

**U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)**

<b>MD 3.1</b>	<b>FREEDOM OF INFORMATION ACT</b>	<b>DT-21-04</b>
<i>Volume 3:</i>	Information Management	
<i>Part 1:</i>	Publications, Mail, and Information Disclosure	
<i>Approved By:</i>	Christopher T. Hanson, Chairman	
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<i>Issuing Office:</i>	Office of the Chief Information Officer Governance and Enterprise Management Services Division	
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**EXECUTIVE SUMMARY**

Management Directive 3.1, “Freedom of Information Act (FOIA),” is revised to—

- Reflect changes to policies and regulations (e.g., Federal Energy Regulation Commission’s (FERC) regulations);
- Clarify that the Office of the Inspector General (OIG) processes FOIA requests for its records;
- Remove the requirement that bracketing be performed in pencil;
- Encourage electronic bracketing or, alternatively, written descriptions of specific information being recommended for redaction (a separate document, “How to Respond to an Initial FOIA Request,” discusses the software to use for electronic bracketing); and
- Clarify that the FOIA Officer is the denying official for records received from offices that report to the EDO.

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**I. POLICY**

**A. Freedom of Information Act (FOIA)**

1. It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to implement the record request provisions of the Freedom of Information Act (FOIA) (United States Code (U.S.C.) Title 5, Section 552) by responding to requests for records in accordance with the requirements established by *Code of Federal Regulations* (CFR) Title 10, Part 9, “Public Records.”
2. Any NRC employee who receives, processes, or responds to a FOIA request for records shall adhere to the policies and procedures listed in this management directive (MD).

**B. Material Not Covered in this Management Directive**

1. This MD does not cover 5 U.S.C. 552(a)(1) and (2) of the FOIA (except for subsection (a)(2)(D)). Subsection (a)(1) requires each agency to publish in the *Federal Register*, for the guidance of the public, a range of basic information regarding its structure and operations (e.g., agency organization, functions, rules of procedure, substantive rules, and statements of general policy). Subsection (a)(2) covers certain types of records (e.g., policy statements, administrative staff manuals affecting the public, and final opinions and orders in administrative adjudications) that must be proactively disclosed in an agency's electronic reading room without waiting for a FOIA request.
2. This MD does not cover information requested in Commission adjudicatory proceedings, which are governed by 10 CFR Part 2, "Agency Rules of Practice and Procedure."
3. This MD does not cover provisions of the Privacy Act of 1974. Those provisions are covered in MD 3.2, "Privacy Act."
4. This MD does not cover declassification provisions, which are addressed in 32 CFR 2001, "Classified National Security Information," Subpart D, "Declassification."

**II. OBJECTIVE**

Define responsibilities and authorities for the review and processing of FOIA requests and appeals consistent with the requirements and the time limits of the FOIA and 10 CFR Part 9, Subpart A, "Freedom of Information Act Regulations."

**III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY****A. Chairman**

Designates the agency's Chief FOIA Officer.

**B. Commission**

Consistent with the Internal Commission Procedures (available at <https://www.nrc.gov/about-nrc/policy-making/internal.html>), the Commission has the following roles and responsibilities.

1. Advises the Executive Assistant to the Secretary of the Commission (SECY), after consulting the Office of the General Counsel (OGC), whether to disclose records received from or provided to the Commission subject to a FOIA request.

2. Each Commissioner advises the Executive Assistant to SECY whether to disclose, in whole or in part, records that he or she originated or possesses but that are not located in the official files of SECY.
3. Advises SECY—
  - (a) After consulting OGC, whether to disclose records in whole or in part, for an appeal of an initial decision denying those records.
  - (b) Whether to grant, as a matter of discretion, an appeal of an initial decision of boards, panels, advisory committees, or offices reporting directly to the Commission.
4. Approves substantive changes to NRC FOIA implementing regulations in 10 CFR Part 9, Subpart A.

**C. Inspector General (IG)**

1. Receives and responds to requests for records originated by the Office of the Inspector General (OIG) or for which OIG has primary responsibility.
2. Appoints an office FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters, and a Senior Management FOIA Official (SMFO) to resolve FOIA issues.
3. Makes the final determination on a FOIA appeal of an initial decision of the Assistant Inspector General for Investigations (AIGI).
4. Determines whether records from OIG that are responsive to FOIA requests can be placed in ADAMS.

**D. Assistant Inspector General for Investigations (AIGI), Office of the Inspector General (OIG)**

1. Determines whether to release or withhold records originated within OIG, or records for which OIG has principal responsibility.
2. Makes the final determination on responses to initial FOIA requests.

**E. General Counsel (GC)**

1. Makes the initial determination whether to release or withhold records that OGC originates or for which OGC has primary responsibility.
2. Provides legal advice and recommendations on FOIA-related matters, including the releasability of records.
3. Provides recommendations to SECY and the Commission on the initial determination on the releasability of records.

4. Appoints an office FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters, and an SMFO to resolve FOIA issues.
5. Reviews for legal sufficiency the applicability of exemptions in response to FOIA appeals for records that fall under the purview of SECY and the EDO.
6. Prepares responses for appeals signed by SECY.
7. Prepares responses for appeals to be co-signed by SECY and the Chief FOIA Officer.
8. Determines whether records from OGC that are responsive to FOIA requests can be placed in ADAMS.
9. Interprets regulations in 10 CFR Part 9, Subpart A, as authorized by 10 CFR 9.5.

**F. Secretary of the Commission (SECY)**

1. Disseminates requests to the Chairman and the Commissioners, as appropriate, asking them to identify records requested under the FOIA.
2. Directs searches of SECY's official files to identify records requested under the FOIA.
3. After consulting with OGC, obtains the views of the Commission on whether to disclose records, in whole or in part, in response to initial requests or appeals for Commission records and records of former Commissioners.
4. After Commission consultation, makes the final determination upon appeal whether to release or withhold records originated or maintained by offices of the Commissioners and SECY.
5. Makes the final determination on an appeal of an initial decision in which records were withheld by the Executive Assistant to the Secretary of the Commission, the GC, or any office director reporting to the Commission, and signs the appeal response letter.
6. Appoints an office FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters and an SMFO to resolve FOIA issues.
7. After consulting with the Commission, individual Commissioners, or their staff, notifies the FOIA office which responsive requests can be placed in ADAMS.

**G. Executive Assistant to the Secretary of the Commission (SECY)**

1. Serves as the denying official for withheld records of the Commission, a Commissioner, or former Commissioners and their staffs.
2. Serves as the denying official for withheld records originated by SECY.

3. Per 10 CFR 9.25 (g)(2), serves as the denying official for withheld records originated by advisory committees established under 10 CFR Part 7, "Advisory Committees," including the Advisory Committee on Reactor Safeguards (ACRS).
4. Per 10 CFR 9.25 (g)(2), makes the final determination whether to release or withhold records originated or maintained by offices of the Commissioners and SECY.

#### **H. Executive Director for Operations (EDO)**

1. Makes the initial determination whether to release or withhold records maintained in the Office of the Executive Director for Operations (OEDO).
2. Delegates to the Chief FOIA Officer the authority to make final determinations on administrative appeals made under the FOIA for records maintained by offices that report to the EDO, including the initial denial of access to such records.
3. Implements FOIA and NRC procedures for responding to all requests for records that the offices reporting to the EDO originate or for which these offices have primary responsibility.
4. Appoints a FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters on behalf of OEDO and an SMFO to resolve FOIA issues.

#### **I. Chief Freedom of Information Act (FOIA) Officer**

1. Serves as the agency's Chief FOIA Officer, as designated by the Chairman.
2. Ensures that a program to administer the FOIA is effectively implemented within the NRC.
3. Makes the final determination on an administrative appeal made under 10 CFR 9.29(d) by offices that report to the EDO.
4. Provides oversight and direction for agency information management activities.
5. Designates the agency's FOIA Public Liaisons.
6. Offers training to agency staff regarding their FOIA responsibilities.
7. Serves as the primary liaison with the Office of Government Information Services (OGIS) and the Department of Justice Office of Information Policy (OIP).
8. Performs required review, not less frequently than annually, of all aspects of the agency's administration of the FOIA to ensure compliance with the FOIA, including—
  - (a) Compliance with agency regulations,
  - (b) Disclosure of records under paragraphs 5 U.S.C. 552 (a)(2) [proactive disclosure provision] and (a)(8) [foreseeable harm standard],
  - (c) Assessment of fees and fee waivers,

- (d) Timely processing of requests,
- (e) Use of exemptions, and
- (f) Use of dispute resolution services with OGIS or the FOIA Public Liaison.

**J. Deputy Chief Information Officer**

1. Manages the NRC's Public Document Room program and the NRC Web site that allows the public to inspect and copy records as authorized by subsection (a)(2) of the FOIA.
2. Designates the agency's FOIA Officer.

**K. Director, Office of Nuclear Security and Incident Response (NSIR)**

1. Advises and assists authorized Safeguards Information (SGI) designators, classifiers, and declassifiers with classifying, downgrading, declassifying, or decontrolling NRC-originated SGI, classified, or potentially classifiable information requested under the FOIA (see MD 12.2, "NRC Classified Information Security Program" and MD 12.7, "NRC Safeguards Information Security Program").
2. Coordinates, through the agency's FOIA Officer, with other Federal agencies the classification, downgrading, declassification, and decontrol of sensitive or classified information obtained from these agencies and included in NRC records requested under the FOIA.
3. Coordinates with the U.S. Department of Energy the downgrading and declassification of Restricted Data, Formerly Restricted Data, and/or Transclassified Foreign Nuclear Information requested under the FOIA.

**L. Office Directors, Regional Administrators, and Chairmen of Boards, Panels, or Committees**

1. Make the initial determination whether to release or withhold (1) records originated by their office, region, board, panel, or committee or (2) records for which their office, region, board, panel, or committee has principal responsibility.
2. Implement FOIA and NRC procedures for responding to all requests for records that their office, region, board, panel, or committee originated or for which it has primary responsibility.
3. Appoint an office, region, board, panel, or committee FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters, and an SMFO to resolve FOIA issues.

4. When responding to an appeal of an initial disclosure determination, approve their office's, region's, board's, panel's, or committee's recommendation to continue to withhold records, or portions thereof.
5. May delegate discretionary release determinations under 10 CFR 9.25(f) to a named designee or position. (See NRC Form 512, "Delegation of Discretionary Release Authority," available in the NRC Forms Library on SharePoint at <https://usnrc.sharepoint.com/teams/NRC-Forms-Library>).
6. Ensure appropriate FOIA coverage; to ensure the NRC meets statutory time limits, all office FOIA coordinators must have alternates or backups when away from the office for 3 or more consecutive working days.

**M. Freedom of Information Act Officer (FOIA Officer), OCIO**

1. Administers the FOIA program for the NRC under the direction of the Chief FOIA Officer and the Deputy CIO and exercises the functions delegated by 10 CFR Part 9, Subpart A, including coordination of agency responses to initial requests and appeals of initial denials, maintenance of official FOIA files, and preparation of statutorily required reports to the Department of Justice.
2. Reviews records containing information proposed to be withheld, in whole or in part, and in consultation with OGC, to identify questions or issues regarding the appropriateness of the exemptions cited as the basis for withholding the information.
3. Makes the final determination whether to withhold records, in consultation with OGC, of all NRC offices, regions, boards, panels, and committees, except the offices of the Commissioners, OGC, OIG, and SECY.
4. Makes the initial determination whether to grant or deny a request for a waiver or reduction of fees.
5. Makes the initial determination whether to grant or deny a request for expedited processing.
6. After consultation, determines whether records of all NRC offices, regions, boards, panels, and committees, except the offices of the Commissioners, OGC, OI, OIG, and SECY, which are responsive to FOIA requests, can be placed in ADAMS.
7. Leads the agency's FOIA training program and provides guidance on FOIA to NRC managers, supervisors, and staff.
8. Ensures appropriate FOIA coverage; to ensure the NRC meets statutory time limits, all Government Information Specialists must have alternates or backups when away from the office for 3 or more consecutive working days.

**N. Senior Management FOIA Official (SMFO)**

1. Appointed by each office director, regional administrator or board, panel, or committee chairman and serves as the respective office's, region's, board's, panel's, or committee's contact to resolve problems that cannot be resolved between OCIO FOIA staff and the Office, Region, Board, Panel, or Committee FOIA Coordinator.
2. Represents the office director, regional administrator, or board, panel, or committee chairman in resolving initial disclosure determination issues or delays by their staff in responding to FOIA actions.
3. Assists the office FOIA coordinator in clarifying the scope of requests and identifying appropriate office staff to conduct the search for and review of responsive records.
4. Possesses substantial knowledge of the work and current technical and policy considerations within the office, usually at the experience level of GG-15 or higher.

**IV. APPLICABILITY**

The policy and guidance in this MD apply to all NRC headquarters and regional employees and contractors when processing FOIA requests.

**V. DIRECTIVE HANDBOOK**

Directive Handbook 3.1 contains the procedures and guidelines to implement the FOIA in accordance with NRC regulations specified in 10 CFR Part 9, Subpart A.

**VI. REFERENCES*****Code of Federal Regulations***

- 10 CFR Part 2, "Agency Rules of Practice and Procedure."
- 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding."
- 10 CFR Part 7, "Advisory Committees."
- 10 CFR Part 9, "Public Records."
- 10 CFR 73.21, "Protection of Safeguards Information: Performance Requirements."
- 32 CFR 2001, "Classified National Security Information."

***Executive Orders***

Executive Order 12600, "Predisclosure Notification Procedures for Confidential Commercial Information," June 23, 1987.

Executive Order 13392, "Improving Agency Disclosure of Information," December 14, 2005.

Executive Order 13526, "Classified National Security Information," December 29, 2009.

### ***NRC Documents and Web Sites***

"How to Respond to an Initial FOIA Request":

<https://drupal.nrc.gov/ocio/catalog/25157>.

NRC FOIA Request Submittal Form:

<https://www.foiaonline.gov/foiaonline/action/public/request>.

NRC FOIA Web Site:

<http://www.nrc.gov/reading-rm/foia/foia-privacy.html>.

NRC Forms Library on SharePoint:

<https://usnrc.sharepoint.com/teams/NRC-Forms-Library>.

NRC Internal Commission Procedures, Office of the Secretary of the Commission

<https://www.nrc.gov/about-nrc/policy-making/internal.html>.

NRC Management Directives—

3.2, "Privacy Act."

3.4, "Release of Information to the Public."

3.53, "NRC Records and Document Management Program."

7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals."

8.8, "Management of Allegations."

8.14, "Agency Action Review Meeting (AARM)."

12.1, "NRC Facility Security Program."

12.2, "NRC Classified Information Security Program."

12.7, "NRC Safeguards Information Security Program."

NUREG-0910, "NRC Comprehensive Records Disposition Schedule."

### ***United States Code***

5 U.S.C. 552, as amended, "Freedom of Information Act."

16 U.S.C. 824o-1(d)(1), "Protection of Critical Electrical Infrastructure Information."

31 U.S.C. 3717, as amended, "Interest and Penalty on Claims."

41 U.S.C. 4702, "Prohibition on Release of Contractor Proposals."

**U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)**

<b>DH 3.1</b>	<b>FREEDOM OF INFORMATION ACT</b>	<b>DT-21-04</b>
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## I. AGENCY RECORDS SUBJECT TO A REQUEST

### A. Freedom of Information Act (FOIA) Lines of Responsibility

Exhibit 1 shows the lines of responsibility involved in processing Freedom of Information Act (FOIA) requests and appeals at the U.S. Nuclear Regulatory Commission (NRC).

### B. Principles

#### 1. Duty to Identify and Retain Records

The FOIA applies to “agency records.” An agency record is any record created or obtained by the agency that is under the control of the agency at the time of the request. To be under the control of the agency, the record must have come into the agency’s possession through the legitimate conduct of its official duties. Agency records include paper documents, e-mail, other electronic records, and records maintained for the NRC under a Government contract, for records management purposes. However, an agency record is distinct from a “personal record” of an employee, which is not under the control of the agency and is not subject to the FOIA. Once an agency record has been captured by a FOIA request, an employee may not destroy or remove the record from the NRC’s possession and control before the prescribed disposition date. Even if an agency record could have been disposed of under its prescribed disposition date, once a FOIA request has been received for that record, it may no longer be disposed of.

#### 2. Public Interest Determination for a Record

- (a) Section 9.17 of Title 10 of the *Code of Federal Regulations* (CFR), “Agency records exempt from public disclosure,” states that the NRC “shall withhold information under this subpart only if the NRC reasonably foresees that disclosure would harm an interest protected by an exemption described in paragraph (a) of this section; or disclosure is prohibited by law.”
- (b) 10 CFR Part 9.25(f), “Disclosure Review,” states “the head of the responsible office shall review agency records located in a search under 10 CFR 9.23(b) to determine whether the agency records are exempt from disclosure.” The head of the responsible office has the ability to authorize disclosure of records that are exempt from FOIA disclosure requirements, but only if disclosure of the records will not be contrary to the public interest and will not affect the rights of any person. An office director, regional administrator, or board, panel, or committee chairman may complete NRC Form 512, “Delegation of Discretionary Release Authority,” (available in the NRC Forms Library at <https://usnrc.sharepoint.com/teams/NRC-Forms-Library/SitePages/Home.aspx>) to delegate his or her discretionary release authority to a named designee or position.

### 3. Segregating Nonexempt and Exempt Portions of a Record

- (a) Agencies are required to provide FOIA requesters with any reasonably segregable nonexempt information contained in records responsive to a FOIA request.
- (b) NRC staff, when making disclosure recommendations/determinations, must reasonably segregate nonexempt information from exempt information. 10 CFR Part 9.19(b), "Segregation of exempt information and deletion of identifying details," states in responding to a request for information in which it has been determined to withhold exempt information, "the NRC shall segregate factual information from advice, opinions, and recommendations in predecisional records unless the information is inextricably intertwined, or is contained in drafts, legal work products, and records covered by the lawyer-client privilege, or is otherwise exempt from disclosure."

### 4. Retention of Records

- (a) Offices reporting to the Commission or to the Chairman, individual Commissioner offices, and the Office of the Inspector General (OIG) may, at their discretion, retain copies of records that they deny in whole or in part, rather than send the records to the FOIA office.
- (b) For the offices reporting to the Executive Director for Operations (EDO), the FOIA office will retain electronic copies of all agency records that are responsive to a FOIA request, unless the denying official for a record deems it necessary for the office to retain the record because of its sensitive nature.
- (c) As provided in NUREG-0910, "NRC Comprehensive Records Disposition Schedule," and in accordance with the applicable statute of limitations, the offices must retain any records withheld in whole or in part and not provided to the FOIA office for 6 years from the date of denial (initial determination, administrative appeal, or once judicial review has concluded).

### 5. Removal of Records Released Inadvertently in Response to a FOIA Request

In the event an office determines that information was inadvertently released in response to a FOIA request, the EDO, the Inspector General (IG), and the FOIA Officer must be advised promptly of the occurrence in writing. Refer to Management Directive (MD) 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals," and MD 3.4, "Release of Information to the Public," for additional guidance. The FOIA Officer may contact the recipient to seek the return of such information and will coordinate the removal of the inadvertently released information from public ADAMS.

### **C. Records Exempt from Disclosure**

#### **1. Exemptions**

Information may be withheld from public disclosure under the FOIA if it falls within one or more of the nine FOIA statutory exemptions (see “How to Respond to an Initial FOIA Request,” available at <https://drupal.nrc.gov/ocio/catalog/25157>).

#### **2. Foreseeable Harm Statements**

FOIA allows agencies to withhold information covered by its nine statutory exemptions only when either (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the exemptions or (2) disclosure is prohibited by law. Where the basis for withholding particular information is foreseeable harm rather than a legal prohibition against release, foreseeable harm statements are used within the agency to explain and document the foreseeable harm determination. Where a foreseeable harm determination is required, the FOIA coordinator must submit one with the response package. A single statement may cover multiple records or multiple portions of a record, provided that the harm foreseen, and the reasons why the harm is foreseen, are the same for each. While foreseeable harm statements do not need to be lengthy, they should be reasonably specific. A foreseeable harm statement is not required for records withheld under Exemptions 1, 3, 4, 5 (attorney work product, attorney-client privilege), 6, or 7(C), unless it is not clear on the face of the record why the exemption is being cited.

3. The deliberative process privilege (asserted under Exemption 5) shall not apply to records created 25 years or more before the date on which the records were requested.

### **D. Frequently Requested Records**

Agencies are required to make available for public inspection in an electronic format non-exempt records that have been requested 3 or more times.

## **II. PROCESSING AN INITIAL FREEDOM OF INFORMATION ACT (FOIA) REQUEST**

### **A. Receipt of a FOIA Request**

#### **1. In Writing**

- (a) A request for access to records under the FOIA must be in writing and clearly state that it is a FOIA request. A request may be submitted by e-mail, paper, fax, or through the Public Portal. Information on submitting a FOIA request can be found on the NRC FOIA Web page (<http://www.nrc.gov/reading-rm/foia/foia-privacy.html>). Records will be made available in any form or format requested (e.g., CD-ROM) if the NRC can readily reproduce the record in that form or format.

(b) As prescribed by Federal regulation (32 CFR 2001.33(f)), when a requester submits a request both under mandatory declassification review and the FOIA, the NRC shall require the requester to select one process or the other. If after consultation the requester fails to select one process, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory declassification review.

## 2. News Media Request

When the FOIA office receives a FOIA request from a requester that has been placed in the representative of the news media fee category, a copy of the request will be forwarded to the Office of Public Affairs (OPA) even if it is not the office to which the request will be assigned for action.

## 3. Allegation File Request

If the incoming FOIA request identifies an allegor, a cover sheet, "Warning— Sensitive Allegation Material," will be attached to the front of the FOIA request if it is being transmitted to the responsible FOIA coordinator in paper form, or "Sensitive Allegation/Investigation Material Attached" will be indicated in the subject line if it is being transmitted by e-mail. NOTE: This information must not be placed into ADAMS.

## 4. Office of Investigations (OI) Request

If the incoming FOIA request identifies an OI investigation, a cover sheet, "Warning—Sensitive Investigation Material," will be attached to the front of the FOIA request if it is being transmitted to the responsible FOIA coordinator in paper form, or "Sensitive Allegation/Investigation Material Attached" will be indicated in the subject line if it is being transmitted by e-mail. NOTE: This information must not be placed into ADAMS.

## 5. Receipt of Request by Offices Other than the OCIO FOIA Team

Any NRC employee who receives a written request for access to, or copies of, records under the FOIA must send it immediately to the FOIA Officer. Generally, a FOIA request is not deemed received by the NRC until it has been received by the FOIA Officer in accordance with the FOIA statute and NRC regulations.

## 6. Questions

A request citing the FOIA that only seeks answers to questions is outside the scope of the FOIA. When the FOIA office receives such a request, it will forward the request to the appropriate office for the office to address, as appropriate, through the agency's correspondence process.

## 7. Delinquent Payment Account

An account is delinquent if the NRC determines, on the basis of a review of FOIA billings provided by the Chief Financial Officer (CFO) or another Federal agency, that the requester has previously failed to pay a properly charged NRC fee within 30

calendar days of receipt of the bill or that the requester has not paid timely another Federal agency's billed fees. The NRC may require the FOIA requester whose account is delinquent to provide advance payment before release of records that have been processed.

8. FOIA Case Number

Upon receipt of a request for records, the FOIA Officer will assign a case tracking number for use as the reference in all matters pertaining to that request.

9. Categorization for Fee Purposes

The FOIA Officer will determine the requester's fee category (commercial-use, representative of the news media, educational institution, non-commercial scientific institution, or non-excepted (all other requests that do not fall into one of the previously mentioned fee categories)).

10. Request for a Fee Waiver

A FOIA requester may request a waiver of the fees associated with processing his or her request. The FOIA Officer must determine, under 10 CFR 9.41, "Requests for Waiver or Reduction of Fees," whether the request meets the requirements for a fee waiver. The FOIA Officer will notify the requester of the determination reached.

11. Request for Expedited Processing

A FOIA requester may request expedited processing of his or her request. The FOIA Officer must, within 10 calendar days, determine whether the request meets the requirements of 10 CFR 9.25(e) and notify the requester.

12. Multitrack Processing

- (a) Upon assignment of a request, a Government Information Specialist, in consultation with the FOIA Officer, will make an initial estimate of the time required to process the request on the basis of a description of the subject matter. The estimated processing time will depend on the following factors:
- (i) Whether the responsive records are expected to be easily found in a single indexed location or in varied locations that are not indexed, or whether the responsive records are filed among a large volume of other records that cannot be easily searched.
  - (ii) The anticipated volume of material that will be located, gathered, and reviewed, in response to the request.
  - (iii) The anticipated need for consultation among components of the NRC and other agencies and/or submitters.
  - (iv) The need for a declassification review of any classified records.

- (v) The need for a designation review of any Safeguards Information (SGI) records.
- (b) On the basis of the initial estimate of time needed to respond to the request, the request will be placed in either the simple or complex track:
  - (i) The simple track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.
  - (ii) The complex track is for requests involving "unusual circumstances" that are expected to take between 21 to 30 working days to complete (e.g., requests that may involve records from multiple offices and/or various types of files of moderate volume of which some are expected to be exempt).
  - (iii) The complex track is also designated for requests that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete. Examples of a complex request include—
    - Requests involving several program or regional offices,
    - Requests that require consultation with one or more Government agencies,
    - Requests for classified records requiring a declassification review,
    - Requests for SGI records requiring a designation review,
    - Requests for records from businesses that are required to be referred to the submitter for their proprietary review prior to disclosure, or
    - Requests for large volumes of records that require detailed review because of their sensitive nature.

### 13. Acknowledging Receipt of Requests

Within 2 working days of the receipt of a request, the requester will be sent an acknowledgement letter with the name and telephone number of the assigned Government Information Specialist who will be the NRC contact for any matters pertaining to the request. The NRC will notify the requester in the acknowledgment letter the estimated time in which the NRC anticipates providing the response to the request. If subsequent information substantially changes the estimated time needed to process the request, the NRC will notify the requester by telephone or in writing and inform the requester that he or she may modify the request to allow faster processing or to lower the fees assessed. If the NRC issues the agency's final response to a request in less than 10 working days, then an acknowledgement letter is not necessary.

#### 14. Perfected Request

A FOIA request must be perfected before processing begins. A request is perfected when the records sought are described in sufficient detail to allow staff who are familiar with the subject matter of the request to search for records with a reasonable amount of effort, identification verification has been provided, if required, and when all applicable fee issues have been resolved with the requester. If necessary, the Government Information Specialist will contact the requester to perfect a request (i.e., clarify or limit the subject or scope of the request, obtain identification verification or release authorization, obtain agreement on payment of applicable fees, or resolve any other matters that preclude processing the request).

#### 15. Due Date for Response

The FOIA requires that an agency respond to a request within 20 working days from the date of receipt of the request. A request is not considered received by the NRC for the purpose of complying with response times set forth in the FOIA until it has been perfected as defined above. In certain unusual circumstances as specified in the FOIA, this response time can be extended for an additional 10 working days. Therefore, each office receiving a FOIA action from the assigned Government Information Specialist will treat it as a priority item and produce responsive records within the 10 working-day time limit specified in these procedures.

### **B. Assigning a FOIA Request Action to an Office for Processing**

1. The Government Information Specialist assigned the request will review it to determine the subject matter of the information being requested and which NRC office(s) would reasonably be expected to have records responsive to the request. The Government Information Specialist will forward a copy of the request by e-mail to the FOIA resource box of each office that is expected to have responsive records. An office may request that a copy of the request be forwarded to the FOIA coordinator for the program office.
2. A Government Information Specialist will not assign a request to an office until the request has been perfected as defined above in Section II.A.13, "Perfected Request."

### **C. Office Processing**

A step-by-step guide for processing FOIA requests, "How to Respond to an Initial FOIA Request," can be found in the NRC service catalog (<https://drupal.nrc.gov/ocio/catalog/25157>).

#### 1. Scope of a FOIA Request

If an office that is assigned action on a request determines that the request needs clarification, or is unreasonably burdensome, the office FOIA coordinator will immediately contact the assigned Government Information Specialist. The Government Information Specialist and, if practicable, the office FOIA coordinator

and other knowledgeable staff will contact the requester to clarify or negotiate the scope of the request. The assigned Government Information Specialist must participate in any telephone calls with the requester.

## 2. FOIA Coverage

To ensure the NRC meets statutory time limits, all Government Information Specialist and office FOIA coordinators must have alternates or backups when away from the office for 3 or more consecutive working days.

## 3. Initial Estimates to Determine Fees for Processing a FOIA Request

To determine the fees that may be charged for processing a request, an office FOIA coordinator will provide to the assigned Government Information Specialist an estimate of the time that will be required to complete the search and review of the records responsive to the FOIA request, including the grade level of the individual conducting the search and review. If a contractor performs the search, the estimated number of contractor hours and the billable rate for the contractor are to be provided as a separate item. The office FOIA coordinator also will provide the anticipated volume of records (in number of pages or linear measure for larger volumes). These estimates must be provided by e-mail within 4 working days of the FOIA assignment.

## 4. Obtaining a Requester's Agreement to Pay Estimated Fees

Once estimates are received from all offices to which the request has been assigned for action, the Government Information Specialist will compute the total fee estimate. The Government Information Specialist will contact the requester to obtain an agreement in writing to pay estimated fees (NRC Form 509, "Statement of Estimated Fees for Freedom of Information Act (FOIA) Request," available in the [NRC Forms library](#)) or to submit an advance payment if the amount of the estimated fee exceeds \$250.

## 5. Suspension of Action

Processing of a FOIA request may be suspended, once, by the Government Information Specialist to allow him or her to seek clarification on the scope of the request or multiple times to wait for the requester to pay estimated fees. During this time, no action will be requested of a program or regional office.

## 6. Search

(a) When a FOIA request has been determined to be perfected, the Government Information Specialist will notify the appropriate office FOIA coordinator to begin the search for records. An office FOIA coordinator will follow his or her office's procedures to ensure that the staff assigned to search is knowledgeable of the subject of the FOIA request, reasonably expected to be in possession of relevant material, and familiar with the files and databases reasonably expected to contain responsive records. A FOIA request covers only agency records in existence on the date the FOIA Officer receives the request. A request that seeks

records not in existence or information that would require the creation of a record will not be processed under the FOIA. However, retrieving readily reproducible electronically stored information does not constitute creation of a record.

- (b) Each office that is assigned to search will conduct a thorough search for, and identify, all responsive records that it maintains. This should include electronic records and records of that office placed in ADAMS, SharePoint, or other shared sites, and records in other media, such as audiotapes, videotapes, or photographs. The program or regional office response should contain the search criteria, e.g., key words or terms used, and the date the searches were conducted by completing NRC Form 511A, so that this information can be included in the agency's official FOIA case file in the event there is a challenge to the adequacy of the agency's search for records. FOIA searches by Commissioner offices are done in accordance with the Internal Commission Procedures.
- (c) If an office identifies a record as being publicly available from ADAMS, the office FOIA coordinator must confirm the validity or accuracy of the ADAMS record, as well as the public availability of the record, and send the assigned Government Information Specialist the ADAMS accession number, Web address, or other location designator. The following fields in the ADAMS profile must be reviewed to ensure that the values appear as follows:
  - (i) Sensitivity – Non-Sensitive,
  - (ii) Availability – Publicly Available,
  - (iii) Official Record – Yes, or
  - (iv) Replicated – Yes.
- (d) Personal records are not considered agency records subject to a FOIA request. If an employee has responsive records that he or she believes may be personal records, these records must be reviewed by the employee using the personal record consideration checklist (NRC Form 510, "Personal Records Checklist," available in the [NRC Forms Library](#)) to determine if the records are personal or agency records. If the employee concludes that the records are personal, the checklist and number of personal pages should be provided to the FOIA team. The personal record must be maintained for the required retention period of 6 years by either the employee, the office FOIA coordinator, or the FOIA office.

#### 7. Duty to Advise If Other Offices or Employees May Have Responsive Records

If an employee in an office assigned to search for records is aware that employees or other program offices may have responsive records as a result of current or past involvement in the subject matter, that employee must inform the office FOIA coordinator or the assigned Government Information Specialist about the other sources of responsive records.

## 8. Review

Staff assigned by the searching office will review all records located in the office, or maintained by that office, and make an initial recommendation as to what information should be released, what information should be withheld, and whether information that is exempt may nevertheless be released in an exercise of discretion.

Discretionary releases must be authorized either by the office director, regional administrator, or by an official who has been delegated this authority. (See NRC Form 512.) Discretionary releases may be appropriate with respect to some exemptions, most commonly Exemptions 2, 5, 7(A), 7(D), and 7(E).

## 9. Identifying/Designating Exempt Information

(a) The FOIA and NRC regulations require that any reasonably segregable portion of a record must be provided to any person requesting the record after deletion of the exempt portion. In response to a FOIA request, the responding office can either provide records bracketed manually or electronically with applicable exemptions indicated or provide unredacted records with a written description of the specific information that the subject matter experts (SME) recommend should be redacted, including the basis for withholding the information.

(b) When responsive records have been identified and reviewed by staff of the program or regional offices, and recommendations have been proposed for release or withholding of information, the Senior Management FOIA Officials (SMFOs) (or their delegates) in the responsible offices will review the records and staff recommendations, and either approve or amend the recommendations before signing off on the records for submission by the office FOIA coordinator to the assigned Government Information Specialist.

## 10. Identifying/Designating Information as a Non-Responsive Record

(a) The nature of a FOIA “record” is defined by both the contents of a document and the subject of the request. A “record” can potentially constitute an entire document, a single page of a multipage document, or even an individual paragraph of a document that consists of discrete items or groupings of information on different topics. On the other hand, a sentence within a paragraph (or words within a sentence) will almost never constitute a distinct FOIA “record.”

(b) If a multi-subject document consists of both information pertaining to the subject of a request and unrelated information, the record could potentially be divisible into multiple distinct “records” for purposes of responding to a FOIA request. The record(s) containing information responsive to the subject of the FOIA request must be disclosed unless the information, in whole or in part, is subject to one or more FOIA exemptions. Any records that do not contain information that is responsive to the subject of the request would be “non-responsive records” that need not be provided to the requester.

- (c) If an entire document is identified as non-responsive to the FOIA request, the document need not be provided to the assigned Government Information Specialist.

#### 11. Non-Public Adams to Public ADAMS

- (a) If a record is in ADAMS, declared as an official agency record, as nonpublic and will be released in its entirety, publicly, in response to the FOIA request, the FOIA coordinator must send the assigned Government Information Specialist the ADAMS accession number. The Government Information Specialist will arrange for changing the appropriate field(s) to make the record publicly available.
- (b) If a record is in ADAMS, not declared as an official agency record, as nonpublic and will be released in its entirety, publicly, in response to the FOIA request, the FOIA coordinator must complete the ADAMS processing, and have the record declared as an official agency record and publicly available. In addition, the FOIA coordinator must send the assigned Government Information Specialist the ADAMS accession number.

#### 12. Proprietary Records

If responsive proprietary records must be reviewed by a licensee, or some other submitter, the program or regional office FOIA coordinator must provide the assigned Government Information Specialist the contact information for the submitter (name, mailing address, e-mail address, and/or telephone number) along with the records to be reviewed.

#### 13. Records for Internal Referral

- (a) If an office locates responsive records, or information in responsive records, obtained from, or that originated in, another NRC office, if the office conducting the search ("first office") wants to defer to the other office, then these records should be marked by the first office for referral to the other office before responding to the Government Information Specialist.
- (b) If an office locates responsive records, or information in responsive records obtained from, or that originated in, another NRC office, if the first office has equities in that information, the office, when responding to the Government Information Specialist, should include its disclosure recommendation along with the suggestion that the information be referred to the appropriate office.
- (c) If an office locates responsive records, or information in responsive records, relating to a program or project for which another NRC office is principally responsible, or with respect to which another NRC office is known to have an interest, the office conducting the search ("first office") must coordinate its recommended disclosure determination regarding these shared-equity records with the other NRC office before responding to the Government Information Specialist. Under certain circumstances and in complex cases, the Government

Information Specialist will refer the matter to other responsible or interested office(s).

- (d) If a request captures records of a task force, an office having responsive records must consult with the lead office's director or SMFO. The lead office for the project or task force will consult with any other affected office's SMFO.
- (e) If an office locates responsive records, or information in responsive records that was sent to or received from an NRC attorney or consists of legal advice or analysis, the office must identify this information and coordinate its recommended disclosure determination with OGC or the Regional Counsel (if possible, the specific attorney(s) or regional counsel involved in the matter).
- (f) Records created by and received from a Commissioner or his or her staff or communicated to a Commissioner or his or her staff, will be referred to the Office of the Secretary of the Commission (SECY) to coordinate the Commissioner's review of the records to obtain approval from the Commissioner before records are released. If they are to be withheld in their entirety or in part, the Executive Assistant to the Secretary of the Commission will be designated as the denying official. If a Commissioner is no longer with the agency, OGC will provide a recommendation to SECY whether to release the records, and if records are to be withheld, the Executive Assistant to the Secretary of the Commission will be designated as the denying official.

#### 14. Records Identified for External Consultation

- (a) If records located in NRC offices originated with another agency, and no NRC office has any interest in the records, the records should be processed consistent with any agreement between the NRC and the agency. If there is no agreement, the records originating from another agency will be referred to the originating agency. If records located in NRC offices contain information of interest to another agency, after consulting with the NRC office that "owns" the records, the Government Information Specialist assigned the request will consult with the agency that has an interest in the records.
- (b) Occasionally when processing a FOIA request, records originated by the Executive Office of the President (White House), or records containing information originating from the White House, may be located. These records may raise issues of executive privilege and, therefore, require special handling. Whenever White House records, or White House information contained in NRC records, are located in response to a FOIA request, it is especially important that the office FOIA coordinator highlight the nature of the records or information when responding to the Government Information Specialist. The Government Information Specialist will consult with the appropriate point-of-contact for the White House before making a final disclosure determination.

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15. Special Retention Options for SECY or Investigative Files

- (a) Offices reporting to the Commission and individual Commissioner offices may, at their discretion, retain copies of records that they deny in whole or in part, rather than send the records to the Government Information Specialist. The records must be placed in a sealed envelope, marked with the FOIA number and the name of the responsible Commission office, and sent to the Executive Assistant to the Secretary of the Commission. The Executive Assistant to the Secretary of the Commission will retain the sealed envelope in a specially designated, secure container for the period provided in [NUREG-0910, "General Records Schedule 14."](#) The records will be given to OGC for review if denial of the records is appealed or if a suit is filed in Federal court challenging their denial.
- (b) OIG may, at its discretion, retain copies of records withheld in whole or in part by the Assistant Inspector General for Investigations. The OIG will retain the records for the period provided in NUREG-0910, "General Records Schedule 14."
- (c) If requested records relate to an allegation, investigation, enforcement action, or disciplinary or adverse actions and it is determined that disclosure of any of the records in the file could reasonably be expected to interfere with open investigations or pending enforcement proceedings, the office may choose to retain the records, mark in the file the records captured by the request, and provide the assigned Government Information Specialist an NRC Form 656, "Exemption 7(A) Certification" (available in the [NRC Forms Library](#)), signed by two individuals stating that disclosure of any of the records in the file could reasonably be expected to interfere with open investigations or pending enforcement proceedings. An estimate of the number of records withheld must be indicated.

16. Cover Sheets

As stated in MD. 8.8, "Management of Allegations," cover sheets must be attached to allegation records provided in response to a FOIA request. These cover sheets must remain with the records throughout the FOIA process.

17. Marking an E-mail

When an office assigned to search for records submits a responsive e-mail to the assigned Government Information Specialist, the program or regional office must identify the office affiliation of the e-mail's sender (if not indicated on the e-mail itself) at the time the e-mail was sent.

18. Submission of Records by FOIA Coordinators to the Government Information Specialist

- (a) Within 10 working days of the Government Information Specialist informing the office FOIA coordinator that a request has been perfected and a search should be conducted, each program or regional office FOIA coordinator must provide the assigned Government Information Specialist copies of any records maintained in

that office that are responsive to the request along with the program or regional office's disclosure recommendations by the indicated due date. Records sent to the Government Information Specialist should be identified clearly as—

- (i) Already publicly available;
  - (ii) Records to be moved from non-public ADAMS to public ADAMS;
  - (iii) Records to be released in full, in part, or denied in full;
  - (iv) Records to be referred to another office or agency;
  - (v) Proprietary records; and
  - (vi) Records recommended for discretionary release.
- (b) If a program office chooses to retain copies of records responsive to a request, due to their sensitivity, then they shall provide the Government Information Specialist with an appendix of the documents withheld. The appendix must include the date of the record, a description, and the page count for each record. The appendices will be sent with the response to the requester and, if appropriate, placed in ADAMS.

#### **D. Responding to the Requester**

##### **1. Preparing a FOIA Response**

The assigned Government Information Specialist will—

- (a) Conduct a detailed review of all records provided by the program or regional office in response to a FOIA request.
- (b) Identify issues regarding the appropriateness of the exemptions cited as the basis for withholding of the information and any inconsistencies between offices.
- (c) Conduct a review of foreseeable harm statements to determine their sufficiency in consultation with OGC. Where the justifications are inadequate, obtain additional justifications or work with the office to release the information.
- (d) Consult with other agencies, as necessary, and submitters on the release of their information, or transfer requests to the originating agencies for their direct response to the requester.
- (e) Make referrals between NRC offices, as needed, under certain circumstances and in complex cases.
- (f) Finalize electronic redactions with the applicable exemptions after resolving proposed release determinations.

- (g) Prepare a response to the requester using NRC Form 464 or other type of response, such as an e-mail or letter, as appropriate. If the request involves a significant number of records, or the responses from some offices are delayed, the Government Information Specialist may prepare a series of interim responses to the requester. If records are withheld, the applicable FOIA exemption(s) and reason(s) for the denial must be specified in the response. The final response also names the denying official(s) and informs the requester of the right to appeal within 90 days, the right to seek assistance or dispute resolution services from the FOIA Public Liaison, and of dispute resolution services from the Office of Government Information Services (OGIS).
  - (h) Obtain all necessary concurrences on the response(s). Once all concurrences have been obtained, the FOIA Officer will sign and a Government Information Specialist will dispatch the response and make the released records publicly available through the public portal and in ADAMS, consistent with NRC regulations.
2. Denying Official
- (a) For records that originate with a Commissioner's office and/or SECY, the Executive Assistant to SECY will be designated as the denying official.
  - (b) For records that originate with OGC, the General Counsel will be designated as the denying official.
  - (c) For records that originate with OIG, the Assistant Inspector General for Investigations will be designated as the denying official.
  - (d) For all other records, the FOIA Officer makes an independent determination on whether agency records are exempt from disclosure and should be withheld, in whole or in part. The FOIA Officer will be the denying official for these records and will consult with OGC regarding the use of FOIA exemptions.
3. FOIA Requests and Records Made Publicly Available
- (a) Incoming FOIA requests are not made publicly available upon receipt. Except as described in Section II.D.4, below, the requests, or redacted versions, will be made public no later than the date of the first interim response or, if no interim responses are provided, the date of the final response to the requester, and promptly released publicly through the public portal and entered into ADAMS for posting.
  - (b) Records requested 3 or more times are required to be made available for public inspection in an electronic format.
  - (c) Only the OCIO FOIA team may make FOIA requests and responses publicly available through the public portal and ADAMS.

#### 4. FOIA Requests and Responses Not Made Publicly Available

- (a) FOIA requests for OI, OE, and OIG records must not be placed in ADAMS, unless specifically authorized by the respective offices.
- (b) FOIA responsive records that contain personal privacy information, the disclosure of which would clearly cause an unwarranted invasion of personal privacy, will not be made publicly available except with the consent of the responsible offices.

### **E. Special Procedures for Processing Records Containing Classified Information**

At all times during the FOIA process, classified information must be marked, processed, reproduced, stored, transmitted, and destroyed in accordance with MD 12.2, "NRC Classified Information Security Program" and MD 12.1, "NRC Facility Security Program."

#### 1. Records Classified in Accordance with an Executive Order

- (a) When, in response to a FOIA request, a program office or regional office locates a classified record, the program office or regional office will conduct an initial declassification review in accordance with MD 12.2 to segregate exempt classified information from information that may be declassified or is unclassified. The classified portions of the record will be clearly bracketed. The unclassified portions of the record will be bracketed, as required, for withholding or disclosure under the FOIA.
- (b) The program or regional office will provide the classified record and the preliminary results of the classification review in its entirety to the Government Information Specialist, who, in turn, will route the record to the Office of Nuclear Security and Incident Response, Division of Security Operations, Information Security Branch (NSIR/DSO/ISB) for review and concurrence before making the deletions or redactions proposed by the program office or regional office. The program office or regional office will ensure the security clearance level of the Government Information Specialist is equal to or greater than the classification of the information that is contained within the classified record before it is transferred to the FOIA Office. If the sensitivity of the information exceeds the clearance level of the Government Information Specialist, the program office or regional office can route the record directly to NSIR/DSO/ISB and inform the Government Information Specialist accordingly.
- (c) NSIR/DSO/ISB will conduct a supplemental declassification review of the classified record in accordance with MD 12.2 to verify that the exempt classified information is segregated from unclassified information.
  - (i) If NSIR/DSO/ISB's review determines that the classified record contains or potentially contains Restricted Data (RD), Formerly Restricted Data (FRD), and/or Transclassified Foreign Nuclear Information (TFNI), then

NSIR/DSO/ISB will route the FOIA request, to include the incoming transmittal from the requester, to the U.S. Department of Energy (DOE) for a classification review, with a copy of the DOE transmittal to the Government Information Specialist handling the FOIA. DOE is the appropriate authority to deny information in a record that contains RD, FRD, and/or TFNI. If DOE determines that the classified record contains RD, FRD, and/or TFNI, then DOE will clearly bracket the RD, FRD, and/or TFNI portions of the record and return the record to the NRC through NSIR/DSO/ISB. The classified RD, FRD, and TFNI will be withheld under Exemption 1, Exemption 3, or any other applicable exemption of the FOIA.

- (ii) If NSIR/DSO/ISB's review determines that the classified record contains or potentially contains another agency's classified equities, then NSIR/DSO/ISB will route the FOIA request, to include the incoming transmittal from the requester, to the appropriate agency for a classification review, with a copy of the DOE transmittal to the Government Information Specialist handling the FOIA. The information in the record determined to be classified National Security Information (NSI) under another agency's purview will be clearly bracketed by the other agency and returned to the NRC through NSIR/DSO/ISB. The classified NSI portions will be withheld under Exemption 1 of the FOIA. This process will be repeated for all agencies with equities in the record.
  - (iii) If NSIR/DSO/ISB's review determines that the classified record contains NSI under the NRC's purview that meets the standards for classification under E.O. 13526 or successor Orders, then the information in the record determined to be NSI will be clearly bracketed by NSIR/DSO/ISB. The classified NSI portions will be withheld under Exemption 1 of the FOIA.
  - (iv) If NSIR/DSO/ISB's review determines that the classified record contains NSI under the NRC's purview that no longer meets the standards for classification under E.O. 13526 or successor Orders, then NSIR/DSO/ISB will declassify the applicable portions in accordance with MD 12.2.
  - (v) The unclassified portions of the record will be bracketed, as appropriate, for withholding or disclosure under the FOIA.
- (d) NSIR/DSO/ISB will provide the Government Information Specialist and the program office or regional office with a copy of the classified record with the exempt portions clearly bracketed. The Government Information Specialist requires a copy of the classified record in the event the denial of the record is appealed. If the sensitivity of the information exceeds the clearance level of the Government Information Specialist, NSIR personnel will retain a copy of the record.

- (e) The Government Information Specialist will delete or redact the classified portions of the record in accordance with MD 12.2. If the sensitivity of the information exceeds the clearance level of the Government Information Specialist, NSIR personnel with the appropriate clearance will perform the deletion/redaction and submit the unclassified record to the Government Information Specialist for further processing.
  - (f) The Government Information Specialist will disclose to the requester the unclassified portions of the record except to the extent those portions still warrant withholding under a FOIA exemption (e.g., if there are unclassified portions containing proprietary information protected by Exemption 4, or personal privacy information protected by Exemption 6, etc.).
2. Records Containing Classified Information That Are Not Properly Classified in Accordance with an Executive Order
- (a) When, in response to a FOIA request, the program office or regional office locates a record that it believes may contain classified material that has either been improperly declassified or is not properly marked as containing classified information (e.g., the record is not stamped "Confidential," "Secret," or "Top Secret"), the program office or regional office will conduct an initial classification review in accordance with MD 12.2 to segregate exempt classified information from unclassified information. The classified portions of the record will be clearly bracketed. The unclassified portions of the record will be bracketed, as required, for withholding or disclosure under the FOIA.
  - (b) The program office or regional office will provide the classified record and the preliminary results of the classification review in its entirety to the Government Information Specialist, who, in turn, will route the record to NSIR/DSO/ISB for review and concurrence before making the deletions or redactions proposed by the program office or regional office. If the sensitivity of the information exceeds the clearance level of the Government Information Specialist, the program office or regional office can route the record directly to NSIR/DSO/ISB and inform the Government Information Specialist accordingly.
  - (c) The program office or regional office discovering or suspecting that a record or records exists that have not been properly marked and/or stored must report the security incident to the Office of Administration (ADM) immediately. The report can be made through the use of the link on the [NRC Web page](#) (top of the menu bar "Report a Safety/Security Incident), or by telephone call to (301) 415-2000 or (301) 415-6666.
  - (d) NSIR/DSO/ISB will conduct a supplemental classification review of the classified record in accordance with MD 12.2 to verify that the exempt classified information is segregated from unclassified information.

- (i) If the NSIR/DSO/ISB review determines that the classified record contains or potentially contains Restricted Data (RD), Formerly Restricted Data (FRD), and/or Transclassified Foreign Nuclear Information (TFNI), then NSIR/DSO/ISB will route the FOIA request, to include the incoming transmittal from the requester, to the U.S. Department of Energy (DOE) for a classification review. DOE is the appropriate authority to deny information in a record that contains RD, FRD, and/or TFNI. If DOE determines that the classified record contains RD, FRD, and/or TFNI, then DOE will clearly bracket the RD, FRD, and/or TFNI portions of the record and return the record to the NRC through NSIR/DSO/ISB. The classified RD, FRD, and TFNI will be withheld under Exemption 3 of the FOIA.
- (ii) If the NSIR/DSO/ISB review determines that the classified record contains or potentially contains another agency's classified equities, then NSIR/DSO/ISB will route the FOIA request, to include the incoming transmittal from the requester, to the appropriate agency for a classification review. The information in the record determined to be classified National Security Information (NSI) under another agency's purview will be clearly bracketed by the other agency and returned to the NRC through NSIR/DSO/ISB. The classified NSI portions will be withheld under Exemption 1 of the FOIA. This process will be repeated for all agencies with equities in the record.
- (iii) If the NSIR/DSO/ISB review determines that the classified record contains NSI under the NRC's purview that meets the standards for classification under E.O. 13526 or successor orders, then the information in the record determined to be NSI will be clearly bracketed by NSIR/DSO/ISB. The classified NSI portions will be withheld under Exemption 1 of the FOIA.
- (iv) If the NSIR/DSO/ISB review determines that the classified record contains NSI under the NRC's purview that no longer meets the standards for classification under E.O. 13526 or successor orders, then NSIR/DSO/ISB will declassify the applicable portions in accordance with MD 12.2.
- (v) The unclassified portions of the record will be bracketed, as appropriate, for withholding or disclosure under the FOIA.
- (e) If it is determined that any portion of the record has been improperly declassified or that a portion has not been properly marked as containing classified information, then NSIR/DSO/ISB shall immediately report the security incident or infraction to the ADM in accordance with MD 12.1.

- (f) NSIR/DSO/ISB will provide the Government Information Specialist and the program or regional office with a copy of the classified record with the exempt portions clearly bracketed. The Government Information Specialist requires a copy of the classified record in the event the denial of the record is appealed. If the sensitivity of the information exceeds the clearance level of the Government Information Specialist, NSIR personnel can retain a copy of the record.
- (g) The Government Information Specialist will delete or redact the classified portions of the record in accordance with MD 12.2. If the sensitivity of the information exceeds the clearance level of the Government Information Specialist, NSIR personnel with the appropriate clearance will perform the deletion/redaction and submit the unclassified record to the Government Information Specialist for further processing.
- (h) The Government Information Specialist will disclose to the requester the unclassified portions of the record except to the extent those portions still warrant withholding under a FOIA exemption (e.g., if there are unclassified portions containing proprietary information protected by Exemption 4, or personal privacy information protected by Exemption 6).

#### **F. Special Procedures for Processing Records Containing Safeguards Information**

At all times during the FOIA process, Safeguards Information (SGI) must be marked, transmitted, stored, processed, reproduced, and destroyed in accordance with MD 12.7, "NRC Safeguards Information Security Program," and MD 12.1 "NRC Facility Security Program."

##### **1. Records Designated as SGI in Accordance with a Statute**

- (a) When, in response to a FOIA request, the program office or regional office locates an SGI record the program office or regional office will conduct an initial designation review in accordance with MD 12.7 to segregate exempt SGI from non-SGI or information that is marked as SGI, but believed to no longer meet the designation requirements for SGI as specified in 10 CFR 73.22, 10 CFR 73.23, or MD 12.7. The SGI portions of the record will be clearly bracketed. The program office or regional office will also review the remaining portions of the record that is believed to warrant the removal of the SGI designation for disclosure under the FOIA.
- (b) The program office or regional office will provide the SGI record and results of the designation review in its entirety to the FOIA team, who, in turn, will route the record to the NSIR/DSO/ISB for review and concurrence before making deletions, re-designation, or redactions proposed by the program office or regional office.

- (c) NSIR/DSO/ISB will conduct a supplemental designation review of the SGI record in accordance with MD 12.7 to verify that the exempt SGI is segregated from the non-SGI information. The SGI portions will be withheld under Exemption 3 of the FOIA.
  - (d) NSIR/DSO/ISB will provide the Government Information Specialist and the program office or regional office with a copy of the SGI record with the exempt portions clearly bracketed. The Government Information Specialist requires a copy of the SGI record in the event the denial, or portions, of the record are appealed.
  - (e) The Government Information Specialist will delete or redact the SGI portions of the record in accordance with MD 12.7.
  - (f) The Government Information Specialist will disclose to the requester the non-SGI portions of the record except to the extent those portions still warrant withholding under a FOIA exemption (e.g., if there are non-SGI portions containing proprietary information protected by Exemption 4 or personal privacy information protected by Exemption 6).
2. Records Containing Safeguards Information That Are Not Properly Controlled in Accordance with a Statute
- (a) When in response to a FOIA request the program office or regional office locates a record that it believes may contain SGI material that has been improperly decontrolled or that is not properly marked as containing SGI (e.g., the record is not stamped "Safeguards Information"), the program office or regional office must mark the document to identify the proposed SGI content. The proposed SGI portions of the record will be clearly bracketed. The program office or regional office will also review the remaining non-SGI portions of the record for disclosure under the FOIA.
  - (b) Once the document has been edited to reflect the proposed correct designation, the program office or regional office must provide the record in its entirety to the Government Information Specialist, who, in turn, will route the record to the NSIR/DSO/ISB for review and concurrence before making deletions or redactions proposed by the program office or regional office.
  - (c) NSIR/DSO/ISB will conduct a supplemental designation review of the SGI record in accordance with MD 12.7 to verify that the exempt SGI is segregated from non-SGI information. The SGI portions will be withheld under Exemption 3 of the FOIA.
  - (d) The program office or regional office discovering or suspecting that a record or records exists that have not been properly marked and/or stored must report the security incident to ADM immediately. The report can be made through the use of the link on the [NRC Web page](#) (top of the menu bar "Report a Safety/Security Incident") or by telephone call to (301) 415-2000 or (301) 415-6666.

- (e) NSIR/DSO/ISB will provide the FOIA team and the program office or regional office with a copy of the SGI record with the exempt portions clearly bracketed. The Government Information Specialist requires a copy of the SGI record in the event the denial, or portions, of the record is appealed.
- (f) The FOIA team will delete or redact the SGI portions of the record in accordance with MD 12.7.
- (g) The Government Information Specialist will disclose to the requester the non-SGI portions of the record except to the extent those portions still warrant withholding under a FOIA exemption (e.g., if there are non-SGI portions containing proprietary information protected by Exemption 4, or personal privacy information protected by Exemption 6).

### **G. Special Procedures for Processing Records Containing Proprietary Information**

#### **1. Submission of Records Identified as Proprietary**

Records responsive to a FOIA request that have previously been identified as containing trade secrets or privileged or confidential commercial or financial information will be sent to the Government Information Specialist along with a copy of the affidavit required under 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding," if applicable; the NRC staff's decision on the submitter's request that the information be deemed proprietary; and the contact information for the submitter or other entity identified as having a proprietary interest in the records. The Government Information Specialist will process information that has previously been identified as containing trade secrets or privileged or confidential commercial or financial information as provided in 10 CFR 9.28, "Predisclosure Notification Procedures for Information Containing Trade Secrets or Confidential Commercial or Financial Information."

#### **2. Records Not Previously Identified as Proprietary but Believed to Contain Proprietary Information**

- (a) When a program office or regional office determines that a record submitted by (or otherwise obtained from) a person may contain trade secrets or confidential commercial or financial information, but has not been previously marked or designated as proprietary, the office FOIA coordinator will send the record to the assigned Government Information Specialist, along with the NRC staff's initial determination on whether the potentially proprietary information may be released, and the contact information for the submitter of the records or other entity identified as potentially having a proprietary interest in the records.
- (b) The procedures specified in 10 CFR 9.28 will be followed.

### 3. Contractor Proposals

The disclosure of a contractor proposal in the possession and control of a Federal agency in response to a FOIA request is prohibited under FOIA Exemption 3 and 41 U.S.C. 4702, "Prohibition on release of contractor proposals," except where the proposal has been incorporated directly or by reference into a contract between the agency and the contractor.

## **H. Special Procedures for Processing a Record Containing Agency Action Review Meeting (AARM) Information**

1. If a program office or regional office locates a responsive record pertaining to an Agency Action Review Meeting (AARM), the record is to be identified as an AARM record and sent to the Government Information Specialist. The originating office will provide a disclosure recommendation. The Government Information Specialist will send the record to OEDO for final approval for release. If the response withholds information, the EDO will be the denying official.
2. The EDO approves the release of records pertaining to the AARM process, which is described in MD 8.14, "Agency Action Review Meeting." These records include AARM-related plant performance information, the applicable sections of the AARM executive summary, and the minutes of the AARM.

## **I. Special Procedures for Processing an Allegation Record**

1. An allegation record transmitted in paper must be transmitted with a cover sheet, in accordance with MD 8.8, "Management of Allegations." An allegation record transmitted electronically must be transmitted with "Sensitive Allegation/Investigation Material Attached."
2. Allegation information should not be released to the public and will not be made publicly available without consulting with the Agency Allegation Advisor (AAA) or designee.
3. The AAA or designee will notify the Government Information Specialist that the information disclosed from the record would not cause harm to an open allegation or disclose the identity of an allegor.
4. If the incoming FOIA request requests allegation records by the name of a purported allegor or witness, without identity verification or release authorization (whether such records actually exist at the NRC or not), the NRC will provide a Glomar response "neither confirm nor deny." If a Glomar response is deemed appropriate, the response would constitute a denial under FOIA exemption (b)(7)(C): disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

## **J. Special Procedures Regarding Treatment of Critical Energy/Electric Infrastructure Information (CEII)**

Critical Energy/Electric Infrastructure Information (CEII) is defined in the Federal Energy Regulation Commission's (FERC) regulations at 18 C.F.R. § 388.113(c)(1) and (2). FERC is statutorily authorized to designate information as being CEII, including information of agencies other than FERC. The NRC and FERC have entered into a Memorandum of Understanding (ML18164A182), which sets forth the basic parameters under which NRC and FERC will cooperate under 18 C.F.R. § 388.113(a) to protect CEII in the NRC's possession that is responsive to a FOIA request.

### **1. Program Office Action**

If, in response to a FOIA request, NRC staff identifies material that it believes is CEII, NRC FOIA team will consult with the FERC CEII Coordinator to receive a supporting determination for the designation of the material as CEII pursuant to Section 215A of Part II of the Federal Power Act, 16 U.S.C. 824o-1. NRC staff should mark on the material itself, either through pencil bracketing if the record is in paper format, or through Adobe's redaction tool (remembering only to "mark," not "apply," the redaction), for the material believed to be CEII. To assist in the CEII consultation with FERC, NRC staff must provide the following input in writing to the office's FOIA coordinator, who will then submit the input to the assigned FOIA team:

- (a) A concise summary indicating why the office believes the material meets the definition of CEII,
- (b) An explanation of how long the material should be designated as CEII (up to five years) and whether renewal of CEII treatment will likely be needed, and
- (c) Any views about public disclosure of the material received by the staff before submission of the FOIA request, such as under 10 CFR 2.390.

### **2. OCIO Government Information Specialist Action**

- (a) Identify the records that will need consultation with FERC for FERC designation.
- (b) Prepare cover letter to transmit records.
- (c) Obtain OGC concurrence on the proposed consultation package.
- (d) Transmit to FERC CEII Coordinator.
- (e) Once FERC responds, notify the program office FOIA coordinator.
- (f) Appropriately redact and apply FOIA exemptions.
- (g) Obtain OGC concurrence on the proposed FOIA response.
- (h) Obtain FOIA Officer signature on the FOIA response.
- (i) Send FOIA response to requester.

### **III. PROCESSING A FREEDOM OF INFORMATION ACT (FOIA) APPEAL**

#### **A. Receipt of a FOIA Appeal**

Any NRC employee who receives a FOIA appeal will immediately send it to the FOIA Officer. The FOIA requires that an agency respond to an appeal within 20 working days of the receipt date. A requester may appeal a denial of records, in whole or in part; the adequacy of search; a no record response; or the lack of response to a FOIA request. A requester may also appeal the denial of a request for a waiver or reduction of fees or denial of a request for expedited processing. Upon receipt, the FOIA office will date stamp the appeal letter and assign it a tracking case number. The requester will be sent a written acknowledgement within 2 working days of the appeal.

#### **B. Assigning a FOIA Appeal Action to an Office**

The Government Information Specialist will provide to SECY, if the office reports to the Commission, or to the OIG, if the appeal is to the IG, a copy of the appeal letter, a copy of the initial request letter, a copy of the NRC Form 464, "Response to Freedom of Information Act Request," or other response (if applicable), and a copy of the records provided to the requester. For offices that report to the EDO, the Government Information Specialist, as appropriate, will provide to the office that provided disclosure recommendations a copy of the appeal letter, a copy of the initial request letter, a copy of the Form 464 or other response (if applicable), and a copy of the records provided to the requester.

#### **C. Processing a FOIA Appeal to the Executive Director for Operations**

The original staff offices that recommended the withholding of information in full or in part will, as appropriate, review the records, consider new information presented in the appeal letter, and recommend to the Government Information Specialist whether the records denied in full or in part should continue to be withheld. The office response must reflect the office director's or designee's signature. OGC will review proposed decisions resolving administrative appeals to the EDO. The Chief FOIA Officer will be the signing authority on the appeals. If the appeal is denied, whether in full or in part, the response will specify the basis for the denial and will advise the requester of his or her right to seek judicial review under 5 U.S.C. 552(a)(4)(B), as well as his or her opportunity to use the mediation services offered by the Office of Government Information Services (OGIS).

#### **D. Processing a FOIA Appeal to the Secretary of the Commission**

SECY will coordinate a review of the denied records and any new information presented in the appeal letter with OGC and the appropriate office for which the initial denial was made. After resolving all identified problems, the Assistant General Counsel for Legal Counsel, Legislation, and Special Projects will prepare a response for the approval and signature of the Secretary of the Commission, who will make the final agency decision on the appeal. If the appeal is denied, whether in full or in part, the response will specify the basis for the denial and will advise the requester of his or her right to seek judicial

review under 5 U.S.C. 552(a)(4)(B), as well as his or her opportunity to use the mediation services offered by OGIS.

**E. Processing a FOIA Appeal to the Secretary of the Commission and the Executive Director for Operations**

For FOIA appeals that involve both records originated by offices that report to the Commission and records originated by offices that report to the EDO, the process described in section C above should be followed for the former set of records and the process described in section D above should be followed for the latter set of records. The Government Information Specialist will forward the resulting recommendations to the Assistant General Counsel for Legal Counsel, Legislation, and Special Projects, who will prepare a joint response for the approval and signature of the Secretary of the Commission and the Chief FOIA Officer. If the appeal is denied, whether in full or in part, the response will specify the basis for the denial and will advise the requester of his or her right to seek judicial review under 5 U.S.C. 552(a)(4)(B), and of his or her opportunity to use the mediation services offered by OGIS.

**F. Processing a FOIA Appeal to the Inspector General (IG)**

A response will be prepared by the General Counsel to the Inspector General for the approval and signature of the IG, the final appellate authority. If the appeal is denied, whether in full or in part, the response will specify the basis for the denial and will advise the requester of his or her right to seek judicial review under 5 U.S.C. 552(a)(4)(B), as well as his or her opportunity to use the mediation services offered by OGIS.

**G. Dispatch**

The FOIA office will dispatch all appeal responses to the requester.

**IV. FEES FOR SEARCH, REVIEW, AND DUPLICATION OF RECORDS CAPTURED BY AN INITIAL FOIA REQUEST**

**A. General**

The FOIA Officer determines the appropriate fee category for each FOIA request based on the information contained in the request letter. In addition, the FOIA Officer may look to how a requester was categorized in prior requests, contact the requester for additional information, or perform web-based searching if there is uncertainty regarding a requester's fee category. Each NRC staff member who is assigned responsibility to search for or review FOIA records will report the time he or she spent on these tasks, along with his or her grade level (clerical 1-10, professional/managerial 11-15, SES/Commission), on NRC Form 496 at the request of the office's FOIA coordinator. This information is used to bill certain requesters.

**B. Charging Fees Under the FOIA**

1. Fees may be charged in accordance with 10 CFR Part 9, Subpart A.
2. The NRC may aggregate FOIA requests for fee purposes if it finds that a requester, or a group of requesters acting in concert, has divided what could have been a single request into multiple requests for the purpose of avoiding fees. When determining whether to aggregate requests, the NRC will consider whether the requests involve related subjects and the time period in which the requests were filed.
3. The NRC will assess interest, penalties, and administrative costs on delinquent invoices. As indicated in 10 CFR 9.34, "Assessment of Interest and Debt Collection," interest will be charged at the rate prescribed in 31 U.S.C. 3717, "Interest and penalty on claims."

**C. Requests for which Fees Are Not Charged**

1. Except as provided above, the NRC will not charge for a search if the requester is a representative of—
  - (a) The news media,
  - (b) An educational institution, or
  - (c) A non-commercial scientific institution.
2. The NRC will not charge for the first 2 hours of a search unless the requester is a commercial use requester.
3. The NRC will not charge a requester for review unless the requester is a commercial use requester.
4. Duplication is provided without charge for the first 100 pages of standard paper copies or equivalent pages on microfiche for all FOIA requesters, except commercial use requesters. No duplication fees are assessed where the records are provided to requesters electronically. Unless requesters specify they want released records in paper format, the FOIA office will provide the released records electronically.
5. Fees assessed will not be billed to a requester if the cost of collecting the fee would be equal to or greater than the fee itself.
6. If a fee estimate exceeds \$250, the NRC will require the requester to remit an advance payment before it will consider the request "perfected" and proceed to process the request.
7. If the NRC determines that it is not able to respond to a FOIA request timely, it may not charge search and duplication fees (or for requesters with preferred fee status, may not charge duplication fees).

8. Per Department of Justice Office of Information Policy, when agencies determine “that an “unusual” circumstance applies to the processing of a request and has provided “timely written notice to the requester,” the delay is “excused for an additional 10 days.” “If the agency fails to comply with the extended time limit,” it may not charge search fees (or for requesters with preferred fee status, may not charge duplication fees). Exception: If unusual circumstances apply, and more than 5,000 pages are necessary to respond to the request, agencies charge search fees (or, for requesters referred to in C.1(a), (b), or (c) above), may charge duplication fees) if timely written notice has been made to the requester and the agency has discussed with the requester by written mail, e-mail, or telephone (or made not less than 3 good faith attempts to do so) how the requester could limit the scope of the request.”

#### **D. Waiving or Reducing Fees**

Fees may be waived only upon written request. A person requesting the NRC to waive or reduce fees must provide the information requested under 10 CFR 9.41(b). This information will permit the FOIA Officer to determine whether waiving or reducing the fees is in the public interest because disclosure of the information would likely contribute significantly to public understanding of the operations or activities of the Government and not primarily to the commercial interest of the requester.

### **V. GLOSSARY**

#### **Agency record**

A record in the possession and control of the NRC that is associated with the NRC’s official Government business. An agency record does not include—

1. Publicly available books, periodicals, or other publications that are owned or copyrighted by non-Federal sources.
2. Records solely in the possession and control of NRC contractors, unless they are maintaining them for archival/storage purposes for the agency.
3. Records of a personal nature not associated with any Government actions, business, or decisions.
4. Records in the possession of NRC personnel that have not been circulated or shared with any NRC staff members, were not required to be created or retained by the NRC, were not commingled with agency records and can be retained or discarded at the author’s sole discretion.
5. Records of the Chairman or Commissioners that have not been circulated or shared with any NRC staff member, except for typing or recording purposes, were not required to be created or retained by the NRC, were not commingled with agency records, and could be retained or discarded at the author’s sole discretion.

**Alternate office FOIA coordinator**

Person designated to perform the functions of the office FOIA coordinator whenever the primary coordinator will be away from the office for 3 or more days.

**Commercial use request**

A request made under 10 CFR 9.23(b), "Requests for Records," for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

**Commission-level office records**

All records originated by a board, a panel, an advisory committee, or an office reporting directly to the Commission, that are not sent to the Commission or to an individual Commissioner's office but are retained by the originating organization.

**Commission records**

All records originated by the Commission or records transmitted to the Commission from any NRC board, panel, office, or advisory committee, or from outside the NRC. The term "Commission" refers to the collegial body and not to individual Commissioners.

**Direct costs**

Expenditures that an agency incurs searching for and duplicating agency records. For a commercial use request, direct costs include the expenditures involved in the initial review of records by the responsible office in responding to the request. Direct costs include the salary of the employee performing the work based on the basic rate of pay for that category, plus 16 percent of that rate to cover fringe benefits and the cost of operating duplicating machinery.

**Duplication**

The process of making a copy of a record necessary to respond to a request made in accordance with 10 CFR 9.23. Copies may take the form of paper copy, microfiche, audiovisual materials, disk, magnetic tape, or machine-readable documentation, among others.

**EDO-level office records**

All records originated by an office reporting to the Executive Director for Operations (EDO) that are not submitted to the Commission or to an individual Commissioner's office but are retained by the originating organization or records received from outside the NRC for which that office has primary responsibility.

**EDO records**

All records originated by the EDO or his or her personal staff, or records received from outside the NRC for which the EDO's office has primary responsibility.

**Educational institution**

An institution that operates a program or programs of scholarly research. Refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of professional education, an institution of vocational education, or an institution of graduate higher education.

**Employees**

Employees, consultants, and members of advisory boards, committees, and panels of the NRC; members of boards designated by the Commission to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

**Exempt Information**

Not all records are required to be released under the FOIA. Congress established nine exemptions from disclosure for certain categories of information to protect against certain harms. The FOIA authorizes agencies to withhold information covered by an exemption when they reasonably foresee that disclosure would harm an interest protected by the exemption, or when disclosure is prohibited by law.

**Expedited processing**

The placement of a FOIA request at the front of the queue for the particular processing track where the requester clearly demonstrates a compelling need because (1) the failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or (2) with respect to a person primarily engaged in disseminating information, an urgency to inform the public concerning actual or alleged Federal Government activity.

**Federal agency**

Any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

**FOIA Coordinator**

Serves as the office/regional FOIA point-of-contact and liaison between the office/region and the Government Information Specialist.

**FOIA Officer**

Administers the FOIA program for the NRC and exercises various FOIA-related functions, as described in Section III.M of the directive portion of this management directive.

**FOIA Public Liaison**

Reports to the Chief FOIA Officer. Serves as a supervisory official to whom a requester can raise concerns about the processing of their requests.

**FOIA Requester**

The person who submits a request for agency records subject to the FOIA.

**Government Information Specialist**

Title for the Office of the Chief Information Officer (OCIO) FOIA personnel responsible for coordination of FOIA actions between the office FOIA coordinators and requesters and preparation of responses to requesters.

**Individual Commissioner's records**

All records originated by a Commissioner or his or her staff and all records received by a Commissioner or his or her staff from sources outside the NRC and not distributed to other NRC offices.

**Non-commercial scientific institution**

An institution that is not operated on a commercial basis, as the term "commercial" is referred to in the definition of "commercial use request," and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any product or industry.

**Office**

Unless otherwise indicated, all offices, boards, panels, and advisory committees of the NRC.

**Office FOIA coordinator**

The person designated by the head of an office to serve as the primary point-of-contact between the FOIA team and his or her office to coordinate the search, review, and all other processing of FOIA requests within the office.

**Perfected request**

A FOIA request for records received by the FOIA Officer that adequately describes the records sought, and for which there are no remaining questions about the payment of applicable fees, the scope of the request, or other matters that preclude processing of the request.

**Personal record**

Records of a private or nonofficial character that ordinarily pertain only to an individual's personal affairs and do not affect the conduct of agency business. A personal record also includes notes that are prepared by an NRC employee pertaining to agency business that—

1. Have not been commingled with agency records,
2. Have not been circulated or shared with others in the course of transacting NRC business,
3. Are prepared for the individual's own use,
4. Are not required to be created or retained by the NRC,
5. Can be retained or discarded at the author's sole discretion, and
6. Are not used as a substantive part in writing an agency record.

**Record**

Information in any format, including an electronic format, such as any book, paper, map, drawing, diagram, photograph, brochure, magnetic tape, tape, sound recording, pamphlet, slide, motion picture, or other documentary material, regardless of form or characteristics. A record does not include an object or an article (e.g., a structure, furniture, a tangible exhibit or model, a vehicle, or a piece of equipment).

**Redact**

The process of removing from or marking information in a record that is to be withheld under a FOIA exemption or removing or marking an individual record to be withheld as nonresponsive record of the FOIA request within a larger document containing other records that are within the scope of the FOIA request.

**Representative of the News Media**

Any person that gathers information of potential interest to a segment of the public, uses his or her editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available to the general

public, including by disseminating information solely on the Internet. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered representatives of the news media. A publication contract would present a solid basis for such an expectation.

**Review**

The initial examination of records identified as responsive to a request to determine whether they are exempted from disclosure in whole or in part. "Review" includes examining records to determine which FOIA exemptions are applicable, determining whether there is foreseeable harm if exempt material were to be released, identifying records or portions of records to be disclosed, and performing the redactions necessary to prepare the records for release.

**Search**

All time spent looking for responsive records, either by manual or electronic search methods, including a page-by-page or a line-by-line identification of responsive information within the records.

**Senior Management FOIA Official (SMFO)**

Appointed by the office director, serves as the office contact to resolve problems that cannot be resolved between OCIO FOIA team and the office FOIA coordinator or among responding offices. Possesses substantial knowledge of the work and current technical and policy considerations within the office.

**Suspension**

The period between the actual date of receipt of a FOIA request and the date the request is "perfected," which does not count as processing time. Also called "tolling."

**Working days**

Monday through Friday, except legal holidays.

**EXHIBIT 1 LINES OF RESPONSIBILITY**

<b>Initial Requests</b>			
	<b>Action</b>	<b>Coordination</b>	<b>Denying Official</b>
Commission Records	SECY	OGC, Commission	Executive Assistant to the Secretary
Individual Commissioner Records	SECY	OGC, Individual Commissioner Office	Executive Assistant to the Secretary
Former Commissioner Records	SECY	OGC	Executive Assistant to the Secretary
Commission-Level Office Records	Originating Office	OGC, Commission	Executive Assistant to the Secretary
OGC Records	OGC	N/A	General Counsel
EDO Records	EDO	OGC	EDO/DEDOs
EDO-Level Office Records	Originating Office	Originating Office, OGC	FOIA Officer
IG Records	IG	N/A	Assistant Inspector General for Investigations

<b>Appeals</b>			
	<b>Action</b>	<b>Coordination</b>	<b>Denying Official</b>
Commission Records	SECY	OGC, Chairman, Commission	SECY
Individual Commissioner Records	SECY	Individual Commissioner Office, OGC	SECY
Commission-Level Office Records	Originating Office	OGC, Commission	SECY
OGC Records	OGC	N/A	SECY
EDO Records	SECY	OGC, Commission	SECY
EDO-Level Office Records	Originating Office	Originating Office, OGC	CIO
IG Records	IG	N/A	IG