Sample Language for Freedom of Information Act Responses

(July 8, 2016)

Some of the sample language below is in the form of complete letters and some is in the form of discrete provisions that you can combine, as appropriate, to make the letter you need.[1] In either case, these are examples only. You must always carefully consider what language is appropriate to your particular situation. *FOIA responses are not one size fits all.*

Please note that filling in material within [Brackets] is not optional. This sample language is insufficient if the brackets are not filled in. However, filling in material within {Curly Braces} may be optional, under certain circumstances.

For examples of how sample provisions can be combined to create customized response letters, please see the first item in this document.

We intend this compilation of sample language to be a living document, which will evolve as new questions and issues arise. Therefore, please note the date on your copy of this document and, before using it, check https://www.doi.gov/foia/news/guidance *to make sure your version is still the most current.*

This sample language has greatly benefited from excellent examples and suggestions provided by the Office of the Secretary's Boilerplate Team, the Department's FOIA & Privacy Act Appeals Officer, the Division of General Law's Branch of General Legal Services, the Department's Senior Regulatory Analyst specializing in Plain Language, the Department of Justice, the Department of the Treasury, and the U.S. Forest Service. Their contributions are gratefully acknowledged.

Please direct any questions about the sample language to the Departmental FOIA Officer at: cindy_cafaro@ios.doi.gov or 202-208-5342.

[1] You are encouraged to send these letters electronically, when possible.

TABLE OF CONTENTS

How to Use Sample Language to Build Response Letters

Introduction

Optional Forwarding to Another Bureau—*43 C.F.R. § 2.4(f)*

Optional Declination to Forward—*43 C.F.R. § 2.4(f)*

Scope of Request Unclear—*43 C.F.R. § 2.5*

Agreement to Pay Fees Absent, Insufficient or Unclear—*43 C.F.R. § 2.6, .51*

Proper Fee Category Absent, Insufficient or Unclear—*43 C.F.R. § 2.6, .51*

Agreement to Pay Fees—*43 C.F.R. § 2.6*

Acknowledgment—Commercial Use Requester—*43 C.F.R. §§ 2.38, .39*

Acknowledgment—Educational or Noncommercial Scientific Institution—*43 C.F.R. §§ 2.38, .39*

Acknowledgment—Representative of the News Media—*43 C.F.R. §§ 2.38, .39*

Acknowledgment—Other Use Requester—*43 C.F.R. §§ 2.38, .39*

Fees—Commercial Use Requester—*43 C.F.R. §§ 2.38, .39, Appendix A*

Fees—Educational or Noncommercial Scientific Institution—*43 C.F.R. §§ 2.38, .39, Appendix A*

Fees—Representative of the News Media—*43 C.F.R. §§ 2.38, .39, Appendix A*

Fees—Other Use Requester—*43 C.F.R. §§ 2.38, .39, Appendix A*

Fees—Fee Waiver Denial—*43 C.F.R. §§ 2.45, .47, .48*

Fees—Fee Estimate—*43 C.F.R. §§ 2.6, .49*

Fees—Acknowledgment After Agreement to Pay Sufficient Fees—*43 C.F.R. § 2.6*

Fees—Advance Payment—Fees over $250—*43 C.F.R. § 2.50*

Fees—Advance Payment—Delinquent Requester—*43 C.F.R. § 2.50*

Fees—No Charge—*43 C.F.R. § 2.49(a)(1)*

Fees—Bill for Collection—*43 C.F.R. §§ 2.52, .53*

Referral of Records to Another Bureau or Agency—Letter to Bureau or Agency—*43 C.F.R.*

§ 2.13(b)(2) and *(e)*

Referral of Records to Another Bureau or Agency—Letter to Requester—*43 C.F.R. § 2.13(b)(2)* and *(e)*

Request to Another Agency for Consultation—*43 C.F.R. § 2.13(f)*

Proposing Changes in Response to Another Agency's Request for Consultation—*43 C.F.R. § 2.13(f)*

Multitrack Processing—*43 C.F.R. § 2.15*

Multitrack Processing—Revising Track Placement—*43 C.F.R. §§ 2.14, .15*

Extension—Ten Workdays—*43 C.F.R. § 2.19*

Extension—More than Ten Workdays—*43 C.F.R. § 2.19*

Complex Determination—*43 C.F.R. § 2.15*

Notification that Determination will be made Outside the Time Limits of Subpart D—*43 C.F.R. Part 2, Subpart D*

Expedited Processing Denial—*43 C.F.R. § 2.20*

Full Release—*43 C.F.R. § 2.22*

Partial Release—*43 C.F.R. §§ 2.22, .23, .24*

Withholding in Full—*43 C.F.R. §§ 2.23, .24*

No Records—*43 C.F.R. §§ 2.23, .24*

Foreseeable Harm

Exemption 3—*43 C.F.R. §§ 2.23, .24*

Exemption 4—*43 C.F.R. §§ 2.23, .24*

Exemption 4—Submitter Notification—Initial Submitter Letter—*43 C.F.R. §§ 2.27, .28*

Exemption 4—Submitter Notification—Release Over Objection—*43 C.F.R. § 2.33*

Exemption 5—*43 C.F.R. §§ 2.23, .24*

Exemption 6—*43 C.F.R. §§ 2.23, .24*

Exemption 7—*43 C.F.R. §§ 2.23, .24*

Appeal Rights—*43 C.F.R. §§ 2.57, .58, .59*

Conclusion for Final Response Letter

How to Use Sample Language to Build Response Letters

An **initial response** typically includes: an introduction; acknowledgement; any clarifying questions (if needed); a discussion of fees (if possible); processing track designation (if possible); contact information for questions; a complimentary close (for example, "Sincerely"); a written signature; and a typed name, bureau, and title. Click on each of the links below to view the sample language.

Sample Initial Response Letter Outline

Introduction

Acknowledgment—Other Use Requester—*43 C.F.R. §§ 2.38, .39*

Multitrack Processing—*43 C.F.R. § 2.14, .15*

Extension—Ten Workdays—*43 C.F.R. § 2.19*

Agreement to Pay Fees—*43 C.F.R. § 2.6*

A **final response** letter typically includes: an introduction; a discussion of whether the response is a full or partial response; a description of what is being provided; if needed, a discussion of what is not being provided (and why); a discussion of fees (as appropriate); a discussion of appeal rights (as appropriate); a statement about the services offered by the Office of Government Information Services; contact information for questions; a complimentary close (for example, "Sincerely"); a written signature; and a typed name, bureau, and title. Click on each of the links below to view the sample language.

Sample Final Response Letter Outline

Introduction

Partial Release—*43 C.F.R. §§ 2.22, .23, .24*

Exemption 5—*43 C.F.R. §§ 2.23, .24*

Fees—Commercial Use Requester—*43 C.F.R. §§ 2.38, .39, Appendix A*

Appeal Rights—*43 C.F.R. §§ 2.57, .58, .59*

Conclusion for Final Response Letter

Introduction

IN REPLY REFER TO:

[EFTS tracking number]

[Date]

[Address]

Dear [Name]:

The [Bureau] FOIA office received your Freedom of Information Act (FOIA) request, dated [Date], on [Date] and assigned it control number [EFTS tracking number]. Please cite this number in any future communications with our office regarding your request.

{For initial responses, note what they have requested here. Quoting the language of the request directly is preferable. For later responses, use your discretion as to whether this would be helpful.}

Optional Forwarding to Another Bureau—*43 C.F.R. § 2.4(f)*

It appears that {some of} the records you are seeking are from unspecified bureaus. We cannot comply with {this part of} your request. We have chosen to forward {a portion of} it to [Other bureau]. {NOTE: If only a portion of the request has been forwarded, specify which portion.} The [Other bureau] will conduct a search for records responsive to {that portion of} your request and send you a response. You do not have to contact the [Other bureau] at this time, but if you need to do so in the future, you may do so by contacting [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

{NOTE: If the entire request has been forwarded, include No Records sample language.}

[NOTE: Carbon copy the other bureau.]

Optional Declination to Forward—*43 C.F.R. § 2.4(f)*

It appears that {some of} the records you are seeking are from unspecified bureaus. We cannot comply with {this part of} your request. We suggest that you reconsider which bureau you believe maintains the records you seek and submit your request directly to that bureau. For your information, a list of bureau FOIA contacts is located at: https://www.doi.gov/foia/contactinfo.

{NOTE: If the entire request has been returned, include No Records sample language }

Scope of Request Unclear—*43 C.F.R. § 2.5*

The FOIA requires that requests describe the records sought with sufficient detail to allow an agency employee familiar with the subject area of the request to locate the records with a reasonable amount of effort. Your request does not adequately describe the records sought, therefore, we are unable to process it at this time. If you wish to pursue your request, please provide [NOTE: Describe the additional information required].

According to our regulations, if we do not receive your written response clarifying what records you are looking for **within 20 workdays** from the date of this letter, we will presume that you are no longer interested in pursuing your request, we will not be able to comply with your request, and we will close our file on it. *See 43 C.F.R. § 2.5(d)*.

[Appeal Rights]

Agreement to Pay Fees Absent, Insufficient or Unclear—*43 C.F.R. § 2.6, .51*

Our regulations require that your request must explicitly state that you will pay all fees associated with processing the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver. [PICK AT LEAST ONE: "Your request does not fulfill this requirement because [NOTE: Add specific reasons]," or "We anticipate that the fees for processing the request will exceed the amount you have agreed to pay,"] therefore, we are unable to process your request at this time. If you wish to pursue your request, please provide [NOTE: Describe the additional information and/or commitment required].

According to our regulations, if we do not receive your written response clarifying these points **within 20 workdays** from the date of this letter, we will presume that you are no longer interested in pursuing your request, we will not be able to comply with your request, and we will close our file on it. [PICK AT LEAST ONE: "*See 43 C.F.R. § 2.6(c)*" or "*See 43 C.F.R. § 2.51(c)*".

Proper Fee Category Absent, Insufficient or Unclear—*43 C.F.R. § 2.6, .51*

Our regulations require that your FOIA request contain sufficient information for us to determine your proper fee category. Your request does not fulfill this requirement because [NOTE: Add specific reasons]. We therefore are unable to process your request at this time. If you wish to pursue your request, please provide [NOTE: Describe the additional information and/or commitment required].

According to our regulations, if we do not receive your written response clarifying these points **within 20 workdays** from the date of this letter, we will presume that you are no longer interested in pursuing your request, we will not be able to comply with your request, and we will close our file on it. [PICK AT LEAST ONE: "*See 43 C.F.R. § 2.6(c)*" or "*See 43 C.F.R. § 2.51(c)*".

Agreement to Pay Fees—*43 C.F.R. § 2.6*

You have agreed to pay up to $[Amount] for the processing of your request. If we find that this will not cover the cost of processing your request, we will let you know before we incur additional charges. You can then either agree to pay the additional amount needed or narrow the scope of your request.

Acknowledgment—Commercial Use Requester—*43 C.F.R. §§ 2.38*, *.39*

We have classified you as a "commercial use" requester. As such, we may charge you for all search, review, and duplication costs for processing this request. *See 43 C.F.R. § 2.39*. However, if our processing costs are less than $50.00, we will not bill you because the cost of collection would be greater than the fee collected. *See 43 C.F.R. § 2.37(g)*.

You can expect to hear from us promptly regarding the outcome of this search.

Acknowledgment—Educational or Noncommercial Scientific Institution—*43 C.F.R. §§ 2.38, .39*

We have classified you as an educational or noncommercial scientific institution. As such, we may charge you for some our duplication costs, but we will not charge you for our search or review costs; you also are entitled to up to 100 pages of photocopies (or an equivalent volume) for free. *See 43 C.F.R. § 2.39*. If, after taking into consideration your fee category entitlements, our processing costs are less than $50.00, we will not bill you because the cost of collection would be greater than the fee collected. *See 43 C.F.R. § 2.37(g)*.

You can expect to hear from us promptly regarding the outcome of this search.

Acknowledgment—Representative of the News Media—*43 C.F.R. §§ 2.38*, *.39*

We have classified you as a representative of the news media. As such, we may charge you for some of our duplication costs, but we will not charge you for our search or review costs; you also are entitled to up to 100 pages of photocopies (or an equivalent volume) for free. *See 43 C.F.R. § 2.39*. If, after taking into consideration your fee category entitlements, our processing costs are less than $50.00, we will not bill you because the cost of collection would be greater than the fee collected. *See 43 C.F.R. § 2.37(g)*

You can expect to hear from us promptly regarding the outcome of this search.

Acknowledgment—Other Use Requester—*43 C.F.R. §§ 2.38, .39*

We have classified you as an "other-use" requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs; you are also entitled to up to 2 hours of search time and 100 pages of photocopies (or an equivalent volume) for free. *See 43 C.F.R. § 2.39*. If, after taking into consideration your fee category entitlements, our processing costs are less than $50.00, we will not bill you because the cost of collection would be greater than the fee collected. *See 43 C.F.R. § 2.37(g)*

You can expect to hear from us promptly regarding the outcome of this search.

Fees—Commercial Use Requester—*43 C.F.R. §§ 2.38*, *.39*, *Appendix A*

The FOIA fee for processing your request is $[Amount], calculated as follows:

[Number of hours]	[Clerical/Professional/Managerial]	Search Time @ $[Corresponding amount] per ¼ hour
[Number of hours]	[Clerical/Professional/Managerial]	Review Time @ $[Corresponding amount] per ¼ hour
[Number of pages]	Duplicated/Scanned Pages	@ $.15 per page
[Number of CDs]	Compact Disc	@ $[Direct cost] per disc

Fees—Educational or Noncommercial Scientific Institution—*43 C.F.R. §§ 2.38*, *.39*, *Appendix A*

The FOIA fee for processing your request is $[Amount], calculated as follows:

[Number of pages]	Duplicated/Scanned Pages	@	$.15 per page
[Number of CDs]	Compact Disc	@	$[Direct cost] per disc

Please note that you have not been charged for the first 100 duplicated/scanned pages, or their equivalent volume.

Fees—Representative of the News Media—*43 C.F.R. §§ 2.38, .39, Appendix A*

The FOIA fee for processing your request is $[Amount], calculated as follows:

[Number of pages]	Duplicated/Scanned Pages	@	$.15 per page
[Number of CDs]	Compact Disc	@	$[Direct cost] per disc

Please note that you have not been charged for the first 100 duplicated/scanned pages (or their equivalent volume).

Fees—Other Use Requester—*43 C.F.R. §§ 2.38*, *.39*, *Appendix A*

The FOIA fee for processing your request is $[Amount], calculated as follows:

[Number of hours]	[Clerical/Professional/Managerial]	Search Time @ $[Corresponding amount] per ¼ hour
[Number of pages]	Duplicated/Scanned Pages	@ $.15 per page
[Number of CDs]	Compact Disc	@ $[Direct cost] per disc

Please note that you have not been charged for the first two hours of search time or for 100 duplicated/scanned pages (or their equivalent volume).

Fees—Fee Waiver Denial—*43 C.F.R. §§ 2.45, .47, .48*

You have asked us to waive the fees for processing your request. Our FOIA regulations state that bureaus will waive, or partially waive, fees if disclosure of all or part of the information is:

(1) In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and

(2) Not primarily in your commercial interest.

See 43 C.F.R. § 2.45(a). Our FOIA regulations also provide four specific criteria that are used to determine whether these two requirements are met. *See 43 C.F.R. § 2.48(a)*. Your request does not [PICK AT LEAST ONE: "address these criteria" and/or "contain enough evidence to demonstrate you meet each of these criteria"]. [NOTE: Provide a full explanation of why the fee waiver request does not meet one or more of the four specific criteria] Therefore, your fee waiver request has been denied. [ADD IF THE REQUESTERS IS NOT A COMMERCIAL USE REQUESTER: "Please note that you are entitled to reduced fee costs because of your fee category and this determination does not affect that entitlement."]

In light of this fee waiver denial, you may wish to modify your request to reduce your fees. For example, you may wish to consider reducing the locations or time period in which you are seeking records.

[Agreement to Pay Fees Absent, Insufficient or Unclear]

[Name], [Bureau] [Title or position] is responsible for this denial. [Name], [Title] in the Office of the Solicitor was consulted.

[Appeal Rights]

Fees—Fee Estimate—*43 C.F.R. §§ 2.6*, *.49*

We are writing today to tell you that the estimated cost of processing your request is {considerably} more than the $[Amount--if the requester has not agreed to pay anything, put in "$0"] that you have agreed to pay. Our best estimate of the cost of processing the records responsive to your request is $[Amount], which includes our estimated costs for [PICK AT LEAST ONE: "search," "review," or "duplication"].

Under the circumstances, you may:

- [PICK ONE: "Provide us with written assurance of your willingness to pay $[Estimated amount] for the processing of your request;" or, if an advance payment is required "Provide us with an advance payment, for the reasons discussed below" and insert the applicable Advance Payment sample language directly after this set of bullet points]

- {NOTE: Only include the following language if the requester has agreed to pay a particular amount: "Ask us to process your request up to the amount you have already agreed to pay $[Amount] (or some additional amount that is lower than our estimate of $[Estimated amount] for the processing of your request);"}

- Reduce the scope of your request, so as to limit the amount of time and/or duplication that would be required to process your request, such that your fee does not exceed the amount that you have agreed to pay; or

- Withdraw your request."

{NOTE: Include the following language if you are not requesting advance payment: "Please note that the time frame for processing your request beyond $[Amount they agreed to pay] will not resume until the remaining issues regarding the payment of FOIA fees have been resolved. According to our regulations, if we do not receive your written response **within 20 workdays** from the date of this letter, we will presume that you are no longer interested in pursuing your request, we will not be able to comply with your request, and we will close our file on it. *See 43 C.F.R. § 2.49(c)*.}

Fees—Acknowledgment After Agreement to Pay Sufficient Fees—*43 C.F.R. § 2.6*

On [Date], we informed you of your fee status and told you that the estimated cost of processing your request would be {considerably} more than you agreed to pay. On [Date], we received notification that you agreed to pay $[Amount] for the processing of your request. If we find that your fees will exceed that amount, we will tell you before incurring additional charges and ask you to either agree to pay the additional amount needed or narrow the scope of your request.

You can expect to hear from us promptly regarding the outcome of this search

Fees—Advance Payment—Fees Over $250—*43 C.F.R. § 2.50*

We estimate that your processing fees will exceed $250 and our records demonstrate that you have never made a FOIA request to the Department requiring the payment of fees. You therefore must either:

- Demonstrate that you have made a FOIA request to the Department requiring the payment of fees; or

- Pay the estimated fee for your request, a total of $[Amount], as discussed above [NOTE: This refers to the Fee Estimate sample language above, which you will need to have included earlier in your letter].

Please note that:

- We will continue work on your request only after you have provided the demonstration or amount noted above. If we do not receive your advance payment within 20 workdays after the date of this letter, we will presume that you are no longer interested and will close the file on your request.

- You may reduce the estimated fee by modifying your request to reduce its scope within 20 workdays after the date of this letter.

- If you pay the estimated fee but the actual fee turns out to be lower than estimated, we will send you a partial refund.

Fees—Advance Payment—Delinquent Requester—*43 C.F.R. § 2.50*

Our records indicate that you are currently on our delinquent requester list. Therefore, before we can begin processing your request, the estimated fee for which is over $250, you must either:

- Demonstrate that you paid your prior fee within 30 days of the date of billing;

- Demonstrate that, although you did not pay your prior fee within 30 days of the date of billing, you have paid off all of your past due fees and penalties and you have paid the fee for one new FOIA request in advance, so you should have been removed from the delinquent requester list; or

- Pay us a total of $[Amount]. This is the sum of any unpaid amount of the prior fee ($[Amount]), interest penalties ($[Amount]), and the estimated fee for your new request (discussed above) [NOTE: This refers to the Fee Estimate sample language above, which you will need to have included earlier in your letter]. After you pay this fee in advance, you will be removed from the delinquent requester list.

Please note that:

- We will continue work on your request only after you have provided the demonstration or amount noted above. If we do not receive your advance payment within 20 workdays after the date of this letter, we will presume that you are no longer interested and will close the file on your request.

- You may reduce the estimated fee by modifying your request within 20 workdays after the date of this letter to reduce its scope.

- If you pay the estimated fee but the actual fee turns out to be lower than estimated, we will send you a partial refund.

Fees—No Charge—*43 C.F.R. § 2.49(a)(1)*

We do not bill requesters for FOIA processing fees when their fees are less than $50.00, because the cost of collection would be greater than the fee collected. *See 43 C.F.R. § 2.37(g)*. Therefore, there is no billable fee for the processing of this request {and there is no need for us to address your request for a fee waiver}.

Fees—Bill for Collection—*43 C.F.R. §§ 2.52*, *.53*

A bill for collection is enclosed. Please note that, if the fees are not paid within 30 calendar days of the date of the bill, you will owe interest under the Federal law; we will use our debt collection authorities, as appropriate, to collect fees; and we may not be able to process other FOIA requests from you.

Referral of Records to Another Bureau or Agency—Letter to Bureau or Agency—*43 C.F.R. § 2.13(b)(2)* and *(e)*

IN REPLY REFER TO:

[EFTS tracking number]

[Date]

[Address]

Dear FOIA Officer:

While processing a Freedom of Information Act request from [Requester], dated [Date], the [Bureau] located [Number] pages that [PICK AT LEAST ONE, KEEPING IN MIND THAT TWO OPTIONS ARE AVAILABE FOR BUREAUS BUT ONLY ONE FOR AGENCIES: "originated in your [PICK ONE: "Bureau" or "Agency"]" or "substantially concern your Bureau".]

We have enclosed the [Number] pages and a copy of the request. We will notify the requester that he/she will receive a direct response from your office.

If you have any questions, you may contact [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

Sincerely,

[Name]
[Bureau]
[Title]

Enclosure

Referral of Records to Another Bureau or Agency—Letter to Requester—*43 C.F.R. § 2.13(b)(2)* and *(e)*

We have located [Number] pages of records that [PICK AT LEAST ONE: "originated in [Bureau or Agency]" or "substantially concern [Bureau]"]. [Bureau or Agency] will issue a response directly to you. You do not have to contact [Bureau or Agency] at this time, but should you need to do so in the future, you may do so at:

[Address]

[Number]

{NOTE: As appropriate, let the requester know that you have located other materials that will not be referred to another bureau/agency and that your office will continue to process those materials.}

[Appeal Rights]

Request to Another Agency for Consultation—*43 C.F.R. § 2.13(f)*

IN REPLY REFER TO:

[EFTS tracking number]

[Date]

[Address]

Dear FOIA Officer:

While processing a Freedom of Information Act request from [Requester], dated [Date], the Department of the Interior's [Bureau] located [Number] pages containing material that may be of interest to your agency.

We have enclosed [PICK AT LEAST ONE: "a CD containing [Number] pages" or "an attachment of [Number] pages"] with our proposed redactions, and a copy of the request. Please review the enclosed records, mark any proposed redactions, state the exemption(s) you would claim for each proposed redaction, and return the records, along with your proposed redactions to us, by [Date]. After carefully considering your proposals, we will issue a final release to the requester.

If you have any questions, you may contact [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

Sincerely,

[Name]
[Bureau]
[Title]

Enclosure

Proposing Changes in Response to Another Agency's Request for Consultation—*43 C.F.R. § 2.13(f)*

IN REPLY REFER TO:

[EFTS tracking number]

[Date]

[Address]

Dear [Name]:

On [Date], the [Agency] requested the Department of the Interior review records responsive to a [Date] FOIA request submitted to [Agency] by [Requester].

We have examined the [Number] [PICK ONE: "pages" or "CD"] you forwarded and attached a file containing specific recommended changes. Our general comments and recommendations are as follows:

[NOTE: Add specific information. For example, "One sentence was redacted inconsistently on pages 3 and 6. We suggest redacting the entire sentence, in both locations, under Exemption 5's attorney-client and deliberative process privileges."]

{NOTE: If additional withholdings are suggested, include "[Name], Attorney- Advisor with the Office of the Solicitor, was consulted in reaching this recommendation.] [Name], [Bureau], [Title], is responsible for making this recommendation."}

If you have any questions, you may contact [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

Sincerely,

[Name]
[Bureau]
[Title]

Enclosure

Multitrack Processing—*43 C.F.R. §§ 2.14*, *.15*

We use Multitrack Processing to process FOIA requests. The Simple track is for requests that can be processed in one to five workdays. The Normal track is for requests that can be processed in six to twenty workdays. The Complex track is for requests that can be processed in twenty-one to sixty workdays. The Exceptional/Voluminous track is for requests requiring more than sixty workdays for processing. The Expedited track is for requests that have been granted expedited processing. Within each track, requests are usually processed on a first-in, first-out basis.

Your request falls into the [PICK ONE: "Normal," "Complex," "Exceptional/Voluminous," or "Expedited"] processing track. We therefore expect that we will dispatch a determination to you by [Date].

You may narrow the scope of your request to obtain quicker processing in your currently-assigned track or move the request into a faster track (which may have the effect of reducing the cost of processing your request). If you have any questions about this, please contact us.

Multitrack Processing—Revising Track Placement—*43 C.F.R. §§ 2.14*, *.15*

As you know, we use Multitrack Processing to process FOIA requests. The Simple track is for requests that can be processed in one to five workdays. The Normal track is for requests that can be processed in six to twenty workdays. The Complex track is for requests that can be processed in twenty-one to sixty workdays. The Exceptional/Voluminous track is for requests requiring more than sixty workdays for processing. The Expedited track is for requests that have been granted expedited processing. Within each track, requests are usually processed on a first-in, first-out basis.

On [Date] we informed you that your request fell into the [PICK ONE: "Normal," "Complex," "Exceptional/Voluminous," or "Expedited"] processing track. We now realize, however that because [NOTE: Add specific reasons], your request falls into the [PICK ONE: "Normal," "Complex," "Exceptional/Voluminous," or "Expedited"] processing track. We therefore expect that we will dispatch a determination to you by [Date].

You may narrow the scope of your request to obtain quicker processing in your currently-assigned track or move the request into a faster track (which may have the effect of reducing the cost of processing your request). If you have any questions about this, please contact us.

Extension—Ten Workdays—*43 C.F.R. § 2.19*

Because we will need to [PICK AT LEAST ONE: "search for and collect requested records from field facilities or other establishments that are separate from the office processing the request," "search for, collect, and examine a voluminous amount of separate and distinct records that are demanded in a single request," or "consult, with all practicable speed, with another agency, or among two or more components of the Department having a substantial interest in the determination of the request"], we are taking a 10-workday extension under *43 C.F.R. § 2.19*. We therefore expect that we will dispatch a determination to you by [Date].

Extension—More than Ten Workdays——*43 C.F.R. § 2.19*

Because we will need to [PICK AT LEAST ONE: "search for and collect requested records from field facilities or other establishments that are separate from the office processing the request," "search for, collect, and examine a voluminous amount of separate and distinct records that are demanded in a single request," or "consult, with all practicable speed, with another agency, or among two or more components of the Department having a substantial interest in the determination of the request"], we are taking a [Number greater than 10]-workday extension under *43 C.F.R. § 2.19(b)*. We therefore expect that we will dispatch a determination to you by [Date].

You may limit the scope of your request, which may enable us to process it more quickly, or agree to an alternative time period for processing by communicating with us or our FOIA Public Liaison, [Name and contact information of bureau FOIA Public Liaison].

Complex Determination—*43 C.F.R. § 2.15*

At this time, we have not reached a final determination on whether responsive material is exempt from release. However, we have gathered the responsive material and conducted an initial survey to identify the quantity and nature of the records.

We have identified approximately [Number] pages of material as potentially responsive to your request. [NOTE: Provide detailed information about this material. For example: "Approximately 7,000 pages relate to public scoping, internal and intra-agency coordination, drafts and discussion related to the development and finalization of the RMPs. Of these:

- Approximately 120 pages of public scoping comments and meeting sign-in sheets will need review under Exemption 6, because some contain personal contact information of members of the public who attended scoping meetings or provided scoping comments (before the public comment period for the Draft RMPs).

- Approximately 50 pages will require review under Exemption 3 and Exemption 4, because they may contain technical proposals not incorporated into an executed contract, or a contractor's confidential commercial information.

- The remaining material will require review under the deliberative process privilege of Exemption 5, because this set of records includes some internal deliberations and drafts. Much of this material is not deliberative and we are in the process of segregating nondeliberative material and material appropriate for discretionary release. A set of approximately 450 pages has already been routed for release approval and review of the remaining records is underway."]

{NOTE: If you plan on making interim responses, note that "We expect to provide your first set of records by [Date], with subsequent sets to follow." If you can, also provide more information, for example "in one to two week intervals."}

Notification that Determination will be made Outside the Time Limits of Subpart D—
43 C.F.R. Part 2, Subpart D

As yet, we have been unable to make a determination on your request. We apologize for this delay. Although we hope that you will wait so that we can complete our [PICK AT LEAST ONE: "search," "review," "duplication," or "consultation"] process, please note that you may seek dispute resolution services from our FOIA Public Liaison, [Name and contact information of bureau FOIA Public Liaison] and/or seek dispute resolution services from the Office of Government Information Services (OGIS).

If you choose to contact OGIS, you may do so in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: https://ogis.archives.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

You may also file an appeal with the Department's FOIA/Privacy Act Appeals Officer regarding this delay. If you choose to appeal this delay, you may do so anytime between now and the date we make our determination on the FOIA request. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must also include with your appeal copies of all correspondence between you and [Bureau] concerning your FOIA request, including your original FOIA request and [Bureau]'s response. Failure to include with your appeal all correspondence between you and [Bureau] will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

We regret the delay and appreciate your consideration. For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at *43 C.F.R. Part 2, Subpart H*. If you have any questions, you may contact [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

Expedited Processing Denial—*43 C.F.R. § 2.20*

You have asked for expedited processing of your FOIA request. The Department's FOIA regulations state that a bureau will provide expedited processing if a requester demonstrates a compelling need for the records by explaining in detail how the request meets one or both of the criteria below and certifying the explanation is true and correct to the best of the requester's knowledge and belief. The two criteria are as follows:

(1) Failure to expedite the request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) There is an urgency to inform the public about an actual or alleged government activity and the request is made by a person primarily engaged in disseminating information. (The requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this 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.)

43 C.F.R § 2.20.

Your request does not [PICK AT LEAST ONE: "contain enough evidence to support either of these criteria because [NOTE: Provide a full explanation of why the fee waiver request does not meet the two specific criteria]" or "does not certify your explanation is true and correct to the best of your knowledge and belief"]. Your request for expedited processing therefore has been denied.

[Appeal Rights]

Full Release—*43 C.F.R. § 2.22*

We are writing today to respond to your request on behalf of the [Bureau].

We have enclosed [NOTE: Add specific information. For example, "one CD containing one file consisting of 32 pages"], which [is/are] being released to you in [its/their] entirety.

Partial Release—*43 C.F.R. §§ 2.22, .23, .24*

We are writing to {partially} respond to your request. {We have previously partially responded to this request on [Date(s)]}

We have enclosed [NOTE: Add specific information. For example, "one CD containing one file consisting of 32 pages"], which [is/are] being released to you [PICK ONE: "in full" or "in part"]]. {NOTE: As applicable, add that "Portions of these materials are being withheld under the following FOIA [PICK ONE: "Exemption" or "Exemptions"]"; insert a discussion of the applicable Exemption(s), using the applicable sample language below; estimate the volume of materials being withheld in full; and estimate the volume of materials being withheld in part.}

{NOTE: If applicable, include: "We are continuing to [PICK AT LEAST ONE: "search for," "review," or "duplicate"] additional records that are responsive to your request.}

If you have any questions about our response to your request, you may contact [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

[Name], [Bureau] [Title or position] is responsible for this partial denial.

[Appeal Rights]

Withholding in Full—*43 C.F.R. §§ 2.23*, *.24*

We are writing to {partially} respond to your request. {We have previously partially responded to this request on [Date(s)]}

We have withheld [NOTE: Add estimate of the volume of records withheld. For example, "one CD containing one file consisting of 32 pages"] in full. These materials are being withheld under the following FOIA [PICK ONE: "Exemption" or "Exemptions"]. [NOTE: Insert a discussion of the applicable Exemption(s), using the applicable sample language below.]

{NOTE: If applicable, include: "We are continuing to [PICK AT LEAST ONE: "search for," "review," or "duplicate"] additional records that are responsive to your request.}

If you have any questions about our response to your request, you may contact [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

[Name], [Bureau] [Title or position] is responsible for this denial.

[Appeal Rights]

No Records—*43 C.F.R. §§ 2.23*, *.24*

We are writing to respond to your request. After a thorough search of our files, [PICK ONE: "it has been determined that the [Bureau] has no records responsive to your request" or "the [Bureau] did not locate records responsive to your request"].

[Name], [Bureau] [Title or position] is responsible for this denial.

[Appeal Rights]

Foreseeable Harm

[NOTE: Before withholding any information under a FOIA exemption, you must consider whether its disclosure could reasonably be foreseen to cause harm to the interest that the FOIA exemption was designed to protect and whether the disclosure would be prohibited by law or otherwise protected from disclosure under Exemption 3. If you have determined that is the case, use this statement. If you have not determined that this is the case, you must release the information.] We reasonably foresee that disclosure would [PICK AT LEAST ONE: "harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure" or "be prohibited by law or otherwise protected from disclosure under Exemption 3"].

Exemption 3—*43 C.F.R. §§ 2.23*, *.24*

[NOTE: Estimate the volume of any records or information withheld, for example "We are withholding 45 pages"] [PICK ONE: "in full" or "in part"] under FOIA Exemption 3. 5 U.S.C. § 552(b)(3). Exemption 3 allows the withholding of information protected by a nondisclosure provision in a federal statute other than FOIA.

[NOTE: Add specific discussion. For example, "Under 41 U.S.C. § 4702(b)-(c), the release of contractor proposals under the FOIA is specifically prohibited unless they have been set forth or incorporated by reference in a final contract. The requested proposal is not releasable under FOIA because it was not set forth or incorporated by reference into the final contract. It has been withheld in full under Exemption 3."]

[Foreseeable Harm]

[Name], [Bureau] [Title or position] is responsible for this {partial} denial. [Name], [Title] in the Office of the Solicitor was consulted.

[Appeal Rights]

Exemption 4—*43 C.F.R. §§ 2.23*, *.24*

[NOTE: Estimate the volume of any records or information withheld, for example "We are withholding 45 pages"] [PICK ONE: "in full" or "in part"] under FOIA Exemption 4. 5 U.S.C. § 552(b)(4). Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

The withheld information is commercial or financial information. [NOTE: Add specific discussion.] The company that supplied this information (the submitter) is considered a person, because the term "person," under the FOIA, includes a wide range of entities including [PICK ONE: "corporations," "banks," "state governments," "agencies of foreign governments," or "Indian tribes or nations"]. We are withholding 45 pages"] [PICK ONE: "in full" or "in part"] under Exemption 4 because they are protected under the following rationale. [NOTE: Only include the discussion of the applicable rationale in your letter]:

The information in question was required to be submitted and is confidential.

[NOTE: If information is required by an agency from all those who chose to participate in an activity—such as seeking a government contract or applying for a grant or loan—the Department of Justice has instructed that information should be considered required.] We have determined that the information at issue was required to be submitted to the government. Information that was required to be submitted is considered confidential if disclosure of it is likely to cause substantial harm to the competitive position of the person from whom the information was obtained, or harm the government's ability to obtain it in the future. [NOTE: Specifically describe why disclosure of the information is likely to 1) cause substantial harm to the competitive position of the person from whom the information was obtained and/or 2) harm the government's ability to obtain it in the future.] Therefore this information is confidential for the purposes of Exemption 4 and we have withheld it.

The information in question was voluntarily submitted and is confidential.

We have determined that the submitter voluntarily submitted this information to the government, as the [Bureau] did not require the information at issue to be submitted. Information that was voluntarily submitted is considered confidential if it is of a kind that would customarily not be released to the public by the person from whom it was obtained. Because the submitter does not customarily release this information to the public and it is not available to the public from other sources, the information is confidential for the purposes of Exemption 4 and we have withheld it.

[Foreseeable Harm]

[Name], [Bureau] [Title or position] is responsible for this {partial} denial. [Name], [Title] in the Office of the Solicitor was consulted.

[Appeal Rights]

Exemption 4—Submitter Notification—Initial Submitter Letter—*43 C.F.R. §§ 2.27*, *.28*

IN REPLY REFER TO:

[EFTS tracking number]

[Date]

Via [PICK ONE: "***Certified Mail/Return Receipt***" or "***Facsimile***" or "***Electronic Mail***"]

[Submitter]

[Address]

Dear [Submitter]:

This letter concerns a [Date] Freedom of Information Act (FOIA) request that [Requester] submitted to the [Bureau]. This FOIA request was assigned control number [EFTS tracking number] and seeks: "[Quote the request]."

Information responsive to this request may be protected under FOIA Exemption 4, which protects from disclosure "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). Accordingly, Executive Order 12,600 and our FOIA regulations, *43 C.F.R. Part 2, Subpart F*, require us to provide you, as the submitter of the information, with written notice of the FOIA request and to seek your views on the disclosure of the information.

We have enclosed a [PICK ONE: "CD" or "attachment"] that contains [PICK ONE: "the request" or "the exact language of the request"] as well as [PICK ONE: "a description of the possibly confidential information located in response to the request" or "a copy of the responsive records, or portions of responsive records, containing possibly confidential information."] If you wish to object to the release of this information, the regulations require you to provide a written statement setting forth the specific and detailed justification for withholding any portion of the information. *43 C.F.R. § 2.30 to § 2.31(a).*

Please note that this is your chance to let us know why some of the information you submitted should be protected. Please review the guidance below carefully and be very clear and specific about your concerns and rationales.

Information may qualify for protection under Exemption 4 as a "trade secret" if it is information that is "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires there be a direct relationship between the information at issue and the productive process. *See id.* Should you wish to object to the disclosure of any of the information in the records because it is a trade secret, your specific and detailed discussion must explain how *each category* of information the objections are related to qualifies for protection under Exemption 4 as a trade secret. The explanation must also identify a direct relationship between the information and the productive process.

Alternatively, information may qualify for protection under Exemption 4 if it is privileged or confidential commercial or financial information. {NOTE: Review *43 C.F.R. § 2.31* to see if you would like to inform the submitter that not all of the information below will be necessary. **Remember you cannot waive the certification requirement**.} Should you wish to object to the disclosure of any of the information in the records because it is privileged or confidential commercial or financial information, your specific and detailed discussion must explain how *each category* of information the objections are related to qualifies for protection under Exemption 4 as privileged or confidential commercial or financial information.

In determining whether information is commercial or financial, the terms are given their "ordinary meanings." *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 38 (D.C. Cir. 2002). You therefore must provide a specific and detailed explanation of how the information relates to your commercial or financial interest and either the commercial/financial function the information serves or the commercial/financial nature of the information.

The test to determine if information is "privileged" or "confidential," on the other hand, is less straightforward and depends on whether you were required to provide the information to the government. *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 281 (D.C. Cir. 1997). If you voluntarily provided information to the government, the information will be considered confidential for the purposes of Exemption 4 if it is the kind of information that you would not customarily release to the public. *See id*. Alternatively, where the government required you to provide the information, the information will be considered confidential for the purposes of Exemption 4 if disclosure "is likely to have either of the following effects: (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

You therefore must discuss whether you voluntarily provided the information in question. If

you assert that you did, you must also explain how the information in question fits into a category of information that you customarily do not release to the public. If, on the other hand, you assert that the government required you to submit the information, you must explain how the information's release would likely impair the government's ability to obtain necessary information in the future and/or cause you substantial competitive or other business harm.

To demonstrate that disclosure is likely to cause substantial competitive harm, you must explain how: 1) you face actual competition in the relevant marketplace; and 2) substantial competitive injury would likely result from disclosure. *See People for the Ethical Treatment of Animals v. United States Dep't of Agric.*, No. 03 C 195-SBC, 2005 U.S. Dist. LEXIS 10586, at *15-*16 (D.D.C. May 24, 2005).) This must include a detailed explanation of who your competitors are and the nature of the competition. You must also explain with specificity how disclosure of each category of information would provide your competitors with information that could enable them to obtain an unfair advantage. *See, e.g., Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 29 (D.D.C. 2000) (discussing how releasing the information in question could give a competitor valuable insights into the submitter's future operations and negotiating positions).

Finally, as required by the regulations, you must certify that any information you object to disclosing is confidential, you have not disclosed the information to the public, and the information is not routinely available to the public from other sources. *See 43 C.F.R. § 2.31(a)(3)*.

{NOTE: If the submitter designated the material as confidential commercial or financial information 10 or more years before the request, include the following language: "We are aware that you have already designated the material as confidential commercial or financial information. However, as this designation occurred 10 or more years before the request, we request your views on whether you still consider the information to be confidential by providing the information requested above."}

{NOTE: If the submitter is an Indian tribe or nation, include the following language: "Please note that if you have shared this material with other entities (such as state or local governments), those entities may also have received a request for this material. You may wish to reach out to them to discuss whether this is the case."}

Please be aware that the FOIA requires that "any reasonably segregable portion of a record" must be released after appropriate application of one of the FOIA's nine exemptions. *See* 5 U.S.C. § 552(b) (discussion after exemptions). Where a record contains both exempt and nonexempt material, the bureau will generally separate and release the nonexempt information. *See 43 C.F.R. § 2.25*. You should be mindful of this segregability requirement in formulating any objections you may have to the disclosure of the records.

Should you wish to object to disclosure of any of the information at issue here, we must receive all of the information requested above **by no later than** [NOTE: The least amount of time that you can give is 10 workdays after the Submitter's receipt of this letter, but you can give additional time if you wish].

You may send the documentation via email to [Address], fax at [Number], or mail to [Address]. If you do not submit the requested detailed written statement on or before the deadline set above, we will presume that you do not object to the disclosure of the information in question and will proceed with processing the FOIA request accordingly. *See 43 C.F.R. § 2.30(b)*.

Also, please note that any comments you submit to us objecting to the disclosure of the records may themselves be subject to disclosure if the Department receives a FOIA request for them. If your comments contain commercial or financial information and a requester asks for the comments under FOIA, we will notify you and give you an opportunity to comment on the disclosure of such information.

Finally, please note that we are responsible for deciding what will be released or withheld. *See 43 C.F.R. § 2.28(f)*. However, if you object to the disclosure of information and we decide to release it over your objections, we will notify you before we release the records. *See 43 C.F.R. § 2.33*.

You may find both the regulations and Executive Order 12,600 at https://www.doi.gov/foia/news/guidance. {NOTE: Also include if applicable: "We have also enclosed the following [PICK AT LEAST ONE: "bureau guidance" or "related regulations"] to aid you in your review of this matter."}

If you have any questions, you may contact [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

Sincerely,

[Name]
[Bureau]
[Title]

Enclosure

[cc without enclosure to requester]

Exemption 4—Submitter Notification—Release Over Objection—*43 C.F.R. § 2.33*

IN REPLY REFER TO:

[EFTS tracking number]

[Date]

Via [PICK ONE: "***Certified Mail/Return Receipt***" or "***Facsimile***" or "***Electronic Mail***"]

[Submitter]

[Address]

Dear [Submitter]:

This letter is in response to your [Date] [PICK ONE: "letter" or "email"] objecting to the release of certain information in response to FOIA request [Number]. After reviewing your proposed redactions and explanations, the Department intends to [PICK ONE: "withhold most of the information you have proposed be redacted, but not all of it," "withhold some of the information you have proposed be redacted, but not all of it," or "release all of the information you proposed be redacted"] because [NOTE: Add specific reasons why the submitter's objections are insufficient to support a withholding]. The enclosed [PICK ONE: "CD" or "attachment"] contains our planned release to the requester.

Please note that {10} workdays after delivery of this letter [NOTE: Ten workdays is the minimum, but you can give more time]," *we will release the records* [PICK ONE: "on" or "in"] *the enclosed* [PICK ONE: "CD" or "attachment"] *to the requester and, under 43 C.F.R. § 2.33(c), this letter serves as notice of this intention.*

If you have any questions, you may contact [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

Sincerely,

[Name]
[Bureau]
[Title]

Enclosure

cc without enclosure to requester

Exemption 5—*43 C.F.R. §§ 2.23*, *.24*

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." 5 U.S.C. § 552(b)(5).Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding [NOTE: Estimate the volume of any records or material withheld, for example "We are withholding 45 pages"] [PICK ONE: "in full" or "in part"] under Exemption 5 because [PICK ONE: "they qualify" or "it qualifies"] to be withheld under the following [PICK ONE: "privilege" or "privileges"] [NOTE: Only include the discussion of applicable privileges in your letter]:

Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. .

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process" and may include "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would [NOTE: Add specific discussion of purpose for withholding. For example, "the release of these drafts would have a chilling effect on the agency's deliberative processes; expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions."]

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Attorney Work-Product Privilege

As incorporated into Exemption 5, the attorney work-product privilege protects from disclosure any materials prepared by or for a party or its representative (including their attorney, consultant, surety, indemnitor, insurer, or agent) in anticipation of litigation or for

trial. The privilege applies once specific claims have been identified that make litigation probable; the actual beginning of litigation is not required. Its purpose is to protect the adversarial trial process by insulating litigation preparation from scrutiny, as it is believed that the integrity of our system would suffer if adversaries were entitled to probe each other's thoughts and plans concerning the case. The privilege extends to administrative, as well as judicial proceedings. Once the determination is made that records are protected from disclosure by the attorney work-product privilege, the entire contents of those records are exempt from disclosure under FOIA.

The materials that have been withheld under Exemption 5 under the attorney work-product privilege were prepared by or for a Department attorney in reasonable anticipation of litigation and they reflect [NOTE: Specifically describe. For example, "the parties' pre-litigation thoughts and evaluation of your request that you be compensated for damages to your property that occurred in connection with the Smith fire"]. So we conclude that the withheld materials are protected in full from disclosure by the attorney work-product privilege of Exemption 5.

Attorney-Client Privilege

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information.

The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between [PICK AT LEAST ONE: "agency attorneys and agency clients," "Federal attorneys and agency clients," "agency attorneys," or "agency and Federal attorneys"], related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by [NOTE: Specifically describe. For example, "attorneys to their clients based on client-supplied facts."] Additionally, the [Bureau] employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the [Bureau] has held this information confidential and has not waived the attorney-client privilege.

Commercial Information Privilege {NOTE: This privilege is invoked very rarely outside the appraisal report context}

When the government enters the marketplace as an ordinary commercial buyer or seller, the government's information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government's monetary functions or commercial interests. The theory behind the privilege is that the government may be placed at a competitive disadvantage or the consummation of a

contract may be endangered if confidential information generated by the government is disclosed during the process of awarding the contract. For example, the pre-sale disclosure of realty appraisals developed to help the federal government sell or buy property would harm the government's commercial interests significantly.

The appraisal report in this case pertains to the [Bureau]'s ongoing negotiations regarding the [PICK ONE: "acquisition" or "sale" {NOTE: If applicable, include: "of other lands in the area"}] of the property that is the subject of your request. The information withheld under this privilege reflects information concerning the monetary values and thoughts and determinations of the appraisers regarding the property. Premature disclosure of this information to the public would allow other parties who may be interested in purchasing the property to know how the [Bureau] values it, thereby allowing them to [PICK ONE: "outbid the government" or "weaken the government's negotiating position."]. Therefore, we conclude that disclosure of {NOTE: If applicable, include: "most of the information contained in"} the [Bureau]'s appraisal report will [PICK AT LEAST ONE: "place the government at a competitive disadvantage" or "endanger the consummation of the sale or acquisition]. {NOTE: If applicable, include: "We are releasing the factual information in the appraisal report that would not harm the [Bureau]'s commercial interests."}

[Foreseeable Harm]

[Name], [Bureau] [Title or position] is responsible for this {partial} denial. [Name], [Title] in the Office of the Solicitor was consulted.

[Appeal Rights]

Exemption 6—*43 C.F.R. §§ 2.23*, *.24*

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). We are withholding [NOTE: Estimate the volume of any records or information withheld, for example "We are withholding 45 pages"] [PICK ONE: "in full" or "in part"] under Exemption 6.

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens 'know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information, [NOTE: Briefly describe the personal information. For example, "social security numbers and home addresses"], and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, {you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and} we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of [PICK ONE: "this individual" or "these individuals"] and we are withholding it under Exemption 6.

[Foreseeable Harm]

[Name], [Bureau] [Title or position] is responsible for this {partial} denial. [Name], [Title] in the Office of the Solicitor was consulted.

[Appeal Rights]

Exemption 7—*43 C.F.R. §§ 2.23*, *.24*

Exemption 7 protects from disclosure "records or information compiled for law enforcement purposes" if the records fall within one or more of six specific bases for withholding set forth in subparts (a) through (f). 5 U.S.C. § 552(b)(7)(a)-(f). We are withholding [NOTE: Estimate the volume of any records or information withheld, for example "We are withholding 45 pages"] [PICK ONE: "in full" or "in part"] under Exemption 7 because they are protected under the following [PICK ONE: "subpart" or "subparts"] [NOTE: Only include the discussion of applicable subparts in your letter]:

7(A)

Exemption 7(A) protects law enforcement records if their release could reasonably be expected to interfere with enforcement proceedings. For the materials that have been withheld under 7(A), we have determined they are law enforcement records for a pending or prospective investigation and releasing them could reasonably be expected to interfere with enforcement proceedings because their premature release could [PICK AT LEAST ONE: "afford a virtual roadmap through the government's evidence, which would provide critical insights into its legal thinking and strategy and could jeopardize the proceedings by more fully revealing the scope and nature of the government's case and assist in circumventing the investigation"; "prematurely reveal the full scope of evidence obtained; the assessment of the evidence; strengths and weaknesses of the government's evidence and case; and the progress, status, direction, and limits of the government's investigation"; "hinder the government's ability to further control and shape the investigation and enable targets of the investigation to elude detection; create defenses; or suppress, fabricate, or tamper with evidence"; "create a great potential for witness intimidation, expose actual or prospective witnesses to undue influence or retaliation, deter their cooperation, and create the potential for interference with them"; or you may insert your own rationale explaining the harm].

7(B) {NOTE: This exemption is invoked very rarely}

Exemption 7(B) protects law enforcement records if their release would deprive a person of a right to a fair trial or an impartial adjudication. For the materials that have been withheld under 7(B), we have determined that releasing them would deprive a person of a right to a fair trial or an impartial adjudication because a [PICK ONE: "trial" or "adjudication"] is [PICK ONE: "pending" or "truly imminent"] and it is more probable than not that the disclosure of the material sought would seriously interfere with the fairness of the proceedings.

7(C)

Exemption 7(C) protects law enforcement records if their release could reasonably be expected to constitute an unwarranted invasion of personal privacy. It is regularly applied to withhold references to individuals in law enforcement files. For the materials that have been withheld under 7(C), we have determined that releasing them would constitute an unwarranted invasion of privacy because they identify individuals referenced in law enforcement records and the release of this information would not shed light on an agency's

performance of its statutory duties.

7(D)

Exemption 7(D) protects law enforcement records if their release could reasonably be expected to disclose the identity of a confidential source. For the materials that have been withheld under 7(D), we have determined that releasing them could reasonably be expected to disclose the identity of a confidential source who provided information under [PICK ONE: "an express promise of confidentiality" or "circumstances from which an assurance of confidentiality could be reasonably inferred"].

7(E)

Exemption 7(E) protects law enforcement records if their release would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law. For the materials that have been withheld under 7(E), we have determined that [PICK AT LEAST ONE: "they are techniques for law enforcement investigations or prosecutions," "they are procedures for law enforcement investigations or prosecutions," or "they are guidelines for law enforcement investigations or prosecutions whose release could reasonably be expected to risk circumvention of the law"].

7(F)

Exemption 7(F) protects law enforcement records if their release could reasonably be expected to endanger the life or physical safety of any individual. For the materials that have been withheld under 7(F), we have determined releasing them could reasonably be expected to endanger the life or physical safety of an individual because [NOTE: Specifically describe. For example, "it would compromise the protection of our facilities and endanger the life or physical safety of individuals"].

[Foreseeable Harm]

[Name], [Bureau] [Title or position] is responsible for this {partial} denial. [Name], [Title] in the Office of the Solicitor was consulted.

[Appeal Rights]

Appeal Rights—*43 C.F.R. §§ 2.57, .58, .59*

{NOTE: If you are notifying the requester of a delay in completing the determination, do not use this language. Instead, use the Notification that Determination will be made Outside the Time Limits of Subpart D.}

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal [PICK ONE: "**no later than 90 workdays** from the date of this letter" if you are not issuing an expedited processing denial; or "as soon as possible after this letter" if you are issuing an expedited processing denial]. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the [Bureau]'s response is in error. You must also include with your appeal copies of all correspondence between you and [Bureau] concerning your FOIA request, including your original FOIA request and [Bureau]'s response. Failure to include with your appeal all correspondence between you and [Bureau] will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

Conclusion

{NOTE: You *must* include this language *if* your bureau is listed in section 10.3(C) of the Department's FOIA Handbook: "For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist."}

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: https://ogis.archives.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. If you have any questions about our response to your request, you may contact [Name] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

You also may seek dispute resolution services from our FOIA Public Liaison, [Name and contact information of bureau FOIA Public Liaison].