

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

Effective Date: 4/22/04

Chapter 6: FOIA Appeals

Originating Office: Office of the Chief Information Officer

6.1 FOIA Appeal Rights. Under the Department's regulations (see 43 CFR 2.28), requesters have the right to file an administrative appeal with the Department when:

- A. Records or parts of records have been withheld;
- B. A request has been denied because the bureau determined that the requester did not adequately describe the records being sought, and the requester has reason to believe that the description was adequate;
- C. A request has been denied because the requested records cannot be located, and the requester has reason to believe that the records exist, or questions the adequacy of the bureau's search for responsive records;
- D. A decision has not been made on the requester's FOIA request within the time limits provided in 43 CFR 2.12;
- E. The bureau did not address all aspects of the request for records;
- F. There is a procedural deficiency (*e.g.*, fees are improperly calculated);
- G. A fee waiver request has been denied; or,
- H. A request for expedited processing has been denied or not responded to on time. (Special procedures apply to this type of appeal (see 43 CFR 2.14, and 2.32(b)). An appeal of this type relates only to a request for expedited processing and does not constitute an appeal of an underlying request for records.

6.2 Requester Contact with Bureaus. Before filing an appeal, the requester may wish to communicate with the contact person listed in the FOIA response or the bureau's FOIA Officer, in an attempt to resolve the issue informally. Informal resolution may be appropriate to clarify a request, or when the requester believes that the file search was not adequate. In the latter instance, the requester may be able to provide additional information that may assist the bureau in locating the requested records. However, if the requester wishes to file an appeal, it must be received by the FOIA Appeals Officer within the time limits prescribed in 43 CFR 2.29.

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Replaces 3/28/91 #383A-1

6.3 Time Limitations for Filing FOIA Appeals.

A. Appeals with the exception of those in paragraph 6.1D and 6.1H of this Chapter must be received by the FOIA Appeals Officer no later than 30 workdays after the date of the final response or 30 workdays after receipt of any records provided to the requester;

B. Appeals covered by 6.1D of this Chapter can be filed at any time after the time limit for responding to a FOIA request has passed; and,

C. Appeals covered by 6.1H of this Chapter should be filed as soon as possible.

6.4 Filing a FOIA Appeal.

A. Appeals must be submitted in writing, *i.e.*, by mail, fax or e-mail, to the FOIA Appeals Officer (see 43 CFR Part 2, Appendix A).

B. All communications concerning an appeal should be clearly marked with the words: "FREEDOM OF INFORMATION ACT APPEAL." However, the Department will accept any written communication that fulfills the requirements of a FOIA appeal.

C. The appeal must be accompanied by a copy of the initial FOIA request, and the bureau's response letter (if there is one). (DOI will not begin processing an appeal, and the time limits for responding to an appeal will not begin, until these documents are received by the FOIA Appeals Officer.)

D. The FOIA Appeals Officer will attempt to obtain copies of the missing required document(s). If the missing document(s) cannot be obtained, the FOIA Appeals Officer will advise the appellant in writing that the Department cannot accept the appeal.

E. The appeal should state the issue(s) that are being appealed.

F. All appeals, in particular those pertaining to denials of a fee waiver request or a request for expedited processing should include as much detail as possible to justify such requests.

6.5 Appeal Notification. The FOIA Appeals Officer will ensure that copies of the appeal documents are distributed to:

A. The pertinent bureau FOIA Officer involved in the request and appeal action, and/or the appropriate reviewing and approving office(s). The bureau FOIA Officer will be directed to refer a copy of the appeal to the pertinent field office if a field office was responsible for handling the initial request.

B. The Office of the Solicitor - Division of General Law (SOL), for appeals that pertain to the denial of:

- (1) Records; or
- (2) Fee waivers.

6.6 Review of FOIA Appeals. The legal review of appeals involving withheld material will require that copies of the material at issue be provided to SOL. Officials who have made decisions on FOIA requests that are subsequently appealed are responsible for maintaining copies of this material, and making it available for the legal review.

6.7 Authority for Making Final Decisions on FOIA Appeals. The Assistant Secretary - Policy, Management and Budget has the authority for making final decisions on appeals for the Department. This authority is delegated through the Chief Information Officer to the FOIA Appeals Officer (see 210 DM 18).

6.8 Decisions on FOIA Appeals. FOIA appeals will be decided by the FOIA Appeals Officer. When necessary, the FOIA Appeals Officer will consult other appropriate offices, including SOL. The FOIA Appeals Officer must consult with SOL in cases of FOIA appeals involving the denial of records or fee waivers. The final decisions on an appeal will be in writing to the appellant, and will state the basis for the decision.

6.9 Denial of FOIA Appeals. If the FOIA Appeals Officer denies an appeal, or a portion of an appeal, he/she will advise the appellant of his/her right to seek judicial review.

6.10 Granting of FOIA Appeals. The following actions will be taken when an appeal has been granted in whole or in part:

A. Withheld Records. If the FOIA Appeals Officer grants an appeal involving withheld records, he/she will release copies of the records directly to the appellant, or instruct the appropriate bureau to release the records as soon as possible. The FOIA Appeals Officer will advise the appellant of this action, and close the file on the appeal. In instances of a partial granting, the FOIA Appeals Officer will release only those records that have been approved for release directly to the appellant, or instruct the appropriate bureau to release the records as soon as possible. The FOIA Appeals Officer will advise the appellant that a portion of the appeal is granted, although the remaining portion is denied, and close the file on the appeal.

B. Fee Waivers. If the FOIA Appeals Officer grants an appeal involving a denial of a fee waiver request, he/she will instruct the bureau to take the appropriate corrective billing actions. The FOIA Appeals Officer will advise the appellant of these actions, and close the file on the appeal.

C. Non-Possession. If the FOIA Appeals Officer grants an appeal involving an issue of “non-possession” because the bureau has subsequently determined that it is in possession of the requested documents, he/she will direct the bureau to make an appropriate records release directly to the requester as soon as possible. The FOIA Appeals Officer will advise the appellant of this action, and close the file on the appeal.

D. Non-Response and Incomplete Response. If the FOIA Appeals Officer grants an appeal involving an issue of “non-response” or “incomplete response,” because the bureau has subsequently issued a complete response to the requester, the FOIA Appeals Officer will advise the appellant that he/she will close the file on the appeal.

E. Procedural Deficiencies. If the FOIA Appeals Officer grants an appeal involving procedural deficiencies, because he/she determines that the bureau was in error in making the subject decision, he/she will direct the bureau to correct the error, and advise the requester as soon as possible. The FOIA Appeals Officer will advise the appellant of this determination, and close the file on the appeal.

F. Expedited Processing of FOIA Requests. If the FOIA Appeals Officer grants an appeal involving a denial of a request for expedited processing, he/she will direct the bureau to process the FOIA request as soon as practicable. The FOIA Appeals Officer will advise the appellant of this determination, and close the file on the appeal.

6.11 Time Limitations for Processing FOIA Appeals. The statutory time limitation for responding to an appeal is 20-workdays after receipt of an appeal that meets the Department’s requirements (see 43 CFR 2.30.) Decisions to grant requests for expedited processing of an appeal will be made within 10 calendar days of receipt of the appeal. If expedited processing of an appeal is granted, the appeal will be given priority for processing ahead of the other pending appeals (see 43 CFR 2.14 and 2.32(b)).

6.12 Delay in Issuing Responses to FOIA Appeals. If the Department does not issue a decision on a FOIA appeal within 20-workdays, the FOIA Appeals Officer will issue a letter to the appellant advising of the status of the FOIA appeal, and advising the appellant of his/her right to seek review in a District Court of the United States.

6.13 Distribution of FOIA Appeals’ Responses. Copies of the Department’s final decisions on FOIA appeals are distributed to the appellant and to the same officials listed in paragraph 6.5 of this Chapter. The copies are provided for information and monitoring purposes, and may contain instructions to Departmental and/or bureau officials regarding any follow-up action(s) required to complete the response to an appeal. Copies of SOL memoranda regarding appeal determinations (if issued) are distributed to the same officials listed in paragraph 6.5 of this Chapter.

6.14 FOIA Appeals Files. The FOIA Appeals Officer maintains an automated index of “open” and “closed” FOIA appeals. The index can be searched in various ways to obtain information on appeals including by names of appellants and organizations, dates of appeals,

subjects of records, appeals issues, and action bureaus and field offices. Also the FOIA Appeals Officer maintains copies of all “open” appeals files, and all appeals files that have been “closed” during the prior six years. Copies of appeals files including final appeal decisions and SOL legal opinions (if issued) may be obtained by contacting the FOIA Appeals Officer.