

RP- 3.1
PROCESSING FREEDOM OF INFORMATION REQUESTS

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Point of Contact: Chief, Information Resources

Supersedes: (RP-3.1, June 21, 2006)

Approval: /RA/ Mark A. Satorius
Title: Regional Administrator

A. Purpose

To establish a regional procedure to implement Management Directive (MD) 3.1, "Freedom of Information Act."

This revision incorporates new FOIA policies and procedures established by the U.S. Attorney General and the NRC Executive Director for Operations; adds new references, website locations, and a section on Privacy Act since Privacy Act requests are also processed under the Freedom of Information Act.

B. References

1. Management Directive (MD) 3.1, "Freedom of Information Act," revised March 30, 2006
2. Management Directive (MD) 3.2, "Privacy Act"
3. 10 CFR Part 9, "Public Records"
4. U.S. Department of Justice "Freedom of Information Act Guide and Privacy Act Overview"
5. Office of the Attorney General Memorandum for Heads of Executive Departments and Agencies, March 19, 2009
6. Yellow Announcement No. 054, "New FOIA Procedures," May 12, 2009
7. FOIA web pages at www.nrc.gov/reading-rm/foia/foia-privacy.html;
www.internal.nrc.gov/ois/divisions/irsdf/foia/new-foia-procedures.pdf
8. Withholding of Sensitive Information at <http://www.nrc.gov/reading-rm/sensitive-info.html>

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C. Discussion

The Freedom of Information Act (FOIA) requires, by law, prompt response by all government agencies to specific requests for information. Each FOIA request must be treated as a high priority item. At no time will incoming FOIA requests, divisional responses or concurrences be placed in the internal mail system—all distributions will be hand carried to the intended recipient.

A request made by an individual for information pertaining to himself or herself that specifies either the FOIA and/or the Privacy Act (PA) is processed under the PA if the requester seeks information contained in a PA system of records and properly identifies the requester as the person to whom the records pertain.

It is the Region's responsibility to be as complete as possible in providing pertinent documents when responding to a request made under the FOIA. It is also the Region's responsibility, as the originating office of information, to screen the documents prior to release to ensure that information to be withheld is properly marked prior to its being forwarded to the Headquarters FOIA/Privacy Act (PA) Staff, Office of Information Services, Information and Records Services Division.

All communications with requesters will be through the FOIA/PA. Region III staff members are not to contact requesters directly. The Region III FOIA Coordinator will initiate or be informed of all communications with the FOIA/PA. Division FOIA Coordinators may request or be requested to participate in conference calls with FOIA/PA and requesters.

FOIA records containing personal privacy information must be protected and safeguarded from unauthorized access and disclosure. Papers, file folders, disks, etc. should be secured in locked filing cabinets. These records should not be left on desks or in staff mail boxes where they can be openly viewed by other employees. Automated records should also be protected from unauthorized access. The records should be retained and disposed of according to the latest system of records notice.

Although personal records are typically not considered agency records subject to a FOIA request, should an employee have responsive records in the office that he or she believes to be personal records, the employee should use Exhibit 2, Personal Record Consideration Checklist, from Management Directive (MD) 3.1 Handbook to make the determination and subsequently notify the Division FOIA Coordinator of the number of pages of personal records.

Guidance provided by the Department of Justice, "Memorandum for Heads of all Federal Departments and Agencies," dated March 19, 2009, and NRC Yellow Announcement No. 054 dated May 19, 2009, have resulted in a new standard being set for the defense of FOIA law suits by the Department of Justice (DOJ).

Attorney General Holder's March 2009 policy provides that DOJ will defend decisions to withhold information only if: 1) the agency reasonably foresees that disclosure would harm an interest protected by one of the FOIA exemptions; or 2) disclosure is prohibited by law. The NRC issues procedures to implement the Attorney General's March 2009

memorandum in Yellow Announcement No. 054, dated May 29, 2009. Staff must follow those procedures when processing FOIA requests.

If the staff locates records that they believe contain Sensitive Unclassified Non-Safeguards (SUNSI) Security-Related information that could be potentially helpful to an adversary, these records must be listed on a separate SUNSI appendix. The FOIA staff will work with OGC to review such information for possible withholding.

When a record containing SUNSI security-related information is proposed for release but does not rise to the level of exempt information under the FOIA, the record will be released only to the requester and will not be made publicly available in ADAMS until a third FOIA request is received for the same record. The Headquarters FOIA/Privacy Act (PA) Staff will keep track of the number of times a record is subject to a FOIA request that falls into this category. When the third request is received, the Headquarters FOIA/PA staff will notify the owning office that the record will be made publicly available in ADAMS.

When bracketing Outside-of-Scope information, if an entire page of a record is outside of the scope of the request, the page should be marked at the top to indicate it is "Outside-of-Scope." This page will not be provided to the requester. If outside-of-scope information is on a page containing information that is subject to the request, the outside-of-scope information must be marked "outside-of-scope." The requester will be provided a redacted copy of the document that does not reveal the information that is outside-of-scope. It is not necessary to apply any FOIA exemptions to outside-of-scope information.

D. Definitions

For purposes of this regional procedure, the definitions and terminology used in MD 3.1 and 10 CFR Part 9 are incorporated by reference. Refer to both of these sources for additional or more detailed definitions.

1. **Agency Record:** A record in the possession and control of the NRC that is associated with Government business.
2. **Document Reviewers:** Region III staff identified by Office/Division management to perform a review of records subject to FOIA requests.
3. **Office:** Unless otherwise indicated, means all offices, boards, panels, and advisory committees of the NRC.
4. **Perfect Request:** A FOIA request for records that adequately describes the records sought, that has been received by the FOI/PA Section, and for which there are no remaining questions about the payment of applicable fees, the scope of the request, the need for verification of identity, or other matters that preclude processing of the request. While perfecting requests, whether clarifying the request, awaiting agreement from the requester to pay estimated fees, or other reasons, offices will suspend processing actions until notified that the request has been perfected. While processing actions are suspended, no time is charged to the offices.

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5. **Personal Records:** Documents of a private or non-official character that pertain only to an individual's personal affairs and do not affect the conduct of agency business. A personal record also includes notes that are prepared by an NRC employee pertaining to agency business that: (a) have not been circulated or shared with others in the course of transacting NRC business; (b) are prepared for the individual's own use; (c) are not required to be created or retained by the NRC; (d) can be retained or discarded at the author's sole discretion; and, (e) were not used as a substantive part in writing an agency record.
6. **Record:** Any information that would be an agency record subject to the requirements of the FOIA when maintained by the NRC in any format, including an electronic format. Record also includes a book, paper, map, drawing, diagram, photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material regardless of form or characteristics. Record does not include an object or article such as a structure, furniture, a tangible exhibit or model, a vehicle or piece of equipment.
7. **Review time:** The period devoted to examining records retrieved in response to a request to determine whether they are exempt from disclosure in whole or in part. Review time also includes the period devoted to examining records to determine which FOIA exemptions, if any, are applicable and identifying records, or portions thereof, to be disclosed.
8. **Search time:** The period devoted to looking for agency records, either manually or by automated means, for the purpose of locating those records that are responsive to a request. *This includes page-by-page or line-by-line identification of responsive information within the records.*

E. Organizational Responsibilities

1. Regional Administrator (RA) or Deputy Regional Administrator (DRA)

The RA/DRA:

- a. is responsible for the determination of whether to release or withhold records originated by Region III, records for which Region III has the principal responsibility, and records maintained by Region III from sources outside the NRC;
- b. will implement FOIA and NRC procedures for responding to all requests for documents originated by Region III or for which Region III has primary responsibility;
- c. will appoint a Senior FOIA Management Official (SFMO), Region III FOIA Coordinator (RIII FC) and alternate; and
- d. when responding to an appeal of an initial disclosure determination will personally approve the determination to continue to withhold records, or portions thereof.

2. Division Directors/Deputies

Each Division Director or Deputy:

- a. is responsible for the determination of whether to release or withhold records originated by the division, records for which the division has the principal responsibility, and records maintained by the division from sources outside the NRC (including records at resident inspector offices);
- b. will designate a Division FOIA Coordinator (DFC) and alternate(s) to coordinate the division response;
- c. will ensure divisional instructions are established, revised, and implemented for FOIA activities;
- d. will ensure divisional FOIA activities are handled in a competent and timely manner;
- e. will ensure employee training and compliance with this procedure; and
- f. will review and concur on divisional responses prior to forwarding them to the Region III FC.

3. Senior FOIA Management Official (SFMO)

The SFMO:

- a. represents the Regional Administrator in resolving initial disclosure determination issues or delays by the staff in responding to Region III FOIA actions;
- b. briefs Regional Administrator and other senior management, on a weekly basis, on the status of FOIA requests assigned to the Region III office;
- c. serves as the office focal point to resolve problems that cannot be resolved between FOIA/PA staff and the Region III FC;
- d. ensures FOIA training is conducted to meet the needs of Region III staff; and
- e. as necessary, reviews, concurs, and signs Region III responses to FOIA/PA requests.

4. Director, Division of Resource Management and Administration (DRMA)

The DRMA Director serves as the Senior FOIA Management Official and has overall responsibility for processing FOIA requests.

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5. Chief, Information Resources Branch (IRB)

The Chief, IRB, provides oversight of FOIA activities.

6. Information Management (IM) Specialist

- a. The IM Specialist serves as an interface between the Region III FOIA Coordinator and the SFMO. Additionally, the IM Specialist:
- b. resolves issues concerning the scope of FOIA/PA requests and the review of office records subject to such requests;
- c. resolves controversial matters between the Region III FOIA Coordinator and the Office/Division FOIA Coordinators.

7. Region III FOIA Coordinator (RIII FC)

The Region III FOIA Coordinator or alternate:

- a. processes, according to DRMA Division Instructions, all FOIA/PA requests received in Region III directly from the public and requests forwarded to Region III from the Headquarters FOIA/PA Branch;
- b. consults with the SFMO, IM Specialist, Office/Division managers and staff, Regional Counsel, and Headquarters staff on those requests which appear to require clarification or rescoping;
- c. provides a weekly status report to the SFMO;
- d. maintain RIII's electronic FOIA Information System (FIS)
- e. resolves controversial matters between FOIA/PA and the Office/Division FOIA Coordinators;
- f. as necessary, submits consolidated Regional estimates of search time, review time, and the amount of releasable records to the FOIA/PA;
- g. coordinates responses from the Office/Division FOIA Coordinators;
- h. follows-up on late responses; and
- i. prepares the consolidated Regional response, obtains required concurrences, and dispatches the response to the Headquarters FOIA/PA Branch.

8. Office/Division FOIA Coordinator (DFC)

The Office/Division FOIA Coordinator or alternate:

- a. processes all FOIA/PA requests received in the Office/Division;

- b. submits consolidated Office/Division estimates of search time, review time, and the amount of releasable records;
- c. ensures all appropriate persons in the division are contacted for records;
- d. ensures that all appropriate paper-based and electronic records (i.e., e-mails, ADAMS's Main/Legacy Library) are identified and reviewed for possible withholding from public disclosure;
- e. ensures that portions of agency records that are exempt from public release are bracketed (using red pencil) as described in the MD 3.1 Handbook;
- f. assembles, as described in the MD 3.1 Handbook, the paper-based records and provides appropriate paper-based and electronic appendices to the RIII FC; and
- g. submits the Office/Division response to the RIII FC by the established response due date.

9. Regional Counsel (RC)

The Regional Counsel:

- a. on request provides counsel and guidance to the staff regarding the release or withholding of specific records;
- b. as necessary, reviews documents to ensure all material appropriate for redaction is redacted and is legally defensible; and
- c. when discrepancies are identified during the review, coordinates their resolution with the affected office/division and provides the RIII FC with a final (concurring or marked-up) version of the response.

10. Enforcement/Investigations Officer

The Enforcement/Investigations Officer:

- a. for requests for allegation-related material ensures the guidance in MD 3.1 and in EICS OFFICE WORK INSTRUCTION OAC-1 is implemented to ensure that all information that would identify or "fingerprint" alleged is appropriately handled;
- b. ensures that a blue cover sheet is placed on records containing allegation material before they are released from the Enforcement and Investigations Coordination Staff (EICS) office;
- c. is responsible for the determination of whether to release or withhold allegation/enforcement records or other records maintained in the EICS office

(i.e., records for which EICS has the principal responsibility, and records maintained by EICS from sources outside the NRC);

- d. is responsible for initial determination of whether to release or withhold records maintained by the Office of the Regional Administrator (for records not maintained by EICS);
- e. will designate an EICS FOIA Coordinator (EFC) and alternate(s) to coordinate the ORA response;
- f. will ensure office instructions are established, revised, and implemented for FOIA activities;
- g. will ensure FOIA activities are handled in a competent and timely manner;
- h. will ensure employee training and compliance with this procedure;
- i. will review and concur on ORA responses prior to forwarding them to the Region III FC;
- j. as deemed necessary by the RIII FC, reviews and concurs on Region III responses developed by other offices/divisions; and
- k. when a discrepancy is identified during the review, coordinates resolution of the discrepancy with the affected office/division and provides the RIII FC with a final (concurred on or marked-up) version of the response.

F. Implementation

- 1. The Freedom of Information Act requires prompt response by all government agencies to specific requests for information. Each FOIA/PA request must be treated as a high priority item. At no time will incoming FOIA/PA requests, office/division responses or concurrences be placed in the internal mail system. All distributions will be hand carried to the intended recipient.
- 2. Responses to separate FOIA requests will not be combined.
- 3. Throughout the process, communication between the RIII FC and the DFCs is crucial.
- 4. The RIII FC will assign response due dates to each office/division.
- 5. Within the allotted time, the office/division will process the request for records, develop the applicable appendices, and obtain office/division management concurrence prior to forwarding the response to the RIII FC. The office/division response is the final response. The office/division will not have another opportunity to review the submitted information prior to it being forwarded to the Headquarters FOIA/PA Specialist.

6. After the RIII FC receives all of the office/division concurred upon responses, the RIII FC will develop the transmittal memo and appendices for submission to the Headquarters FOIA/PA Specialist.
7. As determined necessary by the RIII FC, the transmittal memo and appendices will be routed through EICS (for enforcement and allegation review), RC (for legal review), and through the SFMO (for final review).
8. The following responses are due to the Headquarters FOIA/PA specialist within the time limits described:
 - a. estimates (search time and processing time) - four business days from the date the request was received in Region III.
 - b. responses - ten business days from the date the FOIA/PA request was perfected.
 - c. referrals - eight business days from the date of receipt in Region III.
 - d. appeals - eight business days from the date of receipt in Region III.
9. Processing Estimates:
 - a. Region III FOIA Coordinator Activities:

The RIII FC or alternate will:

 - 1) establish Office/Division and Regional response due dates prior to forwarding the FOIA/PA request for search time, processing time, and amount of releasable records estimates to each applicable Office/Division;
 - 2) as soon as possible, but no later than one business day after receipt of the FOIA/PA request, hand carry the request for estimate, with the established due date, to each applicable Office/Division; and
 - 3) when each Office/Division estimate has been provided, process the response according to established DRMA Division Instructions.
 - b. Office/Division FOIA Coordinator:

The Office/Division FOIA Coordinator or alternate will:

 - 1) distribute the FOIA/PA estimate request in accordance with applicable Office/Division Instructions;
 - 2) within one business day of receipt of the request to provide an estimate, notify the RIII FC if rescoping or clarification of the request is needed; and

- 3) provide the Office/Division's search time, processing time, and amount of releasable records estimate (as described in the MD 3.1 Handbook) to the RIII FC via e-mail addressed to RIIIFOIAPA.

10. Processing Initial Requests:

a. Region III FOIA Coordinator Activities:

The RIII FC or alternate will:

- 1) on the day the authorization to process is received, assign response due dates to each office/division that reported having records and notify the applicable office/division by e-mail; and
- 2) when the records responsive to the FOIA/PA and the appendices are received from the Office/Division, process the information according to applicable DRMA Division Instructions.

b. Office/Division FOIA Coordinator:

The Office/Division FOIA Coordinator or alternate will:

- 1) distribute the FOIA/PA authorization to process in accordance with established Office/Division Instructions;
- 2) ensure that document bracketing and appendices formatting follow the guidance specified in the MD 3.1 Handbook;
- 3) within the established time limit, provide the Office/Division paper-based response with office/division management concurrence, appendices, and a completed NRC Form 496 (to document actual administrative and professional search and review time spent by each individual processing the request) to the RIII FC; and
- 4) at the time the paper-based documents are submitted to the RIII FC, provide an e-mail addressed to the RIIIFOIAPA that contains the electronic copy of each appendix.

11. Processing Records Referred to Region III By Other Offices:

a. Region III FOIA Coordinator Activities:

The RIII FC or alternate will:

- 1) on the day the referral is received, assign response due dates and hand carry the referral to the applicable Office/Division; and

- 2) when the reviewed referral materials are returned to the RIII FC, the RIII FC will process the information according to established DRMA Division Instructions.

b. Office/Division FOIA Coordinator:

The Office/Division FOIA Coordinator or alternate will:

- 1) distribute the referral documents received from the RIII FC in accordance with established Office/Division Instructions;
- 2) as efficiently as possible, process the appeal received from the RIII FC in accordance with applicable Office/Division Instructions; and
- 3) obtain office/division management concurrence prior to forwarding the referred documents to the next office/division for concurrence.

12. Processing Appeals:

a. Region III FOIA Coordinator Activities:

The RIII FC or alternate will:

- 1) on the day the appeal is received, assign response due dates and hand carry the appeal to the applicable Office/Division; and
- 2) when the reviewed appeal materials are returned to the RIII FC, process the information according to applicable DRMA Division Instructions.

b. Office/Division FOIA Coordinator:

The Office/Division FOIA Coordinator or alternate will:

- 1) as efficiently as possible, process the appeal received from the RIII FC in accordance with applicable Office/Division Instructions;
- 2) ensure office/division management concurrence is received prior to forwarding the appeal documents to the next office/division for concurrence or returning the completed documents to the RIII FC for final processing.

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