

How to Respond to a Freedom of Information Act (FOIA) Request

What is FOIA?

The Freedom of Information Act (FOIA) is a law passed by Congress in 1966, and most recently amended in 2016. FOIA allows any person, whether a U.S. citizen or not, to request access to records in the possession of or under the control of a Federal executive branch agency. The Federal executive branch agency must, upon request, provide access to those requested records unless they are exempted from disclosure by one of the nine exemptions categories.

Which records are subject to FOIA?

FOIA applies to all executive branch agency “records.” U.S. Nuclear Regulatory Commission (NRC) agency records are any records created or obtained by the NRC or its employees that are under the control of the agency at the time of a request. These include:

- (1) paper documents (including papers, maps, charts, photographs, and microfiche)
- (2) e-mails
- (3) other electronically stored information
- (4) audiovisual material (including sound and video recordings)

“Personal records” of an employee that are not under the control of the agency are not considered agency records.

Steps to Follow When You Receive a FOIA Request

1. Make Sure You Clearly Understand Which Records Are Being Requested

The NRC’s Government Information Specialist assigned to the request will make every effort to clarify the scope of the request before forwarding the request to the applicable office FOIA coordinators. If you believe that a request is overly broad in scope, unclear, would generate a voluminous amount of records, or would require a burdensome search, please contact your FOIA coordinator to let him or her know, who in turn will communicate with the assigned Government Information Specialist. If you believe it would be helpful to participate in a conference call with the requester about the request, ask your office FOIA coordinator to contact the Government Information Specialist assigned the request to facilitate a conference call with the requester. During this call, you may ask questions or offer suggestions to further define the scope of the request.

Note: Do not make any contact with the requester on your own.

2. Determine If You Are Likely to Have the Requested Records

Based on your knowledge of the subject matter of the request, you should determine if you have records responsive to the request. To be considered an adequate search, you

are only required to search in places that you reasonably expect will contain responsive records.

Only agency records that are in existence on the date a request is received should be provided in response to a FOIA request. This includes readily reproducible, electronically stored information. No records that are potentially responsive to a FOIA request may be destroyed after the agency's receipt of the FOIA request.

If the record requested does not exist, do not create a record to respond to a request; however, extracting information from an existing database (or list) does not count as creating a new record.

To determine whether personal records, such as notes taken during a training class or journals, personal correspondence, or personal notes not used while transacting Government business, please refer to NRC Form 510, Personal Records Checklist (see Exhibit A). Give the completed NRC Form 510 to your office FOIA coordinator. The personal record(s) must be maintained for 6 years, either by the employee, the office FOIA coordinator or the FOIA office. Providing a personal record to either the office FOIA coordinator or the FOIA office does not convert a personal record into an agency record.

If you believe responsive records may be located in other offices, including with people who may have been previously involved in the subject matter or members of a team or project, provide that information to your office FOIA coordinator promptly so that it may be provided to the appropriate Government Information Specialist. The Government Information Specialist will contact the additional office(s) and request a search for records.

3. Provide an Estimate of Search/Review Time and Number of Pages, if Required

Within 4 working days of your office's receipt of the request, you may be required to provide to the Government Information Specialist an estimate of the amount of time expected to be required to search for, and review, responsive records (and whether the search and review time is to be billed at the clerical, professional, or SES/Commissioner rates), and the estimated number of pages expected to be released to the requester. This estimate may also be referred to as a fee estimate. Whether your office will need to provide a fee estimate depends on the fee category of the requester and whether the requester has been granted a fee waiver (see Exhibit B, Fee Categories). Include the following applicable information with your estimate:

- (1) Search—All time spent locating records responsive to a FOIA request. This includes time spent locating records in file cabinets, file folders, ADAMS, SharePoint, Nuclepedia, and other databases, e-mails, and NRC computer hard drives (desktop and network).
- (2) Review—Time spent by the subject matter expert examining records retrieved in response to a request to determine whether they should be withheld under an applicable FOIA exemption in whole or in part.
- (3) Duplication—Estimate the number of pages likely to be released to the requester. This does **not** include staff hours used to copy records.

4. Process Expedited Requests Immediately

Your office FOIA coordinator will inform you if a request has been granted expedited processing. If a request has been granted expedited processing, you should process the expedited FOIA requests ahead of any other FOIA requests previously assigned to you. Contact your office FOIA coordinator for more specific directions, if needed.

5. Search for Records Responsive to the Request

- Your office FOIA coordinator will tell you when to begin your search.
- Conduct a search of paper and electronic files that you reasonably expect will contain responsive records (e.g., file cabinets, e-mails, ADAMS, SharePoint, Nuclepedia, other databases, microfiche, photographs, audiotapes, and videotapes). Even if older records are stored at offsite records centers, you should consider whether they are responsive to a request and take the necessary steps to arrange for their retrieval.
- If a record is publicly available, provide the ADAMS accession number or the Web address where the record is located.
- If a record has been physically and legally transferred to the National Archives and Records Administration (NARA), and no copies are in the custody of the NRC, notify your FOIA coordinator that the records have been transferred.

6. Provide Your Recommendation on the Release of Information

After you have searched and located records, you should review them and provide your disclosure recommendations by:

- Marking portions of the records considered exempt with the applicable exemption (any marking may be done using Adobe, see Exhibit C) or
- By describing the nature or items of information considered exempt with the applicable exemption. (This can be completed directly on NRC Form 511, Program Office Response to a FOIA Request. (see Exhibit D).)

For guidance on how to process investigative and allegation-related records, see Exhibit E, FOIA Processing Guidance for Investigation and Allegation-Related Materials.

NOTE: Sensitive unclassified non-safeguards information (SUNSI), also referred to as controlled unclassified information (CUI), may only be withheld if there is an applicable exemption.

The nature of a FOIA “record” is defined by both the content of a document and the subject of the request. A “record” can potentially constitute an entire document, a single

page of a multi-subject document, or even an individual paragraph of a document that consists of discrete items or groupings of information on different topics. A sentence within a paragraph, or words within a single sentence, will rarely constitute a distinct FOIA “record.”

If a multi-subject document consists of both information pertaining to the subject of the request and unrelated information, the record could be divisible into multiple, distinct records for purposes of responding to the FOIA request. The record(s) containing information responsive to the FOIA request must be disclosed unless that information, in whole or in part, is subject to one or more FOIA exemptions. With respect to email, the record could be the entire email inclusive of the top email and any embedded emails, or each discrete top or embedded email could be considered independent records. The information unrelated to the subject of the request should be considered a non-responsive record that need not be provided to the requester (see example of Non-responsive Record Markings, Exhibit F). If an entire document is identified as a non-responsive record, that document need not be provided to your office FOIA coordinator.

7. **Organize the Records Responsive to Request and Submit Them to Your Office FOIA Coordinator**

In organizing the responsive records, list those records that are already publicly available in ADAMS or elsewhere on <http://www.nrc.gov>, as well as records to be moved from the nonpublic ADAMS site to the public ADAMS site. For all other responsive records, clearly identify the following:

- information and records recommended for discretionary release;
- records to be referred to another office (but you should include your own disclosure recommendations as well);
- records originating with another Federal agency that should be referred to another Federal agency, as appropriate (e.g., your office’s own equities do not warrant withholding, or there is no agreement in place with that Federal agency as to how to handle the record); and
- records to be referred to a licensee (or other business submitter).

Records submitted to the FOIA office must **not** be grouped based on their disclosure recommendation (e.g., records must not be separated into “release in part,” “released in full,” “licensee records,” etc.)

If applicable, complete NRC Form 496, Report of Staff Resources for Processing FOIA Requests (see Exhibit G). Include in your response the actual search time and review time spent on processing the request.

In situations in which the Secretary of the Commission, Office of the General Counsel, or the Office of the Inspector General (OIG), NRC exercises its authority to retain records responsive to a FOIA request, the respective office is required to provide the Government Information Specialist with an appendix identifying those records the

office retains. The appendix must include the date of each record, a description of each record, and the page count for each record.

An email, memorandum, or letter that has one or more attachments, and a letter that has one or more enclosures, are considered a single record. Do not separate attachments/enclosures from the email/memorandum/letter.

8. Submit Response Package to the Government Information Specialist

You are required to provide your office FOIA coordinator your response package within the timeframe specified by your office. Within 10 working days of your office's receipt of the request, your office's response— consisting of disclosure recommendations and copies of responsive records—is due to the assigned Government Information Specialist. If you cannot respond to your office FOIA coordinator within your office's timeframe, you should obtain management approval and, as soon as possible, inform your office FOIA coordinator when you expect to provide a complete response. A foreseeable harm statement is required for records withheld under Exemptions 2, 5 (deliberative process privilege), 7D, 7E, and 7F, or for records withheld under any other exemption where it is not clear on the face of the record why the exemption is being claimed. Because the FOIA office tracks all discretionary releases at the end of the reporting year as part of the annual FOIA report and the Chief FOIA Officer's report, in the event that a discretionary release is being made, cite the exemption that would have been applicable and clarify that your release recommendation is discretionary.

Description of the FOIA Exemptions Regularly Used by the NRC

Exemption 1

FOIA does not apply to records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

This exemption may protect national security information that is properly classified under the procedural and substantive requirements of the Executive Order on classification, in effect when the classification was made. Proper classification markings are: Confidential, Secret, and Top Secret.

Exemption 2

FOIA does not apply to records that relate solely to the internal personnel rules and practice of an agency.

This exemption may protect information that is related solely to the internal personnel rules and practices of an agency.

Exemption 3

FOIA does not apply to records that are specifically exempted from disclosure by statute, if that statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or establishes particular criteria for withholding or refers to particular types of matters to be withheld; and if enacted after October 28, 2009, the statute specifically cites Exemption 3.

This exemption may protect information that has been specifically exempted from disclosure by other Federal statutes. Statutes may fall under this exemption if they:

- (1) Establish an absolute prohibition on disclosure; or
- (2) Establish criteria for withholding or refers to particular types of information that must be withheld; and
- (3) Specifically cite to [FOIA Exemption 3] for statutes enacted after October 28, 2009 (the date of the Open FOIA Act of 2009).

Exemption 4¹

FOIA does not apply to records that are trade secrets and commercial or financial information obtained from a person and privileged or confidential.

This exemption may prevent disclosure of trade secrets, as well as commercial or financial information received from a person that is considered privileged or confidential (often referred to as “proprietary information”):

For proprietary information submitted by a licensee or other business submitter, provide a copy of the affidavit supporting its request that the information be protected from public disclosure and the NRC’s determination letter sent to the company.

If the NRC has conveyed to the licensee or other business submitter that the information would be kept confidential, please notify your office FOIA coordinator so that the coordinator can inform the Government Information Specialist.

In the absence of a supporting affidavit or the assurance of confidentiality, provide records and submitter contact information to your office FOIA coordinator so that the coordinator can provide it to the Government Information Specialist, who will initiate contact with the licensee or business submitter.

Exemption 5

FOIA does not apply to matters that are inter-agency or intra-agency records that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

¹ [*Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 915 \(2019\)](#)

This exemption may protect inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency. The three privileges most often invoked under Exemption 5 are the deliberative process privilege, the attorney–client privilege, and the attorney work product privilege.

Exemption 6

FOIA does not apply to personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This exemption may protect personally identifiable information.

Exemption 7

FOIA does not apply to records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

This exemption may protect information compiled for a law enforcement purpose including information compiled to prevent circumvention of the law. This exemption also may protect information if disclosure could cause one or more of six types of law enforcement harm.

Exemption 8

FOIA does not apply to records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

This exemption not used by the NRC as the exemption applies only to financial institutions.

Exemption 9

FOIA does not apply to geological and geophysical information and data, including maps, concerning wells.

Generally, this exemption not used by the NRC.

Additional concepts related to FOIA

Glomar Response:

- The term “glomar response” or “glomar denial” refers to a “neither confirm nor deny” response to a FOIA request. As an example, the NRC provides a glomar response in situations in which a requester seeks investigative information on a named individual(s) when a response as to whether or not a person is or is not mentioned in an investigative record may have a stigmatizing connotation.

Mosaic (or Compilation) Theory

- Under FOIA, an agency is required to disclose any reasonably segregable information that does not fall within one of the FOIA exemptions. However, some information, while seemingly suitable for public release on its own, can be extremely harmful when grouped with other information (that is either also responsive to the request or has previously been released publicly, or to the requester). To provide protection from public disclosure of information that merits protection because of the context in which it is presented, the courts have sanctioned the use of the “mosaic” or “compilation” theory.
- Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that: (1) meets the standards for classification under Executive Order 13526, and (2) is not otherwise revealed in the individual items of information.

“Compilation” means an aggregation of pre-existing unclassified items of information (Section 1.7(e) of Executive Order 13526).

- The mosaic theory is also available to withhold information under any other FOIA exemption.

Exhibits

Exhibit A: [NRC FORM 510 "Personal Records Checklist"](#)

Exhibit B: Fee Categories

Fee Categories	Search	Review	Duplication
Commercial Use	Charge	Charge	Charge
Educational Institution	No charge (N/C)	N/C	N/C for first 100 pages
General, Public and All Others	NC for first 2 hours	N/C	N/C for first 100 pages
News Media	N/C	N/C	N/C for first 100 pages
Noncommercial/ Scientific Organizations	N/C	N/C	N/C

Exhibit C: [Marking Redactions in Electronic Records \(Adobe\)](#)

Exhibit D: [NRC FORM 511 "Program Office Response to a FOIA Request"](#)

Exhibit E: [FOIA Processing Guidance for Investigation and Allegation Related Material \(see page 328\)](#)

Exhibit F: Non-Responsive Record Markings:
<https://www.nrc.gov/docs/ML1829/ML18296A352.pdf>

Exhibit G: [NRC Form 496 "Report of Staff Resources for Processing FOIA Requests"](#)