

OFFICE OF NUCLEAR REACTOR REGULATION

Office Letter Transmittal

TO: All NRR Employees

SUBJECT: NRR OFFICE LETTER NO. 104, REVISION 3, "FREEDOM OF INFORMATION ACT REQUESTS"

PURPOSE: This procedure supersedes NRR Interim Guidance for Processing Requests submitted under the Freedom of Information Act (FOIA) dated June 30, 1998, and acts as a supplement to Management Directive (MD) and Handbook 3.1, which set forth the procedures for processing (FOIA) requests. These guidelines ensure that requests are thoroughly researched and that responses are complete and timely in accordance with the 1996 Electronic FOIA Amendments of the Freedom of Information Act, and Title 10 of the Code of Federal Regulations (10 CFR) Part 9. Revision 3 incorporates the latest changes established by the Office of the Chief Information Officer, OCIO.

DIVISION OF ORIGIN: Division of Program Management, Policy Development and Analysis Staff

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DATE APPROVED: August 25, 1999

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NRR OFFICE LETTER NO. 104, Revision 3

FREEDOM OF INFORMATION ACT REQUESTS

POLICY

It is the policy of NRR to establish and implement guidelines for processing requests submitted under the FOIA. The FOIA requires prompt responses from all Government agencies to specific requests for information. The FOIA provisions have been used by businesses, citizens, and State and local governments to obtain records concerning how the Government conducts the public business. Any person may submit an FOIA request.

OBJECTIVES

NRR has the responsibility to do the following: (1) Provide all records subject to the request in NRR's possession, consistent with pertinent directives and guidance; (2) identify other NRC offices that might have records subject to the FOIA request; (3) screen the records before releasing them to ensure that information that should be withheld is properly marked before forwarding it to NRC's FOIA/PA Section, CIO; (4) support the decision to withhold information by citing the appropriate exemption and providing "foreseeable harm" statements, and by appropriately handling and safeguarding allegation information; and (5) comply with timeliness guidelines as stipulated in this guidance.

BACKGROUND

On June 24, 1999, the OCIO issued the revised MD 3.1 to reflect changes to organizational responsibilities, authorities, and defining duties of the senior FOIA management officials. The major changes include requests involving allegation records; a requirement to explain why records are categorized as "personal records"; clarifying the use of appendices; process requests involving records of senior management meetings, foreseeable harm statements, and the changes addressed in the 1996 Electronic FOIA Amendments of 5 U.S.C. 552.

DEFINITIONS

Agency records - A record in the possession and control of the NRC that is associated with Government business. An agency record does not include such records as -

- Publicly available books, periodicals, or other publications that are owned or copyrighted by other than non-Federal sources.
- Records solely in the possession and control of NRC contractors.
- Personal records in the possession of NRC personnel that have not been circulated or shared with any NRC staff members, were not required to be created or retained by the NRC, were not commingled with agency records and can be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Government business.
- Nonsubstantive information in logs or schedule books of the Chairman or

Commissioners, uncirculated except for typing or recording purposes.

Appeals - An appeal by an FOIA requester to the agency's denial of information requested, inadequacy of search, or lack of response to an initial request. A requester must file an appeal within 30 days of the NRC response. The office that denied the records is required to review its decision, consider any new information presented in the appeal letter, and determine whether the information still needs to be withheld. In the case of an appeal for inadequacy of search, the office will conduct another search for records and consider any new information presented in the appeal letter. These decisions will be reviewed by the Director or the Deputy Office Director.

Exemptions - The bases for withholding information from public disclosure. There are nine exemptions under which information may be withheld. The four most frequently used in NRR are Exemptions 4 (Proprietary), 5 (Predecisional), 6 (Personal), and 7 (Law Enforcement).

FOIA requests - Handwritten, typed, faxed, or e-mailed requests filed under the provisions of the FOIA (5 U.S.C. 552) by any individual for records maintained by agencies within the Executive Branch of the Federal Government.

"Foreseeable Harm Statement" - A written statement describing the actual potential for harm that could be caused by a disclosure to justify withholding exempt information when the determination to withhold is discretionary rather than mandatory.

Personal records - Documents of a private or unofficial character that ordinarily pertain only to an individual's personal affairs and do not affect the conduct of agency business. A personal record also includes notes that are prepared by an NRC employee pertaining to agency business that (1) have not been circulated or shared with others in the course of transacting NRC business, (2) are prepared for the individual's own use, (3) were not required to be created or retained by the NRC, (4) can be retained or discarded at the author's sole discretion, or (5) were not used as a substantive part in writing an agency record. (See enclosure).

Perfectured request - An FOIA request for records that adequately describes the records sought, that has been received by the FOIA/PA Section, and for which there are no remaining questions about the payment of applicable fees, the scope of the request, need for verification of identity, or other matters that preclude processing of the request.

Review time - Period devoted to examining records retrieved in response to a request to determine whether they are exempt from disclosure in whole or in part. Review time also includes the period devoted to examining records to determine which FOIA exemptions, if any, are applicable and the identifying records, or portions thereof, to be disclosed.

Record - Information in any format, including an electronic format, such as, any book, paper, map, drawing, diagram, photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material, regardless of form or characteristics. A record does not include an object or an article such as a structure, furniture, a tangible exhibit or model, a vehicle, or a piece of equipment.

Search time - All time spent looking for records, either manually or using existing computer programs, that respond to a request, including a page-by-page or a line-by-line identification of responsive information within the records.

Suspension - The period of time between the actual date of receipt of an FOIA/PA request and the date the request is “perfected,” which does not count as processing time.

Working days - Monday through Friday, except legal holidays.

RESPONSIBILITIES AND AUTHORITIES

Director/Deputy Office Director

- Implements FOIA procedures for responding to all requests for documents that the respective offices originated or for which offices have primary responsibility.
- Reviews the denying division’s decision when there is an appeal and determines if denial should be sustained or overruled.

Division Directors

- Review all FOIA requests that are assigned to their divisions.
- Agree to the “harm statement” and the exemption recommended by the staff assigned to respond to the request.
- When Exemption 7A, “Investigatory Records,” is involved, ensure that the records denied in total are directly related to the investigation itself.
- Signs each FOIA response (after it has been processed by the NRR FOIA coordinator) that contains allegation or safeguards information.

Senior FOIA Official - Chief, Information Management Branch

In addition to the duties stated in MD 3.1,

- Oversees the FOIA program in the office to ensure compliance with pertinent directives and guidance.
- Reviews and signs each FOIA response to ensure that all exemptions are properly identified; all documents are correctly identified as to their releasability; records identified as responsive to the request appear to be complete; and that the response to the FOIA/PA Section is complete. This review is performed with special attention to allegation-related information, investigative records, records to be referred to other offices, and other sensitive records to ensure that reviews by appropriate NRC staff members or officials have taken place.
- Signs each FOIA response after it has been processed by the NRR FOIA coordinator.

- Reviews the NRR FOIA performance report to ensure that NRR FOIA actions are receiving proper attention.

Assigned Staff Member Responding to the FOIA Request

- Within **2 working days** of receipt of an initial FOIA request, provides estimates of the time to be expended searching for records and reviewing records and the number of pages involved, as requested by the NRR FOIA coordinator.
- When told to proceed by the NRR FOIA coordinator, performs a thorough search for all records, including office files, Central Files, Public Document Room (PDR) files, e-mail files, and all applicable computer files or information databases for any records subject to an FOIA request.
- Determines whether record(s) or portions of record(s) should be withheld in their entirety or partially withheld from disclosure in accordance with this office letter and MD 3.1.
- Provides to the NRR FOIA coordinator within **7 working days** a memorandum transmitting all records subject to the request along with typed chronological listings of the records as stated in the requesting memorandum. An electronic version of the listings should be sent by e-mail to the NRR FOIA coordinator, as well as any records located that are in electronic format (e.g., e-mail records or letters and memoranda retrieved from WordPerfect files).
- NRC Form 496, "Report of Staff Resources for Processing FOIA Requests," indicating the actual time spent for search and review must accompany the response.
- Ensures that appendices containing chronological listings of identified records do not contain information being withheld in the actual records (e.g., aliter names must be replaced with the word "individual").
- Ensures that FOIA responses containing allegation information are clearly identified with a special blue cover that states: "**WARNING- SENSITIVE ALLEGATION MATERIAL.**"
- Ensures that FOIA requests that capture ongoing or closed allegation-related information are coordinated and reviewed by the NRR allegation coordinator before they are submitted to the NRR FOIA coordinator.
- When the request involves proprietary information for which the staff has not issued a proprietary determination, the staff must supply the transmittal letter and supporting affidavit that accompanied the proprietary submittal. When the proprietary determination has been issued, the licensee/vendor request for withholding and NRC's determination letter are needed. In both cases, copies of proprietary information subject to the request must be provided to the NRR FOIA coordinator even though it may be withheld from public disclosure.
- Personal records are typically not considered agency records subject to an FOIA request. If an employee has responsive records in the office that the employee believes

are personal records, these records should be submitted in a separate envelope with a completed consideration checklist (see enclosure).

NRR Allegation Coordinator

- Reviews all records presented by the staff in response to an FOIA request involving allegation-related information and recommends to the NRR FOIA coordinator how those records should be handled, including identifying records that may be released in their entirety, records that should be redacted, and records that should not be released.
- Reviews and concurs on proposed FOIA responses that contain or address allegation-related information to ensure these are handled appropriately.

NRR FOIA Coordinator or Alternate

- Assigns FOIA request to appropriate individual(s)/organization(s) with instructions on providing estimates and performing searches, including office, personal computer, database information, NUDOCs, ADAMS, and Central Files.
- Reviews response for completeness and ensures that records have been screened and properly marked when information is withheld, or partially withheld, and provides a Harm Statement as necessary before transmittal of NRR's response to the FOIA/PA Section.
- Prepares a denial memorandum identifying the records to be denied.
- Reviews response and transmits document to the FOIA/PA Section after senior FOIA official review.
- Meets with the NRR contact(s) and the FOIA/PA Section to resolve questions of scope and specificity. Arranges conference calls with the FOIA/PA Section, the requester, and NRR contact(s), and schedules appointments with the Office of the General Counsel as required.
- Prepares NRR's FOIA performance report for distribution to NRR management.
- Maintains a filing system for each FOIA request.

BASIC REQUIREMENTS

A. For initial FOIA requests

- All FOIA requests should be considered high-priority actions.
- If an employee receives an FOIA request directly from a requester, the request should immediately be forwarded to the FOIA/PA Section (T-6-D-8).
- The division(s)/contact(s) conducting the search should **NEVER** contact the requester.

- Upon receipt of an FOIA request, the NRR FOIA coordinator will assign and hand carry it to the appropriate division(s)/contact(s) with a copy to the Branch Chief and the Division Director within **1 working day**.
- NRR must provide estimates to the FOIA/PA Section within **4 working days**. The division(s) has (have) **2 working days** to send estimates by e-mail to the NRR FOIA coordinator who will, in turn, compile all estimates and send NRR's estimate by e-mail to the FOIA/PA Section. Estimates are made for search and review time and for the number of pages to be released.
- Unless directed to "suspend" the request, NRR must respond to the FOIA request within **10 working days** from the initial date of assignment. The division(s) has (have) **7 working days** to send a response to the NRR FOIA coordinator, who will consolidate and send the response to the FOIA/PA Section within **3 working days**.
- If the request is "suspended," the FOIA/PA staff will notify the NRR FOIA coordinator, who will advise the division(s)/contact(s) via e-mail. At this time, the request is suspended and no time counts against NRR for the request.
- Once the request is "perfected," the FOIA/PA Section will notify the NRR FOIA coordinator who will notify the division(s)/contact(s) by e-mail. NRR must respond to the FOIA request within **10 working days** from the "perfected" date. The division(s)/contact(s) has (have) **7 working days** to send a response to the NRR FOIA coordinator, who will consolidate and send the response to the FOIA/PA Section within **3 working days**.
- When told to proceed by the FOIA coordinator, search office files, personal files, and all applicable computer files or information databases for any information subject to the FOIA request.
- E-mail records must indicate the name of the author, the name of the recipient, and their respective offices.
- Records should be grouped by (1) records being released in their entirety, (2) records already available in the PDR, (3) records to be referred to other offices/agencies/companies, and (4) records being withheld in part and withheld in their entirety.
- The NRR FOIA coordinator should be given a memorandum transmitting all records subject to the request along with typed chronological listings of the records as stated in the requesting memorandum. An electronic version of the listings should be sent by e-mail to the NRR FOIA coordinator, as well as any records located that are in electronic format (e.g., e-mail records or letters and memoranda retrieved from WordPerfect files).
- NRC Form 496, "Report of Staff Resources for Processing FOIA Requests," indicating the actual time spent for search and review must accompany the response.

- If records being withheld in part and withheld in their entirety exist in the same document, those portions proposed to be withheld should be bracketed in red and the applicable FOIA exemption should be noted. Ensure that the division director agrees with the exemption(s) quoted and the harm statement before sending them to the FOIA coordinator. Provide a “sanitized” (marked with red brackets) and “unsanitized” (unbracketed) copy of the documents, when practical, for any other changes that may need to be made to the bracketing.
- Although personal records are typically not considered agency records subject to an FOIA request, if an employee has responsive records in the office that the employee believes are personal records, these records should be submitted in a separate envelope with a completed consideration checklist (see enclosure).

B. For Referrals and Appeals

- There is no need to provide estimates to process referrals and appeals.
- NRR has **8 working days** to respond to an FOIA referral or an appeal. The division(s) has(have) **5 working days** to prepare and provide the response to the NRR FOIA coordinator. Responses to appeals and their harm statements must be approved by the Director or the Deputy Office Director.

C. Allegations

In addition to the Special Procedures for Processing Allegation Records stated in MD 3.1, the following also applies:

- Records containing allegation information must be coordinated with the NRR allegation coordinator. The NRR allegation coordinator will perform all reviews relating to allegation information and will determine which records are releasable, not releasable or partially releasable.
- Allegation records provided in response to an FOIA request should have all exempt information bracketed and appropriate exemptions identified. This bracketing should also be applied to electronic records created by NRR that are responsive to an FOIA request (e.g., a database report). In redacting allegation-related documentation, the following types of information must be considered in the bracketing process:
 - Descriptive information that is specific enough in circumstances such that it could lead a knowledgeable individual to infer who the allegor is (i.e., fingerprinting information). Examples include:
 - Allegor notification of management
 - References to condition reports or other trackable reports generated by the allegor
 - References to specific work activities, procedure usage, or

other information that could narrow the pool of individuals who could be the alleged

- Personal privacy information of individuals accused of wrongdoing.
- Appendices created to support the records submitted by divisions will not contain any information being withheld in the actual records (e.g., alleged names must be replaced with the word “individual”).
- Before releasing the records or appendices to the FOIA/PA Section, the NRR FOIA coordinator will ensure that the appendices and documents are reviewed and that supporting concurrences have been obtained from the NRR allegation coordinator and the NRR senior FOIA official.

D. Exemptions

Exemption 1: Classified Information

Exemption 1 includes those records “(a) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive order.”

Exemption 2: Internal Rules and Practices

Exemption 2 includes that information “related solely to the internal personnel rules and practices of an agency.”

Exemption 3: Information Exempted by Statute

Exemption 3 includes those records “specifically exempted from disclosure by statute, provided that such statute (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 4: Proprietary Information

Exemption 4 includes “trade secrets and commercial or financial information obtained from a person and privileged or confidential “referred to in MD 3.1 as “confidential business or proprietary information.”

Exemption 5: Predecisional Information

Exemption 5 involves “interagency or intragency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency.”

Exemption 6: Personal Privacy Information

Exemption 6 involves “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

Exemption 7: Investigatory Records

Exemptions 7(A) through (F) involve “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information” -

- “(A) Could reasonably be expected to interfere with enforcement proceedings.
- “(B) Would deprive a person of a right to a fair trial or an impartial adjudication.
- “(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- “(D) 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.
- “(E) 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.
- “(F) Could reasonably be expected to endanger the life or physical safety of any individual.”

Exemption 8: Records of Financial Institutions

Exemption 8 involves matters that are “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.”

Exemption 9: Oil and Gas Well Data

Exemption 9 involves “geological and geophysical information and data, including maps, concerning wells.”

EFFECTIVE DATE

This office letter revision is effective immediately.

REFERENCES

Code of Federal Regulations

10 CFR Part 9, "Public Records."

10 CFR 2.790, "Public inspections, exemptions, request for withholding."

United States Code

Freedom of Information Act, as amended (5 U.S.C. 552).

NRC Management Directives

3.1. "Freedom of Information Act," Volume 3, Part I

3.2, "Privacy Act."

3.4, "Release of Information to the Public."

8.8, "Management of Allegations."

Enclosure: As stated

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**See Previous Concurrence*

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