

RECORD UPDATE

FROM 2009 -

PRESENT

(PART OF

RESPONSE TO

REQUEST #4)

**U.S. Nuclear Regulatory Commission  
Chief Freedom of Information Act Officer Report**

**I. Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

1. Describe below the steps your agency has taken to ensure that that presumption is being applied to all decisions involving the FOIA. This section should include a discussion of the range of steps taken by your agency to apply this presumption, from publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines and providing training on them, to implementing the presumption in response to FOIA requests and administrative appeals, with examples or statistics illustrating your agency's action in making discretionary releases of records or partial releases when full disclosure is not possible.

The U.S. Nuclear Regulatory Commission (NRC) views nuclear regulation as the public's business and, as such, believes it should be transacted as openly and candidly as possible to maintain and enhance the public's confidence. Ensuring appropriate openness explicitly recognizes that the public must be informed about, and have a reasonable opportunity to participate meaningfully in, the NRC's regulatory processes. To achieve its strategic goal of openness, the NRC had a proactive program to make releases of information available to the public in the absence of a Freedom of Information Act (FOIA) request prior to the President's FOIA Memorandum. The NRC also had a robust, centralized FOIA program that already operated with the presumption of openness as part of achieving the agency's strategic goal of openness.

On January 29, 2009, the NRC General Counsel provided a memorandum to the NRC Chairman and the Commissioners entitled, "Presidential Memoranda on Government Transparency and the Freedom of Information Act." This seven-page memorandum provided details and an analysis of the President's FOIA Memorandum.

As a result of the President's FOIA Memorandum and the Attorney General's (AG's) FOIA Guidelines, on March 25, 2009, the NRC published an article in its weekly online publication the *NRC Reporter* entitled, "AG Holder Issues FOIA Reminder." The article provided a discussion of the AG's memorandum and a link to it.

On May 19, 2009, the NRC's Chief FOIA Officer acting for the Executive Director for Operations issued an agencywide announcement through the NRC intranet identifying the AG's new FOIA Guidelines and the President's FOIA Memorandum. The announcement was titled "New Freedom of Information Act Procedures" and advised all agency staff and contractors of the President's commitment to accountability, transparency, and increased Governmental openness. It called for the commitment of all agency personnel to help achieve the President's new era of open Government. It discussed the President's call for agencies to adopt a presumption in favor of disclosure in FOIA decisions. The announcement also provided links to both the President's FOIA Memorandum and the AG's FOIA Guidelines. The announcement issued guidance to the Office of General Counsel (OGC), office FOIA coordinators, and senior FOIA officials regarding the presumption of openness and the need to provide "foreseeable

harm" statements when denying information under FOIA Exemptions High 2 and 5 (Deliberative Process only). An explanation of the need to withhold information under Exemptions 6, 7(A), and 7(C) are provided when it is not obvious why the agency is citing those exemptions. The announcement also encouraged the discretionary release of certain types of information. Since the implementation of new FOIA procedures, there has been an increase in the amount of deliberative process information discretionarily released under Exemption 5. In fiscal year (FY) 2009, the percentage of times that Exemption 5 was invoked by the NRC decreased by 5.2 percent compared with FY 2008.

Staff updated the agency FOIA training class to include training about the following: (1) the intent of the President's Memorandum and the AG's Guidance and (2) how to implement the procedures at NRC, including the need for "foreseeable harm" statements. The FOIA/Privacy Section (FPS) also provided training to two regional offices. Staff also updated the agency online FOIA training course to include this information. The FOIA staff written guidance was also updated.

The agency FOIA/Privacy Act Officer held meetings with her staff and staff from NRC offices and regions to ensure their understanding of the new policies and procedures.

Staff is currently revising the NRC's management directive on FOIA to include the intent of the President's Memorandum, the intent of the AG's Guidance, and how to implement the procedures at NRC, including the need for "foreseeable harm" statements.

**2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.**

In its FY 2009 Annual FOIA Report, the NRC did not see a noteworthy change in the percentage of requests where records were released in full or where records were released in part when compared to those percentages in the previous year's Annual FOIA Report. The percentage of requests in FY 2009 that were released in full compared to the total of requests involving a release/denial decision that year was 51 percent compared to 56.8 percent in FY 2008. The percentage of requests released in part in FY 2009 was 39.3 percent compared to 37.0 percent in FY 2008. The percentage of requests denied in full in FY 2009 was 9.6 percent compared to 6.0 percent in FY 2008. To gain a historical perspective, the averages for each category were calculated for the 5-year period beginning in FY 2004 and ending in FY 2008. They were 54.8 percent released in full, 39.4 percent released in part, and 5.6 percent denied in full.

As previously mentioned, the NRC has a proactive program to release information to the public in the absence of a FOIA request. We believe that this has reduced the number of FOIA requests we would have received in the absence of such a proactive program. However, this also means that a higher percentage of the FOIA requests received are for information that would not normally be released to the public because it is exempt. Examples are requests for information related to allegations, investigations, retired material licenses, and records that contain proprietary information. A specific example of how this impacts the above discussion is the use of Exemption 7(A). In FY 2009, the agency had 19 requests denied in full. Of those, it invoked Exemption 7(A) 14 times. There is considerable potential for "foreseeable harm" related to the release of an ongoing investigation; therefore, these denials would not be subject to the President's or AG's intention of openness. The protection of an individual's personal

privacy is another specific example of the type of information that would not be made open to the public under the President's memorandum or the AG's guidance. In FY 2009, the NRC invoked Exemption 7(C) 31 times, and on 24 occasions invoked Exemption 6. Proprietary information was exempted on 19 occasions. In summary, because the NRC already had a FOIA program that stressed openness prior to the President's FOIA Memorandum, we do not expect to see significant changes in the percentages of requests that are released in full, released in part, or denied in full because the types of exemptions that are being invoked are not discretionary for the most part. The exception to this has been with regard to Exemption 5, as previously noted.

## **II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

**As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.**

The NRC has an effective system for responding to FOIA requests, as is evident by the progress it has made in reducing its FOIA backlog and in improving the timeliness of responses to FOIA requesters within the statutory deadlines.

The NRC has a centralized FPS responsible for tracking and processing all FOIA requests received by the NRC. The FPS is managed by the NRC's FOIA/Privacy Officer who also serves as one of the two agency FOIA Public Liaisons. The FPS is in the Information Services Branch (ISB), which is in the Information and Records Services Division (IRSD) of the Office of Information Services (OIS). The Director, OIS, who is a member of the Senior Executive Service (SES), reports directly to the Deputy Executive Director for Corporate Management (DEDCM) in the Office of the Executive Director for Operations. The DEDCM is the agency's Chief FOIA Officer. The DEDCM provides guidance and oversight to the NRC FOIA program. The Director, OIS supervises the Director, IRSD who is also a member of the SES. The Director, IRSD, supervises the ISB Branch Chief who is a GG-15. The ISB Branch Chief, who also serves as the other FOIA Public Liaison, supervises the FOIA/Privacy Officer, who is also a GG-15. The FOIA/Privacy Officer manages the day-to-day implementation of the FOIA program. This organizational structure provides senior-grade management attention and expertise which contributes to the effectiveness of the NRC's FOIA program by ensuring adequate resources including Information Technology support, policy guidance, and oversight are provided to the FOIA program.

Additionally, all NRC Office Directors and Regional Administrators (ODs/RAs) are responsible for ensuring compliance with the FOIA program in their office or region. These SES managers have a performance element and standard in their annual performance plan and appraisal which requires that they ensure their office or region provides release/denial recommendations to the FPS 90 percent of the time in 10 days or less. Each OD/RA appoints a Senior Management FOIA Official, normally a SES or GG-15, as his or her representative to manage

the FOIA program in their office or region. Offices and regions also have a FOIA coordinator responsible for processing requests received in that office or region. In most cases, the FOIA coordinator in each office or region is in the chain of command of the Senior Management FOIA Official. The FPS trains the FOIA coordinators in the FOIA exemptions, administrative aspects of the FOIA, and the NRC FOIA processes. FOIA coordinators assist the staff in their office or region.

The OGC also supports the FOIA program by providing legal reviews of FOIA denials and appeals. In addition, OGC provides legal advice on FOIA policy and novel questions of law, as well as FOIA litigation support. The OGC is adequately staffed to review cases in a manner so as to not impede timeliness.

The centralized FPS is responsible for managing and tracking all FOIA requests and appeals received by the NRC. It is comprised of both Federal employees and contractors. The NRC accepts FOIA requests through e-mail, postal mail, courier, and facsimile. Offices and regions know to forward any requests they receive to the FPS within 1 work day. Received requests are administratively opened and assigned to a FOIA specialist. A preliminary determination is made in the FPS regarding where the requested information may reside; the request is either hand carried, sent through overnight mail, or transmitted electronically to the FOIA coordinator in the appropriate office(s) or region(s). The FOIA coordinator provides an estimate of the search, review, and duplication effort.

Once the FPS has determined that a request has been "perfected" (i.e., fee issues have been resolved and the scope of the request clarified), the FPS electronically notifies the appropriate FOIA coordinators to begin the search for records.

Once the request is perfected, the offices and regions must search for, retrieve records, and provide them to a subject matter expert within the office or region who makes recommendations on release or denial of the information. They bracket information that is proposed for denial. They make appendices with lists of documents that are already publicly available and provide the records to the FPS within 10 work days. The FOIA packet is then provided to the FOIA specialist who reviews the release and denial recommendations. Disagreements between the FOIA specialist and the FOIA coordinator and subject matter experts are resolved. After reviews are completed and differences of opinions are reconciled, the documents are scanned and redactions are made using FOIAXpress software. The packet is prepared for release to the requester via postal mail. Most requests are still provided in paper because that is what the requesters want. When requested, the NRC also sends results as an attachment to an e-mail or on a computer disc.

In complex requests that involve a voluminous amount of documents or documents from multiple offices or regions, partial releases are frequently made to requesters. This helps keep requesters satisfied and allows the processing pipeline to continue moving rather than waiting until the entire request is processed and sending all records at the same time.

In FY 2008, the NRC closed 74 percent of its simple FOIA requests in 20 days or less. In FY 2009, the percentage of simple requests processed in 20 days or less increased to 82 percent.

The NRC's FOIA professionals have sufficient IT support available in order to post required documents to the FOIA Web site, make documents publicly available, and assist with the loading of FOIAXpress software and updates as required. The agency provides sufficient

funding for the continuation of the FOIAXpress maintenance contract which also provides adequate licenses to perform redaction operations. The FPS receives direct IT support from the Infrastructure and Computer Operations Division (ICOD) which is also part of the OIS. The ICOD provides state-of-the-art personal desktop computers to the FPS and ensures timely help desk support to quickly address problems when they arise. This support ensures continuity of the FPS IT operations.

### **III. Steps Taken To Increase Proactive Disclosures**

**Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.**

As stated earlier, the NRC has a long-standing proactive practice of conducting its regulatory responsibilities in an open and transparent manner by keeping the public informed of the agency's regulatory, licensing, and oversight activities in the absence of a FOIA request.

The NRC was the first Federal agency to provide the public with electronic access to all of its public documents through the groundbreaking Agencywide Documents Access and Management System (ADAMS). Since the institution of ADAMS in 1999, it has been the NRC policy to make nonsensitive documents publicly available through ADAMS unless there is a specific reason not to do so. Consequently, since the inception of ADAMS in 1999, the agency has made public more than 600,000 full-text documents and is currently publishing an average of almost 300 documents daily.

The NRC public Web site broadens the public's understanding of the NRC's mission, goals, and performance; increases openness by providing information that enhances the ability of stakeholders to participate effectively in the regulatory process; and makes doing business with the NRC easier by enhancing access to agency information and making tools available for conducting business electronically. The public Web site provides links to the following Web page titles: Electronic Reading Room, ADAMS, Document Collections, Basic References, Photo and Video Gallery, Index to Frequently Asked Question Pages, Public Document Room, FOIA Requests, How to Obtain Paper Copies, Records Management, Facility Information Finder, Subscribe to E-mail Notices, Operating Reactor Correspondence, and the Congressional Affairs and Public Affairs home pages. In addition, the public Web site also provides links to news releases and speeches.

### **IV. Steps Taken To Greater Utilize Technology**

**A key component of the President's Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. For this section of the Chief FOIA Officer Report, please answer the following questions:**

- 1. Does your agency currently receive requests electronically?**

Yes, the NRC currently receives requests electronically through e-mail and facsimile. The NRC FOIA request e-mail address, [FOIA.resource@nrc.gov](mailto:FOIA.resource@nrc.gov), is located on the NRC Web site. The NRC FOIA request e-mail address is also published in the "Citizen's Guide to U.S. Nuclear Regulatory Commission Information" (NUREG/BR-0010, Revision 4), which can be found on the NRC's Web site at [www.nrc.gov/reading-rm/foia/foia-privacy.html](http://www.nrc.gov/reading-rm/foia/foia-privacy.html). The facsimile number is also available on the NRC Web site.

**2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.**

Not Applicable (N/A)

**3. Does your agency track requests electronically?**

Yes, the NRC uses FOIAXpress software to track requests electronically. Requests are logged in and assigned a case number. The status of each request is updated (e.g., when it is tolled, when it is perfected, when it is closed). Data is captured in order to produce the Annual FOIA Report and other ad hoc reports.

**4. If not, what are the current impediments to your agency utilizing a system to track requests electronically.**

N/A

**5. Does your agency use technology to process requests?**

Yes. Besides the operations described elsewhere in this section, the NRC has been using commercial software since April 2007 to electronically redact information from documents. Staff scan documents to create a Portable Document Format document. The NRC is currently using the redactions software provided as part of the FOIAXpress software product.

**6. If not, what are the current impediments to your agency utilizing technology to process requests.**

N/A

**7. Does your agency utilize technology to prepare your agency Annual FOIA Report?**

Yes. The NRC uses FOIAXpress software to prepare its Annual FOIA Report.

**8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.**

N/A

**V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are an ongoing agency effort. Both the President and the Attorney General emphasized the importance of improving timeliness in responding to

requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the previous fiscal year and for this current fiscal year. Your Chief FOIA Officer Report should address the following elements.

**1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals.**

The number of NRC backlogged cases decreased from 6 at the end of FY 2008 to 5 at the end of FY 2009. The oldest backlogged case at the end of FY 2008 was 115 days old. The oldest backlogged case at the end of FY 2009 was 89 days old. There were no backlogged appeals in FY 2008. Even though the NRC received an inordinately high number of appeals in FY 2009, there were only 3 backlogged appeals at the end of FY 2009. The oldest backlogged appeal at the end of FY 2009 was 83 days old.

**2. If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction.**

N/A

**3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.**

In addition to steps mentioned previously in this report, the NRC has reduced the review time given to outside external submitters when it is necessary to coordinate requests containing proprietary information. Submitters now have 10 calendar days instead of 30 to provide a response to NRC. In addition, NRC now uses FedEx to "fast track" consultations with submitters.



<b>NO.</b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)</u></b>
1.	3/8/10	E-Mail from FOIA Resource to <a href="mailto:doj.oip.FOIA@usdoj.gov">doj.oip.FOIA@usdoj.gov</a> , Chief Freedom of Information Act (FOIA) Officer Report (10 pages)
2.	7/28/09	E-Mail from Menefee to Raphael, RIV Training Next Week (2 pages)
3.	8/4/09	E-Mail from Holzle to Raphael, Foreseeable Harm Statements RelatedTo Requests for Security Related Requirements (3 pages)
4.	10/1/09	E-Mail from Nichols to Floyd, IOI – FOIA Training Region III (1 page)
5.	10/14/09	E-Mail from Nichols to Holzle, FOIA hearing tomorrow (3 pages)
6.	11/9/09	E-Mail from DOJ.OIP.FOIA to Arrington et al., Chief FOIA Officer Reports (2 pages)
7.	12/3/09	E-Mail from Nichols to Floyd, Item of Interest – Semi-Annual FOIA Training (1 page)
8.	12/3/09	FOIA Training presented by Donna Sealing (4 pages)
9.	12/4/09	E-Mail from Nichols to Floyd, item of Interest – ASAP Training (1 page)
10.	12/7/09	E-Mail from Nichols to Floyd, Item of Interest (1 page)
11.	12/8/09	E-Mail from Wood to Brown et al., Use of FedEx (1 page)
12.	1/12/10	E-Mail from Nichols to Floyd, Item of Interest (1 page)
13.	2/16/10	E-Mail from Nichols to Sealing, Use of Exemption 5 (1 page)
14.	3/31/10	The Freedom of Information Act (FOIA) at the U.S. Nuclear Regulatory Commission (60 pages)
15.	3/31/10	NRC Web site: Freedom of Information Act (2 pages)
16.	3/31/10	NRC web site: Freedom of Information Act and Privacy Act Requests (2 pages)

## Sealing, Donna

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**From:** FOIA Resource  
**Sent:** Monday, March 08, 2010 1:22 PM  
**To:** [doj.oip.foia@usdoj.gov](mailto:doj.oip.foia@usdoj.gov)  
**Subject:** Chief Freedom of Information Act (FOIA) Officer Report  
**Attachments:** Chief FOIA Officer Report.doc

Our responses to your comments are addressed in **purple** below. I have also attached the revised report.

Donna Sealing  
U.S. NRC

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**From:** Villanueva, Valeree A [<mailto:Valeree.A.Villanueva@usdoj.gov>]  
**Sent:** Friday, March 05, 2010 3:54 PM  
**To:** FOIA Resource  
**Subject:** RE: Chief Freedom of Information Act (FOIA) Officer Report.

Good Afternoon,

I have reviewed your draft Chief FOIA Officer Report for technical compliance with the Guidelines for the report (available at <http://www.justice.gov/oip/foiapost/2009foiapost18.htm> and <http://www.justice.gov/oip/foiapost/2009foiapost28.htm>). Please revise according to the comments below and post your final report on your website. A copy of your final report should be sent to the Department of Justice no later than March 15, 2010. Please submit it to [DOJ.OIP.FOIA@usdoj.gov](mailto:DOJ.OIP.FOIA@usdoj.gov). Please note that OIP has not verified the accuracy of the statistics and/or Annual Report numbers to which you cite in your draft; accordingly, we suggest that you re-confirm these values before posting your final report.

### General comments

Part II: Please ensure that your discussion specifically includes steps taken to ensure that your agency's FOIA personnel have sufficient IT support.

**Response: Additional information was added at the end of Part II.**

Part III: Please ensure that your discussion includes a description of the steps your agency took to increase the amount of material that is available on your website and citations to specific examples or statistics to illustrate proactive disclosures made by your agency since issuance of the new FOIA Guidelines.

**Response: Our report does include a discussion of the amount of material that is available on our Web site. The NRC has had a proactive program to make releases of information available to the public in the absence of a FOIA request prior to the President's FOIA Memorandum therefore NRC did not make additional changes to its automatic disclosure program. The agency makes almost 300 documents per day available to the public as part of this program, which was stated in our report.**

Part V, Section 1: Please report your agency's backlog pending request and administrative appeal numbers from both the FY 2008 and FY 2009 Annual Reports in order to show whether your backlog is decreasing. If you report a backlog for either year, please also report the date of your agency's oldest pending request and administrative appeal as of the end of that Fiscal Year. For instance, if you report a backlog for both pending requests and administrative appeals in FY 2008 and FY 2009, you should also report the oldest pending request and administrative appeal for FY 2008 and FY 2009.

**Response: Specific number of backlogged requests for FY 2008 has been added along with the age of the oldest backlogged request. Information was also added about the number of backlogged appeals for FY 2008.**

Part V, Section 3: Unless your agency responded to all requests within the statutory time period of 20 days in FY 2009, you must provide a response to this section.

**Response: Response was provided.**

Specific comments

Part V, Section 1: Please make sure that you only use FY '08 and FY '09 data for this report

**Response: Removed information concerning years prior to FY 2008.**

Part V, Section 3: I would suggest restating all the steps and examples your agency is taking to improve timeliness, which were provided throughout the report, just in case the reader may have overlooked them.

**Response: We did not restate all the steps because the information is addressed under each specific question. We do not see the need to repeat it.**

Please contact me, by replying to this e-mail or by calling (202) 514-4594, if you have any questions regarding these comments.

Thank you,

Valeree Villanueva  
Office of Information Policy  
Department of Justice

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**From:** FOIA Resource [mailto:FOIA.Resource@nrc.gov]  
**Sent:** Friday, February 26, 2010 1:53 PM  
**To:** DOJ.OIP.FOIA  
**Subject:** Chief Freedom of Information Act (FOIA) Officer Report.

As required by FOIA Post article, "Guidelines for Chief FOIA Officer Report to the Department of Justice Pursuant to Attorney General Holder's FOIA Guidelines," dated September 30, 2009, attached is our letter transmitting the subject report.

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in Compliance with the FOIA](#)[Home](#) > [Electronic Reading Room](#) > [FOIA and Privacy Act](#) > [Annual Chief FOIA Officer Reports](#)

## NRC Annual Chief FOIA Officer Reports

*The following links on this page are to documents in our Agencywide Documents Access and Management System (ADAMS). ADAMS documents are provided in either Adobe Portable Document Format (PDF) or Tagged Image File Format (TIFF). To obtain free viewers for displaying these formats, see our [Plugins, Viewers, and Other Tools](#). If you have problems with viewing or printing documents from ADAMS, please contact the [Public Document Room](#) staff.*

Report: 2010

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Tuesday, March 09, 2010

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**2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.**

In its FY 2009 Annual FOIA Report, the NRC did not see a noteworthy change in the percentage of requests where records were released in full or where records were released in part when compared to those percentages in the previous year's Annual FOIA Report. The percentage of requests in FY 2009 that were released in full compared to the total of requests involving a release/denial decision that year was 51 percent compared to 56.8 percent in FY 2008. The percentage of requests released in part in FY 2009 was 39.3 percent compared to 37.0 percent in FY 2008. The percentage of requests denied in full in FY 2009 was 9.6 percent compared to 6.0 percent in FY 2008. To gain a historical perspective, the averages for each category were calculated for the 5-year period beginning in FY 2004 and ending in FY 2008. They were 54.8 percent released in full, 39.4 percent released in part, and 5.6 percent denied in full.

As previously mentioned, the NRC has a proactive program to release information to the public in the absence of a FOIA request. We believe that this has reduced the number of FOIA requests we would have received in the absence of such a proactive program. However, this also means that a higher percentage of the FOIA requests received are for information that would not normally be released to the public because it is exempt. Examples are requests for information related to allegations, investigations, retired material licenses, and records that contain proprietary information. A specific example of how this impacts the above discussion is the use of Exemption 7(A). In FY 2009, the agency had 19 requests denied in full. Of those, it invoked Exemption 7(A) 14 times. There is considerable potential for "foreseeable harm" related to the release of an ongoing investigation; therefore, these denials would not be subject to the President's or AG's intention of openness. The protection of an individual's personal

privacy is another specific example of the type of information that would not be made open to the public under the President's memorandum or the AG's guidance. In FY 2009, the NRC invoked Exemption 7(C) 31 times, and on 24 occasions invoked Exemption 6. Proprietary information was exempted on 19 occasions. In summary, because the NRC already had a FOIA program that stressed openness prior to the President's FOIA Memorandum, we do not expect to see significant changes in the percentages of requests that are released in full, released in part, or denied in full because the types of exemptions that are being invoked are not discretionary for the most part. The exception to this has been with regard to Exemption 5, as previously noted.

## **II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

**As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.**

The NRC has an effective system for responding to FOIA requests, as is evident by the progress it has made in reducing its FOIA backlog and in improving the timeliness of responses to FOIA requesters within the statutory deadlines.

The NRC has a centralized FPS responsible for tracking and processing all FOIA requests received by the NRC. The FPS is managed by the NRC's FOIA/Privacy Officer who also serves as one of the two agency FOIA Public Liaisons. The FPS is in the Information Services Branch (ISB), which is in the Information and Records Services Division (IRSD) of the Office of Information Services (OIS). The Director, OIS, who is a member of the Senior Executive Service (SES), reports directly to the Deputy Executive Director for Corporate Management (DEDCM) in the Office of the Executive Director for Operations. The DEDCM is the agency's Chief FOIA Officer. The DEDCM provides guidance and oversight to the NRC FOIA program. The Director, OIS supervises the Director, IRSD who is also a member of the SES. The Director, IRSD, supervises the ISB Branch Chief who is a GG-15. The ISB Branch Chief, who also serves as the other FOIA Public Liaison, supervises the FOIA/Privacy Officer, who is also a GG-15. The FOIA/Privacy Officer manages the day-to-day implementation of the FOIA program. This organizational structure provides senior-grade management attention and expertise which contributes to the effectiveness of the NRC's FOIA program by ensuring adequate resources including Information Technology support, policy guidance, and oversight are provided to the FOIA program.

Additionally, all NRC Office Directors and Regional Administrators (ODs/RAs) are responsible for ensuring compliance with the FOIA program in their office or region. These SES managers have a performance element and standard in their annual performance plan and appraisal which requires that they ensure their office or region provides release/denial recommendations to the FPS 90 percent of the time in 10 days or less. Each OD/RA appoints a Senior Management FOIA Official, normally a SES or GG-15, as his or her representative to manage

the FOIA program in their office or region. Offices and regions also have a FOIA coordinator responsible for processing requests received in that office or region. In most cases, the FOIA coordinator in each office or region is in the chain of command of the Senior Management FOIA Official. The FPS trains the FOIA coordinators in the FOIA exemptions, administrative aspects of the FOIA, and the NRC FOIA processes. FOIA coordinators assist the staff in their office or region.

The OGC also supports the FOIA program by providing legal reviews of FOIA denials and appeals. In addition, OGC provides legal advice on FOIA policy and novel questions of law, as well as FOIA litigation support. The OGC is adequately staffed to review cases in a manner so as to not impede timeliness.

The centralized FPS is responsible for managing and tracking all FOIA requests and appeals received by the NRC. It is comprised of both Federal employees and contractors. The NRC accepts FOIA requests through e-mail, postal mail, courier, and facsimile. Offices and regions know to forward any requests they receive to the FPS within 1 work day. Received requests are administratively opened and assigned to a FOIA specialist. A preliminary determination is made in the FPS regarding where the requested information may reside; the request is either hand carried, sent through overnight mail, or transmitted electronically to the FOIA coordinator in the appropriate office(s) or region(s). The FOIA coordinator provides an estimate of the search, review, and duplication effort.

Once the FPS has determined that a request has been "perfected" (i.e., fee issues have been resolved and the scope of the request clarified), the FPS electronically notifies the appropriate FOIA coordinators to begin the search for records.

Once the request is perfected, the offices and regions must search for, retrieve records, and provide them to a subject matter expert within the office or region who makes recommendations on release or denial of the information. They bracket information that is proposed for denial. They make appendices with lists of documents that are already publicly available and provide the records to the FPS within 10 work days. The FOIA packet is then provided to the FOIA specialist who reviews the release and denial recommendations. Disagreements between the FOIA specialist and the FOIA coordinator and subject matter experts are resolved. After reviews are completed and differences of opinions are reconciled, the documents are scanned and redactions are made using FOIAXpress software. The packet is prepared for release to the requester via postal mail. Most requests are still provided in paper because that is what the requesters want. When requested, the NRC also sends results as an attachment to an e-mail or on a computer disc.

In complex requests that involve a voluminous amount of documents or documents from multiple offices or regions, partial releases are frequently made to requesters. This helps keep requesters satisfied and allows the processing pipeline to continue moving rather than waiting until the entire request is processed and sending all records at the same time.

In FY 2008, the NRC closed 74 percent of its simple FOIA requests in 20 days or less. In FY 2009, the percentage of simple requests processed in 20 days or less increased to 82 percent.

The NRC's FOIA professionals have sufficient IT support available in order to post required documents to the FOIA Web site, make documents publicly available, and assist with the loading of FOIAXpress software and updates as required. The agency provides sufficient



funding for the continuation of the FOIAXpress maintenance contract which also provides adequate licenses to perform redaction operations. The FPS receives direct IT support from the Infrastructure and Computer Operations Division (ICOD) which is also part of the OIS. The ICOD provides state-of-the-art personal desktop computers to the FPS and ensures timely help desk support to quickly address problems when they arise. This support ensures continuity of the FPS IT operations.

### **III. Steps Taken To Increase Proactive Disclosures**

**Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.**

As stated earlier, the NRC has a long-standing proactive practice of conducting its regulatory responsibilities in an open and transparent manner by keeping the public informed of the agency's regulatory, licensing, and oversight activities in the absence of a FOIA request.

The NRC was the first Federal agency to provide the public with electronic access to all of its public documents through the groundbreaking Agencywide Documents Access and Management System (ADAMS). Since the institution of ADAMS in 1999, it has been the NRC policy to make nonsensitive documents publicly available through ADAMS unless there is a specific reason not to do so. Consequently, since the inception of ADAMS in 1999, the agency has made public more than 600,000 full-text documents and is currently publishing an average of almost 300 documents daily.

The NRC public Web site broadens the public's understanding of the NRC's mission, goals, and performance; increases openness by providing information that enhances the ability of stakeholders to participate effectively in the regulatory process; and makes doing business with the NRC easier by enhancing access to agency information and making tools available for conducting business electronically. The public Web site provides links to the following Web page titles: Electronic Reading Room, ADAMS, Document Collections, Basic References, Photo and Video Gallery, Index to Frequently Asked Question Pages, Public Document Room, FOIA Requests, How to Obtain Paper Copies, Records Management, Facility Information Finder, Subscribe to E-mail Notices, Operating Reactor Correspondence, and the Congressional Affairs and Public Affairs home pages. In addition, the public Web site also provides links to news releases and speeches.

### **IV. Steps Taken To Greater Utilize Technology**

**A key component of the President's Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. For this section of the Chief FOIA Officer Report, please answer the following questions:**

- 1. Does your agency currently receive requests electronically?**

Yes, the NRC currently receives requests electronically through e-mail and facsimile. The NRC FOIA request e-mail address, [FOIA.resource@nrc.gov](mailto:FOIA.resource@nrc.gov), is located on the NRC Web site. The NRC FOIA request e-mail address is also published in the "Citizen's Guide to U.S. Nuclear Regulatory Commission Information" (NUREG/BR-0010, Revision 4), which can be found on the NRC's Web site at [www.nrc.gov/reading-rm/foia/foia-privacy.html](http://www.nrc.gov/reading-rm/foia/foia-privacy.html). The facsimile number is also available on the NRC Web site.

**2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.**

Not Applicable (N/A)

**3. Does your agency track requests electronically?**

Yes, the NRC uses FOIAXpress software to track requests electronically. Requests are logged in and assigned a case number. The status of each request is updated (e.g., when it is tolled, when it is perfected, when it is closed). Data is captured in order to produce the Annual FOIA Report and other ad hoc reports.

**4. If not, what are the current impediments to your agency utilizing a system to track requests electronically.**

N/A

**5. Does your agency use technology to process requests?**

Yes. Besides the operations described elsewhere in this section, the NRC has been using commercial software since April 2007 to electronically redact information from documents. Staff scan documents to create a Portable Document Format document. The NRC is currently using the redactions software provided as part of the FOIAXpress software product.

**6. If not, what are the current impediments to your agency utilizing technology to process requests.**

N/A

**7. Does your agency utilize technology to prepare your agency Annual FOIA Report?**

Yes. The NRC uses FOIAXpress software to prepare its Annual FOIA Report.

**8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.**

N/A

## **V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are an ongoing agency effort. Both the President and the Attorney General emphasized the importance of improving timeliness in responding to

requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the previous fiscal year and for this current fiscal year. Your Chief FOIA Officer Report should address the following elements.

**1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals.**

The number of NRC backlogged cases decreased from 6 at the end of FY 2008 to 5 at the end of FY 2009. The oldest backlogged case at the end of FY 2008 was 115 days old. The oldest backlogged case at the end of FY 2009 was 89 days old. There were no backlogged appeals in FY 2008. Even though the NRC received an inordinately high number of appeals in FY 2009, there were only 3 backlogged appeals at the end of FY 2009. The oldest backlogged appeal at the end of FY 2009 was 83 days old.

**2. If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction.**

N/A

**3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.**

In addition to steps mentioned previously in this report, the NRC has reduced the review time given to outside external submitters when it is necessary to coordinate requests containing proprietary information. Submitters now have 10 calendar days instead of 30 to provide a response to NRC. In addition, NRC now uses FedEx to "fast track" consultations with submitters.

## Raphael, Mary Jean

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**From:** Menefee, Becky  
**Sent:** Tuesday, July 28, 2009 8:13 AM  
**To:** Raphael, Mary Jean  
**Subject:** RE: riv training next week  
**Attachments:** FOIA Semiannual Training Schedule - August 2009.doc

Attached is the schedule Donna provided for the Region IV training on August 4. Is Donna not expecting to be in on the 4th?

---

**From:** Raphael, Mary Jean  
**Sent:** Tuesday, July 28, 2009 7:51 AM  
**To:** Menefee, Becky  
**Subject:** RE: riv training next week

o.k. Do you know what the schedule for the RIV 8/4 training is? (times). Also, Donna was scheduled to do some of the presentation I believe. Maybe you should ask Russ to do that.

---

**From:** Menefee, Becky  
**Sent:** Tuesday, July 28, 2009 7:50 AM  
**To:** Raphael, Mary Jean  
**Subject:** RE: riv training next week

I was working on a schedule for the December training because Region III & IV always seem to have problems with it.

---

**From:** Raphael, Mary Jean  
**Sent:** Tuesday, July 28, 2009 6:02 AM  
**To:** Menefee, Becky  
**Subject:** riv training next week

Were you and I working on the time schedule for RIV training next week or was it for the December training? I ask because Donna came up with a schedule a few weeks ago for the 8/4 RIV training and I believe already sent it to Earnestine.

**FOIA Training – Region IV  
August 2009**

09:30	Introduction – Donna Sealing
09:30 – 09:50	FOIA Basics – Deborah Dennis
09:50 – 10:00	Discussion of New FOIA Guidelines – Donna Sealing
10:00 – 10:15	Receipt of Requests and Appeals – Responses, Close Outs & Reports - Barbara Culleen
10:15 – 11:45	FOIA Procedures, Exemption 7 - Mary Jean Raphael
11:45 – 1:15	Lunch
01:15 – 02:00	Exemptions 1 - 6 - Natalie Brown
02:00 – 02:30	Questions for OGC – Cathy Holze
02:30 – 02:45	Conclusion – Donna Sealing

## **Raphael, Mary Jean**

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**From:** Holze, Catherine  
**Sent:** Tuesday, August 04, 2009 3:33 PM  
**To:** Raphael, Mary Jean  
**Subject:** RE: Foreseeable Harm Statements Related to Requests for Security Related Requirements

I think this is a good example of a harm statement. It's clearly not boilerplate but somebody bothered to analyze the document and articulate the nature the harm that would be expected to result from inappropriate dissemination. That's what I was trying to get across to them this afternoon.

---

**From:** Raphael, Mary Jean  
**Sent:** Tuesday, August 04, 2009 3:27 PM  
**To:** Holze, Catherine  
**Subject:** FW: Foreseeable Harm Statements Related to Requests for Security Related Requirements

FYI - This was one of the harm statements that has been approved in one of my cases. FSME forwarded it their counterparts in the regions to use, if it applies to any of their records. I mentioned this harm statement in the FOIA training this morning to RIV.

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**From:** Munroe, Stacey  
**Sent:** Tuesday, August 04, 2009 12:50 PM  
**To:** Raphael, Mary Jean; Clay, Earnestine  
**Subject:** FW: Foreseeable Harm Statements Related to Requests for Security Related Requirements

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**From:** Cain, Chuck  
**Sent:** Tuesday, August 04, 2009 12:06 PM  
**To:** Munroe, Stacey  
**Subject:** FW: Foreseeable Harm Statements Related to Requests for Security Related Requirements

Stacey, I guess you've seen this. Terry Reis sent it to all the DNMS regional managers and we've forwarded it to the DNMS branch chiefs.

---

**From:** Terrence Reis  
**Sent:** Monday, August 03, 2009 1:01 PM  
**To:** Reynolds, Steven; Kinneman, John; Collins, Daniel; Loudon, Patrick; Howell, Art; Cain, Chuck  
**Cc:** Luehman, James; Mauer, Andrew; Lukes, Kim; Foster, Jack; Einberg, Christian; White, Duncan  
**Subject:** Foreseeable Harm Statements Related to Requests for Security Related Requirements

All,

On March 19, 2009, the Attorney General issued comprehensive new guidelines to the heads of executive departments and agencies governing FOIA. These guidelines reaffirm the government's "commitment to accountability and transparency" as directed by the President in the FOIA memorandum issued January 21, 2009. The guidelines address the following: presumption of openness that the President stated in the FOIA memorandum; necessity for agencies to create and maintain an effective system for responding to requests; and necessity for agencies to make information available proactively to achieve the "new era of open Government" that the President envisions.

Due to the change in policy with the new administration, a foreseeable harm statement needs to be provided when information can not be disclosed to the public. This statement may cover multiple documents or multiple portions of documents, provided that the harm foreseen, and the reasons why the harm is foreseen, are the same for each. Foreseeable harm statements do not need to be lengthy, but they should be reasonably specific.

We have developed a foreseeable harm statement in response to a few FOIA requests for documents that would disclose the Increased Controls implementation status of licensees. The attached statement was written generic enough that it may be applicable to other similar FOIA requests we receive regarding documents that would disclose licensees' implementation status of the Increased Controls or other security-related requirements (irradiator, M&D, and RAMQC orders).

The draft statement has been reviewed and approved by OGC and has been used in response to some recent FOIA requests.

We want to share the statement with the Regions, so that this statement may be used for any relatable FOIA requests received in the Regions. Also, we want to make sure the RSAOs are aware of this statement, so that if they receive any inquiries from the States about how the NRC deals with releasing information that discloses security-related information to the public, this statement may be shared with the States.

If you have any questions about the attached document, please contact Kim Lukes at 301-415-6701

Thank you,

Terry



Terrence Reis  
Deputy Director, Division of Materials Safety and State Agreements  
Office of Federal and State Materials and Environmental Management Programs  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
MS TWFN T8E24

(301)415-3340 main  
(301) 415-5955 fax  
(202)680-9694 cell

Foreseeable Harm Statement

The type of document requested contains information that would disclose an individual licensee's implementation status of certain additional increased controls measures, which supplement existing regulatory requirements in 10 CFR § 20.1801 and 10 CFR § 20.1802, to ensure adequate protection of, and minimize danger to, the public health and safety. It is important to protect and minimize dissemination of such information that identifies implementation status of recipients of these additional increased controls requirements because release of this type of information could reasonably be foreseen to identify licensees that may have possession of radioactive materials that are deemed to be attractive targets for malevolent use. Signed \_\_\_\_\_, dated \_\_\_\_\_.



## **Sealing, Donna**

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**From:** Nichols, Russell  
**Sent:** Thursday, October 01, 2009 9:15 AM  
**To:** Floyd, Daphene  
**Cc:** Sealing, Donna  
**Subject:** FW: IOI - FOIA Training Region III

Daphene,  
Here is an IOI.  
Russ

---

**From:** Sealing, Donna  
**Sent:** Thursday, October 01, 2009 8:32 AM  
**To:** Nichols, Russell  
**Subject:** IOI - FOIA Training Region III

Russ,

Here is the draft IOI from Tuesday's FOIA Training at Region III.

### Freedom of Information Act Training - Region III

On September 29, 2009, Freedom of Information Act (FOIA) Training was presented at Region III by staff of IRSD and the Office of General Counsel. The training covered FOIA procedures and exemptions, the new "foreseeable harm" standard, appeals, personal records, outside-of-scope information, and Region III good practices. Approximately 75 employees and resident inspector staff attended the training.

## Sealing, Donna

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**From:** Nichols, Russell  
**Sent:** Wednesday, October 14, 2009 1:18 PM  
**To:** Holzle, Catherine  
**Cc:** Sealing, Donna  
**Subject:** Re: FOIA hearing tomorrow

Thanks. Trip forwarded it. Donna also went to a training session sponsored by DOJ.

---

**From:** Holzle, Catherine  
**To:** Nichols, Russell  
**Cc:** Sealing, Donna  
**Sent:** Wed Oct 14 13:10:23 2009  
**Subject:** FW: FOIA hearing tomorrow

don't know if this made its way to you and I'm late in looking at it myself, but these are Sean's notes from the FOIA hearing a couple of weeks ago. of note is the point that DOJ will be asking agencies to describe steps taken to apply the disclosure presumption, etc.

---

**From:** Croston, Sean  
**Sent:** Wednesday, September 30, 2009 11:23 AM  
**To:** Rothschild, Trip; Holzle, Catherine  
**Subject:** RE: FOIA hearing tomorrow

FYI,

I listened to the hearing while working on some stuff for Steve, and took the notes below, in case you are interested:

Sen. Leahy, Chairman of the Senate Judiciary Committee, began by praising FOIA and the new Administration's FOIA policies. Ranking member Sen. Cornyn was busy (along with half of the Judiciary Committee) with the Finance Committee's health care deliberations, but showed up to offer brief praise for FOIA too. He said the Open Gov't Act of 2007 was important, and agencies need to reply to FOIA requests quickly and thoroughly - "change in ethic and culture of the federal government" is most important goal -- citizens should be treated as valued customers, not as adversarial nuisances. The new NARA Office of Government Information Services (OGIS) is important to prevent unnecessary problems/litigation.

First witness was Tom Perrelli, Assoc. General Counsel and chief FOIA officer in DOJ. Perrelli praised openness in government because of DOJ's "particular responsibility" w/r/t FOIA, and noted Holder memo's "new approach" and "new culture" regarding FOIA. Records should not be withheld simply b/c exemptions *may* apply, but agency must reasonably foresee harm protected by exemption. Also pointed out new yellow FOIA manual - "that's a lot of FOIA." He also had a new announcement that today, new guidance will be sent to agency FOIA officers, requiring each agency to describe steps taken to apply presumption of disclosure, backlog of requests, information about implementing new technologies, etc. Pleased to welcome NARA's OGIS.

Second witness was Miriam Nisbet, head of NARA/OGIS. She thanked Committee for creating her office in Open Gov't Act. Public's right to access gov't records is "fundamental to our democracy" and her job was to make process work "smoothly and efficiently." NARA/OGIS has just received funding, and is getting off the ground -- "it's a little lonely here." She's trying to hire 5 staffers. Plans to offer ADR/mediation to help FOIA

work better for public and gov't agencies. Will review agency compliance/performance with FOIA, work closely with DOJ, and with chief FOIA officers at agencies, taking advantage of existing technology and existing annual FOIA reports. Will help resolve disputes between requesters and agencies, as non-binding alternative to litigation -- using existing federal mediation services in newly-standardized process. Will create online dispute resolution "ODR" system -- a new approach to FOIA disputes. View role as mediator, FOIA ombudsman, and source of information regarding FOIA and public records. Will promote good practices regarding FOIA, records searches, and consider problems of volume and sensitivity of records. Seeking to save time for agencies and public, and bolster confidence in open government.

Leahy asked Perrelli about Holder memo; was pleased with the memo. Asked about specific steps to implement new memo. Perrelli said there's been a number of steps -- training other agencies and DOJ personnel (Laura's recent FOIA training?) to focus on why records can be disclosed, not why they can't be disclosed. Started releasing OLC opinions, Immigration review guidance. Require agencies to identify statutory exemptions used to withhold information, esp. for Exemption 3 withholding (like safeguards for NRC).

Sen. Klobuchar asked Perrelli about President's FOIA memo. Perrelli said old DOJ message was withhold anything if you can find a basis in an exemption, and now message is that info should be presumed releasable. Agencies are now going out of the way to put records up online too. Agencies have a significant challenge in trying to keep up with volume of FOIA requests. DOJ still working to ensure focus on Partial disclosures -- are there pieces of information that can be released, even if other segments of document cannot be released? Trying to inculcate this idea in agencies. Regarding tracking numbers for requests, this should be broadly implemented by now. Still, a wide disparity in agencies' technological abilities, working to standardize electronic searches.

Then there was a long discussion about the new State Secrets policy, which wasn't really about FOIA... summarizing the administration's new position, that was recently announced.

Tom Curley then testified for the Sunshine in Gov't Initiative. He attacked the proliferation and widespread use of Exemption 3 statutes, when a lot of the info withheld should not need to be withheld -- e.g., identities of watermelon growers and ingredients in cigarettes are withheld via FDA's Exemption 3 statute. Sen. Leahy joked about watermelons, said patriotic Americans would want to conceal this information.

Meredith Fuchs of the National Security Archive testified next. She said that there was still a huge backlog in FOIA requests -- some pending for 17 years. She also complained about agencies not applying Holder memo policy to pending FOIA requests -- new standards have not been applied in all cases. Wants to know if DOJ has refused to defend any agencies yet under the new policy. She wanted White House offices to count as an agency for purpose of FOIA. Urged new administration to fully implement principles in Holder memo. In response to Leahy question, she said it's too early to tell if new guidelines have worked -- still lots of high-profile withholdings, and long backlog in requests. Leahy said that if agencies keep long backlog, they can discourage requesters, and wait for requesters to inevitably give up (or die?), and this is not the way to do business. According to study, 1/3 of FOIA requests were denied in 2004, leaving litigation as only option, and Leahy said litigation is too expensive for most people -- perhaps OGIS can be helpful alternative to litigation. Leahy praised Sen. Franken for working behind the scenes on the problem of FOIA backlogs, saying he's one of the hardest-working senators he's ever seen.

Leahy stated that public has right to know "when government screws up." These records are often withheld from "unnecessary paranoia" and security concern, as well as avoiding embarrassment. Wanted more details on watermelon growers story from FDA -- exemption 3 provisions slipped into legislation. Tom Curley complained about use of Ex. 5 to withhold lots of predecisional information as well as Ex. 3. Curley wants Congress to close some of the Ex. 3 loopholes.

Meredith Fuchs said very few agencies are complying with Open Gov't Act of 2007, and presumption of disclosure. She requested constant oversight from Judiciary Committee. Then the hearing ended.

---

**From:** Croston, Sean  
**To:** Holze, Catherine; Rothschild, Trip  
**Sent:** Tue Sep 29 13:38:37 2009  
**Subject:** FOIA hearing tomorrow

FYI,

I thought you might be interested in tomorrow's Congressional hearing regarding FOIA:

<http://judiciary.senate.gov/hearings/hearing.cfm?id=4077>

DOJ, NARA, the National Security Archive, and the Sunshine in Government Initiative will be testifying before the Senate Committee on the Judiciary.

Sean Croston  
Attorney  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O15-D21  
Washington, DC 20555  
(301) 415-2585

NOTICE: This email and any attachments may contain confidential Attorney-Client or Attorney Work Product material. Do not disclose outside NRC without Commission approval.

## Sealing, Donna

From: DOJ.OIP.FOIA [DOJ.OIP.FOIA@usdoj.gov]  
Sent: Monday, November 09, 2009 1:52 PM  
To: Arrington, Angela; Ball, Katherine; Bartlett, Michael J.; Bridge, Diane L.; Broderick, Marilyn;  
Cramer, Jodi; Dangin, Alan; Adams Jr., Albert D.; An, Gil Hyun  
; Apol, David; Babcock, Lisa; Batie, Patricia; Bender, Stuart; Berger, Robin;  
Berumen, Malia; Boling, Edward A.; Bomgardner, Elizabeth; Bovey, Julia; Boyd, Harriette;  
Brockner-Ryan, Beth; Buck, John; Castelli, Laurence; Castelli, Michael; Cerveney, John;  
Christopher, Nancy; Coe, A. Ren'ee; Cornell, Susan R.; Costello, Dan; Cragg, Scott;  
Crowley, Gerald; Diaz-Ortiz, Martha; Dolan, Brenda; Duncan, Hilario R.; Eckert, Robert;  
Ehrlich, Carol; Fina, Joan; Fisch, Fred; FitzGerald, E. William  
Frangipane, Noelle; Frazier, Kimberly; Frye, Nneka  
; Garner, Stephanie D.; Gee, Patricia  
; Gottesman, Larry; Gottry, Heather C.  
; Grafeld, Margaret P.; Gressman, William E.  
Gross, Jacqueline; Hackett, John F.; Hair,  
Shoko; Hardy, Dionne; Hawkins,  
Sharron; Higgins, Kitty; Hite, Jeanette S.  
; Holland, A.; Hollingsworth, Judi; Ingersoll,  
Janet; Inman, Katie; Jagadesan, Des  
; Jeffcoat, Mary A.; Jensen, Leslie  
; Johnson, Clay; Kammer, Will  
Kirkpatrick, Christopher; Korb, Timothy; Kurt,  
Christopher; Lankford, Sylvia; Laster, John  
; Lazaroff, Joy; Link, Kendra; Livornese,  
John; Low, Carol; Luczynski, Kimberley  
; Luna, Stella; Marquis, Michael S.  
Mason, Tony; Matthews, Carol A.; Mcconnell,  
Stephen; McCoy, Regina; McCready, Andrew  
W.; McLaughlin, Jeanne; Means, Judith  
; Mengel, David; Mills, Alberta  
; Newman, Annette; Nichols, Russell; Noble, Jacqueline; Oleinick,  
Lew; Oliver, Ramona; Papoi,  
Catherine; Parsons, Bobbie; Patten, Mae R.  
Payne, Latita M.; Peppe, Margaret G.; Petersen, Daniel  
; Phelan, John; Phillips, Pamela N.; Plick, Joe  
; Ratchford, Jeanne; Ray, Kathy  
; Sadler, Fred; Smith,  
Angela; Waymer, Ella; Adam, Joan; Aitken, Steven; Akers, Kelly; Army Human Resources  
Command; Barber, Delores J.; Beemer, Anne; Bestrain, Peggy; Blagg, Mahlon; Brown,  
Miriam; Bryant, Maureen; Carr, Paul J.; Carter, Brenda; Carter-Johnson, Jean; Chase,  
Michelle; Combs, Robert; Corbman, Laura; Debrae, Melvin; DeProspero, Peggy; DeSantis,  
Camillo; Dickerson, Robert; Dickey, Jennifer; Drabek, Cynthia; Easter, Stacy; English, Sarah;  
Espinal, John; Gilmore, Hugh; Hamlet, Greg; Hawkins, Sandra, L.; Henshall, Dave; Hester,  
tom; Hogan, Jim; Hudson, Jennifer; Jackson, Barbara; Jackson, Kim; Jacobsmeyer, Paul;  
Johnson, Tammye; Johnson, Toyia; Jones, Thom; Kahn, R.; Katilius, Lizzette; Krabbenhoft,  
Linda; Leonard, Rachael; Lesko, Stephanie; Levitt, Marilyn; Lighton, Sharon; Longnecker,  
Tom; MacNeil, Deirdre; Mallus, Alex; Mancini, N.; Marr, Jennifer; Martz, Amanda;  
Mastromichalis, Keith; Miller, Margaret A.; Morris, Alexander; Morris, Ladonna; Moss, Sara;  
Motto, Brian; Moye, Melba; National Reconnaissance Office; Nelson, Delores; Nikolaisen,  
Jennifer; O'Connor, Cindy; Oliveri, Medaris; Ortiz, Raho; Pavlik-Keenan, Catrina; Pickworth,  
Melissa; Poore, Ray; Ramsay, Nancy; Reali, Francis; Rollor, Audrey; Ross, Teresa; Rouse,  
Dianne; Salva, Dianne; Sasser, Tracey; Schecker, Larry  
; Sealing, Donna; Senzel, David; Sharpe, Thomas; Sheils, Peter  
; Shonks, Margie; Siegelbaum, Jill;  
Singer, Harold; Smith, Nancy Kegan; Sorbera,  
Joseph A.; St. Louis, Nicole; Steinberg, David  
; Stevenson, Todd A.; Supik, Frank; Suzuki, Shari;  
Sydnor, Cynthia; Taylor, Anastazia; Thomas, Charlene Wright  
; Tilley, Steven D.; Travers, Linda A.  
Underwood, Dale; Vance, Frank D.

**To:** ; Vankevich, Peter M. ; Veach, Kimberly; Verreau, Rebecca ; Virga, Jane; Wallace, Sally; Washington, Angela; Watt, Sheree; Weber, Frank; Westmoreland, Carol; Wiggins, Dawn; Williams, Alesia; Winefordner, Arlin ; Wooden, Eric; Wright, Lauren E. ; Yates, Ruth; Yohe, Melanie ; Abbott, Marilyn; Ashar, Monica; Barley, Renee; Blevins, Dianna; Bowers, Ralph ; Cadiente, Nichole; Cueva, Maria-Teresa; Dent, Linda; Eyre, Jane; FOIA Officer; Ghosal, Linda H.; Grady, Judith; Gramian, Nikki; Gross, Jackie; Janet, Kevin; Johnson, Pam; Kish, Kirsie; Landy, Eli; Lesko, Stephanie; Maloney, Carol; Martha, Sell; McKee, Catherine; Meza, Eric; Monroig, Emma; Parker, Susanna; Prutsman, Gary; Ridges, Mae; Salley, Candace; Skolochenko, Mary; Smith, Denise; Sweeney, Paula; Sweeney, Timothy; Taylor, Douglas; Thibadeau, Andrew; Turner, Alisa; Weeks, Roslyn ; White, Felisa; Winter, Celia; Young, Jacqueline; Aitken, Steven; Ashworth, Russ; Ballard, E.; Barnes, Janet L.; Bartholow, Steven; Bennet, Marilyn; Bertina Adams; Bhagowalila, Sanjeev (Sonny); Black, David ; Boling, Edward; Buffon, Kathleen; Calvert, Lawrence; Carson, David; Cinerney, R.M.; Conley, Michael; De Deo, Carol; Duncan, Thomasenia; Ellison, Michele P.; Flahavan, Richard; Ford, Delorice; Fortuno, Victor; Gregory, Karen V.; Grosner, Brian; Hall, Bill; Hertz, Philip; Hill, Beverly; Hughes, Inez; Johnson, Jennifer L.; Johnson, Mary; Jurith, Edward; Kaye, Janice; Kearney, Barry; Keats, Craig; Killelte, Delores; Knapp, Lindy; Kolb, Ingrid; Kropf, John (DHS); Luecke, Matthew M.; Mancini, Nadine; Mantini, John; Mastroianni, Peggy; mspb@mspb.gov; McDonnell, Erin; McKenna, Michael; Miranda, Roberto J.; Morgan, Rita M; Mould, David; Nichols, Dorothy; Paul Kollmer-Dorsey; Petrick, James; Powell, D. Matthew; Quintero, Mara; Rhodes, Michael; Richards, Laura; Ryan, JoAnn; Scherer, Robert; Schiffer, Lois; Shannon, Matthew; Shapiro, Robert; Stern, Gary; Suro-Brodie, Carmen; Tittsworth, Jim; Tobey, Bill; Trinity, Frank; Warner, Christopher; Watson, Carole; Weiss, Nancy; Wellman, Tricia; Zak, Leocadia; Apol, D; Bradfield, Michael; Caldwell, J.; Callahan, Mary Ellen; Cantor, Jonathan; Charles, John; Germain, Danielle; Grove, Shoshana; Holzerland, William (DHS); Jackson, Karen; Jacobs, Robert; Jagadesan, Dev; Koppel, Rosa; Lewis, Vicky; Meza, Eric; Moss, Elizabeth; Overton, Bruce; Phelps, John; Rodriguez, Steven; Ruzow, Lawrence; Shaub, Walter; Shaw, Cynthia; Shigekawa, Joan; Spencer, William; Tarasiuk, Aldolfo; Walters, Barry; Weems, Dorothy; White, Chris; Yates, Earl; Yoshimura, Edwin

**Subject:** Chief FOIA Officer Reports

**To:** Chief FOIA Officers and Principal FOIA Contacts

**From:** Melanie Ann Pustay  
Director  
Office of Information Policy  
U.S. Department of Justice

**Subject:** Chief FOIA Officer Reports

In accordance with the Attorney General's FOIA Guidelines, on September 30, 2009, the Office of Information Policy issued guidance to all agencies on the required elements of their Chief FOIA Officer Reports, which must be submitted to the Department of Justice by March 15, 2010. See FOIA Post, "Guidelines for Chief FOIA Officer Reports to the Department of Justice Pursuant to Attorney General Holder's FOIA Guidelines" (posted 9/30/2009). In their Chief FOIA Officer Reports, each agency is asked to give examples or statistics to document concretely the impact the new FOIA Guidelines are having. For example, in the Chief FOIA Officer Report each agency must give examples or statistics reflecting the numbers of discretionary releases that have been made under the new standards and the numbers of proactive disclosures that have been made.

This is a reminder to all agencies that it is vitally important to review the requirements for the Chief FOIA Officer Reports and to ensure that there are systems in place to track and account for the changes that are being made as a result of the new FOIA Guidelines so that that information can be included in the Chief FOIA Officer Reports.

## Sealing, Donna

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**From:** Nichols, Russell  
**Sent:** Thursday, December 03, 2009 1:12 PM  
**To:** Floyd, Daphene  
**Cc:** Sealing, Donna  
**Subject:** Fw: Item of Interest - Semi-Annual FOIA Training

Daphene,  
Here is an IOI for today's FOIA training.  
Russ

---

**From:** Sealing, Donna  
**To:** Nichols, Russell  
**Sent:** Thu Dec 03 13:01:26 2009  
**Subject:** Item of Interest - Semi-Annual FOIA Training

Russ,

Here an IOI concerning the Semi-Annual FOIA training.

Donna

### Semi-Annual Freedom of Information Act Training

On December 3, 2009, OIS staff presented Freedom of Information Act (FOIA) training to HQ and Region II staff. The training covered FOIA processes and procedures, exemptions, and the new "foreseeable harm" standard.

12/3/2009

GOOD MORNING I'M DONNA SEALING AND I'M THE CHIEF OF THE FOIA/PRIVACY SECTION AND I'D LIKE TO WELCOME YOU TO TODAY'S FOIA TRAINING.

IN YOUR NOTEBOOKS YOU'LL FIND THE SCHEDULE FOR THE TRAINING. THIS TRAINING IS BROKEN DOWN BY TOPIC AND WILL BE PRESENTED BY SEVERAL MEMBERS OF MY STAFF. WE WILL BE FOCUSING ON FOIA PROCESSES AND PROCEDURES, AN OVERVIEW OF THE FOIA EXEMPTIONS AND THE FOIA REPORTS WE PRODUCE. WE WILL ALSO BE DISCUSSING THE NEW FOIA GUIDELINES ISSUED BY THE PRESIDENT AND THE ATTORNEY GENERAL. I AM FORTUNATE TO HAVE A VERY EXPERIENCED STAFF. A COUPLE OF THE LADIES HAVE BEEN WORKING IN THE NRC FOIA OFFICE FOR OVER 30 YEARS SO PLEASE ASK QUESTIONS AND TAKE ADVANTAGE OF THEIR KNOWLEDGE. ALSO TAKING THE TRAINING TODAY IS CYSTAL STOKES, OUR SECRETARY. MANY OF YOU MAY HAVE CONTACT WITH HER FROM TIME TO TIME.

I'D LIKE TO THANK BECKY FOR ARRANGING THIS TRAINING AND ORGANIZING THE MATERIALS.

I'D LIKE TO START OFF TALKING A LITTLE ABOUT THE NEW FOIA GUIDELINES. ON MAR 19, 2009, THE ATTORNEY GENERAL ISSUED NEW FOIA GUIDELINES. THESE GUIDELINES REAFFIRM THE GOVERNMENT'S "COMMITMENT TO ACCOUNTABILITY AND TRANSPARENCY" AS DIRECTED BY PRESIDENT OBAMA IN HIS JAN 21, 2009, MEMO ON THE FOIA. THESE TWO MEMOS CALL FOR INCREASED GOVERNMENT OPENNESS. AGENCIES MUST "ADOPT A PRESUMPTION IN FAVOR OF DISCLOSURE." WE ARE



STRONGLY ENCOURAGED TO MAKE DISCRETIONARY RELEASES EVEN IF WE HAVE AN EXEMPTION THAT MAY ALLOW IT. IN ORDER TO WITHHOLD INFORMATION, AGENCIES MUST NOW REASONABLY FORESEE THAT DISCLOSURE WOULD CAUSE HARM. "SPECULATIVE FEARS" ARE NOT ENOUGH TO JUSTIFY WITHHOLDING. THERE HAS BEEN A NEW STANDARD ESTABLISHED FOR DEFENDING AGENCIES IN FOIA LITIGATION. DOJ WILL ONLY DEFEND US IF THERE WOULD BE HARM OR IF THE DISCLOSURE IS PROHIBITED BY LAW.

IN ORDER TO COMPLY WITH THE "FORESEEABLE HARM" STANDARD AND ENCOURAGE THE DISCRETIONARY RELEASE OF CERTAIN TYPES OF INFORMATION, WE'VE IMPLEMENTED THE NEW FOIA PROCEDURES AT NRC:

IF EXEMPTION 5 (PREDECISIONAL/DELIBERATIVE PROCESS) OR HIGH 2 (SENSITIVE, INTERNALLY-GENERATED SECURITY INFORMATION WHICH WOULD ALLOW CIRCUMVENTION OF LAWS) IS CLAIMED IN THE INITIAL REQUEST, A FORESEEABLE HARM STATEMENT MUST BE PROVIDED TO MY OFFICE. NO HARM STATEMENT IS REQUIRED FOR EXEMPTION 5 - ATTORNEY-CLIENT PRIVILEGE OR ATTORNEY WORK PRODUCT.

LOW 2 (INTERNAL TRIVIAL INFORMATION) WOULD TYPICALLY CAUSE NO HARM AND DISCRETIONARY RELEASE OF THIS INFORMATION WOULD APPLY.

WHILE EACH DOCUMENT OR PORTION OF A DOCUMENT PROTECTED BY EXEMPTIONS HIGH 2 AND 5 MUST BE ADDRESSED IN THE HARM STATEMENT, A SINGLE STATEMENT MAY COVER MULTIPLE DOCUMENTS OR MULTIPLE PORTIONS OF DOCUMENTS,

**PROVIDED THE HARM FORESEEN IS THE SAME FOR EACH. THESE STATEMENTS DO NOT NEED TO BE LENGTHY, JUST REASONABLY SPECIFIC.**

**A FORESEEABLE HARM STATEMENT FOR EXEMPTION 6, 7(A) OR 7(C) IS ONLY NECESSARY WHEN NOT OBVIOUS. THE SAME APPLIES FOR EXEMPTIONS 1, 3, AND 4.**

**WHEN RESPONDING TO APPEALS, THE OFFICE DIRECTOR OF THEIR DESIGNEE MUST INDICATE APPROVAL OF BOTH THE DECISION TO WITHHOLD AND THE FORESEEABLE HARM STATEMENT.**

**ANOTHER SIGNIFICANT PART OF THE NEW GUIDELINES IS THAT AGENCIES MUST TAKE REASONABLE STEPS TO SEPARATE EXEMPT INFORMATION FROM NON-EXEMPT INFORMATION. YOU'LL HEAR MORE ABOUT THE NEW GUIDELINES THROUGHOUT TODAY'S TRAINING.**

**BARBARA CULLEEN WILL DISCUSS THE RECEIPT OF NEW REQUESTS, OUR TRACKING SYSTEM AND PROCEDURES INVOLVED WITH CLOSING REQUESTS.**

**I'D LIKE TO THANK YOU FOR ATTENDING OUR TRAINING AND I HOPE IT WAS  
INFORMATIVE AND BENEFICIAL. I HOPE YOU HAVE A BETTER UNDERSTANDING  
OF OUR PROCESSES AND PROCEDURES, THE FOIA EXEMPTIONS AND THE  
NEW FOIA GUIDELINES. IF YOU EVER HAVE QUESTIONS, PLEASE FEEL FREE TO CALL  
ANY OF US OR SEND US AN EMAIL. ANY FINAL QUESTIONS????**

## Sealing, Donna

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**From:** Nichols, Russell  
**Sent:** Friday, December 04, 2009 7:36 AM  
**To:** Floyd, Daphene; Higgs, Gloria  
**Cc:** Sealing, Donna  
**Subject:** FW: Item of Interest - ASAP Training

Good Morning,

Here is an item of interest.

Russ

---

**From:** Sealing, Donna  
**Sent:** Thursday, December 03, 2009 2:16 PM  
**To:** Nichols, Russell  
**Subject:** FW: Item of Interest - ASAP Training

Russ,

Here's the IOI on the ASAP training that Deb attended.

Donna

\*\*\*\*\*

### American Society of Access Professionals Annual Symposium and Training Conference

On December 1 and 2, 2009, OIS staff attended the American Society of Access Professionals (ASAP) Annual Symposium and Training Conference. ASAP is a professional forum dedicated to bringing government Freedom of Information Act (FOIA) and Privacy Act (PA) personnel in touch with the requester community. The symposium consisted of panel discussions including the state of the FOIA, post President Obama's directive to increase transparency, and ongoing efforts to amend the PA. The keynote speaker was the Honorable Norman L. Eisen, Special Counsel to the President for Ethics and Government Reform who spoke on the White House efforts to be more transparent and the need for agencies to engage in more proactive disclosure. The newly formed Office of Government Information Services provided a mission overview.

## Sealing, Donna

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**From:** Nichols, Russell  
**Sent:** Monday, December 07, 2009 1:46 PM  
**To:** Floyd, Daphene  
**Cc:** Higgs, Gloria; Sealing, Donna  
**Subject:** Item of Interest

Daphene,

Here is an IOI for the training that Donna and I attended this morning.

### Freedom Of Information Act Public Liaison Officer Training

On December 7, 2009, NRC's two Freedom of Information Act (FOIA) Public Liaison Officers (FPLO) attended FPLO training sponsored by the Department of Justice (DOJ) at the Department of Commerce in Washington, D.C. A briefing of the general responsibilities of the FPLO was provided by DOJ and common concerns raised by the FOIA requester community were discussed. The Director, Office of Government Information Services (OGIS), recently established at the National Archives and Records Administration as a result of The Open Government Act of 2007, provided a briefing of the OGIS mission and how OGIS will interact with agency FPLOs. A question and answer session followed the two briefings.

Russ

## Sealing, Donna

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**From:** Wood, Becky  
**Sent:** Tuesday, December 08, 2009 8:31 AM  
**To:** Brown, Natalie; Raphael, Mary Jean; Culleen, Barbara; Dennis, Deborah; Christian, Warren  
**Cc:** Sealing, Donna; Stokes, Crystal  
**Subject:** Use of FedEx

**Importance:** High

Yesterday, agencies were instructed by Melanie Pustay, the Director of Office of Information Policy, to find ways to "fast track" consultations with outside agencies/entities. To achieve this, we have been granted authorization to utilize FedEx when sending documents to outside the agency for review.

*Becky Wood*, Program Analyst

FOIA/Privacy Section, Information Services Branch

Information & Records Services Division, Office of Information Services

[Becky.Wood@nrc.gov](mailto:Becky.Wood@nrc.gov) Ph: 301-415-6968 Rm: T-5F16 Ms: T-5F09

## Sealing, Donna

---

**From:** Nichols, Russell  
**Sent:** Tuesday, January 12, 2010 2:43 PM  
**To:** Floyd, Daphene  
**Cc:** Sealing, Donna  
**Subject:** FW: Item of Interest

Daphene,

Here is an IOI from today.

Russ

---

**From:** Sealing, Donna  
**Sent:** Tuesday, January 12, 2010 2:20 PM  
**To:** Nichols, Russell  
**Subject:** Item of Interest

Here's the IOI for your review from today training:

### Chief Freedom Of Information Act Officer Report Training

On January 12, 2010, OIS staff attended Chief Freedom of Information Act (FOIA) Officer Report training sponsored by the Department of Justice (DOJ) at the Department of Commerce in Washington, D.C. DOJ hosted the training to discuss the requirements for this new report which will address a range of issues, including agency efforts to improve timeliness in responding to FOIA requests, steps taken to utilize technology to improve the timeliness of FOIA responses, and examples of proactive disclosures of information in the absence of a FOIA request. Each agency Chief FOIA Officer must submit a draft report to DOJ by March 1, 2010, and a finalized report by March 15, 2010. Each agency must also post its report on its Web site.

## Sealing, Donna

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**From:** Nichols, Russell  
**Sent:** Tuesday, February 16, 2010 11:47 AM  
**To:** Sealing, Donna  
**Subject:** Use of Exemption 5

Donna,

I looked at the reports for FY's 09, 08, and 07.

When I compared the number of times we invoked Exemption 5 versus the total number of cases that were either partially denied or denied in full, it does show a decrease of 5% in the use of Exemption 5.

Here's what I found;

<u>FY</u>	<u># of times Ex5 used</u>	<u>Total # of Requests (Partially denied and fully denied)</u>	<u>% of use of Ex5</u>
09	29	97	29.8%
08	35	100	35.0%
07	42	106	39.6%

I think this is statistically significant enough to warrant writing about it. I'll add it somewhere.

Russ



# ***The Freedom of Information Act (FOIA) at the U.S. Nuclear Regulatory Commission***

The Commission directed the NRC staff to develop a training program for NRC staff members who routinely deal with FOIA matters. This on-line training was developed to meet that requirement and to provide individuals who have been assigned a Freedom of Information Act (FOIA) action who do not routinely deal with FOIA matters, a tutorial on the provisions of the FOIA, and implementation of the FOIA at the NRC. The NRC Office of Information Services FOIA/PA staff also provides classroom FOIA training semiannually at NRC Headquarters. For information about FOIA classroom training, contact the Office of Information Services FOIA/PA staff via email at [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov).

Click  to continue.

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## • ***Module A - Introduction to the FOIA***

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1.1 Objectives

1.2 Freedom of Information Act

1.3 Who Is Subject to the FOIA?

1.4 Who Can Make a FOIA Request?

1.5 Requirements for Making a Request

1.6 What Records Can be Requested

1.7 Searches for Records

1.8 Time Requirement for Agency's Response

1.9 Expedited Processing

1.10 Key Elements of a Response

1.11 Appeal Process and Appeal Denials

1.12 FOIA Requester Categories and Fees

1.13 Fee Waiver

## **1 Objectives**



- ▶ Definition of the FOIA
- ▶ Purpose of the FOIA
- ▶ General Provisions of the FOIA

## 2. Freedom of Information Act



5 U.S.C. § 552 - Enacted in 1966, the FOIA established the first comprehensive statutory right of access to government information.

### ► Principles of the FOIA

- ★ government should be open and accountable
- ★ shed light on the functions and operations of the government

### ► The burden is on the government to justify the withholding of information

### **3 Who Is Subject to the FOIA?**



- ▶ The FOIA applies to all federal agencies in the Executive Branch
- ▶ Does NOT apply to Congress, the Federal Courts, or the Executive Office of the President

#### 4. Who Can Make a FOIA Request?



##### ► Who Can Make a FOIA Request?

- ★ the FOIA provides that **"any person"** has a right, enforceable in court, to obtain access to federal agency records, except as protected from disclosure by the exemptions in the statute
- ★ the term **"any person"** encompasses individuals (including citizens of foreign countries), partnerships, corporations, associations, and foreign and domestic governments

## 5 Requirements for Making a Request



- ▶ The request must be made in accordance with the NRC's published regulations in 10 CFR Part 9
  - ★ requester must cite the FOIA
  - ★ requester must reasonably describe the agency records sought in sufficient detail to allow a "reasonable" search and identification of records
  - ★ request does not require a signature (except for individuals who make requests for records about themselves)
  - ★ requester may ask for records in the form or format desired, i.e., electronic or paper. Agency must provide them if they are readily reproducible by the agency in that form or format

## 6 What Records Can be Requested



► Records in any format (paper or electronic) that are:

- ★ either created or obtained by the NRC
- ★ in the possession and control of the NRC associated with Government business

► Does not include:

- ★ publicly available books, periodicals and other publications that are owned or copyrighted by non-Federal sources
- ★ records solely in the possession and control of NRC contractors
- ★ personal records that have not been circulated or integrated into agency files, including:
  - notes concerning government business that are either typed or written and not shared with others
  - records of a personal nature that are not associated with Government business



## 7 Searches for Records



- ▶ A "search" means to review manually or by automated means, agency records for the purpose of locating those records which are responsive to a request
- ▶ An agency must undertake a search that is reasonably calculated to uncover all relevant records
- ▶ An agency must search using methods which can be reasonably expected to produce the information requested
- ▶ Failure to find a specific record does not render the search inadequate. It is unreasonable to expect even the most exhaustive search to uncover every responsive record because records can be lost, destroyed, and misfiled
- ▶ Only agency records that are in existence on the date the NRC received the request are subject to the FOIA request
- ▶ Agencies are not obligated to create a record to respond to a FOIA request
- ▶ Agencies are not required to answer questions asked in a request

## 8. Time Requirement for Agency's Response



- ▶ Agencies must respond to a FOIA request within 20 days, excluding weekends and holidays, of receipt of a perfected request
  - ★ A request is considered perfected when it describes the records sought well enough to allow a reasonable search to be made, all questions about the applicable fees have been resolved with the requester, and any other matters, such as verification of identity, have been resolved. If a request does not require clarification, further agreement to pay fees, or resolution of any other issues, it will be considered to be a perfected request as of the date of receipt by the OIS FOIA/PA staff.
- ▶ An agency can extend the 20-day time limit if there is:
  - ★ an **unusual** circumstance
    - the need to search for and collect the requested records from regional offices or other establishments that are separate from the office processing the request
    - the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request
    - the need for consultation, which will be conducted with all practicable speed, with another Federal agency having a substantial interest in the determination of the request or among two or more components of the NRC having substantial subject-matter interest therein
  - ★ an **exceptional** circumstance
    - a requester may be notified in certain exceptional circumstances, when it appears that a request cannot be completed within the allowable time, and will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing

## 9. Expedited Processing



- ▶ NRC may place a person's request at the front of a queue upon receipt of a written request that clearly demonstrates a compelling need for expedited processing due to:
  - ★ imminent threat to the life or physical safety of an individual
  - ★ media urgency to inform the public concerning actual or alleged Federal Government activity
- ▶ Within 10 calendar days, the requester must be informed of an expedited processing determination

## 10. Key Elements of a Response



### ► Agencies must provide:

- ★ fee information, if applicable
- ★ access to requested records where there is no legal basis to withhold
- ★ appropriate exemption(s) for withheld information
- ★ name of denial authority, if applicable
- ★ appeal procedures, if applicable

## Appeal Process and Appeal Denials



- ▶ A requester may appeal an adverse determination
- ▶ A determination may be considered adverse when:
  - ★ a request is denied in whole or in part
  - ★ a search results in a "No record" determination (may raise questions regarding the adequacy of the search)
  - ★ a request for expedited processing is denied
  - ★ a fee waiver request is denied
  - ★ the agency fails to provide the requested records within 20 days, excluding weekends and holidays
- ▶ The appeal must be sent to the specified NRC appellate authority within 30 calendar days of the date of the NRC denial
- ▶ If an appeal is wholly or partially denied, the requester may seek judicial redress in a Federal district court

## 12. FOIA Requester Categories and Fees



► The FOIA provides for three categories of requesters. The fees vary for each category:

- ★ commercial

- pay all fees: search, review, duplication

- ★ educational institution/non-commercial scientific institution/news media

- pay duplication fees with first 100 pages free

- ★ all others

- pay search fees with first 2 hours free
  - pay duplication fees with first 100 pages free

**13 Fee Waiver**

## ► Fee Waiver

- ★ the FOIA provides that records shall be furnished without any charge or at a reduced charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."
- ★ FOIA requesters asking for a waiver or reduction of fees must:
  - describe the purpose for which they intend to use the requested information
  - explain the extent to which they will extract and analyze the substantive content of the agency record
  - describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications they possess to utilize information for the intended purpose in such a way that it will contribute to public understanding
  - describe the likely impact on the public's understanding of the subject as compared to the level of public understanding of the subject before disclosure
  - describe the size and nature of the public to whose understanding a contribution will be made
  - describe the intended means of dissemination to the general public
  - indicate if public access to information will be provided free of charge or provided for an access fee or publication fee
  - describe any commercial or private interest that they or any other party has in the agency records requested



## **Module B - The FOIA Exemptions**

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- 2.1 Objectives
- 2.2 What is an Exemption?
- 2.3 FOIA Exclusions
- 2.4 FOIA Exemption (b)(1) Classified National Security Information
- 2.5 FOIA Exemption (b)(1) at NRC
- 2.6 FOIA Exemption (b)(2) Internal Agency Rules and Practices
- 2.7 FOIA Exemption (b)(2) Low
- 2.8 FOIA Exemption (b)(2) High
- 2.9 FOIA Exemption (b)(3) Information Withheld by Statute
- 2.10 FOIA Exemption (b)(4) Commercial/Financial
- 2.11 FOIA Exemption (b)(5) Deliberative Process
- 2.12 FOIA Exemption (b)(5) (Cont.)
- 2.13 FOIA Exemption (b)(6) Personal/Privacy Information
- 2.14 FOIA Exemption (b)(6) (Cont.)
- 2.15 FOIA Exemption (b)(6) and Civilian Federal Employees
- 2.16 FOIA Exemption (b)(7) Law Enforcement/Investigatory
- 2.17 FOIA Exemption (b)(7) (Cont.)
- 2.18 FOIA Exemption (b)(7) (Cont.)
- 2.19 Examples of Terminology Not Covered by (b)(7)(E)
- 2.20 Examples of Specific Techniques Covered by (b)(7)(E)
- 2.21 FOIA Exemption (b)(7) (Cont.)
- 2.22 Reasonable Segregation





## Objectives

### 1. Objectives

- ▶ The FOIA Exemptions and Exclusions
- ▶ Application of the FOIA Exemptions

## 2. What is an Exemption?



- ▶ The FOIA provides nine exemptions from mandatory disclosure provisions
- ▶ The FOIA requires agencies to provide information unless it fits into an exemption. The NRC uses seven of these exemptions
- ▶ The seven FOIA exemptions used by the NRC are:
  - ★ Exemption 1 - Classified National Security Information
  - ★ Exemption 2 - Internal Agency Rules and Practices Information
  - ★ Exemption 3 - Information Required to be Withheld by Another Federal Statute
  - ★ Exemption 4 - Commercial/Proprietary Information
  - ★ Exemption 5 - Deliberative Process, Attorney-Client and Attorney Work Product Information
  - ★ Exemption 6 - Personal/Privacy Information
  - ★ Exemption 7 - Law Enforcement/Investigatory Information

### 3 FOIA Exclusions



- ▶ There are two special provisions for protecting certain especially sensitive law enforcement matters under certain specified circumstances that are rarely used by the NRC:
  - ★ the (c)(1) Exclusion: Whenever a request is made which involves access to records described in subsection (b)(7)(A) and
    - (A) the investigation or proceeding involves a possible violation of criminal law; and
    - (B) there is reason to believe that
      - (i) the subject of the investigation is not aware of its pendency, and
      - (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section (the FOIA)
  - ★ the (c)(2) Exclusion: Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of the FOIA unless the informant's status as an informant has been officially confirmed

#### 4. FOIA Exemption (b)(1) Classified National Security Information



- ▶ 5 U.S.C. § 552 (b)(1) of the FOIA integrates the national security protections provided by Executive Order (E.O.) 12958, as amended by E.O. 13292, with the FOIA disclosure mandate by protecting from disclosure all classified national security information concerning the national defense or foreign policy that has been properly classified in accordance with the substantive and procedural requirements of the current order
  - ★ the information needs to be reviewed to determine whether the record in its entirety or portions thereof can be declassified and released
  - ★ after review, if information remains classified, it must be withheld
- ▶ The amended Executive Order of March 25, 2003 (E.O. 13292), is the basis for determining what information qualifies as classified national security information
- ▶ Classification levels:
  - ★ Top Secret (TS)
  - ★ Secret (S)
  - ★ Confidential (C)

## 5. FOIA Exemption (b)(1) at NRC



- ▶ NRC receives few FOIA requests for classified records
- ▶ The classifying office will conduct a declassification review to segregate exempt classified information from nonexempt unclassified information, consulting with the Office of Nuclear Security and Incident Response (NSIR), if necessary
- ▶ NSIR will prepare a memorandum advising the classifying office of the results of its declassification review and indicating which portions of the record are currently classified. NSIR also will send a copy of this memorandum to the OIS FOIA/PA staff

**The Freedom of  
Information Act (FOIA)  
at the U.S. Nuclear  
Regulatory Commission**

**6. FOIA Exemption (b)(2) Internal Agency Rules and Practices**



► 5 U.S.C. § 552 (b)(2) of the FOIA exempts from mandatory disclosure records that are "related solely to the internal personnel rules and practices of an agency."

★ two subcategories: "low 2" and "high 2"

Module A -  
Introduction to the  
FOIA

Module B - The FOIA  
Exemptions

Module C - NRC  
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## **7. FOIA Exemption (b)(2) Low**



5 U.S.C. § 552 (b)(2) Low

► Protects information which is trivial in nature and is considered not to have public interest

★ all information fitting within the bounds of Exemption (b)(2) Low may be released at the discretion of the agency

★ examples include:

- parking program
- employee performance standards
- leave practices

## **8 FOIA Exemption (b)(2) High**



### 5 U.S.C. § 552 (b)(2) High

- ▶ More substantial internal matters, the disclosure of which would risk circumvention of a statute or agency regulation
- ▶ Protects any information which might be used to circumvent a statute or agency rule or regulation

★ examples include:

- security classification guides
- operating rules, manuals for investigators
- vulnerability assessments
- internal information that could aid a terrorist including results of security-related inspections
- bridge pass codes for conference calls
- crediting plans for evaluation of employment applications
- agency credit card numbers



**9. FOIA Exemption (b)(3) Information Withheld by Statute**

- ▶ 5 U.S.C. § 552 (b)(3) of the FOIA allows the withholding of information prohibited from disclosure by another Federal statute: the statute either "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld."
- ▶ Exemption 3 statutes include:
  - ★ Section 145 of the Atomic Energy Act which precludes release of Restricted Data
  - ★ Section 147 of the Atomic Energy Act which precludes release of Safeguards Information
  - ★ 41 U.S.C. Section 253(b), Subsection (m)(I), prohibits the disclosure of contractor proposals in the possession and control of an Executive agency to any person under Section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal
- ▶ No discretion allowed for release of information under this exemption, the information must be withheld

**10 FOIA Exemption (b)(4) Commercial/Financial**

- ▶ 5 U.S.C. § 552 (b)(4) of the FOIA protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential.
  - ★ in order to be exempt from disclosure under this exemption, information must originate outside the Federal government. Most information developed by government contractors on behalf of the government can not be withheld using this exemption
  - ★ confidential business information (proprietary), the disclosure of which would likely cause the submitter competitive harm, can be withheld under this exemption and may encompass
    - voluntary or mandatory submission of costing information
    - unique technical approaches to problems
    - customer lists
    - information revealing vulnerabilities of nuclear facilities or materials to theft or sabotage
    - product manufacturing and design information
    - private sector information which could reasonably jeopardize the effectiveness of a Government security program
    - facility drawing details showing specific locations of equipment or materials within a building that could be of use to an adversary
    - non-public financial information
    - contract proposal information
    - confidential settlement agreement information
  - ★ information can be withheld as proprietary if it is submitted in confidence by a foreign source or if it concerns a licensee's or applicant's physical protection program, program for protection of classified national security, or control and accounting program for special nuclear material in accordance with 10 CFR 2.390

## FOIA Exemption (b)(5) Deliberative Process



- ▶ 5 U.S.C. § 552 (b)(5) protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."
- ▶ This encompasses memos, letters, drafts, and unclassified records normally not circulated beyond the Executive Branch
- ▶ Not all such information is withholdable. To be withheld, the information must generally be within one of three primary privileges
  - ★ attorney-client privilege
  - ★ attorney-work product privilege (documents prepared by attorneys in anticipation of litigation)
  - ★ pre-decisional/deliberative process privilege
- ▶ Covers communications between NRC employees or between NRC employees and other Federal agencies that have not been shared with the nuclear industry or public
- ▶ Even if the information is withholdable, the NRC frequently makes discretionary releases of records covered by Exemption 5, including drafts of records

**12 FOIA Exemption (b)(5) (Cont.)**

- ▶ The deliberative process privilege has several purposes:
  - ★ encourages open, frank discussion on matters of policy
  - ★ protects against public confusion that might result from disclosure of reasons and rationales that were not ultimately the grounds for an agency's action
  - ★ protects against premature disclosure of proposed policies
- ▶ The deliberative process privilege only encompasses advice, opinions, and recommendations prepared as part of a decision making process. Segregable factual material must be disclosed
- ▶ Examples of withholdable information:
  - ★ non-factual parts of reports (pre-decisional) containing evaluations, opinions, suggestions, and/or recommendations
  - ★ advice, suggestions, or evaluations of consultants and task forces
  - ★ trade secret, confidential research, or commercial information owned by the government
  - ★ facts inextricably intertwined with recommendations and opinions

**13 FOIA Exemption (b)(6) Personal/Privacy Information**

- ▶ 5 U.S.C. § 552 (b)(6) of the FOIA permits the government to withhold all information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." This requires a balancing of the public's right to disclosure against the individual's right to privacy
- ▶ This exemption covers:
  - ★ medical files, personnel records, security clearance investigations, or any information not considered appropriate for release from a privacy perspective
  - ★ applications, resumes, and other material submitted by candidates not selected for a position applied for at the NRC
  - ★ information must be identifiable to a specific person not to a group or be statistical information

#### 14. FOIA Exemption (b)(6) (Cont.)



##### ► Examples of Personal/Privacy Information that will be withheld

- ★ date of birth/place of birth
- ★ social security number
- ★ other personal information
  - home addresses, home phone numbers, personal cell phone numbers, home email addresses, marital status, non-job-related interests, medical and financial information, religious affiliation or reference to religious activities, employee performance, and disciplinary information

## 15 FOIA Exemption (b)(6) and Civilian Federal Employees



► Federal employees have reduced privacy rights for certain information pertaining to their federal employment ([see Yellow Announcement 2007-025](#)).

► Releasable information of Federal Employees

- ★ name
- ★ title
- ★ grade
- ★ salary
- ★ duty station
- ★ work phone numbers
- ★ portions of successful employment applications that show their qualifications for their positions

**16 FOIA Exemption (b)(7) Law Enforcement/Investigatory**

- ▶ 5 U.S.C. § 552 (b)(7) of the FOIA protects from disclosure "records or information compiled for law enforcement purposes."
- ▶ 5 U.S.C. § 552 (b)(7)(A) protects from disclosure the release of such law enforcement records or information which could reasonably be expected to interfere with enforcement proceedings when
  - ★ a law enforcement proceeding is pending or prospective
  - ★ release of information about it could reasonably be expected to cause some articulable harm
- ▶ Exemption (b)(7)(A) is temporal in nature and ends once the investigation has been completed and all enforcement action, including judicial proceedings, have ended
- ▶ At NRC, Exemption (b)(7)(A) protects from disclosure the release of such law enforcement records or information which could reasonably be expected to interfere with a pending allegation, investigation, or enforcement action



**17. FOIA Exemption (b)(7) (Cont.)**

- ▶ 5 U.S.C. § 552 (b)(7)(B) protects from disclosure the release of such law enforcement records or information which would deprive a person of a right to a fair trial or an impartial adjudication
  - ★ aimed at preventing prejudicial pretrial publicity that could impair a court proceeding
  - ★ not often invoked
  - ★ use of Exemption (b)(7)(A) serves the same purpose
- ▶ 5 U.S.C. § 552 (b)(7)(C) protects from disclosure the release of such law enforcement records or information which could reasonably be expected to constitute an unwarranted invasion of personal privacy
  - ★ similar to Exemption (b)(6) but less stringent standards imposed
  - ★ the passage of time will not ordinarily diminish the applicability of Exemption (b)(7)(C)
  - ★ examples of uses of Exemption (b)(7)(C) at the NRC
    - personal information in closed allegation, investigation, or enforcement files
    - names and other identifying information on allegeders, informants, and/or subjects of investigation

**18 FOIA Exemption (b)(7) (Cont.)**

- ▶ 5 U.S.C. § 552 (b)(7)(D) protects from disclosure the release of such law enforcement records or information which 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 a 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.
  - ★ source must be given an express promise of confidentiality, or under circumstances from which such assurances could be reasonably inferred
  - ★ interpretations of the term "source" include individuals and institutions and can include crime victims, citizens providing allegations of misconduct, citizens responding to inquiries from law enforcement agencies, employees providing information about their employers, and foreign law enforcement agencies
- ▶ 5 U.S.C. § 552 (b)(7)(E) protects from disclosure the release of such law enforcement records or information which 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
  - ★ the technique must not be well known to the public

## 19 Examples of Terminology Not Covered by (b)(7)(E)



► The fact that the following investigative terminology may be used does not qualify them as an investigative **technique** within the meaning of Exemption (b)(7)(E) because the **terminology** is commonly known to the public.

- ★ wire tapping
- ★ mail cover
- ★ use of post office boxes
- ★ security flashes
- ★ tagging of fingerprints
- ★ pretext telephone calls
- ★ tracking devices
- ★ polygraph - lie detector testing
- ★ electronic monitoring or surveillance

## **20. Examples of Specific Techniques Covered by (b)(7)(E)**



- ▶ The details of whether a particular technique was used in an investigation and, if so, how it was done are protectable. This allows withholding of
  - ★ how a wiretap is performed
  - ★ how a mail cover is conducted
  - ★ specific tracking devices used and their capabilities
  - ★ polygraph test procedures, formats, and questions used
  - ★ the details about how electronic monitoring or surveillance are performed

**21 FOIA Exemption (b)(7) (Cont.)**



► 5 U.S.C. § 552 (b)(7)(F) protects from disclosure the release of such law enforcement records or information which could reasonably be expected to endanger the life or physical safety of any individual

- ★ requires the withholding of any information necessary to protect the safety of individuals

- ★ no discretionary release

## 22. Reasonable Segregation



- ▶ The FOIA requires that any reasonably segregable portion of an agency record (except for attorney work product) shall be provided to any person requesting such a record after deletion of the portions which are exempt
- ▶ Agencies cannot withhold entire pages or records if only portions contain exempt information. Agencies must segregate releasable information from exempt information and provide non-exempt information
- ▶ All records, including non-public records, must be reviewed when subject to a FOIA request

## **Module C - NRC Procedures Guidance**

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### 3.1 Objectives

### 3.2 General NRC Procedures

### 3.3 OIS FOIA/PA Officer and OIS FOIA/PA Staff Procedures When a Request is Received

### 3.4 OIS FOIA/PA Officer and OIS FOIA/PA Staff Procedures After Records are Received from the Office(s) and/or Region(s)

### 3.5 Specific NRC Procedures for Office(s) and/or Region(s)

### 3.6 Office and Region Timelines

### 3.7 Steps to Process a FOIA Request

### 3.8 Searches for Relevant Files

### 3.9 Searching for Records

### 3.10 Reviewing Relevant Records

### 3.11 Creating Appendices

### 3.12 Receipt and Processing of FOIA Appeals

### 3.13 Assigning FOIA Appeal Actions to Offices

### 3.14 Processing a FOIA Appeal

### 3.15 Processing a FOIA Appeal (Cont.)

### 3.16 Appeal Denials and Dispatch of Appeals

### 3.17 NRC FOIA References

## **1 Objectives**



- ▶ General NRC Procedures
- ▶ OIS FOIA Officer and Staff Responsibilities
- ▶ Offices and Regions Responsibilities
- ▶ NRC Instructions for Processing a FOIA Request
- ▶ NRC Instructions for Processing a FOIA Appeal



## 2 General NRC Procedures



- ▶ FOIA request is received at NRC
  - ★ FOIA request is not considered received at NRC until it is received by the OIS FOIA/PA staff
- ▶ OIS FOIA/PA staff assigns the request to office(s) and/or region(s)
- ▶ The office(s) and/or region(s) provide an estimate of search and review time and pages
- ▶ Request is verified as valid (perfected). If the request is not perfected because of a need to collect fees
  - ★ OIS FOIA/PA staff computes the total amount due based on fee estimates from office(s) and/or region(s)
    - contacts requester for agreement to pay fees
    - may request advance payment
  - ★ action by office(s) and/or region(s) is suspended until notified by OIS FOIA/PA staff that the request is perfected
- ▶ The office(s) and/or region(s) search for records when notified by the OIS FOIA/PA Caseworker
- ▶ The office(s) and/or region(s) review responsive records line-by-line noting exemptions and make initial recommendations
- ▶ The office(s) and/or region(s) must provide foreseeable harm statements for Exemptions 2 (high) and 5 (Deliberative Process)
- ▶ The OIS FOIA/PA Caseworker reviews the office(s) and/or region(s) recommendations and coordinates with the office(s) and/or region(s) to resolve any differences of opinion
- ▶ The OIS FOIA/PA Caseworker obtains Office of General Counsel (OGC) review, when required
- ▶ NRC FOIA/Privacy Officer approves and signs the response
- ▶ The OIS FOIA/PA staff provides the response and records, if applicable, to the FOIA requester

### **3. OIS FOIA/PA Officer and OIS FOIA/PA Staff Procedures When a Request is Received**



#### **► OIS FOIA/PA Officer**

- ★ reviews request for completeness
- ★ approves or disapproves expedited processing, if requested
- ★ approves or disapproves fee waiver, if requested
- ★ reviews office(s) and/or region(s) to be assigned action on requests
- ★ assigns request to OIS FOIA/PA Caseworker

#### **► OIS FOIA/PA Staff**

- ★ enters request in case tracking database
- ★ sends request to the FOIA Coordinator in the appropriate office(s) and/or region(s) for estimates
  - advises the FOIA Coordinator if expedited processing is requested
- ★ sends acknowledgement letter or e-mail to requester with case number and name and telephone number of the OIS FOIA/PA Caseworker assigned to the case
- ★ contacts requester for clarification of scope and fee issues, if necessary

#### **4. OIS FOIA/PA Officer and OIS FOIA/PA Staff Procedures After**



##### **Records are Received from the Office(s) and/or Region(s)**

- ▶ Review proposed responses from office(s) and/or region(s) for accuracy and completeness
- ▶ Resolve differences with office(s) and/or region(s)
- ▶ Make referrals to other Federal agencies, private sector entities, and NRC offices, if necessary
- ▶ Obtain OGC review, if necessary
- ▶ Redact the withheld information

★ redaction is the physical removal of withheld information from a record for the purpose of making a sanitized version of the record available

- ▶ Consolidate appendices received from office(s) and/or region(s)
- ▶ Prepare(s) response(s) to the requester

## 5. Specific NRC Procedures for Office(s) and/or Region(s)



- ▶ FOIA Coordinator receives the request from the OIS FOIA/PA staff
  - ★ reviews request for understanding of scope (see Section 3.10), if needed
    - contacts OIS FOIA/PA staff for clarification, if necessary
  - ★ provides estimates of duplication and time to complete the search and review of records
    - must provide an estimate to the OIS FOIA/PA staff within 4 work days of the offices' receipt of the request
  - ★ when the request is perfected (see Section 3.2), the office and/or region locates, reviews, brackets records, prepares foreseeable harm statement for Exemptions 2 (high) and 5 (Duplicative Process), and creates appendices (see Sections 3.9, 3.10, 3.11)
  - ★ advises OIS FOIA/PA staff if other offices or employees may have responsive records

## 7. Steps to Process a FOIA Request



- ▶ Make sure you clearly understand what records the requester is seeking
  - ★ if you do not have a clear understanding of what records the requester is seeking, contact the FOIA/PA Caseworker for clarification. Do not contact the requester directly. The FOIA/PA Caseworker will contact the requester, if necessary
- ▶ Determine if you are likely to have records subject to the request
- ▶ Provide an estimate of search and review time and an estimate of pages if required (NRC Form 496, Report of Staff Resources for Processing FOIA/PA Requests)
- ▶ When processing is required
  - ★ search for records responsive to the request
  - ★ determine if the records are to be released or withheld from the requester
  - ★ bracket information that should be withheld and identify which exemption should be applied
  - ★ provide a foreseeable harm statement for Exemptions 2 (high) and 5 (Duplicative Process). A statement is not required for Exemptions 1, 3, 4, 6, 7(a) and 7(c) unless it is not obvious why these exemptions are claimed
  - ★ indicate whether the records do or do not contain sensitive security information
    - if a record contains sensitive security-related information proposed for release because it does not rise to the level of exempt information under the FOIA, the record will be released to the requester only and not made publicly available in ADAMS until a third FOIA request is received for the same record
  - ★ organize the records responsive to the request and submit them to your office FOIA coordinator
  - ★ submit your response package to your office FOIA coordinator

## 6. Office and Region Timelines



- ▶ Within 4 days (excluding weekends and holidays) provide fee estimate to OIS FOIA/PA staff
- ▶ Within 10 days (excluding weekends and holidays), of receiving a perfected request, provide the OIS FOIA/PA staff any responsive records
  - ★ responsive records should be reviewed and bracketed by the office before providing records to the OIS FOIA/PA staff

## **8. Searches for Relevant Files**



- ▶ Search all relevant files (paper and electronic)
  - ★ based on knowledge of subject matter
  - ★ where you reasonably expect to locate records covered by the request

## 9 Searching for Records



### ► Paper Records

- ★ paper records under your personal control including working papers you have retained in your possession
- ★ paper records maintained in your office
- ★ paper records in the NRC File Center

### ► Electronic Records

- ★ e-mails including property sheets in the Received, Sent, Archives, and Trash files. Note that since trash files are still within your control, e-mails responsive to a FOIA request in the trash folder must be identified, retrieved, printed, and processed. You should also move the e-mail out of the trash folder to eliminate the possibility that an automatic deletion of e-mail will destroy the only copy
- ★ electronic records in ADAMS Main Library and Legacy Library including all versions
- ★ other electronic files, including but not limited to WordPerfect, Microsoft Word, spreadsheets, and presentation files, including those files stored on disks
- ★ databases including those files stored on disks

### ► Recording Computer Search Criteria

- ★ when a computer database such as ADAMS is searched to locate records responsive to a request, the search criteria used for conducting the search must be provided with the office response. The Department of Justice has advised agencies in order to justify that they have done an adequate search they must maintain computer search criteria. The search criteria must be provided even if no records are identified as a result of the computer search

### ► Searching Other Media

- ★ audio or video files or tapes



## 10 Reviewing Relevant Records



- ▶ Review records to determine if they should be released or withheld, after applying the FOIA exemption criteria
- ▶ Apply "**reasonably segregable**" rule (see Section 2.22)
- ▶ Bracket exempt information
- ▶ Prepare a foreseeable harm statement for Exemptions 2 (high) and 5 (Duplicative Process) information
- ▶ Mark **outside of scope** information
  - ★ if any information on a page of a record that is responsive to the request falls outside of the scope of the request, the information must be marked that it is outside of the scope. The requester will then be provided a redacted copy of the record with the information withheld identified as being outside the scope of the request
  - ★ if entire pages from a record are outside of the scope of the FOIA request, indicate on those pages that they are outside of the scope of the request. Those pages will not be provided to the requester. The appendices for "Records Being Withheld in Part" will indicate the number of pages deemed outside of the scope

## Creating Appendices



- ▶ Office/Region FOIA Coordinator provides to OIS FOIA/PA staff six categories of appendices, as necessary
  - ★ Records Already Publicly Available
  - ★ Records Being Released in Their Entirety
  - ★ Records Containing Sensitive Security Information to be Released to the Requester Only
  - ★ Records Being Withheld in Part
  - ★ Records Being Withheld in Their Entirety
  - ★ Records to be Referred to Other Office, Agency, or Company

## **12. Receipt and Processing of FOIA Appeals**



- ▶ Any NRC employee who receives a FOIA appeal shall immediately send it to the OIS FOIA/PA Officer
- ▶ The FOIA requires that an agency respond to an appeal within 20 days (excluding weekends and holidays)
- ▶ A requester may appeal a denial of records in whole or in part and/or appeal
  - ★ the adequacy of a search, or "No Record" determination
  - ★ failure to provide records within 20 days (excluding weekends and holidays)
  - ★ denial of a fee waiver request
  - ★ denial of an expedited processing request

## **13 Assigning FOIA Appeal Actions to Offices**



► The OIS FOIA/PA staff will provide:

- ★ a copy of the appeal correspondence
- ★ a copy of the original request correspondence
- ★ a copy of the initial request denial response with appropriate appendices
- ★ the records that were denied, unless maintained in another office

## 14 Processing a FOIA Appeal



### To the Executive Director for Operations

- ▶ The original staff offices denying release of the records will review them again
- ▶ Consider any new information presented in the appeal correspondence
- ▶ Recommend to the OIS FOIA/PA staff whether or not the records, in whole or in part, should continue to be withheld from disclosure
- ▶ Office response must reflect the office director's or designee's personal approval of the decision to withhold each record or portion thereof
- ▶ A foreseeable harm statement for Exemptions 2 (high) and 5 (Duplicative Process)
- ▶ The office response must indicate whether the records do or do not contain sensitive security information (see Section 3.11)
- ▶ After resolving all identified problems; the OIS FOIA/PA staff will prepare a response
- ▶ The OIS FOIA/PA staff will obtain concurrences from
  - ★ the original offices denying the records
  - ★ OGC
  - ★ any other offices that are appropriate
- ▶ The OIS FOIA/PA staff will send the response to the DEDO for approval and signature

## **15 Processing a FOIA Appeal (Cont.)**



### **To the Secretary of the Commission**

- ▶ SECY will coordinate a review of the denied records with OGC and
- ▶ Consider any new information in the appeal letter
- ▶ OGC will prepare a response for approval and signature of SECY

### **To the Inspector General**

- ▶ A response will be prepared by the OIG Counsel, following consideration of any new information presented in the appeal correspondence, for approval and signature of the IG

## **16. Appeal Denials and Dispatch of Appeals**



### **Appeal Denials**

- ▶ If the appeal is denied, the response will specify the basis for the denial and will advise the requester of his or her right to seek a judicial review under 5 U.S.C. 552 (a)(4)(B) in the Federal District Court in their locale, or in the Federal District Court for the District of Columbia

### **Appeal Dispatch**

- ▶ The OIS FOIA/PA staff will dispatch all appeal responses to the requester

**17 NRC FOIA References**

- ▶ [Management Directive 3.1](#)
- ▶ [10 CFR Part 9, Subpart A](#)
- ▶ [10 CFR 2.390](#)
- ▶ U.S. Department of Justice, [Freedom of Information Act Guide, 2009](#)
- ▶ OIS FOIA Privacy Team Guidance for [Expedited Processing \(ML062690296\)](#)
- ▶ Step-By-Step Guidance - [How to Respond to a FOIA Request \(ML060590485\)](#)
- ▶ [NRC FOIA External Web Site](#)
- ▶ [NRC FOIA Intranet Web Site](#)
- ▶ [President Obama Memorandum dated January 21, 2009](#)
- ▶ [Office of the Attorney General Memorandum dated March 19, 2009](#)



- ***Module D - Review***



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The following is a short quiz.

**1** Module D Review

Click on the box to begin. After you have finished, click on the "back" arrow, then the "forward" arrow to receive your certificate.



## Review for Modules A, B & C



Select the appropriate answer for each question or enter the answer in the blank provided. When you have finished, click the button to submit your answers and find out your score.

- Q 1. The FOIA provides individuals a method to obtain information about the functions and operations of the government.
- ☐ True
- ☐ False
- Q 2. Agencies are required to provide records in the form and format requested if reasonably possible to do so.
- ☐ True
- ☐ False
- Q 3. Commercial requesters must pay all fees for processing a FOIA request.
- ☐ True
- ☐ False
- Q 4. Once a denial decision has been made regarding an appeal, a requester has no further recourse but to accept it.
- ☐ True
- ☐ False
- Q 5. Proprietary information would be withheld under FOIA Exemption 2.
- ☐ True
- ☐ False
- Q 6. A Social Security number would be withheld under FOIA Exemption 6.
- ☐ True
- ☐ False
- Q 7. Civilian Federal employees have no privacy rights.
- ☐ True
- ☐ False
- Q 8. The office receiving the FOIA request from the OIS FOIA/PA staff must conduct a search in all reasonable areas, including e-mail.
- ☐ True
- ☐ False
- Q 9. The office receiving the FOIA request from the OIS FOIA/PA staff must locate, review, and provide bracketed records to the OIS FOIA/PA staff within 10 days (excluding weekends and holidays)
- ☐ True
- ☐ False

- Q 10. When a computer database is searched, it is not necessary to record the search criteria for the OIS FOIA/PA staff.
- ☐ True
- ☐ False
- Q 11. A document that can not be located is considered outside the scope of the FOIA request.
- ☐ True
- ☐ False
- Q 12. Personal notes do not have to be provided under the FOIA if they have not been circulated or integrated into agency files.
- ☐ True
- ☐ False
- Q 13. All drafts are withholdable under the FOIA
- ☐ True
- ☐ False
- Q 14. When processing a FOIA request or appeal, NRC employees can contact the OIS FOIA/PA Officer or OIS FOIA/PA staff for advice or assistance.
- ☐ True
- ☐ False
- Q 15. FOIA Exemptions 2 (high) and 5 (Deliberative Process) require a foreseeable harm statement.
- ☐ True
- ☐ False

**Grade the Test**

**Your score will appear here**

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## Freedom of Information Act

The Freedom of Information Act (FOIA) of 1966 protects the rights of the public to information and makes provisions for individuals to obtain information on the operation of federal agencies. OIS manages NRCs FOIA Program and coordinates responses to requests under the Act.

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### Contact/Help

■ [Donna L. Sealing](#)  
 Email: [Donna.Sealing@nrc.gov](mailto:Donna.Sealing@nrc.gov)  
 Telephone: 301-415-7169

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### Guidance

- [How To Respond To An Initial FOIA Request](#)
- [Personal Information Withheld from Third Parties](#)
- [Freedom of Information Act and Privacy Act Requests](#)
- [Yellow Announcement No. 054 dated May 19, 2009, New FOIA Procedures](#)
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- [Part 9 - Public Records](#)
- [The Freedom of Information Act](#)
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### Service Levels

- Hours of operation: Monday through Friday 7:30 am - 4:15 pm
- Service Response times are in accordance with the Freedom of Information Act.

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### Training

- FOIA training is available online at <http://grape.nrc.gov/Training/NewSite/courselogin.cfm?page=foia> or by participating in one of the semiannual FOIA/PA training sessions
- Contact the FOIA/Privacy Section at 301-415-7169 or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov) for further information.

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## Freedom of Information Act and Privacy Act Requests

NRC administers policies, programs, and procedures to ensure NRC compliance with the Freedom of Information Act (FOIA) and the Privacy Act (PA), 5 U.S.C. 552 and 5 U.S.C. 552a. NRC's regulations on public records are found in 10 CFR Part 9 of the Code of Federal Regulations. NRC's Deputy Executive Director for Corporate Management is designated as the NRC Chief FOIA Officer.

The FOIA generally provides any person the right, enforceable in court, to obtain access to Federal agency records.

The objectives of the Privacy Act are to restrict disclosure of personally identifiable records maintained by Federal agencies, grant individuals rights of access to agency records maintained on themselves, grant individuals the right to seek amendment of agency records maintained on themselves, and to require agencies to comply with statutory norms for collection, maintenance, and dissemination of records.

To submit a FOIA/Privacy Act request:

**Mail:**

U.S. Nuclear Regulatory Commission  
FOIA/Privacy Officer  
Mailstop: T-5 F09  
Washington, DC 20555-0001

**Fax:** 301-415-5130

**E-mail:**

FOIA.resource@nrc.gov

**Questions:** 301-415-7169

For more information related to the FOIA and Privacy Act, see the following:

- Freedom of Information Act Guide
  - Access to Records Without a FOIA Request [5 U.S.C 552(a)(1) & (2)]
  - What to include in a FOIA request, how to submit the request, and how NRC will process the request
- Amendments to the FOIA "OPEN Government Act of 2007" - full text of the "Openness Promotes Effectiveness in our National Government Act of 2007, the bill signed into law on December 31, 2007
- Freedom of Information Act **EXIT** - President Obama Memorandum dated January 21, 2009
- Open Government and FOIA **EXIT** - Office of the Attorney General Memorandum dated March 19, 2009
- Executive Order 13,392, Improving Agency Disclosure of Information - provides a synopsis of the purpose and intent of the Executive Order, its requirements, and the NRC's compliance with its requirements
- NRC FOIA Backlog Reduction Goals for FY2008, FY2009, and FY2010 - establishes goals with respect to the numbers of FOIA requests and administrative appeals to be processed
- Privacy Act Requests Guide - what to include in a Privacy Act request, how to submit the request, and how NRC will process the request
- Processing Fees - detailed explanation of our FOIA and Privacy Act processing fees and fee waivers
- Index of Closed FOIA/PA Requests by Subject - subject list of requests closed since 1998
- Recent FOIA Requests - subject list and reference number of recently received requests
- Records Frequently Requested under the FOIA - full text of frequently requested records
- Privacy Act Systems of Records - a complete description of agency records that are retrieved by name, social security number, or any other type of personal identifier
- Annual FOIA Reports - statistics on NRC's FOIA program reported annually to the Department of Justice
- Annual Chief FOIA Officer Reports - reports on the steps taken to improve FOIA operation and facilitate information disclosures
- Contact Us About FOIA/Privacy Act, Service Center, and Public Liaisons

### Related Information

- Citizen's Guide to U.S. NRC Information - description of NRC's information and how to obtain it
- Public Document Room
- Certification of Reading Room in Compliance with the FOIA

For more information on the U.S. Federal government's FOIA programs, visit the Office of Information Policy, U.S. Department of Justice [EXIT](#), the Web site of the Federal government's executive office for guidance on FOIA implementation.

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*Tuesday, March 09, 2010*