



### U.S. NUCLEAR REGULATORY COMMISSION RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

U.S. NUCLEAR REGULATORY COMMISSION

FOIA

RESPONSE NUMBER

2017-0679

1

RESPONSE TYPE  INTERIM  FINAL

**REQUESTER:**

Julian Tarver

**DATE:**

09/08/2017

**DESCRIPTION OF REQUESTED RECORDS:**

ML092990170, ML093240198, ML032240161, ML093340414

#### PART I. - INFORMATION RELEASED

You have the right to seek assistance from the NRC's FOIA Public Liaison. Contact information for the NRC's FOIA Public Liaison is available at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>

- Agency records subject to the request are already available on the Public NRC Website, in Public ADAMS or on microfiche in the NRC Public Document Room.
- Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

#### PART I.A -- FEES

#### NO FEES

AMOUNT\*

\*See Comments for details

- You will be billed by NRC for the amount listed.
- You will receive a refund for the amount listed.
- Fees waived.

- Minimum fee threshold not met.
- Due to our delayed response, you will not be charged fees.

#### PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- You may appeal this final determination within 90 calendar days of the date of this response by sending a letter or e-mail to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov). Please be sure to include on your letter or email that it is a "FOIA Appeal." You have the right to seek dispute resolution services from the NRC's Public Liaison, or the Office of Government Information Services (OGIS). Contact information for OGIS is available at <https://ogis.archives.gov/about-ogis/contact-information.htm>

#### PART I.C COMMENTS ( Use attached Comments continuation page if required)

This final response acknowledges receipt of your FOIA requested as described above. We have provided the responsive records to ML092990170, ML093240198, ML032240161. ML093340414, is a package number that consist of multiple records that, along with the other three accession numbers you requested, will exceed the threshold of the number of pages in which you would receive the documents at no cost. Therefore, records under ML09330414 are not provided but are already publicly available, and is available in the NRC Public Electronic Reading Room at <http://www.nrc.gov/reading-rm.html>. If you need assistance in obtaiing these records, please contact NRC's Public Document Room (PDR) at 301-415-4737, or 1-800-397-4209, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov).

Signature - Freedom of Information Act Officer or Designee

**Stephanie A. Blaney**

Digitally signed by Stephanie A. Blaney  
DN: c=US, o=U.S. Government, ou=U.S. Nuclear Regulatory Commission, ou=NRC-PIV, cn=Stephanie A. Blaney, o.9.2342.19200000.100.1.1=200001997  
Date: 2017.09.08 13:38:51 -0400

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Course Ma

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

- 1. Module A - Introduction to the FOIA
- 2. Module B - The FOIA Exemptions
- 3. Module C - NRC Procedures Guidance
- 4. Module D - Review



# 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 semi-annually 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.

Click  to continue.

*These changes were made in June*

*2/1*

## **1. Module A - Introduction to the FOIA**



- 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
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- 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

 **1.1 Objectives**

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



## 1.2 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

- ▶ Memo dated January 21, 2009 from President Obama re: FOIA
- ▶ Obama memo (link to memo)
- ▶ Memo dated March 19, 2009 from the Attorney General re: FC
- ▶ Holder memo (link to memo)

Move to 3.17

### 1.3 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

## 1.4 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

## 1.5 Requirements for Making a Request



- ▶ The request must be made in accordance with the NRC's published regulations in 10 CFR Part 9 *AR*
  - \* 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



## 1.6 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* ~~on~~ 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

## 1.7 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

## 1.8 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

**1.9 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

**1.10 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 for withheld information
- ★ name of denial authority, if applicable
- ★ appeal procedures, if applicable



**1.11 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
- ~~▶ The requester must be advised in the response to an appeal that they can seek judicial redress~~

AR

*Handwritten notes:*  
The requester  
must be advised  
that they can  
seek judicial  
redress



### 1.12 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

## 2. Module B - The FOIA Exemptions



- 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.)
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- 2.19 Fee Waiver
- 2.20 Examples of Terminology Not Covered by (b)(7)(E)
- 2.21 Examples of Specific Techniques Covered by (b)(7)(E)
- 2.22 FOIA Exemption (b)(7) (Cont.)
- 2.23 Reasonable Segregation *rk*

*move to 1.13*



2.1 Objectives

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



*(Procedures)?*

*New FOIA Guideline listing of exemptions that require harm statement*

*next page*

*Where?*



## 2.2 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

 **2.3 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

## 2.4 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)



## 2.5 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

**2.6 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"

**2.7 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

**2.8 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



2.9 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

▶ No discretion allowed for release of information under this exemption, the information must be withheld

*\* 41 U.S.C. SECTION 253(b), Subsection (m)(1), 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*

**2.10 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

## 2.11 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

**2.12 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

**2.13 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

**2.14 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

**2.15 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 2007-029)

▶ 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

**2.16 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



**2.17 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 alleged, informants, and/or subjects of investigation

**2.18 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

**2.19 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

*Move to 1.13 why is this here?*

 **2.20 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

**2.21 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



**2.22 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

**2.23 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 <sup>subject to</sup> covered by a FOIA request


*Wong*  
*Documentation*  
*ak*

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



- [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](#)
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- [3.17 NRC FOIA References](#)



 **3.1 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



3.2 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

- ▶ <sup>Request is</sup> Verified as valid <sup>(perfect)</sup>, If the request is not perfected because of a need to collect fees <sup>This sentence does not apply to me.</sup>

- ★ 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 Specialist

- ▶ The office(s) and/or region(s) review responsive records line-by-line noting exemptions and make initial recommendations

- ▶ <sup>The office(s) and/or regions must provide foreseeable harm statements for Exemptions 3 (high) and 5 (Deliberative Process)</sup> The OIS FOIA/PA Specialist 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 Specialist obtains Office of General Counsel (OGC) review, when required

- ▶ <sup>and Signs</sup> NRC FOIA/Privacy Officer approves the response

- ▶ The OIS FOIA/PA staff provides the response to the FOIA requester <sup>and records, if applicable,</sup>



### 3.3 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 Specialist

#### ▶ 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
  - ~~confirms receipt if not acknowledged by office(s) and/or region(s) within 4 days~~
- ★ sends acknowledgement letter or e-mail to requester with case number and name and telephone number of the OIS FOIA/PA Specialist assigned to the case
- \* *Contacts requester for clarification of scope and fee issues, if necessary.*

### 3.4 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 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 response to the requester

**3.5 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
- ★ ~~Performs an initial~~ <sup>Provides</sup> estimate of time to complete the search and review of records <sup>duplication and</sup>
  - 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, and creates appendices (see Sections 3.9, 3.10, 3.11) <sup>prepares</sup>
- ★ advises OIS FOIA/PA staff if other offices or employees may have responsive records

*Prepares  
for  
submission  
to  
the  
OIS  
staff  
for  
review*



### 3.6 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

### 3.7 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 Specialist for clarification. Do not contact the requester directly. The FOIA/PA Specialist 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
  - ★ 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

\* Provide ~~to~~ foreseeable Form statements for exemptions 2 (high) and 5 (deliberative process). A statement is not required for Exemptions 1, 3, 4, ~~6, 7A and 7C unless it is not obvious why these exemptions are claimed.~~



### 3.8 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





### 3.9 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

### 3.10 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) *may need to be changed to Section 2.23*
- ▶ Bracket exempt information
- ▶ *Prepare a foreseeable harm statement for Exemptions 2 (high) and 5 (Deliberative Process.)*  
▶ 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



### 3.11 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

**3.12 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

### 3.13 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

### 3.14 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 feasible non-statement is required for exemptions 2 (b)(7) and 5 (Declassification 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 ~~OEDC or appropriate~~ DEDO for approval and signature

**3.15 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

**3.16 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



*References*  
*3.17*

President Obama Memorandum dated January 21, 2009 -  
[http://www.whitehouse.gov/the\\_press\\_office/Freedom of Information Act](http://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act)

Office of the Attorney General Memorandum dated March 19, 2009 -  
<http://www.usdoj.gov/ag/foia-memo-march2009.pdf>

U.S. Department of Justice, Freedom of Information Act Guide, 2009  
[http://www.usdoj.gov/oip/foia\\_guide09.htm](http://www.usdoj.gov/oip/foia_guide09.htm)

**3.17 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, March 2007](#)
- ▶ 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](#)



*Not Working  
Need Guide  
published in 2009*

**4. Module D - Review**



The following is a short quiz.

**4.1 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.



**4.1.1 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
- 11. A document that can not be located is considered outside the scope of the FOIA request.

Review for Modules A, B & C

- Q  True  
 False

12. Personal notes do not have to be provided under the FOIA if they have not been circulated or integrated into agency files.

- Q  True  
 False

13. All drafts are withholdable under the FOIA

- Q  True  
 False

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.

- Q  True  
 False

15



Your score will appear here

*Disputed and another question concerning the possible Room Statement*

Q 14.

*QUESTION: What FOIA exemptions require a Room Statement?  
↑  
possible*

A 14.

*Answer: Ex 2 (high)  
Ex 5 (Deliberative Process)*

## **Exemption 1**

### **Classified Information**

Confidential – Secret - Top Secret

- ❖ **Exempts from public disclosure records that are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy, and that are properly classified pursuant to such Executive Order**
  - This includes information classified as Confidential National Security Information (C/NSI), Secret National Security Information (S/NSI), or Top Secret National Security Information (TS/NSI)
  - Classification is indicated in parenthesis after each paragraph
  - Classified records must have a cover sheet attached indicating the highest-level of classified information contained in the record. (SF 703, Top Secret; SF 704, Secret; SF 705, Confidential)
  - Classified NRC records relate to foreign and/or domestic policy
  - The NRC sometimes consults with other federal agencies before making a release determination for classified records

NOTE: See Management Directive 12.2, NRC Classified Information Security Program for further information

Must be accompanied by a foreseeable harm statement only if it is not obvious why the agency is citing this exemption

A136

**Exemption 2  
Internal Personnel Rules and Practices  
of an Agency**



## Exemption 2 (High)

❖ The information is predominately internal and disclosure significantly risks circumvention of statues or agency regulations. Homeland Security Information can be withheld using this exemption including critical infrastructure systems and assets and vulnerability assessments. Other information properly withheld include:

- General guidelines for conducting investigations
- Computer programs and source codes
- Bridge passcodes
- Agency credit card numbers
- Crediting plans

A foreseeable harm statement must accompany any denials using this exemption

## Exemption 2 (Low)

❖ Exemption 2 (low) has historically applied to internal information of a trivial nature, such as NRC parking lists or room numbers for NRC office buildings. Public release of such information would typically cause no harm, so the agency should generally authorize discretionary releases of Exemption 2 (low) records.

Exemption 3  
Disclosure Prohibited by  
Other Federal Statutes

## Exemption 3

The withheld information is specifically exempted from public disclosure by the statute indicated:

- ❖ **Section 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data**
  - Information whose compromise would assist in the design, manufacture, or utilization of nuclear weapons
- ❖ **Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information**
  - Concerns the physical protection of operating power reactors, spent fuel shipments, or the physical protection of Special Nuclear Materials
  - A Safeguards Information cover sheet (NRC Form 461) must be attached to the record
- ❖ **41 U.S.C., Section 253b, Subsection (m)(l), 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**

Must be accompanied by a foreseeable harm statement only if it is not obvious why the agency is citing this exemption

**Exemption 4  
Trade Secrets, Commercial or  
Financial Information**

## **Exemption 4**

Trade Secret, Commercial, or Financial Information

- ❖ **Disclosure will harm an identifiable private or governmental interest**
- ❖ **The exempt information is originated by non-government sources**
- ❖ **Information is confidential business (proprietary)**
  - Records marked "proprietary information" or "10 CFR 2.390" are submitted to the NRC from outside government sources (companies, licensees, etc.), and are accompanied by an affidavit which details what information should be withheld from public disclosure, and what harm would come from release of the information. When these records become subject to a FOIA request, the program office must review the records to determine whether the records (or portions of the records) are still proprietary, and provide a disclosure determination to the FOIA/PA Caseworker.
  - If the program office determines that the information is no longer proprietary, the FOIA/PA caseworker will send a letter informing the submitter that because it is subject to a FOIA request, the records (or portions of the records) will be released unless the submitter objects to the release. If the submitter objects, the objection must be received by the NRC within 10 days of the date of the letter. The records will then be returned to the program office for re-review, and a final disclosure determination.
- ❖ **Information concerns a licensee or applicant's physical protection, material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1)**
- ❖ **Information was submitted by a foreign source which was received in confidence pursuant to 10 CFR 2.390(d)(2)**

Must be accompanied by a foreseeable harm statement only if it is not obvious why the agency is citing this exemption

**Exemption 5  
Predecisional Information**

## **Exemption 5**

### **Predecisional Information**

- ❖ **This exemption covers information referred to as predecisional information. It is frequently used to cover records that (1) would reveal a deliberative process, portions of which are advice, opinions, or recommendations, (2) attorney work-products, and (3) records covered by the attorney-client privilege**
- ❖ **Normally records received from outside NRC cannot qualify for Exemption 5**
  - **Exception: External experts working as if an employee**
- ❖ **Attorney Work Product**
  - **Records prepared by an OGC attorney in anticipation of litigation**
- ❖ **Attorney-Client**
  - **Confidential communications between an OGC attorney and client providing legal advice**
  - **Must be applied by client**
    - **usually OGC requests it be used**
    - **record referred by FOIA/PA caseworker to client**
    - **facts divulged by client to OGC attorney**
    - **opinions given by OGC attorney**
- ❖ **Inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency**
- ❖ **On March 19, 2009, Attorney General Holder issued new guidelines reaffirming President Obama's commitment to accountability and transparency. Agencies must adopt a presumption in favor of disclosure and make discretionary releases in response to requests for records**
- ❖ **Request could ask the agency to release a draft containing preliminary recommendations. Such a record might be eligible for withholding under FOIA Exemption 5 because it contained analysis and recommendations that constituted part of a deliberative process, but that should not be the end of the agency's review. Rather, the age, content, and character of that particular draft should be reviewed in determining whether the agency reasonably foresees that disclosure would harm an interest protected by Exemption 5**
- ❖ **A Foreseeable Harm Statement must be provided for Exemption 5, Deliberative Process. Attorney-Client Privilege and Attorney-Work Product do not require a Foreseeable Harm Statement**

Exemption 6  
Personal Information



## **Exemption 6**

### **Personal Information**

- ❖ **Protects from disclosure of personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy**
- ❖ **When personal information is found, the agency must balance the person's privacy interest against the public's interest in knowing these facts--how do these facts show how the agency functions**
  - If the balance is in favor of the individual, then the agency will redact the information
  - If the balance is in favor of the public, the agency will release the information
- ❖ **Personal information is normally not disclosed to third parties**
  - There may be circumstances when this information may be disclosed
    - with the consent of the person to whom the information pertains, or
    - a determination is made that disclosure is in the public interest
    - this requires a balancing of the public interest in disclosure against the individual's right to privacy
- ❖ **The following are examples of personal information that may be located in job applications, resumes, personnel records, materials licenses, etc., that are exempt from disclosure pursuant to Exemption 6:**
  - Social Security number
  - Home street address, city, state and zip code
  - Home phone number, personal cell phone, and pager numbers
  - Names of children, spouse, number of children
  - Marital status
  - Email address (non-government)
  - Date of birth and age
  - Citizenship
  - Personnel dosimetry records
  - Type of military discharge, serial/service number, disciplinary actions, performance evaluations\*
  - Veteran preference information
  - Lowest pay applicant will accept
  - Non-Federal salaries
  - Non-job related interests

- Reason for leaving a job
- Supervisor's name, address, and telephone number exception: release if last supervisor was a Federal employee
- Personal medical and financial information
- Personal performance and disciplinary matters
- Date graduated from high school, high school name and location of high school
- Dates attended colleges and date of degrees
- Scholarships/fellowships
- References' name, address and telephone number
- References to language skills that are not job required
- Responses to questions whether a person has been fired from a job
- Responses to questions regarding criminal activity, court martials, forfeited of collateral, imprisonment due to firearms or explosives violations, pending charges of violations of law or delinquency on any Federal debt
- Response to whether you ever applied for retirement pay
- Response to whether you have relatives working for the Federal Government
- Religious affiliation or reference to religious activities
- ❖ **Form SF 50 and SF 52 - Request for Personnel Action**
  - FEGLI Plan
  - Annuitant Indicator
  - Service Computation Date
  - Veterans Preference (both places)
- ❖ **Form 178, Candidate Evaluation - Certification & Selection Record (CERT)**
  - On Part A, withhold all names except for the selectee and the requester. Release all ratings for each rating factor and overall rating
  - On Part B, withhold all names except for the selectee and the requester
- ❖ **Form 412, Non-SES Performance Appraisal Summary Rating**
  - Withhold all notations in the chart giving the element's rating and numerical equivalent, the summary rating and the numerical total
- ❖ **Form 412A, Non-SES Performance Appraisal System Performance Plan**
  - Withhold ratings and appraisal narratives

Must be accompanied by a foreseeable harm statement only if it is not obvious why the agency is citing this exemption

\*There may be additional protectable aspects of military services but this will be determined on a case-by-case basis.

## **Exemption 7 and Allegation Files**

Protects "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information" could be expected to cause one of the harms outlined in one of the subparts, 5 U.S.C. Section 552(b)(7)

### ❖ **Law Enforcement Purpose Standard**

- May include civil, criminal, administrative and regulatory proceedings
- May apply to records compiled to enforce state law, unless the agency lacks the authority to pursue a particular law enforcement matter

### ❖ **Exemption 7A**

- Could reasonably be expected to interfere with enforcement proceedings
  - two step analysis
    - is the law enforcement proceeding pending/prospective
    - could the release reasonably be expected to cause some articulable harm
- Not designed to endlessly protect law enforcement information. May only apply to enforcement proceedings that are:
  - pending (still investigating)
  - prospective (actually have a concrete plan to investigate in the future)
- May apply to closed investigations, if records substantially relate to another proceeding
- Information provided by the requester:
  - generally may not withhold this material, unless it can articulate how it would interfere with enforcement
- Changed circumstances:
  - if 7A is no longer valid while the FOIA request is pending, office will need to review the records for release
- 7A Certification - Do not need to provide the records [Exhibit 19]
  - complete the 7A cert (Form 656 on Informs)
  - file must still be reviewed to determine if there are any records that can be released

- office denying the material must mark in their file what material was subject to the request at the time the denial was made

❖ **Exemption 7B**

- Would deprive a person of a right to a fair trial or an impartial adjudication
  - rarely invoked
  - in the situation in which it would most logically be employed (ongoing law enforcement proceeding) an agency's application of 7A to protect law enforcement interests would serve to protect the interests of the defendants to the prosecution as well

❖ **Exemption 7C**

- Could reasonably be expected to constitute an unwarranted invasion of personal privacy
  - to protect personal privacy information in a closed investigation/allegation/enforcement file
  - fingerprinting [Exhibit 20]
  - the passage of time does not ordinarily diminish the 7C protection
  - fact that was previously public knowledge or disclosed, may be so far from the public arena today that it is practically obscure and 7C may apply
  - privacy interest may increase with the passage of time
  - 7C is not precluded by the fact that the requester could piece together the identity of a third party from the other sources, or from improperly redacted documents
- **Balancing the Public Interest**
  - interest is whether the records shed light on the agency's performance of its statutory duties
- **Minimal Privacy Interest?**
  - even a minimal privacy interest is superior to no public interest
- **Glomarization**
  - a defense that an agency can use to protect the privacy of persons mentioned in records compiled for law enforcement purposes and for particularly sensitive non-law enforcement records. This "neither confirm nor deny" response is used when even the mere acknowledgment of the existence or non-existence of records would cause "a clearly unwarranted invasion of personal privacy." (Exhibit 5)
    - example: request from a third party for allegations/investigations/complaints on a named individual

### Exemption 7D

- "...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 that 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."

### ❖ Exemption 7E

- 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
  - covers techniques and procedures for investigations or prosecutions, but only if they are not well known to the public. (Courts have held that common law enforcement techniques, such as wiretapping or the placement of radio tracking devices on suspect vehicles, are well known to the public
  - in some cases, commonly known procedures have been protected when "the circumstances of their usefulness may not be widely known" or their use in concert with other elements of an investigation and in their totality directed toward a specific investigative goal constitute a 'technique' which merits protection
    - agency must make a determination whether the disclosure could reasonably be expected to risk circumvention of the law
    - similar to Exemption 2 (high) and designed to protect only the material that would harm investigations or prosecutions

### ❖ Exemption 7F

- Could reasonably be expected to endanger the life or physical safety of any individual
  - can withhold names and identifying information of Federal employees and third persons who may be unknown to the requester in connection with law enforcement matters
  - can withhold identities of individuals who testified at requester's criminal trial
  - can withhold law enforcement officer subsequently retired
  - not limited to criminal law enforcement information
  - can be used to protect information that would aid a terrorist
  - must be some enforcement related regulatory requirement that caused the information to come into the NRC's possession
  - **A foreseeable harm statement is not needed for Exemption 7 unless it is not obvious why the information is being withheld.**

## Allegation Files

- ❖ **Agency Allegation Advisor (AAA)**
  - OE
- ❖ **Office Allegation Coordinators (OAC)**
  - FSME, NRR, NRO, NMSS, NSIR, RI, RII, RIII, and RIV
  - FOIA requests involving allegation records must be transmitted with either the red or blue cover sheet in accordance with MD 8.8
    - green cover sheet – Investigation Information
    - red cover sheet - Confidential Allegation Material
    - blue cover sheet - Sensitive Allegation Material
  - The appropriate cover sheet will remain with the FOIA package throughout the processing of the records
  - If the incoming FOIA request clearly identifies an alleged, the request will be Fed-Ex'd or hand-carried to the office/region and not scanned into ADAMS
  - Allegation records will not be made publicly available in ADAMS without the approval of the regional or program OAC or the AAA or his/her assistant
  - The AAA or designee will review and concur in all responses to FOIA requests involving allegation records
    - in providing his/her concurrence, the AAA or designee is certifying that the information to be disclosed from each record would not cause harm to an open allegation or disclose the identify of an alleged whose identity still warrants protection
  - If alleged is widely publicly known - will not protect his/her identity
  - Definition of Widely Known Alleger:
    - alleged notified media
    - alleged held press conference about the allegation
    - alleged identified himself/herself as the alleged at a public meeting
  - Alleger must be notified if NRC is going to release their identity in FOIA requests involving TECHNICAL issues. (OAC's will notify the alleged)
  - Records in an Allegation/Investigation file originated by the licensee:
    - licensee records marked "Confidential," "Proprietary," or "Withhold from Public Disclosure under 2.390" must be reviewed for release
    - if the determination is made to release the record in its entirety or in part, the FOIA/PA caseworker will send a letter to the licensee
    - the FOIA/PA caseworker will not tell the licensee who the requester is unless it is a 3rd party and we are going to be placing the FOIA request, response and records in ADAMS as public

# U.S. NUCLEAR REGULATORY COMMISSION FREEDOM OF INFORMATION ACT (FOIA) GUIDE

02/2004

## Contents

This reference guide comprises the following sections to familiarize you with the procedures for submitting a request to the U.S. Nuclear Regulatory Commission (NRC) under the Freedom of Information Act (FOIA):

- I. Introduction
- II. Access to Records Without a FOIA Request
- III. Where to Send Your FOIA Request
- IV. How to Make a FOIA Request
- V. Processing Your FOIA Request
- VI. Response Times
- VII. Expedited Processing
- VIII. Fees
- IX. Fee Waivers
- X. Initial Request Determinations
- XI. Appeals
- XII. Judicial Review

## I. Introduction

The Freedom of Information Act (FOIA), enacted in 1966, is a Federal law that is set forth in Title 5, Section 552, of the *United States Code* (5 U.S.C. 552), as amended. In enacting the FOIA, Congress established the presumption that any person has the right to submit a written request for access to records or information maintained by the Federal Government. In response to such written requests, Federal agencies must disclose the requested records, unless they are explicitly protected from disclosure by one or more of the FOIA exemptions and exclusions (defined later in this reference guide). In addition, the right to request access is enforceable in court, and the law provides administrative and judicial remedies for those who are denied access to records requested under the FOIA.

The FOIA does not apply to records that are maintained by State and local governments, or persons or organizations who receive Federal contracts or grants, or private organizations or businesses.

This reference guide is designed to familiarize you with the specific procedures for making a FOIA request to the NRC. The process is neither complicated nor time-consuming, and following the guidance presented on the following pages will ensure that you prepare your request properly and send your request to the proper NRC official so that we can promptly record and assign your request for action.

Before preparing your request, however, it is important to understand that the Federal Government does not have a central office to process FOIA requests, and each agency responds to requests for its own records. Therefore, before sending a request to the NRC, you should determine whether we are likely to have the records you are seeking.

You should also note that the FOIA is a companion to the Privacy Act (5 U.S.C. 552a), which balances the Government's need for information about individuals with the need to protect those individuals against unwarranted invasions of their privacy by Federal agencies stemming from the collection, maintenance, use, and disclosure of personal information. In general, the Privacy Act (PA) allows individuals to learn how the Federal Government collects, maintains, uses, and disseminates records containing personal information. It also safeguards confidentiality by limiting or restricting disclosure of personally identifiable records maintained by Federal agencies. The PA allows individuals to gain access to their own personal records (unless the requested records are exempted from disclosure), and it allows individuals to seek correction or amendment of Federally maintained records that are inaccurate, incomplete, untimely, or irrelevant. As such, the PA establishes a "code of fair information practices," which requires Federal agencies to comply with statutory norms for collecting, maintaining, and disseminating records containing information about individuals.

Despite their similarities, the FOIA and the PA have different procedures and exemptions. Consequently, information that is exempt from disclosure under one Act may be disclosable under the other. In order to take maximum advantage of both Acts, you may cite *both* laws when submitting a request for access to NRC records that contain information only about yourself. However, when requesting NRC records that contain information about other individuals or entities, you may cite only the FOIA.

The NRC will automatically handle requests in a manner that maximizes the amount of information that is disclosable. If you have any doubt about which Act to use in requesting information from the NRC, always cite *both* the FOIA and the PA. While neither Act grants an absolute right to examine Government documents, both Acts give you the right to request records and to receive a response to your request. You also have the right to appeal the denial and, if necessary, to challenge it in court (as discussed later in this guide).

The formal regulations for making FOIA requests to the NRC are set forth in Title 10, Part 9, Subpart A, of the *Code of Federal Regulations* (10 CFR Part 9), which is available on the NRC's public Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part009/>.

Another source of information on how to make a FOIA request is "Your Right to Federal Records," which is a joint publication of the U.S. General Services Administration and the U.S. Department of Justice. This pamphlet is available for \$0.50 per copy from the Consumer Information Center, Department 320J, Pueblo, Colorado 81009, and it can also be accessed on the Internet at [http://www.pueblo.gsa.gov/cic\\_text/fed\\_prog/foia/foia.htm](http://www.pueblo.gsa.gov/cic_text/fed_prog/foia/foia.htm).

## **II. Access to Records Without a FOIA Request**

The FOIA explicitly provides two distinct ways for the public to gain access to the records maintained by Federal agencies. Most people know that one way is to submit a written request



for copies of records that are not routinely made available as part of the agency's public record. The FOIA mandates that Federal agencies must make certain types of records freely available (without a written request), as discussed in this section. Moreover, in 1996, Congress revised the statute by passing the Electronic Freedom of Information Act (EFOIA) amendments, which include provisions for public access to information in an electronic format, as well as establishment of electronic FOIA reading rooms through agency FOIA sites on the Internet. Furthermore, the E-Government Act of 2002 establishes a goal for certain information published or made publicly available be made available electronically. As a general rule, before making a FOIA request, you should peruse the information that the NRC makes available on its public Web site and through other conventional sources, as described in the following subsections.

#### **A. Records Required To Be Publicly Available**

The FOIA mandates that all Federal agencies must make certain types of records publicly available. Section (a)(1) of the FOIA requires agencies to publish in the Federal Register the following records and under the E-Government Act of 2002, agencies are to make these records accessible electronically. This information is included in NRC regulations at 10 CFR Parts 1-199.

- descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;
- statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
- rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
- substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and each amendment, revision, or repeal of the foregoing.

Section (a) (2) of the FOIA requires that each agency, in accordance with published rules, make available for public inspection and copying--

- final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.
- those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register. *(note all NRC statements of policy and interpretations are published in the Federal Register)*

- administrative staff manuals and instructions to staff that affect a member of the public. These include Regulatory Guides, Consensus Standards, Generic Communications, Standard Review Plans, Agreements with an Agreement State, Branch Technical Positions, Topical Reports, NRC Enforcement Manual, NRC Inspection Manual, and Management Directives that affect the Public.
- copies of all records, regardless of form or format, which have been released to any person in response to a FOIA request and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and a general index to these records.

**B. Access to NRC Records Routinely Made Publicly Available**

The NRC releases several hundred documents to the public during each workday. The NRC makes these records available in its Agencywide Documents Access and Management System (ADAMS), which is accessible on the NRC's public Web site at <http://www.nrc.gov/reading-rm/adams.html>. Members of the public can use ADAMS to access a wealth of valuable information without filing a FOIA request. You may use ADAMS **Search** or **Advanced Search** to create an index (list) of documents based on the criteria you select. From that index (list) you may select specific documents you want to view.

In addition, NRC makes an extensive amount of information available on its web site, as illustrated by the following examples:

- **Who We Are** (organization; locations; planning, budgeting, and performance information; license fees; governing legislation; agency history and values; etc.)
- **What We Do** (Commission direction-setting and policymaking, radiation protection, nuclear security and safeguards, key components of our regulatory program, etc.)
- **Nuclear Reactors, Nuclear Materials, and Radioactive Waste** (technical information regarding the NRC's activities in these strategic arenas)
- **Facility Information Finder** (names and locations of operating nuclear power reactors and fuel cycle facilities, as well as status reports, event notification reports, significant enforcement actions, and other facility information)
- **Public Involvement** (opportunities for public participation in the regulatory process, including meeting schedules, documents for comment, information quality guidelines, etc.)
- **Electronic Reading Room** (basic references, options for electronic and conventional access to the NRC's document collections, FOIA/PA requests, and related links to the NRC's High-Level Waste Electronic Hearing Docket and Licensing Support Network)
- **Report a Safety Concern**
- **Employment at the NRC and Contracting with the NRC**
- **Highlights and News Releases**
- **NRC Forms and Electronic Information Exchange (EIE) submittal guidance**
- **Public Meetings, Current Rulemakings, Daily Reports, and Key Topics**

### C. FOIA Requests and FOIA Responses on the NRC's Public Web Site

The NRC makes available for public inspection and copying nonsensitive FOIA requests and responses to those requests. To locate these records from the NRC's public Web site (<http://www.nrc.gov>), click the **Electronic Reading Room** tab. Then click **Documents in ADAMS**, and select **Web-Based Access**.

In the **Search** block on the Web-Based Access to ADAMS page, you may type any information you have about the request. For example, if you are interested in a specific FOIA/PA request and you know the related request number, you should type FOIA/PA, followed by the request number in quotation marks (e.g., FOIA/PA "2000-0103") and click the **Search** button or press the **Enter** key. If you are interested in a particular subject, you should type that subject name in the Search block and click the Search button or press the Enter key. Similarly, you can type the name of the person or organization who submitted the request and click the **Search** button or press the **Enter** key.

You may obtain better results by using **Advanced Search**. To do so, click on Advanced Search, which is located just below the Search block. The system will then display a window containing a number of fields in which you can enter information to narrow your search. For example, to search for completed requests within a specific date range, enter the beginning and ending dates in the **Document Date** field using the mmddyyyy-mmddyyyy format, and click the **Select from Known Values** button to the right of the **Document Type** field. Then scroll through the menu to highlight **FOIA/Privacy Act Response to Requester** and click the **Select Values** button. (You may define the date range in any search.) You may also use Advanced Search to search by the name of the requester by typing the person's name in the **Author** field. Similarly, if you are interested in requests by a particular organization or institution, you may enter the name into the **Author Affiliation** field.

You can also quickly review the subject matter headings of FOIA requests to which the NRC has responded since 1998. To do so from the NRC's public Web site (<http://www.nrc.gov>), click the **Electronic Reading Room** tab. Then click **FOIA and Privacy Act Requests**, and select **Index of Closed FOIA/PA Requests by Subject**. (You can also access this page directly at <http://www.nrc.gov/reading-rm/foia/closed-request.html>.) From the index page, you can select a specific year for which the system will display a table that identifies the subject, request number, date received, and date closed for each request, and indicates whether the response is available in the NRC's Public Document Room.

Similarly, to view the subject of recent FOIA/PA requests that the NRC has received from the NRC's public Web site (<http://www.nrc.gov>), click the **Electronic Reading Room** tab. Then click **FOIA and Privacy Act Requests**, and select **Recent FOIA Requests**. Again, the system will display a table that identifies the subject and request number of each FOIA/PA request received within the specified time frame.

Links from the Freedom of Information Act and Privacy Act Requests page provide additional resources, including access to the text of the Freedom of Information Act, the NRC's FOIA regulations, recent FOIA requests, an index to completed FOIA requests, a list of frequently requested records, the NRC's Annual FOIA Reports, and Governmentwide FOIA guidance. In

addition, this page provides access to related references to the Privacy Act program, as well as the "Citizen's Guide to U.S. Nuclear Regulatory Commission Information" and the Government Information Locator Service.

#### **D. Other Sources of NRC Records**

The NRC also offers a Public Document Room (PDR), which maintains a large collection of publicly available agency records and provides equipment and services to assist persons who seek access to NRC records. The PDR is located at NRC headquarters at 11555 Rockville Pike, Rockville, Maryland 20852. In addition, certain NRC publications (staff-prepared NUREG-series reports) are available for subscription purchase from the National Technical Information Service (5285 Port Royal Road, Springfield, Virginia 22161) and the Government Printing Office (GPO). You may contact the GPO Access User Support Team by telephone (toll-free) at 1 (888) 293-6498 between the hours of 7:00 a.m. and 5:30 p.m. EST, Monday through Friday, excluding Government holidays. You can also contact the GPO Access User Support Team by email at [gpoaccess@gpo.gov](mailto:gpoaccess@gpo.gov) or by fax at (202) 512-1262.

### **III. Where to Send Your FOIA Request**

You may submit a FOIA request to the NRC by mail, email, or facsimile (fax), *addressed to the NRC Freedom of Information Act and Privacy Act (FOIA/PA) Officer*, as follows:

Mail: U.S. Nuclear Regulatory Commission  
Mail Stop T6-D8  
Washington, DC 20555-0001

Fax: (301) 415-5130

Email: Send an email message to [FOIA@nrc.gov](mailto:FOIA@nrc.gov).

— *OR* —

Use our FOIA Request Form  
(<http://www.nrc.gov/reading-rm/foia/foia-submittal-form.html>)  
to email your request directly to the NRC from our Web site.

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Electronic  
Information  
Exchange  
(EIE):

The NRC offers the following means to obtain detailed guidance on making electronic submissions:

- access the agency's public Web site at <http://www.nrc.gov/site-help/eie.html>
- call (301) 415-6030
- email [EIE@nrc.gov](mailto:EIE@nrc.gov)
- write to the Applications Development Division  
Office of the Chief Information Officer  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Among other topics, the available EIE guidance discusses the formats that the NRC can accept, the use of electronic signatures, and the treatment of non-public information.

For further information, contact the NRC's FOIA/PA Officer at (301) 415-7169 between the hours of 7:00 a.m. and 4:00 p.m. EST, Monday through Friday, excluding Government holidays.

#### **IV. How to Make a FOIA Request**

Under the Freedom of Information Act (FOIA), you may request access to any record maintained by the NRC. This does not mean, however, that the NRC will disclose any record you request. As summarized later in this reference guide, the FOIA establishes certain statutory exemptions and exclusions that authorize the NRC to withhold information of a sensitive nature. When the NRC does withhold information from you, we will cite the relevant FOIA exemption.

You should also understand that the purpose of the FOIA is to give the public access to *existing* Government records. That is, the Act does not require agencies to create records or develop information to satisfy your request, or to conduct research or investigations or analyze data to answer your written questions. The FOIA does not obligate us to provide records that were destroyed or discarded before we received your request or were not created until after we received your request.

In making your request you should be as specific as possible. Remember that all FOIA requests must be in writing and, at a minimum, should contain the following basic elements:

- State that you are seeking access to records under the Freedom of Information Act (or under the Freedom of Information Act *and* the Privacy Act, as described above). For the quickest possible handling, mark both your letter and the envelope "Freedom of Information Act Request."
- Include your name, address, and daytime telephone number (in case we need to contact you to discuss your request).
- Describe the requested records (or information) as specifically as possible, including individual and company names (where applicable), as well as the relevant dates, places, events, subjects, and other details.

- State your willingness to pay the applicable fees, if any, associated with processing your FOIA request. (See Section VIII for a discussion of fees.)

Remember that the more specific you are about the records (or types of records) that you want, the more likely it will be that the NRC will be able to locate those records. If your request does not provide sufficient information to enable the NRC to identify the requested record(s), we will contact you to obtain additional information or clarification in order to process your request. As a general rule, you are not required to state the reason(s) why you are requesting the given records. However, you may do so if you think it might help the NRC to locate the records.

In addition, in order to protect your privacy, whenever you request information about yourself, you must provide proof of identity:

- **If you make a written request**, you may establish your identity by providing your name, address, date of birth, social security number, employee identification number (if any), signature, and one other identifying item (such as a copy of your driver license, Federal agency badge, or passport).
- **If you cannot provide the necessary proof of identity**, you may provide a notarized statement, affirming or swearing to your identity and the fact that you understand that the NRC may impose penalties for obtaining records under false pretenses. You may obtain forms for such statements by contacting the NRC's FOIA/PA Officer, whose address and phone number are noted above.

Similarly, the NRC will not generally disclose records relating to another person, if such disclosure would invade that person's privacy. For such requests, you must provide either (1) a statement, signed by that other person and witnessed by a notary, that explicitly authorizes the NRC to release the specified information to you, or (2) incontrovertible evidence that the subject of your request is deceased.

The FOIA and its EFOIA amendments also give you the option to specify the form or format in which you would like to receive the requested records. For example, if the agency maintains the requested records in electronic format, you can choose to receive the information electronically (on a disk or CD-ROM) or in hardcopy (a paper printout). However, if you request records in electronic format, but they exist only in paper form or in an electronic format other than the one you've requested, the NRC is only obligated to provide the requested records in the specified electronic format if it can do so with a reasonable amount of effort.

## **V. Processing Your FOIA Request**

When the NRC's FOIA/PA Officer receives your request, that officer will record the request and assign a tracking number. In addition, the NRC will send you a written acknowledgment letter indicating the name and telephone number of the NRC FOIA/PA Specialist, whom you should contact if you need to discuss the processing and/or status of your request. The acknowledgment will also provide additional information regarding your request, such as your fee category and the charges that may apply to your request.

The NRC will assign your request to the NRC office(s) or region(s) that are likely to have records that would be responsive to your request. The responsible office then assigns staff

who are knowledgeable about the subject matter of your request to search for responsive records, review the records to determine whether they can be released to you and, if they cannot, identify the information that they propose to withhold and the reason for nondisclosure. After compiling a package of the responsive records and the disclosure recommendation, the responsible office forwards the package to the central FOIA staff. The assigned FOIA/PA Specialist then reviews the office's response and the office's recommendations, coordinates any additional agency reviews or referral to other agencies or companies, and prepares the agency determination that is sent to you.

## **VI. Response Times**

All Federal agencies have a statutory responsibility to respond to a FOIA request within 20 business days (excluding legal holidays) after the agency's FOIA/PA Officer receives the request and it is recorded as received by the FOIA/PA Officer. However, the FOIA gives Federal agencies the right to extend that time by 10 business days when a given request requires additional search time or consideration. This may apply when (1) the NRC needs to assemble responsive records from our regional offices; (2) the request involves a "voluminous" amount of records that must be located, compiled, and reviewed; or (3) the NRC must consult with another agency component or another Federal agency that may have originated the information or have a substantial interest in the information. If we need to extend the response time, we will contact you in writing or by telephone to explain the reason for the extension and project when the NRC expects to make a determination.

To ensure the most equitable treatment possible, the NRC processes FOIA requests on a first-in, first-out basis, using multiple tracking systems based upon the estimated time it will take to process the request. The NRC makes a good faith effort to respond to all requests within the statutorily established time frame; however, on occasion, the NRC may not be able to fully respond within that time. In such cases, the NRC will generally provide a series of responses (if possible) so that each requester will receive as much of their requested information as possible within the shortest possible time. If you have not received a response within the statutory time frame, you may contact the responsible FOIA/PA Specialist to discuss the status of your request.

## **VII. Expedited Processing**

Under the Freedom of Information Act (FOIA), the NRC may place your request at the front of the queue if you clearly show a "compelling need" for a speedy response. For purposes of determining whether to grant expedited processing, the statute defines a "compelling need" as follows:

- (1) Failure to obtain the requested records within an expedited time frame could reasonably be expected to pose an imminent threat to an individual's life or physical safety.
- (2) You are "primarily engaged in disseminating information" and there is an urgent need to "inform the public concerning actual or alleged Federal Government activity."

The NRC will not grant a request for expedited processing under the second provision merely because the requester is a representative of the news media. A person requesting expedited processing must include a statement certifying the compelling need as "true and correct to the best of [his or her] knowledge and belief," unless the NRC explicitly waives this certification requirement as a matter of agency discretion. The FOIA requires the NRC to notify you of its decision about whether to grant expedited processing within 10 days after receiving your letter. If the NRC denies your request for expedited processing, we will advise you of your right to submit an administrative appeal of that denial.

## **VIII. Fees**

The NRC does not charge an initial fee for filing a FOIA request. By law, however, the agency is entitled to charge certain fees, depending on the fee category for which you qualify. For the purposes of assessing fees, the FOIA divides requesters into three categories:

- (1) Commercial requesters may be charged fees for searching for, reviewing, and copying the requested records.
- (2) Educational or noncommercial scientific institutions and representatives of the news media are charged only for copying, and only in excess of the first 100 pages. The NRC currently charges \$0.20 per page for copying.
- (3) Other requesters are charged only for record searches and copying, and there is no charge for the first 2 hours of search time or the first 100 pages of copying. The NRC currently charges \$0.20 per page for copying.

In all cases, if the total fee does not exceed a minimum amount (currently \$15.00), the NRC will not charge any fee at all.

As previously indicated, you can avoid delays in the processing of your FOIA request if your request letter states your willingness to pay the applicable fees, if any, associated with processing your request. In so doing, you can also identify any limitation on the fees you are willing to pay. If you do not do so, the NRC will assume that you are willing to pay fees of up to \$25. If NRC estimates that the total fees for processing your request will exceed \$25 or the amount you specify in your request, we will notify you in writing of the estimate and offer you an opportunity to narrow your request in order to reduce the fees. If you continue to want all of the records involved, we will ask you to express your commitment to pay the estimated fees and we will suspend the processing of your request until you agree to do so.

The NRC will not ordinarily require you to actually pay the fees until we have processed your request and sent the records to you. However, if you have failed to pay fees within 30 days of billing in the past, or if the estimated fees exceed \$250, the NRC may require you to pay the estimated fees in advance (that is, before we process your request). If you agree to pay fees and then fail to do so within 30 days of billing, the NRC is authorized to charge interest, penalties, and administrative costs on your overdue balance and we will not process any further requests from you until you have remitted payment in full. If you agree to pay fees for searching for records, be aware that we may require you to pay such fees even if the search does not locate any responsive records or if we withhold the responsive records in their entirety.



If the NRC finds that a requester (or a group of requesters acting in concert) has filed multiple requests that actually constitute a single request, and if those requests involve clearly related matters, we may aggregate all of the related requests in determining the records search time and copying services to be provided without charge.

## **IX. Fee Waivers**

If you expect or are advised that the NRC will charge a fee for processing your FOIA request, you may ask the agency to waive or reduce those fees. However, fee waivers or reductions are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the agency's operations and activities and is not primarily in the commercial interest of the requester. Note that persons who seek information about themselves usually do not meet this legal standard, and a requester's inability to pay fees is not a legal basis for granting a fee waiver.

If you ask the NRC to waive or reduce its fees for processing your FOIA request, you will need to submit a statement of justification, as follows:

- Describe the purpose for which you intend to use the requested information.
- Explain the extent to which you will extract and analyze the substantive content of the requested records.
- Describe the nature of the specific activity or research in which you will use the requested records and the specific qualifications you 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, compared to the level of public understanding of the subject before disclosure of the requested information.
- Describe the size and nature of the public segment whose understanding will be increased by disclosing the requested information.
- Describe the means by which you intend to disseminate the requested information to the general public.
- Indicate whether you will provide public access to the requested information free of charge or in return for an access or publication fee.
- Describe any commercial or private interest that you or any other party may have in the requested records.

## **X. Initial Request Determinations**

Once the NRC has processed your request and resolved any fee-related issues, the agency will send you a written initial determination letter and will usually enclose any records that can be disclosed under the Freedom of Information Act (FOIA) that are not already publicly available. This letter will advise you whether the NRC is withholding any information pursuant to one or more of the exemptions to the FOIA (as discussed below). When the NRC is withholding one or more page(s) in entirety, the initial determination letter will either specify the

number of pages being withheld or will provide a reasonable estimate of the volume of information withheld.

While the intent of the FOIA is to make Government information available to the public, the statute recognizes that there are circumstances when disclosure is not appropriate. The statute includes nine exemptions and three exclusions.

Specifically the FOIA exemptions authorize Federal agencies to withhold the following types of information:

- (1) classified national defense and foreign relations information
- (2) internal agency rules and practices
- (3) information that is prohibited from disclosure by another Federal statute
- (4) trade secrets and other confidential business information
- (5) inter- or intra-agency communications that are protected by legal privileges
- (6) information involving matters of personal privacy
- (7) certain types of information compiled for law enforcement purposes
- (8) information related to the supervision of financial institutions
- (9) geological information on wells

Congress recognized, however, that even acknowledging the existence of certain types of records may cause as much harm as disclosing the requested information. The three exclusions, which are rarely used, pertain to especially sensitive law enforcement and national security matters.

You should also note that even if the FOIA statute allows the NRC to withhold certain information, we may still disclose the requested records as a matter of administrative discretion (if no other law prohibits us from doing so). However, the NRC is not legally obligated to do so.

## **XI. Appeals**

Upon receiving the NRC's initial determination letter, you will have 30 calendar days to submit an appeal if the letter indicates that the NRC has decided to deny a FOIA request for (1) access to agency records or portions thereof, (2) waiver or reduction of fees, or (3) expedited processing. You may also appeal any disputed fee matter or any determination that (1) a requested record does not exist, (2) a requested record is not readily reproducible in the desired format, or (3) the requested information is not subject to the FOIA. If you are submitting an appeal because you believe the agency has not located all records related to your request, you should specify why you believe additional records exist and, if possible, where you believe such records may be located.

All appeals must be made in writing, directed to the appellate official identified in the NRC's initial determination letter, and addressed as follows:

Freedom of Information and Privacy Act Officer  
U.S. Nuclear Regulatory Commission  
Mail Stop T6-D8  
Washington, DC 20555-0001

When appealing the NRC's decision to deny access to the requested records, you should clearly identify your appeal (on the envelope and in the letter) as an "Appeal from Initial FOIA Decision."

The NRC has three appellate authorities, and the agency will inform you which authority will handle your appeal. The responsible appellate authority will make a determination within 20 working days of receiving your appeal, or 10 working days if your appeal relates to the denial of a request for expedited processing.

## **XII. Judicial Review**

If you have filed an appeal, but you still believe that the NRC has not handled your request in accordance with the FOIA, you have the right to challenge the agency's decision in a lawsuit. The NRC's response to your appeal will inform you that you may file your suit in a District Court of the United States in the district in which you reside or have a principal place of business, the district in which the relevant agency records are located, or the District of Columbia.