** Best and final offer of the successful bidder when included in the final contract or award. If not, this information would be protected by exemption (3) (see the Federal Property and Administrative Services Act, 41 U.S.C. 253b, as amended by the National Defense Authorization Act for FY 1997, Pub. L. 104-201).

D. Policy Documentation.

- (1) Final orders and opinions in administrative actions.
- (2) Documents representing final decisions of agency officials, including documents adopted or incorporated by reference in the final decision.
- (3) Official policy statements, interpretations, and guidelines that have been adopted by the agency.

3.30 Requests for Records not yet in Existence. The FOIA only applies to records in the bureau's possession and control at the time it begins its search for responsive records. When a bureau receives a request for records that are not yet in existence, but may be created at some future time, as a courtesy it may advise the requester that he/she may wish to resubmit the request at a later date. The bureau should explain in the response why the records are not in existence and provide the requester with his/her appeal rights (see paragraph 3.20B of this Chapter.) See Appendix B, Illustration 17.

3.31 Receipt of Classified Material. Whenever another agency refers classified documents to DOI for review, the following procedures will apply:

A. Classified documents will be handled in accordance with 442 DM, National Security Information.

B. The documents will be hand-carried immediately to the Office of Law Enforcement and Security (OLES) for processing. In cases where this is not practicable, contact the bureau/office's designated security officer or call OLES for guidance.

3.32 Certification of Documents. See 310 DM 10.