

**From:** [Blaney, Stephanie](mailto:Blaney, Stephanie)  
**To:** [Ennis, Tina](mailto:Ennis, Tina)  
**Subject:** Fwd: FOIA Request 22-A. Adverse Determination Letters FY 2016 - FY 2022  
**Date:** Friday, March 04, 2022 1:39:39 PM

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Not sure if this was sent to you or not.

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**From:** "Moses, John" <[John.Moses@nrc.gov](mailto:John.Moses@nrc.gov)>  
**Subject:** FW: FOIA Request 22-A. Adverse Determination Letters FY 2016 - FY 2022  
**Date:** 04 March 2022 07:02  
**To:** "Blaney, Stephanie" <[Stephanie.Blaney@nrc.gov](mailto:Stephanie.Blaney@nrc.gov)>  
**Cc:** "McGowan, Anna" <[Anna.McGowan@nrc.gov](mailto:Anna.McGowan@nrc.gov)>, "Silberfeld, Dafna" <[Dafna.Silberfeld@nrc.gov](mailto:Dafna.Silberfeld@nrc.gov)>, "Feibus, Jonathan" <[Jonathan.Feibus@nrc.gov](mailto:Jonathan.Feibus@nrc.gov)>

Attached is a FOIA request received last night.

Thanks.

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**From:** Robert Hammond <[dod.foia.pa@gmail.com](mailto:dod.foia.pa@gmail.com)>  
**Sent:** Thursday, March 03, 2022 10:27 PM  
**To:** Robert Hammond <[dod.foia.pa@gmail.com](mailto:dod.foia.pa@gmail.com)>  
**Subject:** [External\_Sender] FOIA Request 22-A. Adverse Determination Letters FY 2016 - FY 2022

March 3, 2022

**Subject: FOIA Request 22-A. Adverse Determination Letters FY 2016 - FY 2022**

I am submitting this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended. If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited below apply.

**\*\*\*This Request will be timely for Judicial Review in twenty working days\*\*\* RECORDS SOUGHT VIA FOIA.  
**22-A. Adverse Determination Letters FY 2016 - FY 2022.****

I am respectfully seeking from your agency:

1. Records of the first 5 FOIA adverse determination letters (other than full grant) processed by your agency for fiscal years FY 2016, FY 2017, FY 2018, FY 2019, FY 2020, and FY 2021 (seven fiscal years, 35 records).

- a. This is an inherently simple request. Records are the FOIA Office These are antecedent records that have already been released to the Public via the determination letters themselves
- b. There should be no redactions as to names, email addresses or phone numbers (excluding cell numbers) of government employees, which are not exempt under (b)(6).
- c. There should be no redactions as to names, of non-commercial requesters, which are not exempt under (b)(6). Federal agencies have stated, "I am releasing the names of the FOIA requesters as courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp.1218, 1223 (D.D.C. 1981)."
- d. There should be no redactions for commercial entity names, addresses, phone numbers and emails, as these are in the public domain.

2. I am also seeking a copy of this FOIA Request, which is an Agency record subject to FOIA that exists and is in the Agency's possession at the time of my FOIA request. This record is a responsive record integral to my Request. Release of the Agency's copy is not optional.

### **REQUESTED FORMAT.**

I am also seeking a single ADA accessible PDF file by return email with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) with record page count for all records released records (3) a copy of this request in your reply. I seek records via email in PDF format with an imbedded copy of my requests to (1) impede the agency from not addressing the FOIA Request; (2) impede the Agency from not providing the documents stated in the Agency's letter reply, and (3) make it obvious in any subsequent review what the Agency has or has not done

Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be released in that format upon request.

Each record must be provided as a distinct record in their native format. Emails should be provided as

This request is distinctly separate from any other. Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the reply.

**FEE WAIVER/ PUBLIC INTEREST/PUBLIC RELEASE.** Notwithstanding my agreement to pay fees below if my fee waiver is denied, I am seeking a fee waiver due to significant public interest in this information. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest.

There is significant public interest.

**AGREEMENT TO PAY FEES.**

I agree to pay fees for searching or copying the records up to \$25. If the fees exceed this amount please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any [] Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting an electronic file, there should not be a per page copy fee.

The OMB Guidelines direct that searches for responsive records should be done in the "most efficient and least expensive manner." See OMB Fee Guidelines, 52 Fed. Reg. at 10,017. As an "all others" requester, I may only be assessed search and duplication fees and not fees for review. See 32 CFR 286.12 - Schedule of fees. Also, please note that, should payment become necessary, the Coinage Act of 1965, specifically Section 31 U.S.C. 5103, entitled "Legal tender," states: " United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

( [Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980](#) ; [Pub. L. 97-452, §1\(19\), Jan. 12, 1983, 96 Stat.](#)

[2477.](#).)

**STILL-INTERESTED PREEMPTIVE REPLY.** This is a preemptive reply to the Justice Department guidelines the procedure known as a "still interested" inquiry, through which a FOIA officer can confirm that the requester has not lost interest in obtaining the documents.

My interest in all FOIA requests submitted to your office is enduring, meaning that my interest in seeking replies to all past and future FOIA request remains in effect until each request has been answered fully and the time for judicial review has passed. Please do not initiate any "still interested" inquiries. This serves as my notice of enduring interest and automatic reply to any future questions of interest by your office. There are no

reasonable grounds to ever conclude in the future that I am not interested in this request.

#### Implementation Checklist for DOJ OIP Guidance on “Still-Interested” Inquiries

1. Ensure there are reasonable grounds to make a “still-interested” inquiry in first instance.
2. Absent good cause, do not make multiple “still-interested” inquiries.
3. Use requester’s preferred method of communication and in the absence of a preference, communicate by telephone or email as the default.
4. Memorialize any decision by a requester to withdraw a request that is conveyed by telephone by sending the requester a brief email or letter noting the withdrawal.
5. Provide requesters no less than thirty (30) working days to respond to the “still- interested” inquiry and ensure that there is a simple way to do so.
6. Advise the requester that if they elect not to respond to the inquiry, the request will be administratively closed at the conclusion of the designated time period (which must be at least 30 working days).
7. Prior to administratively closing a request based upon the lack of a response by the requester, make good faith efforts to reach out to the requester using multiple methods of communication.
8. In the event a requester responds to the “still- interested” inquiry within a reasonable time after the deadline has passed, reopen the request and place it back into the processing queue where it would have been.

#### **PRESERVE RECORDS AND SEARCHES FOR JUDICIAL REVIEW.**

Please search for, locate and preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. NARA GRS 4.2 requires that FOIA and Privacy Act case files be retained for 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later.

Records of responsive searches would include but not be limited to: searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof. Such persons determining the locations of responsive records must be inclusive of persons who would know such locations and their identities and manner of determining search locations must be preserved.

In any subsequent proceedings, I may seek sworn declarations and a court order appointing a special counsel, as appropriate. Similarly, I may pursue additional venues.

Any deletion of potentially responsive records by any party having knowledge of this Request may be a violation of law. In as much as applicable staff and leadership have knowledge of my subject request, the Agency must search for, locate and preserve all responsive or potentially responsive records and records of searches in their FOIA case file, and leadership must ensure that this is done. Failing to do so and allowing records to be deleted IAW any other records management schedule may be a violation of law.

### **ELECTRONIC RECORDS PRESERVATION.**

The Agency must preserve all electronically stored information, copies and backup, as defined by Rule 34 of the Federal Rules of Civil Procedure, along with any paper files which the Agency maintains, relevant to this action I am seeking electronic data in the Agency's custody and control that is relevant to this action, including without limitation emails, along with metadata, and other information contained on Agency computer systems and any electronic storage systems. I consider this electronic data and paper files to be valuable and irreplaceable sources of discoverable information in this matter. No procedures should have been implemented to alter any active, deleted or fragmented data. Moreover, no electronic data should have been disposed of or destroyed. (ETL Institute for Advancement of America's Legal System).

Further, to properly fulfill your preservation obligation, stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the sale, gift or destruction of hardware. Notify all individuals and of the need and duty to take the necessary affirmatives steps to comply with the duty to preserve evidence. (2008 Thomson Delmar Learning).

The Agency's Director of Information Operations or similar organization must initiate procedures to preserve electronic records.

### **ALTERATION/DESTRUCTION OF RECORDS**

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title,

imprisoned not more than 20 years, or both. 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added Pub. L. 107–204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.).

**18 U.S.C. 641 and 2071.** The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both (18 U.S.C. 641 and 2071).

**36 CFR § 1230 UNLAWFUL OR ACCIDENTAL REMOVAL,  
DEFACING, ALTERATION, OR DESTRUCTION OF RECORDS  
§1230.3**

*Unlawful or accidental destruction (also called unauthorized destruction)* means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under §1226.14(d) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

**IMPROPERLY WITHHOLDING RECORDS**

Pursuant to FOIA:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” 5 U.S.C. § 552(a)(4)(F)(i).

**LEGAL FRAMEWORK OF FOIA**

1. The definition of “records” includes:

“[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made *or received* by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.” 44 U.S.C. § 3301 (emphasis supplied).

2. FOIA requires that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person” 5 U.S.C. § 552(a)(3)(A).

3. FOIA requires that “each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request” 5 U.S.C. § 522(a)(7)(A).

4. FOIA requires that each agency shall “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5

U.S.C. § 522(a)(7)(B).

5. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

6. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See also* 5 U.S.C. § 552(a)(6)(C).

7. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

8. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),

9. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).

10. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5

U.S.C. § 552(a)(4)(E).

11. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, *Handbook for Agency Annual Freedom of Information Act Reports*, “Disposition of FOIA Requests,” (available at [http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department\\_of\\_justice\\_handbook\\_for\\_agency\\_annual\\_freedom\\_of\\_information\\_act\\_reports.pdf](http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf)) (“DOJ Handbook”).

12. Among other things, the DOJ Handbook states, “All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured.”

13. The DOJ Handbook also states:

“[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that

will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance.” DOJ Handbook, at 3.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance.

With my respect,

/s/

Robert  
Hammond

Requester

11828 Wayland Street, Oakton, VA 22124

## References:

1. The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended,
2. Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, “Your Right to Federal Records”
3. The Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a, *et seq.*, as amended
4. GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act
5. Department of Justice Handbook for Agency Annual Freedom of Information Act Reports
6. (b) Administrative Instruction 106, “Alternative Dispute Resolution (ADR) Program,” January 30, 2014
7. Executive Order 12988, “Civil Justice Reform,” February 5, 1996
8. Public Law 101-552, “Administrative Dispute Resolution Act,” November 15, 1990
9. Public Law 104-320, “Administrative Dispute Resolution Act of 1996,” October 19, 1996
10. Presidential Memorandum for Heads of Executive Departments and Agencies, “Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking,” May 1, 1998
11. United States Code, Title 5
12. Alternate Dispute Resolution Handbook ([opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf](http://opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf))
13. President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines ([justice.gov/sites/default/files/oip/legacy/2014/07/23/foia-memorandum.pdf](http://justice.gov/sites/default/files/oip/legacy/2014/07/23/foia-memorandum.pdf))