

Freedom of Information Act Guide

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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 maybe 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 in Judicial Review).

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).

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.

Access to Records Without a FOIA Request [5 U.S.C 552(a)(1) & (2)]

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.

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 (ASLBP Decisions, Commission Decisions - CLI; Board Decisions - LBP; Director Decisions - DD).
- 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, 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.

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). 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 Submittal guidance
- Public Meetings, Current Rulemakings, Daily Reports, and Key Topics

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

The NRC makes available for public inspection and copying non sensitive FOIA requests and responses to those requests. To locate these records from the NRC's public Web site, 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, click the Electronic Reading Room tab. Then click FOIA and Privacy Act Requests, and select Index of Closed FOIA/PA Requests by Subject. 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, 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 Government-wide 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.

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 people 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 from 7:00 a.m. to 5:30 p.m. EST, Monday through Friday, excluding Government holidays. You can also contact the GPO Access User Support Team by e-mail at gpoaccess@gpo.gov or by fax at 202-512-1262.

Overview of Categories of NRC Records for Which a Specific Exemption May Apply

Exemption 1: All 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 such order

- Information pertaining to security of fuel cycle facilities possessing strategic quantities of special nuclear material
- Information about security systems (e.g., guards, alarms, duress codes, etc.) of certain facilities or activities that would aid an adversary in attacking a facility or mode of transportation
- Foreign government information provided with an understanding or agreement that information is considered classified by the supplying foreign government

Exemption 2: Internal matters of a relatively trivial nature – "low 2"; more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement – "high 2"

Low 2:

- Leave practices
- Parking rules
- Concurrence chains

High 2:

- Information pertaining to the security of buildings that house NRC employees
- Internal NRC analysis of licensee security programs, including security inspections, where disclosure of information could aid a terrorist in circumventing security arrangements
- Security inspection report shared with a licensee, if report is predominantly for internal use, and the licensee does not share it with others

Exemption 3: Information mandated by Federal statute to be withheld from public disclosure

- Restricted Data include technological details of uranium enrichment technologies (e.g., diffusion, centrifuge, laser-based enrichment) and technologies in certain defense systems, such as a Navy nuclear program (42 U.S.C. §2161-2165)
- Safeguards Information includes details from a licensee's physical security plan, such as number of guards, specific location of security equipment (42 U.S.C. §2167)
- Contractor proposals submitted by unsuccessful offerors in response to a solicitation (41 U.S.C. §253b(m)(1))
- Contractor proposals submitted by the successful offeror in response to a solicitation not set forth or incorporated by reference in the contract (41 U.S.C. §253b(m)(1))

Exemption 4: Trade secrets and commercial or financial information obtained from a person which is privileged or confidential

- Product manufacturing and design information
- Nonpublic financial statements
- Settlement agreements
- Customer lists
- Information submitted in confidence by a foreign source
- Detailed plant security information, including licensee's control and accounting procedures for safeguarding licensed nuclear material, or detailed measures for the physical security of a licensed facility, particularly information that could facilitate attempts at sabotage, diversion of nuclear material, or other attacks detrimental to public health and safety
- Information generated outside the Government revealing vulnerabilities of nuclear facilities or material to theft or sabotage
- Certain facility drawing details showing specific locations of equipment or materials within buildings
- Private sector information the disclosure of which could reasonably jeopardize a Government security program's effectiveness

Exemption 5: Inter-agency or intra-agency material privileged in the context of civil discovery

- Portions of briefing papers or drafts of security-related or nonsecurity-related documents

- Security or nonsecurity-related policy analyses and recommendations produced by agency employees
- Analysis of agency's litigative risk in security-related or nonsecurity-related hearing
- Description of agency's legal strategy in proceeding on security-related or nonsecurity-related matters

Exemption 6: Matters "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"

- Social Security Numbers
- Home address, telephone numbers and e-mail address
- Dates of birth
- Marital status
- Non-job-related interests
- Medical or financial information
- Religious affiliation or reference to religious activities
- Performance and disciplinary information

Exemption 7: Investigatory and other information compiled for law enforcement purposes

- Office of Investigations and Inspector General investigations focused on misconduct or potentially unlawful activity
- Security-related or nonsecurity-related information developed by the Office of Investigations used to determine whether enforcement action should be taken against a licensee
- Security inspection or nonsecurity inspection reports related to a focused investigation with information addressing whether there has been a possible violation of regulatory requirements
- Allegations of security-related or nonsecurity-related violations received from outside the agency and related analyses prepared by or for the Office of Enforcement to determine whether sanctions should be imposed against the violator

Exemption 7(A): Information compiled for law enforcement purposes if disclosure "could reasonably be expected to interfere with enforcement proceedings"

- Information that could reasonably be expected to interfere with an open allegation
- Information that could reasonably be expected to interfere with an open investigation in the Office of Investigations
- Information that could reasonably be expected to interfere with an open investigation in the Office of the Inspector General
- Information that could reasonably be expected to interfere with an ongoing enforcement action

Exemption 7(B): Aimed at preventing prejudicial pretrial publicity that could impair a court proceeding, protects "records or information compiled for law enforcement purposes (the disclosure of which) would deprive a person of a right to a fair trial or an impartial adjudication"

- Exemption has not been used by NRC
- Rarely invoked, an application of Exemption 7(A) normally would protect the defendant's interests just as well, as would Exemption 5, outside the context of law enforcement purposes

Exemption 7(C): Matters "the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy"

- Personal information in closed allegation, investigatory, or enforcement files
- Social Security Numbers
- Home address, telephone numbers and e-mail address
- Dates of birth
- Marital status
- Non-job-related interests
- Medical or financial information
- Religious affiliation or reference to religious activities
- Performance and disciplinary information

Exemption 7(D): Protection of identity of confidential source

- Information that could reasonably be expected to disclose the identity of a confidential source in Office of Investigations and Inspector General investigations
- In certain cases, all information provided by a confidential source

Exemption 7(E): Protection of law enforcement techniques and procedures where disclosure could reasonably be expected to risk circumvention of law - technique must not be well known to the public

- Techniques and procedures contained in investigation reports
- Law enforcement guidelines (no legitimate public interest in disclosure of information that would assist in evasion of law or detection)

Exemption 7(F): Disclosure could reasonably be expected to endanger life or physical security of any individual

- Exemption has not been used by NRC
- Records or information compiled for law enforcement purposes the disclosure of which could endanger the life or physical safety of an individual or individuals, for instance, where necessary to protect an individual (or group of individuals) from possible harm by a requester who has threatened harm in the past

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

- Exemption not used by NRC

Exemption 9: Geological and geophysical information and data, including maps, concerning wells

- Exemption not used by NRC

Where to Send Your FOIA Request

You may submit a FOIA request to the NRC by mail, e-mail, or 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 T5-F11
Washington, DC 20555-0001

Fax: 301-415-5130

E-mail: Send an e-mail message to FOIA@nrc.gov.

— OR —

Use our FOIA Request Form to e-mail your request directly to the NRC from our Web site.

Electronic Submittals:

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

- access Electronic Submittals through the agency's public Web site
- call 301-415-7186
- e-mail EIE@nrc.gov
- write to the
Business Process Improvement and Applications Division (BPIAD)
Office of Information Services
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Among other topics, the available Electronic Submittals 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 Office at 301-415-7169 from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, excluding Government holidays.

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 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:

- 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.

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.

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.

Expedited Processing

Under the Freedom of Information Act, 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.

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.

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.

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.

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 T5-F11
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.

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.