

SAMPLE LETTERS AND OTHER ILLUSTRATIONS

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SAMPLE LETTER

RECORDS DO NOT EXIST

(Agency Not Obligated to Create a Record)

(ADDRESS)

Dear \_\_\_\_\_:

This is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_ and received in this office on \_\_\_\_\_. You requested an inventory of Government commercial activities under OMB Circular A-76 for the State of Arizona. The Bureau does not maintain a listing of A-76 activities by State or geographical area, but rather by type of commercial activity.

Under 43 CFR 2.7(d), a bureau is not required to create or compile a record to respond to a FOIA request. The Act applies only to records in the bureau's possession and control as of the date the bureau begins its search for responsive records.

If you consider this response to be a denial of your request, you may file an appeal by writing to the Freedom of Information Act Appeals Officer, U.S. Department of the Interior, 1849 C Street, N.W., MS-6556, MIB, Washington, D.C. 20240. Your appeal must be received no later than 30 workdays after the date of this letter. Both the envelope and the letter should be marked "FREEDOM OF INFORMATION APPEAL." A copy of your original request and this letter should accompany your appeal, along with any information you have which leads you to believe the records do exist, including where they might be found, if the location is known to you.

If you have any questions concerning your request, please contact (name, and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

## EXAMPLES OF PERSONAL VERSUS AGENCY RECORDS

1. A supervisor maintains his/her own personal notes to use as a memory jogger for performance evaluations. They are maintained privately and not circulated to or verbally shared with any other employees. The notes are not required to be kept in official agency files, so that the supervisor can remove them from the office and destroy them at will.

Although the notes are physically located in the Department and concern DOI employees, they are not under the control of the Department and not subject to the FOIA or Privacy Act. The supervisor created the notes solely for his/her own convenience and he/she is the only one privy to them. If they are passed on to another supervisor, verbally shared, or used wholly or in part to support a performance rating or any personnel action, they will become agency records. Otherwise, the notes are considered personal records and not subject to the provisions of the FOIA or the Privacy Act.

Note: If personal records, e.g., supervisor's notes, are removed from the immediate custody of the supervisor and placed in the official Personnel Files that the Supervisor maintains on employees, they will be subject to the provisions of the FOIA. Once a FOIA request is received, the files cannot be altered.

2. An employee attends a meeting at the Department and takes personal notes to refresh his/her memory on the issues discussed as he/she works on a long-term project. The notes are maintained in a file folder in the employee's desk and are not disseminated to or verbally shared with any other employees or used to conduct agency business. The employee uses the notes solely as a memory jogger. The employee's notes, in this case, are not agency records subject to the provisions of the FOIA or the Privacy Act. The notes would not be considered agency records unless the employee treats them as such by sharing them with others, uses them to support an agency action or conduct business or places them within the bureau's official file on this subject.

3. Every week the Director's secretary prepares a calendar listing the activities for each day of the upcoming week. The calendar is provided to the staff either on paper or via e-mail to inform them of the director's availability.

The calendar is an agency record. The document, which is created at agency expense by an agency employee, is circulated to the staff for business purposes. It is created for the express purpose of facilitating the daily activities of the office, i.e., to inform the staff of the availability of the director. Any personal information could easily be segregated from the business material, if necessary.

4. A supervisor keeps an appointment calendar on her desk to note upcoming business meetings as well as personal appointments, e.g., lunch with an old schoolmate, doctor's appointment, etc. The secretary may note appointments that have been scheduled for him/her.

The calendar is not an agency record. Although created by an agency employee at agency expense, it contains little, if any, substantive information. The calendar was created for the supervisor's personal convenience so that she could organize both her personal and business appointments. It is not circulated to other employees as it was not intended for their use. The agency did not require the supervisor to maintain the calendar and she is free to destroy it at any time. Exception: Certain calendars are controlled by agency disposition schedules, i.e., those of high-level officials, which would make them agency records.

Note: Those individuals whose calendars are considered agency records may wish to maintain two calendars, one for business and another for personal use.

**(NOTE: These are only examples. Records must be considered on a case-by-case basis depending on the circumstances of a particular request.)**

SAMPLE LETTER  
10-WORKDAY TIME EXTENSION

(ADDRESS)

Dear \_\_\_\_\_:

This acknowledges your Freedom of Information Act request dated \_\_\_\_\_ and received in our office on \_\_\_\_\_. Your request concerns \_\_\_\_\_. For your information, your request has been assigned FOIA control number: \_\_\_\_\_. Please refer to this number in future communications with the bureau regarding your request.

(Insert one of the reasons below as appropriate), we are taking a 10-workday extension under the Department of the Interior's FOIA regulations (43 CFR 2.13(a)) in order to properly process your request.

Reason for Time Extension:

1. Due to the need to search for, collect, and examine a voluminous amount of records
2. Due to the need to search for and collect the requested records from multiple offices
3. Due to the need to consult with another agency or other components in the Department

We will send a final reply to you on or before (give the 10-workday projected date). If you have any questions concerning your request, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

CLARIFYING A VAGUE OR OVERLY BROAD REQUEST

(ADDRESS)

Dear \_\_\_\_\_:

This letter is in response to your Freedom of Information Act request dated \_\_\_\_\_ and received in our office on \_\_\_\_\_. Your request concerns \_\_\_\_\_.

In accordance with the Department's FOIA regulations (43 CFR 2.8(a)), a FOIA requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate the responsive records with a reasonable amount of effort. Your request does not meet this requirement. Because of the broad and general nature of your request, we are unable to identify which records are being sought.

Please be as specific as possible concerning the type of documents you are requesting. If you know, please include the date, title or name, author, recipient, and subject matter of the records you are seeking. Additionally, please identify the geographical location and timeframe for which you are seeking records. It is unclear whether your request covers only records in the bureau's headquarters or in its field offices as well.

We will not proceed further with your request until we receive additional clarification from you. In accordance with our regulations (43 CFR 2.8(a)(3)), if we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request. If you have any questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

RECORDS CANNOT BE LOCATED

(ADDRESS)

Dear \_\_\_\_\_:

This is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_ and received in this office on \_\_\_\_\_. In your request you sought \_\_\_\_\_. We have conducted a thorough search of our files and were unable to locate any records responsive to your request. (*Explain to the requester why there are no responsive records if appropriate.*)

If you consider this response to be a denial of your request under 43 CFR 2.28(a)(2), you may file an appeal by writing to:

Freedom of Information Act Appeals Officer  
Office of the Chief Information Officer  
U.S. Department of the Interior  
1849 C Street, NW  
MS-6556, MIB,  
Washington, D.C. 20240.

Your appeal must be received no later than 30 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the words "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe that responsive records do in fact exist, including where they might be found, if the location is known to you.

If you have any questions concerning your request, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

INTERIM RESPONSE - DELAY IN PROCESSING REQUEST  
(Unable to respond to a request within 20-workday period or 10-workday extension)

(ADDRESS)

Dear \_\_\_\_\_:

This letter is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_ and received in our office on \_\_\_\_\_. Your request concerns \_\_\_\_\_.

Examples of a possible explanation follow below:

- (1) Because of the voluminous nature of your request, additional time is necessary to enable us to determine which records or portions thereof may be released. Accordingly, we anticipate a delay in providing you with our final response. We expect to complete our response to you by (SPECIFIC DATE).
- (2) The requested documents have been retired to a Federal records center. We have asked that they be returned to us and will advise you when the material becomes available.
- (3) The (name of office processing the request) is unable to respond to your request within the time limits established by the FOIA due to a backlog of requests and other unforeseen circumstances. Please be assured, however, that your request is being handled as equitably as possible and that all documents that can be released will be made available at the earliest possible date.
- (4) The records you requested are located in our field offices and at headquarters. The (name of responsible office) in Washington, D.C., will be coordinating the response since it has jurisdiction over these records. As a result, additional time is needed to search for, collect, and review the material.

- (5) In accordance with 43 CFR 2.23(a), when the Department of the Interior receives a FOIA request that seeks commercial or financial information submitted to the Government by an outside party, the Department is required to consult with the submitter of the information. The submitter we contacted regarding your request has taken longer than anticipated to review the material. We expect to hear from the submitter by (ESTIMATED DATE) and a decision on your request will be forthcoming.

The bureau expects to complete its response to you by (specify date).

You have a right to treat this delay as a denial of your request. You may appeal this matter by writing to:

Freedom of Information Act Appeals Officer  
Office of the Chief Information Officer  
U.S. Department of the Interior,  
1849 C Street, NW  
MS-6556, MIB,  
Washington, D.C. 20240.

You may file an appeal anytime after the time limit for responding to your request has passed. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter. We hope, however, that you will defer action until a decision has been reached on your initial request.

We regret the delay and appreciate your consideration in this matter. Should you have any additional questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER  
REFERRING REQUESTER TO ANOTHER AGENCY

(ADDRESS)

Dear \_\_\_\_\_:

This letter is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_ and received in our office on \_\_\_\_\_. In your request you sought records regarding \_\_\_\_\_.

The records you are seeking are not within the Department of the Interior's possession and control. Therefore, we are unable to provide you with these records (43 CFR 2.7(d)(1)). It is possible that they may be located at (name of agency). You may wish to contact (name of agency) if you have not done so already. Any FOIA requests to that agency should be directed to the following address:

(Name of FOIA Officer, Agency, Address, and Phone Number)

If you consider this response to be a denial of your request, you may file an appeal by writing to:

Freedom of Information Act Appeals Officer  
Office of the Chief Information Officer  
U.S. Department of the Interior  
1849 C Street, NW  
MS-6556, MIB,  
Washington, D.C. 20240.

Your appeal must be received no later than 30 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records do in fact exist, including where they might be found, if the location is known to you.

Should you have further questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

REFERRAL OF RECORDS TO ANOTHER AGENCY  
FOR REVIEW AND DIRECT RESPONSE  
(Letter to Agency)

(ADDRESS)

Dear \_\_\_\_\_:

While processing a Freedom of Information Act request from (Name of Requester), dated \_\_\_\_\_, the (Name of Bureau) located (number) documents that originated in your agency. The documents are listed below:

(Description of Documents)

Enclosed are copies of those documents. We have advised (Name of Requester) that he/she will receive a direct response from your office.

If you have any questions concerning this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosures

cc: (Name and Address of Requester)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

REFERRAL OF RECORDS TO ANOTHER AGENCY  
FOR REVIEW AND DIRECT RESPONSE  
(Letter to Requester)

(ADDRESS)

Dear \_\_\_\_\_:

This letter is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_ and received in our office on \_\_\_\_\_. In your request you sought records regarding \_\_\_\_\_.

While processing your request, the (Name of Bureau), located (number) documents that originated with the (Name of Agency). In accordance with the Department of the Interior's FOIA regulations (43 CFR 2.22(b)(2)), we are referring the documents to (Name of Agency) for a direct response. If you wish to contact that agency concerning your request, the mailing address is:

(Name of FOIA Officer, Agency, Address, and Telephone Number)

If you consider this response to be a denial of your request, you may file an appeal by writing to the:

Freedom of Information Act Appeals Officer  
Office of the Chief Information Officer  
U.S. Department of the Interior  
1849 C Street, NW  
MS-6556, MIB,  
Washington, D.C. 20240.

Your appeal must be received no later than 30 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with a brief statement of the reasons why you believe this initial decision to be in error

Should you have further questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosure (Letter to Agency)

cc: (Name and Address of FOIA Officer at the Other Agency)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER  
REFERRAL TO ANOTHER BUREAU

(ADDRESS)

Dear \_\_\_\_\_:

This letter is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_ and received in our office on \_\_\_\_\_. In your request you sought records regarding \_\_\_\_\_.

We have determined that the records described in your letter may be located at (Name of Bureau), Department of the Interior. Therefore, we have forwarded your request to that bureau which will provide you with a direct response. If you wish to contact the bureau, the mailing address is:

(Name of FOIA Officer, Bureau, Address, and Telephone Number)

Should you have further questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER  
RELEASE OF ALL DOCUMENTS

(ADDRESS)

Dear \_\_\_\_\_:

This is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_ and received in this office on \_\_\_\_\_. In your request you sought documents regarding \_\_\_\_\_.

In response to your request, the (Name of Bureau) located (number of) documents which we are providing to you in their entirety (see documents and list enclosed). The fee for providing these documents is less than \$30 and is not being charged in accordance with 43 CFR 2.16(b)(2) and 2.18(a).

If you have any questions concerning your request, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosures

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

## STEPS FOR RESPONDING TO A FOIA REQUEST

1. Know and follow the Department's regulations; apply them fairly.
2. Read the request.
  - A. Is it a request for records (i.e., a FOIA request) or a request for information (i.e., a public inquiry)? Questions can be considered a request for records when the bureau possesses records that contain answers to those questions.
  - B. Disregard labels--"Under the provisions of the Privacy Act, I want a copy of Jim Smith's SF-171." Don't let the requester mislead you about which act applies. A third party request for an individual's record should be processed under the FOIA, taking into account the Privacy Act.
3. Read the request again.
  - A. Does it reasonably describe the record(s) sought? That is, do you know what the requester wants? Do you know where to go to get the records?
  - B. How broadly or narrowly should you interpret the request?
  - C. Would discussion with the requester help to define, clarify, or narrow the scope of the request?
4. Resolve questions about fees with the requester. Fee issues should be resolved before the bureau begins to search for responsive records.
  - A. Has the requester indicated a willingness to pay the cost of searching for, reviewing (this applies only to commercial-use requesters), and copying the records? If not, advise the requester of the estimated fees associated with processing the request (itemize the costs) (43 CFR 2.18(b)(i)). Notify the requester that the time limits for processing the request will not begin until written assurance is received.
  - B. Has the requester asked for a fee waiver? Does he/she qualify for a fee waiver under 43 CFR 2.19? If the fee waiver request is denied, notify the requester of the procedures and time limits for appealing the fee waiver denial to the FOIA Appeals Officer. If the requester did not indicate his/her willingness to pay the fees, advise the requester of the estimated fees and that the time limits for processing the request will not begin until written assurance is received or the Department grants the fee waiver on appeal.

**(NOTE: When you work on a FOIA request, always assume that it may result in litigation. Keep good records--a telephone log or a written record of all**

**conversations. Communicate with the requester--keep him/her advised of the status of the request.)**

Illustration 12  
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C. Are the fees to process the request \$30 or less? If the fees are \$30 or less, the bureau normally will not charge the requester (43 CFR 2.16(b)(2)).

5. Identify and locate the records.

A. Do the records exist? Are they personal or agency records?

B. Are the records in the agency's possession and control?

C. Should another agency be consulted and/or deferred to?

D. Was the bureau's search for the records adequate and sufficient to ensure that all records within the scope of the request were identified and located?

6. Decide whether expedited processing is appropriate. Has the requester asked for expedited processing of his/her request and provided adequate justification (including the required certification statement) to qualify for it (43 CFR 2.14(c))? If expedited processing is denied, notify the requester of the basis for the denial and the procedures and time limits for appealing the denial of expedited processing to the FOIA Appeals Officer.

7. Decide whether a 10-workday time extension is appropriate to properly process the request.

8. Review the records.

A. Duplicate the records so that you have a working copy in the file.

B. Are there exempt records or portions of records?

C. Does the bureau (office) want to make a discretionary release of exempt information? Has the bureau carefully considered the institutional (the Government), commercial (business entities) and personal privacy (individuals) interests that might be impacted by disclosure?

9. Consult with the designated FOIA attorney before denying a requested record, making a discretionary release of an exempt record, or denying a fee waiver.

10. Prepare the records for disclosure/nondisclosure, segregating exempt records or portions of records from nonexempt records or portions.

A. Redact (delete) any exempt information. Indicate in the area of the deletion, the exemption used to withhold the information or if all deletions on a document

Illustration 12  
(Page 3 of 3)

are covered by one or more exemptions, annotate them on the document (e.g., all deletions are covered by exemptions 5, 6 and 7(C)).

B. Duplicate--one readable redacted copy to be released, one readable redacted copy to be retained for file purposes and in case of an appeal.

11. Prepare letter to requester:

A. Enclose the records, or notify the requester when and where records will be available for inspection or when and how copies will be provided if they are not enclosed;

B. Estimate the volume of records or portions withheld, explaining the reasons for the denial and citing the applicable exemption(s) authorizing the withholding (43 CFR 2.21(d)(2));

C. Include the names and titles or positions of each person responsible for the denial and the name and title of the SOL attorney consulted (43 CFR 2.21(d)(5)) (the names of any other individuals consulted in the review process also may be included); and

D. Provide the procedures and time limits for appealing the denial to the FOIA Appeals Officer and the mailing address (the name of the FOIA Appeals Officer, and his/her fax and e-mail address also may be included).

12. Prepare the Bill for Collection Form if appropriate (when a fee has been assessed).

13. Issue the response, enclosing records to be disclosed and the Bill for Collection Form (if appropriate).

A. Maintain one copy of the response, records released, and bill (if appropriate) for the action office file.

B. Send one copy of the bill--the Accounting Copy--to the bureau's finance office.

C. Maintain a copy of the withheld records or a list that identifies the records to be made available to the SOL in the event of an appeal or litigation.

SAMPLE LETTER  
DENIAL OF RECORDS

(ADDRESS)

Dear \_\_\_\_\_:

This responds to your Freedom of Information Act (FOIA) request dated \_\_\_ (1) \_\_\_, in which you requested copies of certain documents relating to \_\_\_\_\_ (2) \_\_\_\_\_. Your request was received in this office on \_\_\_ (3) \_\_\_. The (Name of Bureau/Office) located (number of) documents responsive to your request which we are enclosing with the following exceptions:

Select one of the paragraphs below:

- Certain documents (identify specific material or records withheld) are being withheld (33 pages) because they reflect the personal opinions, recommendations, and advice of staff members, and were used to arrive at a final agency decision. Disclosure of such material would inhibit the open and candid expression of such views in similar future deliberations, could confuse the public as to the official agency position on an issue, and have a detrimental effect on our decision making process. Therefore, we are withholding the materials pursuant to exemption 5 of the FOIA (5 U.S.C. 552(b)(5)), which permits an agency to withhold "interagency or intra-agency memorandums or letters that would not be available by law to a party . . . in litigation with the agency." **(4), (5) & (6)**
- The names, home addresses and telephone numbers, and social security numbers of the individuals have been deleted (item 1 on each page – 10 pages of material). The Department maintains that the individuals identified in the records have privacy interests in withholding this information. We do not perceive, nor have you enunciated, any public interest that would be served in disclosing this data, which would outweigh the privacy interests of the subject individuals. The release of the individuals' names, addresses, and social security numbers would be a violation of their privacy. Therefore, we are withholding this information under exemption 6 of the FOIA (5 U.S.C. 552(b)(6)), which permits an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." **(4), (5) & (6)**

In addition to myself, the official(s) responsible for this partial denial are (name(s), title(s), and organization(s) of official(s)). This decision was made in consultation with (Name of the Attorney and Division, Region or Field Office), Office of the Solicitor. In accordance with 43 CFR 2.28(a)(1), you may appeal this partial denial to: **(7) & (8)**

Freedom of Information Act Appeals Officer  
Office of the Chief Information Officer  
U.S. Department of the Interior  
1849 C Street, NW  
MS-6556, MIB  
Washington, D.C. 20240.

Your appeal must be in writing and received no later than 30 workdays after the date of the final response or 30 workdays after the receipt of all the records that are provided to you. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter. **(9)**

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). **(10)**

If you have any questions, please call (name and telephone number of someone familiar with the request). **(11)**

Sincerely,

(Name, Title, and Bureau)

Enclosures

**Elements of the Letter**

- (1) Date of request
- (2) Description of requested records
- (3) Date letter received (include if delayed)
- (4) Justification for denial
- (5) Volume of information withheld
- (6) Denial authority - exemption
- (7) Denial officials
- (8) Name & title of attorney consulted
- (9) Appeal procedures

(10) Fees

(11) Contact

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

CONSULTATION WITH THE SUBMITTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(ADDRESS)

Dear \_\_\_\_\_:

This is in regard to a Freedom of Information Act (FOIA) request from \_\_\_\_\_, dated \_\_\_\_\_, and received in this office on \_\_\_\_\_. The request is for documents concerning \_\_\_\_\_ (see enclosed FOIA request). In response to (Name of Requester's) request, the bureau located several documents (see enclosed) that contain information that your company submitted to the Government.

To assist us in determining whether this information should be released, we need your firm's views on which of these documents, if any, are protected (in whole or in part) from disclosure under the FOIA (5 U.S.C 552(b)). If you recommend that any of this information be withheld, please provide us with the following:

- (1) The data to be withheld and the justification for withholding any portion of the information under the FOIA. In the case of exemption 4, you must provide a specific and detailed discussion of:
  - 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 release of this information; or
  - Whether you provided the information voluntarily and, if so, a statement that you customarily do not release this type of information to the public.
- (2) A certification that the information is confidential, has not been disclosed to the public by your company, and is essentially non-public because it is not routinely available to the public from other sources.

- (3) A telephone number where you can be reached during normal business hours, an email address, and a fax number, if not already provided, in the event the bureau needs to contact you.

Please review the enclosed materials and submit any recommendations you may have concerning disclosure of the information within 10 business days from the date of receipt of this letter. If we do not hear from you within 10 business days, we will presume that you have no objection to disclosure of the information (43 CFR 2.23(f)). Please note that your comments may be subject to disclosure under the FOIA if the bureau receives a FOIA request for them. In the event your comments contain commercial or financial information and a requester asks for the comments under the FOIA, you will be notified and given the same opportunity to comment that you have been given in this instance. If you have any questions regarding this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosures

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

NOTIFYING SUBMITTER OF AGENCY'S INTENT TO RELEASE DOCUMENTS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(ADDRESS)

Dear \_\_\_\_\_:

Thank you for your letter dated \_\_\_\_\_, in which you objected to the bureau's disclosure of (Name of Company's) contract proposal and related correspondence for Contract No. \_\_\_\_\_.

After considering your comments and thoroughly reviewing your proposal and the related correspondence, we plan on releasing the following information for the reasons discussed below (explain why the information is being released)–Examples:

1. Contract Award Amount. The total amount of the contract awarded to (Name of Company) and the total amount of the two modifications subsequently issued to the contract are a matter of public record and thus releasable under the FOIA. The public has a right to know the cost of doing business with the Government.

2. Name of the President/CEO of the Company - (Name of Company) is a publicly-owned company, therefore, this information is published in the company's annual report. Because it is already a matter of public record, we feel that the information is releasable under the FOIA.

3. Government Contracts and Information Available to the Public - The list of Government contracts previously awarded to the company, various sales brochures, and the annual report are a matter of public record, and thus releasable under the FOIA.

We do not believe that release of this information will reveal confidential commercial or financial information or cause (Name of Company) substantial competitive harm. The

bureau plans to release this information (copies enclosed) to the requester 10 workdays from the date of receipt of this letter. If you have any questions regarding this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

Enclosures

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

RESPONSE TO REQUESTER - RELEASE OVER OBJECTION OF SUBMITTER  
(Release of Documents Delayed)

(ADDRESS)

Dear \_\_\_\_\_:

This letter is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_, in which you seek access to records concerning (Subject of Request). The records that are responsive to your request contain information that was submitted to the Government by (Name of Company). (Name of Company) has advised the bureau that it considers all of its information in the documents to be confidential commercial information that is protected from disclosure by exemption (4), which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)).

After considering (Name of Company's) objections and reviewing the material, we disagree with (Name of Company) in part, and have concluded that some of the information is not protected from disclosure. We intend to release this information to you 10 workdays after (Name of Company's) receipt of our (date of) letter notifying the company of our intent to disclose the information (see 43 CFR 2.23(g)). This 10-workday timeframe offers (Name of Company) an opportunity to initiate legal action to prevent disclosure of the information.

(Name of Bureau) agrees with (Name of Company) in part, and concludes that disclosure of the following confidential commercial information will cause substantial competitive harm to the company, and are withholding it under exemption 4 of the FOIA. (List items to be withheld and explain why the information is protected.) Examples:

1. Cost and financial data and the competitive pricing approaches of the contractor. Release of this information would reveal the contractor's internal operations and business practices, thereby diminishing its competitive abilities. In addition, release could render future negotiations difficult if offerers become reluctant to furnish such information for fear of disclosure by the Government (Items 20-30) - 10 pages withheld.
2. Certain technical and commercial data describing the company's equipment, and internal operating procedures, and the names and telephone numbers and other information concerning its non-Government clients for the same reasons cited above (Items 41-50) – 5 pages withheld.

Since it has been determined that you are a commercial-use requester, the fee for processing your request is calculated as follows - Example:

	Total # of Units	Unit Charges	Amount
Document Search/Review:			
Managerial			
Professional	8 hours	(Insert rate from	
Clerical		fee chart)	
Duplication:	55 pages	\$.13	\$7.15
		TOTAL	_____

You will be billed accordingly.

This decision was made in consultation with (Name of the Attorney and Division), Office of the Solicitor.

In accordance with 43 CFR 2.28(a)(1), you may appeal this partial denial of your request by writing to:

Freedom of Information Act Appeals Officer  
Office of the Chief Information Officer  
U.S. Department of the Interior  
1849 C Street, NW  
MS-6556, MIB,  
Washington, D.C. 20240.

Your appeal must be received no later than 30 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with a brief statement of the reasons why you believe this initial decision to be in error.

If you have any additional questions regarding this matter, contact (name and telephone number)

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

RECORDS NOT YET IN EXISTENCE

(ADDRESS)

Dear \_\_\_\_\_:

This is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_, regarding \_\_\_\_\_. Your request was received in this office on \_\_\_\_\_.

In accordance with the Department of the Interior's regulations (43 CFR 2.7(d)(1)), in order for a record to be considered subject to a FOIA request, it must be in the possession and control of the Department at the time it begins its search for records. This regulation imposes no obligation on the Department to place a FOIA requester's name on a mailing list for automatic receipt of any kind of records as they become available.

The documents you requested do not exist at the present time (*Explain why*). However, we anticipate that the records may be created after (specify a date). You may wish to resubmit your request at that time.

If you interpret this response to be a denial of your request, you may file an appeal by writing to:

Freedom of Information Act Appeals Officer  
Office of the Chief Information Officer  
U.S. Department of the Interior  
1849 C Street, NW  
MS-6556, MIB,  
Washington, D.C. 20240.

Your appeal must be received no later than 30 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records are available, including where they might be found, if the location is known to you.

If you have any questions regarding this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER  
DENIAL OF EXPEDITED PROCESSING

(ADDRESS)

Dear \_\_\_\_\_:

This is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_, and received in this office on \_\_\_\_\_. In your request, you sought records regarding \_\_\_\_\_.

In your letter you also requested expedited treatment of your request. In accordance with the FOIA (5 U.S.C. 552) and the Department of the Interior's FOIA regulations (43 CFR 2.14), it is the policy of the Department to grant requests for expedited processing whenever it is determined that they involve:

- (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) Circumstances in which there is an urgency to inform the public about an actual or alleged Federal Government activity (if the FOIA request is made by a person primarily engaged in disseminating information). This refers to information that has particular value that will be lost if not disseminated quickly, and ordinarily refers to a breaking news story of general public interest. 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; or
- (3) The loss of substantial due process rights.

You state that you are requesting expedited treatment (Explain why) (*Sample - in order to protect the due process rights of the public in connection with the Department's proposal to list the Atlantic salmon in certain Maine rivers.*) However, your letter did

not provide adequate justification to support your argument. Therefore, consistent with the Department's FOIA regulations (43 CFR 2.14), the bureau is denying your request for expedited processing.

Since we process requests in the order they are received, we will begin processing your request as soon as it comes up in the queue.

Under 43 CFR 2.28(a)(7), you may appeal the denial of your request for expedited processing by writing to:

Freedom of Information Act Appeals Officer  
Office of the Chief Information Officer  
U.S. Department of the Interior  
1849 C Street, NW  
MS-6556, MIB,  
Washington, D.C. 20240.

Your appeal must be received as soon as possible after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with a brief statement of the reasons why you believe this initial decision to be in error.

If you have any questions concerning this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER  
ASSURANCE OF PAYMENT

(ADDRESS)

Dear \_\_\_\_\_:

This responds to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_, and received in our office on \_\_\_\_\_. In your request, you sought \_\_\_\_\_.

The estimated fee for processing your request is [insert \$ amount], calculated as follows: [insert # of pages] pages of duplication at \$.13 per page and [insert # of hours] hours of [search / review--if applicable] time at [insert rate – see fee chart] per hour. Prepayment is not requested at this time. However, please furnish written assurance of your willingness to pay the full amount for the documents to [insert name of individual and address/fax/email where assurance is to be sent]. You may wish to modify your request to reduce the fee at this time.

We will not start processing your request until this written assurance has been received. If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request. If you have any questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

ADVANCE PAYMENT – DELINQUENT REQUESTER

(ADDRESS)

Dear \_\_\_\_\_:

This responds to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_, and received in this office on \_\_\_\_\_. In your request, you sought \_\_\_\_\_.

The estimated fee for processing your request is [insert \$ amount], calculated as follows: [insert # of pages] pages of duplication at \$.13 per page and [insert # of hours] hours of [search / review—if applicable] time at [insert rate – see fee chart] per hour. Moreover, our records show that you owe a balance of [insert amount], including interest penalties, on a previous request dated \_\_\_\_\_ to (name of office). Under the Department of the Interior's regulations (43 CFR 2.18(c)(2)), you must pay your delinquent fees or prove you have paid them and make an advance payment of the fees for this request before we will start processing it. If you wish, you may modify your current request to reduce the fees and amount owed. The total amount owed is [insert amount].

Please send a check or money order made payable to the Department of the Interior [or insert the name of your Bureau] to [insert address where payment is to be mailed] or let us know if the [insert amount] has been paid. We will not start processing your request until this issue is resolved. If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request.

If you have any questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER

ADVANCE PAYMENT – FEES OVER \$250

(ADDRESS)

Dear \_\_\_\_\_:

This is in response to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_, and received in this office on \_\_\_\_\_. In your request, you sought \_\_\_\_\_.

Our initial estimate of the cost for the bureau to process your request is [insert \$ amount], calculated as follows: [insert # of pages] pages of duplication at \$.13 per page and [insert # of hours] hours of [search/review--if applicable] time at [insert rate – see fee chart] per hour. Because this exceeds \$250, and we [do not have a record that you have paid fees in the past] [or] [you did not pay a previous fee promptly], you must make an advance payment of the full amount of the estimated fee for this request (43 CFR 2.18(c)).

If you are still interested in obtaining these documents, please send a check or money order made payable to the Department of the Interior [or insert the name of your Bureau] to [insert address where payment is to be mailed]. Please note that it is possible that the cost to process your request could exceed the total estimated above. If this occurs, we will stop processing your request. We then will notify you of the higher amount and ask that you provide written assurance of payment of the higher amount before we resume processing your request. It also is possible that the cost could be less than our estimate. In that event, we will provide you a refund after completing our response.

In accordance with the Department's FOIA regulations (43 CFR 2.18(c), 2.18(d), and 2.12(b)), we will not begin processing your request until payment is received. If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request. Please note that you have the option of modifying your request to reduce the fee.

If you have any questions, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER  
DETERMINING CATEGORY OF REQUESTER

(ADDRESS)

Dear \_\_\_\_\_:

This responds to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_, and received in our office on \_\_\_\_\_. In your request you sought \_\_\_\_\_.

In your letter you stated that you [insert information from letter about the requester's vocation or category and explain why you need more information and what type of information you need]. *Example: In your letter, you stated that you are a freelance journalist. However, you did not provide sufficient evidence for the bureau to make a determination as to whether you qualify as a "freelance journalist" for the purpose of assessing fees. Explain your affiliation with a news organization(s). You also should explain any history of publication in the news media that may indicate a solid basis for expecting publication.*

In accordance with our regulations (43 CFR 2.17(b)), we will not proceed further with your request until we hear from you. If we do not receive a response from you within 20 workdays of the date of this letter, we will close the file on your request. If you have any questions regarding this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

information publicly available? Explain how disclosure will increase the level of public understanding that existed prior to disclosure.

- (5) Explain whether you have a commercial interest that would be furthered by disclosure and if so, whether the public interest in disclosure would be greater than any commercial interest you or your organization would have in the documents.

If you are still interested in obtaining these documents, please provide additional information to justify your fee waiver request or written assurance of your willingness to pay all fees or specify the maximum amount that you are willing to pay for the bureau to process your request. This will allow us to begin processing your request for records while considering your fee waiver request. If the bureau grants your fee waiver request, we will not charge fees to the extent that it grants the waiver. If you have agreed to pay fees up to a particular amount, we will contact you when we have processed your request up to that amount before proceeding further. If we do not hear from you by [insert date – 5/10 workdays after bureau’s receipt of request and, in any event, within a timeframe that will allow the bureau to respond to the fee waiver request within the statutory time limit],\* we will deny your fee waiver request since it does not meet DOI’s fee waiver criteria. We will then close the file on your FOIA request.

If you have any questions concerning this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**\*Please note--The bureau must make a determination on the fee waiver request within the statutory time limit, i.e., 20 workdays after receipt of the request by the appropriate FOIA contact. If the requester has not submitted any additional justification by the date specified in the letter, the bureau must deny the fee waiver request within the statutory time limit.**

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**

SAMPLE LETTER  
FEE WAIVER CLARIFICATION

(ADDRESS)

Dear \_\_\_\_\_:

This responds to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_, and received in this office on \_\_\_\_\_. In your request, you sought records regarding \_\_\_\_\_.

In your letter, you also requested a fee waiver. However, you did not provide sufficient justification to qualify for a fee waiver under the Department's FOIA regulations (43 CFR Part 2, Appendix D). The statutory requirement for granting a fee waiver is that release of the information must be in the public interest because it—

- (1) Is likely to contribute significantly to public understanding of the operations and activities of the Government; and
- (2) Is not primarily in your commercial interest.

To assist us in making a decision on your request for a fee waiver, we ask that you address the following as applicable. You must be specific in addressing the Department's fee waiver criteria for each request you submit, regardless of whether you may have been granted a fee waiver previously.

- (1) Explain how the records you are seeking will be meaningfully informative with respect to the bureau's operations and activities. Your identity, vocation, qualifications, and expertise regarding the requested information may be relevant factors.
- (2) Explain how disclosure of the records will contribute to the understanding of the public at large or a reasonably broad audience as opposed to only enhancing your knowledge.
- (3) Explain how and to whom you intend to disseminate the information and how you intend to use the information to contribute to public understanding.
- (4) Explain how release of the requested records will contribute significantly to public understanding. For example, is the information being disclosed new, does the information confirm or clarify data released previously, and is the

SAMPLE LETTER  
FEE WAIVER DENIAL

(ADDRESS)

Dear \_\_\_\_\_:

This responds to your Freedom of Information Act (FOIA) request dated \_\_\_\_\_, and received in this office on \_\_\_\_\_. In your request, you sought records regarding \_\_\_\_\_.

In your letter, you also requested a fee waiver. The FOIA permits documents to be furnished without charge or at a reduced charge if disclosure of the information--

- (1) Is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the Government, and
- (2) Is not primarily in your commercial interest.

The Department considers the following factors (see 43 CFR Part 2, Appendix D) in deciding whether you are entitled to a fee waiver:

- (1) How do the records concern the operations or activities of the Government?
- (2) If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?
- (3) If there is likely to be a contribution to public understanding, will release of the requested records contribute significantly to public understanding?
- (4) Would disclosure be primarily in your commercial interest?

Your request does not contain sufficient justification to support a fee waiver. Although your request fulfills the requirements of the first factor, i.e., it concerns the operations of the (Name of Bureau), it does not meet the second factor. Based on the information you provided in your letter, (Explain reason why it does not meet the factor] - *Example - We are unable to determine how disclosure of the requested records will contribute to the general public's understanding of the bureau's employment practices, as opposed to the understanding of a narrow segment of interested persons, in particular, applicants for employment with the bureau. Also, you have not demonstrated how you intend to disseminate the information to the general public or how you intend to use it to increase*

*the level of public understanding of the bureau's operations that existed prior to disclosure.*) Therefore, we are denying your request for a fee waiver under 43 CFR 2.19.

We have determined that you are a [insert category of requester] for the purpose of assessing fees (see 43 CFR 2.17). Based on that category, we estimate that the fee for the bureau to process your request is [insert \$ amount], calculated as follows: [insert # of pages] pages of duplication at \$.13 per page and [insert # of hours] hours of [search / review--if applicable] time at [insert rate – see fee chart] per hour. If you want us to continue processing your request, please furnish written assurance of your willingness to pay the full amount of the estimated fee to [insert name of individual and address/fax/email where assurance is to be sent].

You may wish to modify your request to reduce the fee at this time [Insert information on how it might be narrowed.] *Example - We would be happy to provide a random sampling of consultation communications from all the regions as well as any logs that exist showing informal and formal consultations. You may also consider narrowing your request to a more recent time frame than the last six years or to communications from specific companies.* Please feel free to call us if you need assistance in narrowing the scope of your request.

This decision was made in consultation with (Name of the Attorney and Division), Office of the Solicitor. Under 43 CFR 2.28(a)(2), you may appeal the denial of your fee waiver request by writing to:

Freedom of Information Act Appeals Officer  
Office of the Chief Information Officer  
U.S. Department of the Interior  
1849 C Street, NW  
MS-6556, MIB,  
Washington, D.C. 20240.

Your appeal must be received no later than 30 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter. You also should include in as much detail as possible the reason(s) why you believe the bureau's response is in error.

We will not begin processing your request until we receive written notification from you in response to this letter. If we do not hear from you within 20 workdays of the date of

this letter, we will assume you are no longer interested in this matter and will close the file on your request. If you have any questions concerning this matter, please contact (name and telephone number).

Sincerely,

(Name, Title, and Bureau)

**(NOTE: This is only a sample. It should be changed to reflect the circumstances of a particular request.)**