# FOIA Procedures

**All FOIA requests should immediately be sent to the FOIA/PA Section to mail stop: TWFN-05F09 or by fax to 301-415-5130**

- **FOIA/PA caseworker does not answer questions unless the question can be answered by providing access to a specific record**
  - For example, if a request asked, "How many awards were made in the years 2003, 2004, and 2005 to persons in the SES and SLS series?"
    - if the Office of Human Resources can readily produce a document with the information, it would be provided to the requester
- **Requests for records not yet created or information that would require the creation of a record will not be processed under the FOIA**
- **Requester may request records in any form or format if "reasonably possible"**
  - As an example, a requester may prefer to have the response on a CD in an Excel format instead of a paper copy. NRC would produce the information in the requested format if reasonably possible

## Roles of the FOIA/PA Caseworker

- **Contacts requester for clarification, re-scoping, fee issues. Arranges conference calls between requester and staff when necessary. FOIA/PA caseworker must be included in all contacts with the requester**
  - All conference calls with a requester for scope clarification must be handled by the FOIA/PA caseworker so that all appropriate staff are included. This insures that everyone involved clearly understands what the requester is asking for
- **Conduct review of bracketed portions of records to be withheld in part and records proposed to be withheld in their entirety and make an independent judgment whether or not this proposed withholding is proper**
  - The FOIA/PA caseworker reviews material designated for withholding
- **Perform a general review of records proposed to be released by an office, primarily focusing on records with markings (i.e., classified, proprietary, safeguards, copyrighted), records originated by other Federal agencies, and records containing obvious personal privacy information**
  - Keep in mind that personal e-mail addresses should be withheld and these can appear in the page header and in several places within e-mails when a running dialogue takes place between individuals
- **Identify questions or issues regarding the appropriateness of the exemptions cited as the basis for withholding of the information and inconsistencies between offices, or by one office, in proposed withholdings**

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- It may be necessary for the FOIA/PA caseworker to discuss the proposed withholding or designated exemption with an office so that we fully understand the basis for the withholding

- **Make referrals between offices, to other agencies, and to companies either for direct response or consultation**
  - When records are designated for referral to a company/licensee, the office providing the records must provide the name of the company/licensee that the record is to be referred to as well as a contact name and phone number
- **After resolution of proposed release determinations, redact the information to be withheld**
  - Offices are only to [bracket] any material to be withheld --the FOIA/PA caseworker is responsible for physically redacting the bracketed information
- **Consolidate the appendices received from the offices and prepare them to accompany the response to the requester**
  - It is important that all offices prepare their appendices in the exact format provided to each coordinator
- **Prepare response(s) to the requester including the applicable FOIA exemptions and reasons for the denial, names of denying officials and informs requester of right to appeal, if applicable**
- **Obtain all necessary concurrences. Obtain signature from FOIA/PA Officer. Dispatch response, make distribution copies. Make available in ADAMS released records, when appropriate**

## Roles of the Office FOIA/PA Coordinator

- **The office FOIA coordinator serves as the office/region point of contact and serves as liaison between the office/region and the FOIA/PA caseworker**
- **Responsible for assigning action to appropriate staff within the office/region in accordance with internal office procedures**
- **Assists staff in understanding the scope of the request and provides assigned staff instructions on how to respond to the FOIA request**
- **Responsible for providing a consolidated office/region response for fee estimates within the allotted 4-day time frame when applicable**
- **Notifies the FOIA/PA caseworker if staff indicates additional offices/regions are likely to have responsive records**
- **Informs staff within the office/region when to begin processing the request**
- **Notifies the FOIA/PA caseworker of any problems which would impact the completion date**
- **The office FOIA coordinator, prior to submitting the records to the caseworker, should review the records to insure that information to be withheld is bracketed consistently throughout the records and that duplicate records are removed (e.g., two divisions/branches provide the same record)**

- **Organizes all responsive record into the categories identified in the "How to Respond to an Initial FOIA Request" (ML060590485)** [Exhibit 14] **document. Prepares the consolidated appendices and submits to the FOIA/PA caseworker with a completed transmittal memo** [Exhibit 16] **and NRC Form 496** [Exhibit 15]

## Roles of the Senior FOIA Management Official

**Each NRC office has an individual designated as the Senior FOIA Management Official. This is the person who can provide the office FOIA coordinator with the necessary guidance when problems or questions arise within the office** [Exhibit 10]

- **Serves as office focal point to resolve problems that cannot be resolved between FOIA/PA caseworker and office FOIA coordinator**
- **Represents the Office Director in resolving initial disclosure determination issues or delays by the staff in responding to FOIA actions**
- **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**
- **Possesses substantial knowledge of the work and current technical and policy considerations within the office**

## FOIA/PA Case Assignment

- **3 Types of E-mail Assignment**
  - Basic E-mail
    - normal processing - office FOIA coordinator to provide fee estimates to FOIA/PA caseworker within 4 days of case assignment to the office (individual office procedures may allow fewer than 4 days) [Exhibit 12.1]
  - Fee waiver granted
    - FOIA/PA Officer makes determination - office does not need to provide any processing estimates and should begin processing immediately [Exhibit 12.2]
  - Expedited processing granted
    - FOIA/PA Officer makes determination - If granted, the FOIA request moves to the top of the list of other pending FOIA requests in your office [Exhibit 12.3]
- **Offices/Regions:**
  - Provide fee estimates within 4 working days
  - Search/Review/Duplication (inches or pages)
    - search is time spent looking for responsive records, manually and/or using existing computer programs
    - review is time spent examining the responsive records to determine whether they are exempt from disclosure in whole or in part
    - duplication is the number of releasable pages or inches*

* Duplication costs can take the form of pages, microform, audiovisual materials, disk, CD, magnetic tape, or machine-readable documentation

- Provide records to FOIA in 10 working days from perfection
  - a request is considered to be "perfected" when there are no remaining questions about the scope of the request, the payment of applicable fees, the need for verification of identity, or other matters that preclude processing of the request

❖ **NRC Form 496A Referral Related to FOIA/PA Request** [Exhibit 13]

- Referral of related records for which your office has responsibility or an interest in the records which requires a release determination or recommendation
- Used to assign an action to an office through the appeal process

## Responding to an Initial FOIA Request

### How to Respond to an Initial FOIA Request

❖ **Record**

- What is an agency record? 10CFR Part 9: a record in the possession and control of the NRC that is associated with Government business. Documents which have handwritten notations on them qualify as a separate document (e.g., you have a clean copy of a SECY paper and you have another copy of the paper with someone's editorial comments on it - treat as two separate documents)

- Agency record does not include publicly available books, periodicals, or items that are copyrighted; does not cover records solely in the possession and control of contractors;

- Nor does it include personal records in the possession of NRC personnel that have not been circulated, were not required to be created or retained by the NRC and can be retained or discarded at the author's sole discretion

❖ **Personal Records**

- Have not been commingled with agency records
- Have not been circulated or shared with others in the course of transacting NRC business
- Were prepared for the individual's own use
- Were not required to be created or retained by NRC
- Can be retained or discarded at the author's sole discretion
- Were not used as a substantive part in writing an agency record
- Complete Consideration Checklist (MD 3.1, pages 72-73)
  - provide number of pages
- Personal records must be maintained for six years by the employee, office FOIA coordinator, or FOIA/PA caseworker

- **Search**
  - All records that are in existence on the date a request is received and that are within the scope of the request must be addressed (records include electronic, databases, e-mail with properties page, word processing files, disks, audio, video. Also must check ADAMS - PARS & Legacy Libraries (public and non-public). Also check file center (NRR, FSME and NMSS and regions often send records to file center)
- **Review**
  - Searching office will conduct a detailed review and make an initial recommendation as to what information can be released and what should be withheld
  - Outside scope - if on same page as information within scope, outside scope position must be identified. If entire page is outside scope, mark accordingly
- **Office Response**
  - Indicate in your memo
    - whether the response is a partial or final
    - whether the records can be placed in PDR
    - a foreseeable harm statement for Exemptions 2 (high) and 5 (Deliberative Process), and 1, 3, 4, 6, 7A and 7C if not obvious.
    - whether or not the response contains any sensitive security information
    - indicate the actual time spent processing the request on NRC Form 496 which is available on Informs
- **Creating Appendices**
  - Response Memo and Appendix Samples [Exhibit 16]
    - Records Being Released in Their Entirety
    - Records containing sensitive security information (Being released to requester only)
    - Records Being Withheld in Part
    - Records Being Withheld in Their Entirety
    - Records to be Referred to Other Office/Agency/Company
- **Record computer search criteria (ADAMS, MLTS, etc.)**
  - Described in "How to Respond.." instructions - Item 5.d
  - Make sure records listed as publicly available are indeed public
    - for ADAMS records check availability, release date, sensitivity, and replication (has to have all 4)
- **When describing records on the appendices - do not use anything in your description that is being withheld within the record you are describing**
- **Non-Public Records in ADAMS to be made publicly available**
  - Provide ML # and indicate record can now be made publicly available. FOIA/PA caseworker will work with ADAMS to have record made publicly available

- **Copyrighted Records**
  - Place on appendix - Release in Entirety. Place * before description of the record. [e.g., web sites, map quest, newspaper, magazines, books, documents marked with copyright ©] A note in the transmittal memo stating that there are copyrighted documents within the package is helpful
- **Records for Referral**
  - FOIA/PA caseworker makes all referrals to other offices/companies/agencies
  - If record is to the Commission, originating office makes recommendation on releasability. FOIA/PA caseworker will refer to Commission, who will make final decision on release
  - If office locates record originated by another office but the locating office has an interest in the record, provide a recommendation to FOIA/PA caseworker
- **Response to FOIA/PA Request** [Exhibit 17]
  - A copy of NRC Form 464 Part I & Part II with appendices will be provided to each office involved with a specific response
- **Removal of Records from PDR Released under FOIA**
  - Telephone FOIA/PA caseworker immediately
  - Senior FOIA Management Official shall follow-up with written confirmation of the release
  - FOIA/PA caseworker will coordinate removal of the records
- **Senior Management Meeting Documents (Agency Action Review Meeting (AARM) Information**
  - Identify these records as "senior management meeting documents"
  - Provide a disclosure determination

FOIA/PA caseworker will refer to the EDO's office who will make the final determination on release

# Appeals

- **Appeals can be made for:**
  - Denial
    - records, fee waiver, expedited processing
  - Adequacy of Search
    - record was not located
  - Lack of Response
    - NRC failed to respond within 20 days
- **Appellate Authority:**
  - Commission appeal
    - SECY responds
  - IG appeal
    - IG responds
  - EDO appeal
    - FOIA/PA caseworker coordinates and prepares response for appropriate DEDO
    - staff reviews records appealed, considering any new information presented in appeal letter
    - response to FOIA/PA caseworker from office FOIA coordinator must reflect that the office director or his designee has personally approved the decision to withhold each record or portion thereof
    - a foreseeable harm statement is required for Exemptions 2 (high) and 5 (Deliberative Process), and 1, 3, 4, 6, 7A and 7C if not obvious.