



U · S · DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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Date:

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Subject:

Freedom of Information Act (FOIA)

Approval:

Title: Acting Director

1. **Purpose.** The purpose of this directive is to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, in accordance with the procedures established in the Department of the Interior regulations contained in 43 CFR Part 2, Subpart B-Requests for Records. It also provides internal guidelines and procedures for routing requests, reviewing documents for FOIA allowed exemptions, and responding to requests made to the Office of Surface Mining Reclamation and Enforcement (OSM) under the FOIA, in keeping with the spirit of the FOIA (43 CFR 2.13(a)(b).)

2. **Summary of Changes.** This directive revises and supersedes Directive INF-3, Title Transmittal Number 721, dated May 14, 1992. The significant revisions are as follows:

a. Section 3.e., Agency Record, has been expanded to refer reader to INF-1, Records Management Manual, for guidance on filing procedures and records disposition.

b. Sections 4.b.(11), 4.b.(16), and 4.b.(22) have been revised to add the requirement that responses that quote the appeal rights must be mailed by Certified Mail, Return Receipt Requested.

c. Section 4.b.(20), Billing for Collection of Fees, has been expanded to address non-payment of fees by the requester and subsequent action.

d. Appendix C, Illustration 5. A new sample letter has been added which should be sent to the requester of commercial (b)(4) information when the company that provided the information must be contacted for clearance to release the information.

e. Appendix C, Illustration 6. A new sample letter has been added to be sent to the requester asking for the assurance of payment of fees.

f. Appendix C, Illustration 16. A new sample letter has been added which should be sent to the requester when all records are being released.

g. Appendix D, page D-4. Sample listing of computer costs has been expanded.

h. Appendix D, page D-5. A new form for calculating fees has been substituted for action offices to complete and forward for every FOIA request.

3. Definitions.

a. Act and "FOIA" mean the Freedom of Information Act, 5 U.S.C. 552.

b. Action Office is the office within OSM that has been assigned the lead responsibility for collecting documents, reviewing documents for FOIA exemptions, and preparing the FOIA response. It is the office within OSM which is in possession of the records requested by the FOIA and whose staff can best provide a review of records for FOIA exemptions.

c. Advance Fee Payments are payments which may be required from a FOIA requester by the action office when it is anticipated that allowable fees are likely to exceed \$250 and that the requester does not have a history of prompt payment of FOIA fees. (See Section 4.b.(21) and Appendix C, Illustration 10.)

d. Agency is OSM.

e. Agency Record is any form (paper, video cassette tape, or computer data tape, etc.) of information already maintained by the Agency that was created by the Agency or received from other sources in connection with the transaction of public business. Refer to INF-1, Records Management Manual, for guidance on filing procedures and records disposition.

Note: The FOIA does not apply to Personal Records of individual employees, as long as these documents are created and maintained primarily for the convenience of the employee not on Agency time, not at the Agency's expense, not concerning Agency business, and not distributed to other employees for Agency purposes.

f. **Appeals** are written notices (see 4.b.(16) of this directive) prepared by the FOIA requester and sent to the Department of the Interior, Assistant Secretary for Policy, Management and Budget in cases when:

- (1) Records have been withheld in a FOIA response;
- (2) A request has been denied because of failure to describe requested records or because of other procedural deficiencies, or when it has been determined that the requested records do not exist or cannot be located;
- (3) A fee waiver has been denied; or
- (4) A request has not been provided within the time limits stated in 43 CFR 2.17.

g. **Commercial Information Notification** is a written notice prepared by the action office that, in accordance with 43 CFR 2.15(d) and Executive Order (EO) 12600, allows the submitters of commercial and financial information the opportunity to provide the Agency with a detailed statement of any objection to disclosure of such documents. (See Appendix C, Illustration 4.)

h. **Denial Of A Document** is a written decision prepared by the action office to withhold a requested record. (See Appendix C, Illustration 12, and 4.b.(16).)

i. **Denial Of A Request** is a determination made by the action office familiar with the files, that a request does not reasonably describe the requested records. A denial of a request includes the same written appeal language as a denial of a document.

j. **Due Date** is the date 10 working days after the date that the initial request has been received by the Agency or a later date, where action is deferred pursuant to paragraph 4.b.(4).

k. **Exemptions** are the nine categories of criteria for exempting documents or portions of documents from the Act's statutory disclosure requirements. A list of the exemptions and explanations can be found in 43 CFR 2.13(c)(1) through (c)(9), and Appendix B.

l. **Extension Of Time** is an additional (one-time) 10-working-day period for providing a FOIA response, pursuant to 43 CFR 2.17(c).

m. **Fees** are the costs OSM may charge for search, review, and reproduction of records according to the appropriate requester category, as indicated in 43 CFR 2.20 (Appendix D of this directive), unless fees are waived pursuant to 43 CFR 2.21. (See sample form for assessing fees, Appendix D, pg. D-5.)

n. **Fee Waiver** is an OSM determination to provide documents without charge or at a reduced amount pursuant to 43 CFR 2.21(a) (Appendix C, Illustration 6.)

o. **FOIA Request** is a written request for Agency records made by any person that:

- (1) States that the request is made under FOIA;
- (2) Reasonably describes the records sought, or is sufficient to enable an Agency employee familiar with the subject area to locate the record with a "reasonable amount of effort" (see 43 CFR 2.14(b)); and
- (3) States whether they are willing to pay fees and states the maximum amount of fees that they are willing to pay, and the fee category into which they claim to fall; or requests consideration for a fee waiver.

See Section 4.b.(2) for information on treating an incoming as a FOIA request. See Section 4.b.(3) for information on requests not covered under FOIA.

p. **FOIA Response** is the Agency's written notification to the FOIA requester that is prepared by the action office and sets forth the Agency's determination whether to grant or deny a FOIA request. Ordinarily the FOIA response will include the following materials:

- (1) A list of documents being released, and a list of documents being withheld (if any), with the exemptions for withholding each document (or part of a document);
- (2) All records responsive to the request in the format most convenient for the Agency to provide;
- (3) Records that are already in existence at the time of receipt of the request, not documents created after receipt of the request;
- (4) A determination of fee charges or fee waiver.

q. **Interim Response** is a letter provided (usually by the action office) to apprise the requester of the status of his or her request. For example, an interim letter could be sent to:

(1) Notify the requester of a delayed response exceeding 20 working days including the extension;

(2) Notify the requester that OSM is providing an opportunity for review of possible confidential commercial or financial documents by the submitter of the documents;

(3) Request information to clarify a FOIA request;

(4) Request responses to questions to justify a fee waiver; or

(5) Notify a requester of the estimated charges for preparing a response, and request a commitment to pay the charges or to provide advance payment if fees exceed \$250.

r. **Transfer of a FOIA Request** is the action office referral of documents that were prepared or classified by another Federal agency, to that agency for review. The action office should also notify the FOIA requester that the originating agency will be communicating with the requester directly regarding those documents.

s. **Working Day** is a regular Federal workday (not Saturdays, Sundays or legal holidays).

4. **Policy/Procedures.**

a. **Responsibility.**

(1) **The Director** oversees compliance with the requirements of the FOIA and institutes a program which ensures impartial administration of FOIA by OSM. The Director also ensures protection of the rights accorded to the public by the Act.

(2) **OSM's Freedom of Information Act Officer** duties are delegated to the Chief, Correspondence and Issues Management Staff (CIMS). The FOIA Officer signs all interim and final responses to FOIAs prepared at Headquarters, and any FOIA prepared within OSM that withholds information under one of the FOIA exemptions; develops policies, guidelines, procedures, standards, and training for the OSM FOIA program; and monitors and evaluates

the program's effectiveness. The Chief of CIMS also coordinates all OSM FOIA actions with the Assistant Solicitor, Branch of Regulatory Programs, Division of Surface Mining; coordinates all FOIA requests directed to the Secretary that involve documents in files maintained by OSM; provides authoritative guidance on which documents can be released or are exempt under the Act; advises the Director on policy matters involving FOIA; and prepares the Annual Report on FOIA activities for the Agency.

(3) Field Office Directors and Assistant Directors of the Western and Eastern Support Centers are responsible for signing any interim, or final response to a FOIA request when such a response releases all information requested, but only after review by CIMS and as necessary, the Solicitor's Office. Each Field Office Director (FOD) and Assistant Director (AD) is responsible for designating a FOIA Coordinator, who is trained or will be trained in the area of the FOIA; providing the name and title of the individual designated as FOIA Coordinator to the Chief, CIMS; developing guidelines and operating procedures consistent with this directive; and acting as a responsible official for documents, within the jurisdictions of the FOD or AD in question, which are released or withheld. The FOD or AD is accountable for these responsibilities.

(4) Field FOIA Coordinators assist the action office responding to a FOIA request by answering questions concerning the application of the FOIA guidelines and reviewing documents for FOIA exemptions; providing training, if necessary, concerning the above FOIA guidelines; controlling and tracking FOIA requests as the responses are being prepared; ensuring that the action office responding to the FOIA follows the procedures in this directive (see the FOIA Checklist, Appendix A); assisting the Headquarters FOIA Coordinator in preparing the Annual Report; and reviewing FOIA responses to ensure their consistency with the FOIA directive prior to sending responses to CIMS. Each Field FOIA Coordinator is the main contact, with the FOIA Officer and the Headquarters FOIA Coordinator, for his or her office.

(5) Headquarters FOIA Coordinator assists the Field Coordinators and Headquarters action offices responding to the FOIA request by answering questions concerning the application of the FOIA guidelines and reviewing for exemptions; developing and providing training to Agency personnel; controlling and tracking the FOIA request as the response is being prepared in Headquarters; and reviewing all Agency FOIA responses, for completeness and decisions to withhold or release documents, before forwarding them to the Assistant Solicitor, Branch of Regulatory Programs,

Division of Surface Mining. The Headquarters FOIA Coordinator also maintains records necessary for the preparation of the Annual Report to Congress. The Headquarters FOIA Coordinator is the contact between the Department of the Interior FOIA Officer and OSM for FOIA activities and policies.

b. Procedures/Preparation.

As a quick guide for preparing a FOIA response, see the FOIA Checklist, Appendix A, in addition to the following.

(1) Controlling Incoming FOIAs. OSM field or Headquarters offices receiving a FOIA request should immediately date-stamp it, and send a copy of the request to the FOIA Coordinator at Headquarters for correspondence control. CIMS will place a control number and assign a due date on the control sheet for each FOIA request. It will also send the incoming and control sheet to the action office either at Headquarters or to the FOIA Coordinator in the field.

When the field installation has the action, the Field FOIA Coordinator should copy the action office and track the response. When a Headquarters office has action, the Headquarters FOIA Coordinator will copy the action office and track the response.

(2) Treating A Request As A FOIA Request: OSM may decide to treat an incoming letter as a FOIA request when:

(a) A third party asks to view Agency documents concerning another party (such as personnel records); or

(b) A request is made for a specific document which is known to be protected by one of the FOIA exemptions (such as audit files or draft documents).

If an OSM office has decided to treat an incoming as a FOIA, it should copy the OSM FOIA Officer. The letter will then be handled according to FOIA procedures. The due date will be 10 working days from the date it was decided the letter should be treated as a FOIA.

(3) Requests Not Covered Under FOIA: A request is not covered under FOIA when:

- (a) It is from an employee of a Federal agency acting in an official capacity;
- (b) It is from a congressional committee or subcommittee;
- (c) It is by an individual for records about himself/herself which are subject to the Department's Privacy Act regulations; and
- (d) It asks for information that OSM would need to create in response to the request, and not for records that already exist.

In these cases, FOIA procedures and review are not required.

(4) Due Dates. According to the FOIA and 43 CFR 2.17, a response to a request for records should be made no more than 10 working days after receipt of the request by the Agency. For tracking purposes, the due date is assigned by CIMS and appears on the CIMS control sheet.

The running of the 10 working days may be deferred if:

- (a) The requester has to be contacted by the action office for information to clarify his/her request;
- (b) The requester must agree to pay fees because the request did not state a willingness to pay fees, and no fee waiver has been sought or granted; or
- (c) The requester must make advance payment because costs for processing the request exceed \$250.

The first 10-day time period will begin when these questions are resolved.

(5) Coordinating Responses With Other Offices. If a field or Headquarters office receives a request for which some responsive documents are located in other OSM offices, the action office should take the lead in coordinating a response with the other offices and should contact the FOIA Coordinator concerning this. The action office has the responsibility to inform all relevant offices of the FOIA request.

When a FOIA request that needs coordination within OSM is received, and more than one office maintains a large number of documents responsive to it, the Headquarters FOIA Coordinator will take the lead in coordinating a response. In either case, the action office should identify the need for coordination to the FOIA Officer and follow through with the other offices.

(6) Requests That Are Not Clear. If the action office determines that the request is so general that a reasonable determination of the nature and location of the requested documents cannot be made, the action office should contact the Headquarters FOIA Coordinator. The action office should then contact the requester by letter or phone to clarify the request. (See Appendix C, Illustration 1.)

(7) Willingness to Pay Fees. The initial FOIA request should include the amount of fees the requester is willing to pay, unless he or she requests a fee waiver. (See Appendix C, Illustration 7.) If a willingness to pay fees has not been indicated, then the action office should prepare a letter inquiring whether the FOIA requester is willing to pay fees, and estimating fee charges (based on fee categories explained in Appendix D). Letters should be cleared through the Headquarters FOIA Coordinator.

(8) Transferring a Request. If the FOIA request seeks records that were originated or maintained by another Federal agency, the action office should notify the Headquarters FOIA Coordinator of the situation. The action office will then prepare a transmittal letter for the FOIA Officer's signature transferring a copy of the request (with the agency documents if applicable) to the appropriate Federal agency, with a request that the agency directly reply to the requester concerning the documents in question. (See Appendix C, Illustration 3 and Illustration 11.) The action office will also notify the requester by letter that action on the request has been transferred to the other agency. (See Appendix C, Illustration 2.)

The procedure does not apply if documents requested were originated by a State agency. The State should however be notified by the action office of the FOIA request for State records.

(9) Fee Waivers. When a fee waiver is requested in the incoming FOIA, the action office should determine if the requester has addressed the statutory requirements identified in 43 CFR 2.21 or in Appendix C, Illustration 7. If further information is needed concerning the justification for a fee waiver, the action office should send an interim response to the FOIA requester before the first 10-day due period has expired. The interim response will include the estimated costs (based on fee categories explained in Appendix D) to be paid if the fee waiver is not approved. If a fee

waiver is approved, the approval should be noted in the final response. OSM may charge fees for copying and search costs for documents in the administrative record, when they are in a location easily available to the requester.

All correspondence should be cleared through the Headquarters FOIA Officer.

(10) 10-Day Extension of Time. Under three circumstances FOIA provides for an additional (one-time) 10 working days for sending a FOIA response. The additional 10 days starts on the next working day after the first 10-day period. See Appendix C, Illustration 8 for the cases in which an extension is permitted, and a sample extension notice. The action office should prepare and send the extension notice before the end of the first 10-day period. The Headquarters FOIA Officer should be contacted and copied.

(11) Responses Exceeding 20 Days. OSM is required to send a "delay" letter if OSM cannot send the FOIA response within the 10-day time period and the additional 10-day extension period. The requester may deem the request denied and may exercise a right of appeal in accordance with 43 CFR 2.18. (See Appendix C, Illustration 9 for a sample letter.) The action office will prepare the delay letter before the 20th day. The Headquarters FOIA Officer should be contacted and copied.

NOTE: Any FOIA response quoting the requester his/her appeal rights must be sent Certified Mail, Return Receipt Requested.

(12) Notifying Submitters of Commercial or Financial Information. Under 43 CFR 2.15(d) and EO 12600 (see Appendix H), if a requester seeks a record containing trade secrets or commercial or financial information that may be confidential and was submitted by a person outside of the Federal Government, the action office shall provide the outside submitter with a notice of the FOIA request and copies of the documents in question. The action office should prepare this notice as indicated in Appendix C, Illustration 4. If the period for the submitter to comment exceeds the time limit for processing the request, the action office will notify the requester of the delay. (See Appendix C, Illustration 5.)

Notifications are not necessary if OSM determines prior to giving notice that the request for the record should be denied, or the information has previously been lawfully published or released, or is readily available to the public from another source.

(13) Collecting Responsive Documents. The FOIA requires that OSM only provide those responsive documents which exist, and are in the possession or control of the Agency at the time the Agency receives a request; not those prepared or acquired after the date of receipt of the FOIA request: Such later documents are not responsive to the request. If a document responsive to the request does not exist, the Agency is not required to produce a document that incorporates the requested information.

All responsive documents that have been located then must be identified on either the release list or withheld list. See Appendix C, Illustration 13, for a sample of the required formats for the lists.

(14) Review of Documents for FOIA Exemptions. Under the FOIA, there are nine exemptions on the basis of which a document (or portion of a document) may be withheld from disclosure to the public. OSM will withhold information falling within an exemption category only if (a) release of the information is prohibited by statute or Executive Order (EO 12600 and SMCRA for example) or (b) sound grounds exist for invoking one of the FOIA exemptions.

Each document should be reviewed for applicability of one or more FOIA exemptions. If information within a given document does not fall under any of the exemption categories, there is no basis for withholding that document.

The program person in the action office should be the first to review and identify documents that may be withheld. The program person and officials identified in the appeal language may be required to explain the rationale for withholding documents if there are questions raised by CIMS; by the Staff Attorney, Branch of Regulatory Programs; or by a staff attorney in General Law upon appeal of the FOIA response.

(15) FOIA Exemptions. Appendix B lists the nine FOIA exemptions and provides a detailed explanation of the exemptions most often used by this Agency.

Please consult with the Headquarters FOIA Coordinator or the OSM FOIA Officer, if it is unclear as to whether or not specific records or documents fall under any of the exemptions. CIMS will coordinate the review of the final response, including these records, with the Office of the Solicitor, Division of Surface Mining.

NOTE: How documents have been filed and/or released prior to the receipt of the FOIA request may have an effect on the applicability of a FOIA exemption, and in some cases might require release of a document that might otherwise have been withheld. OSM's recordkeeping policy is found in the Records Management Manual, INF-1.

(16) Withholding (Denying) Documents (or Portions of Documents) A denial of a document includes a reference to the specific FOIA exemption authorizing the withholding (e.g., 5 U.S.C. 552(b)(5)), the sound grounds for withholding the record (e.g., pre-decisional), a listing of the names and titles or positions of each person responsible for the denial, and a statement that the denial may be appealed to the Department of the Interior, Assistant Secretary for Policy, Management and Budget. (See Appendix C, Illustration 12). Each document being released and each document being withheld should be listed in the appropriate enclosure, as the illustration shows.

If OSM plans to withhold a portion of a document and release the remainder, on a copy of the document, the words, paragraphs, or numbers to be withheld should be blackened out completely (excised or taped over), to provide an excised copy for release. A document of this type should be listed on both the release and withheld lists. The FOIA Officer should receive for review and filing a complete set of documents being released, and a complete set of documents being withheld including copies of both excised and not excised versions of each document being partially withheld.

NOTE: Attorneys in Field Offices of the Solicitor will not be routinely involved in preparation or review of FOIA responses. In the relatively rare instances in which, because of the volume of documents being reviewed, it is appropriate to obtain the assistance of a Field Office attorney on a FOIA response, the referral to a Field Office attorney will be made through the Headquarters Office of the Solicitor. The action office will notify the Headquarters FOIA Coordinator of this situation.

As indicated in Appendix C, Illustration 12, a denial letter should include:

- (a) The FOIA citation for withholding each document on the withheld list item;
- (b) Justification of the denial for each withheld list item;

- and
- (c) The appeal language in the body of the response;
 - (d) The name and title of the person(s) responsible for the denial.

A denial of a request (not being able to locate any responsive records after a reasonable search) includes the same written appeal language as a denial of a document. (See Appendix C, Illustration 13.)

NOTE: Any FOIA response quoting the requester his/her appeal rights must be sent by Certified Mail, Return Receipt Requested.

(17) **Computer Data:** It is the Agency's policy to provide computer data (following review for exempt information), unless major reprogramming would be required and the Agency has no use for resulting data that would justify the cost of the reprogramming. (See Appendix C, Illustration 14.) The Agency may provide the information to the requester in whatever format is most convenient to the Agency.

(18) **Administrative Records or Public Files:** If the requester desires to come into an Agency installation to review and possibly copy documents from the Agency files, he or she may do so if documents have already been deemed releasable because they are required to be released by law -- and so are placed in a public or administrative file -- or because they have already been reviewed for FOIA exemptions. If a fee waiver does not apply and documents need to be reviewed, any search and/or review time for documents will be charged as appropriate for the fee category in Appendix D into which the requester falls. There will be a charge of \$.13/page for copying the documents. See below for billing and fee collecting instructions.

(19) **Estimating Fee Charges.** Upon receipt of a FOIA request, the action office should identify the fee category into which the requester falls (see Appendix D), and should maintain a log of costs (see D-5 of Appendix D) to substantiate charges. Appendix F also provides information on costs that are allowable under the law. The Agency may charge fees (\$.13/page) for providing copies of requested documents that are in the administrative record when they are at a location easily available to the requester.

Fee Categories:

- (a) Commercial use,
- (b) Educational and Noncommercial Scientific Institutions,
- (c) Representatives of the News Media, and
- (d) All Others.

(20) Billing for Collection of Fees. Once a FOIA response (that charges fees) has been signed, a copy of it should be transmitted via memorandum to: Chief, Programmatic Accounting, Division of Financial Management, P.O. Box 25065, Room D-2125, Denver, Colorado 80225.

Programmatic Accounting will then send the bill for collection to the FOIA requester and provide a copy of the bill to the FOIA Officer. In accordance with 43 CFR 2.20(j), a bill for collection, Form DI-1040, shall be used for collection of fees. Refer to Appendix D for sample language. If a FOIA request charge has not been paid by the requester after 30 days, Programmatic Accounting should provide that information to the Headquarters FOIA Coordinator, who will record that fact in the requester's file. The Headquarters FOIA Coordinator will notify the action office preparing a later FOIA response that the requester has not paid fees. The Headquarters FOIA Coordinator will then notify the requester that he/she has outstanding fees and that the action on his/her request will not occur until the fees are paid.

(21) Fees Exceeding \$250. Where it is anticipated that allowable fees are likely to exceed \$250 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before the Agency processes the request. (43 CFR 2.20(h)(1).) (See Appendix C, Illustration 10.) The Agency will notify the requester that prepayment is due and at the same time provide him/her with an opportunity to modify the request to reduce the fee.

Where a requester has previously failed to pay a fee within 30 calendar days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees (43 CFR 2.20(h)(2)). In accordance with the Debt Collection Act of 1982, interest can be assessed after the 31st day following the day on which the bill was sent.

The office of the Chief, Programmatic Accounting should immediately contact the Headquarters FOIA Coordinator when advance payment is received, and the Coordinator will contact the action office regarding the payment.

(22) Format of a Response.

(a) Affirmative Responses: After the action office has reviewed the responsive documents for FOIA exemptions, and if all documents are deemed releasable, the action office will prepare a response similar to that in Appendix C, Illustration 15, when fees are less than \$15; use the language in Appendix C, Illustration 10, when fees exceed \$250; and include fee waiver approval, when answers to fee waiver questions justify the Agency's granting a fee waiver.

The proper listing of documents being released is an important element in the FOIA response; the action office should use the Appendix C illustration format.

(b) Responses denying records: After the action office has reviewed the responsive documents for FOIA exemptions, and if some or parts of documents are withholdable under a FOIA exemption, the action office will prepare a response similar to that in Appendix C, Illustration 12. Enclosure A will list documents being released, as well as the portions of documents being released (those that have excised material). Enclosure B will list documents and portions of documents being withheld with the statutory reason cited.

NOTE: Any FOIA response quoting the requester his/her appeal rights should be sent Certified Mail, Return Receipt Requested.

(23) Copies of the Final Response. In the case where all documents are being released, the action office should send the response in final format to the FOIA Officer for review in CIMS (bcc copies will not have to be provided until after the final review and any revisions have been made). The response should include two copies of the responsive documents and a copy of the letter and Enclosure A, Release List; as well as a Wordperfect diskette containing the letter and enclosures. CIMS will send the response and documents for further review to the Solicitor's office as necessary. The second copy of the documents will be maintained in CIMS files by the FOIA Officer.

In the case where the action office determines that part or all of some documents should properly be withheld under applicable FOIA exemptions, the action office should provide to the FOIA Officer a response package which includes: the response letter; Enclosure A, Release List; and Enclosure B, Withheld List; a copy of the letter and enclosures on a Wordperfect diskette; two complete copies of the documents being released (one for CIMS file); and one set of documents being withheld. If a portion of a document is to be withheld, the complete document should be sent to be reviewed in CIMS and the SOL office.

After the FOIA response has been reviewed and revised as appropriate, the action office should send the following offices, in general, a copy of the response letter with the enclosure list(s):

bcc:
OSM Subject
OSM Reading
CIMS
CIMS-FOIA Coordinator (Complete Copy)
SOL/DSM/Regulatory Programs
Action Office
FOD or AD

5. **Reporting Requirements. Annual Report.** The OSM FOIA Officer is required to provide by February 1 to the Department of the Interior FOIA Officer information as requested by the Department of the Interior FOIA Officer (such as data on requests, affirmative responses and denials). This information is collected by the Department of the Interior to be submitted to Congress.
6. **References.** 43 CFR Part 2, Subpart B; 383 DM 15, Department of the Interior, Freedom of Information Handbook; and 5 USC 552 et seq.
7. **Effect on Other Documents.** Supersedes directive INF-3, Freedom of Information Act, dated May 14, 1992.
8. **Effective Date.** Date of issuance.
9. **Contact.** Chief, Correspondence and Issues Management, (202) 208-2562 or FAX at 1-202-219-3107.
10. **Keywords.** Freedom of Information Act (FOIA) and FOIA Exemptions.
11. **Appendices.**
 - Appendix A - Checklist for Preparing a FOIA Response
 - Appendix B - FOIA Exemptions
 - Appendix C - Samples of Letters
 - Appendix D - Calculating Fee Charges
 - Appendix E - 43 CFR Part 2: Departmental Guidelines on FOIA
 - Appendix F - 43 CFR Part 2, Appendix A: Fees
 - Appendix G - 5 U.S.C. 552: The Freedom of Information Act
 - Appendix H - Notification Procedures for Commercial Confidential Information

CHECKLIST FOR PREPARING A FOIA RESPONSE
(With Cites)

HFC = Headquarters FOIA Coordinator
FFC = Field FOIA Coordinator
ACTION OFFICE = Office assigned responsibility for collecting and reviewing documents, and preparing the FOIA response

1. Any OSM office receiving a FOIA request should promptly date stamp the letter and send a copy to the **HFC** and/or **FFC**. A response is due within 10 days from OSM's receipt of the FOIA.
2. **HFC** in CIMS will control the FOIA and send it to the **ACTION OFFICE**. Due dates are assigned by CIMS.
3. The **ACTION OFFICE** coordinates response with other Field or Headquarters office(s) if more documents are located in other offices. Notify **HFC** and/or **FFC** regarding this.
4. The **ACTION OFFICE** determines what fee category group the requester is in (43 CFR 2.20). The **ACTION OFFICE** and other offices involved with responding should keep track of search time and copying costs for the appropriate fee category. (See Appendix D - Fee Charges.)
5. **INTERIM RESPONSES**
 - a. If request is unclear, or too broad to determine what information is responsive, then after consultation with the FOIA Coordinator, the **ACTION OFFICE** contacts the requester by letter or phone to clarify request. (See Appendix C, Illustration 1)
 - b. If the FOIA requester asks for a fee waiver, the **ACTION OFFICE** reviews the justification for fee waiver with regard to questions listed in 43 CFR 2.21(a) and Appendix C, Illustration 7, of the FOIA Directive. If a justification is not clear from the information the requester has already provided, then the **ACTION OFFICE** will send a letter requesting necessary information, after consultation with the **HFC** and the **SOL**.

- c. The **ACTION OFFICE** should prepare a letter requesting a 10-day extension, if the first 10-day due date can't be met (43 CFR 2.17(c)). FOD or Assistant Director may sign. (See Appendix C, Illustration 8.)
 - d. The **ACTION OFFICE** should identify exempt documents according to Appendix B - FOIA Exemptions, and provide CIMS with reasons for using the exemption. (e.g., the document to be withheld is a draft, the claimant requested confidentiality, or this is not final agency policy, etc.)
 - e. The **ACTION OFFICE** contacts by letter the person or organization that provided OSM with documents which are responsive to the incoming FOIA and which may contain confidential commercial or financial information. The submitter of those documents has 10 days to review the documents in question and provide sufficient reason why the information is confidential. The FOIA requester should be notified by letter that a review by the submitter is pending. (See 43 CFR 2.15(d) and Appendix C, Illustration 4.)
6. For documents responsive to a FOIA request that were originated by another Federal agency, the **ACTION OFFICE** will forward a copy of the FOIA response, together with the other agency's documents, to the other Federal agency for review, and direct response to the requester. (See 43 CFR 2.15(b) and Appendix C, Illustration 11.) If documents are provided by a state agency, the state may be contacted concerning the request as a courtesy but not necessarily for review of their documents.
 7. The **ACTION OFFICE** chronologically lists documents (or portions of documents) to be released in Enclosure A. Enclosure B lists chronologically documents (or portions of documents) being withheld under one or more of the FOIA exemptions. All documents should be marked with corresponding identifiers. (See Appendix C, Illustration 1.)
 8. The **ACTION OFFICE** prepares response in accordance with the FOIA Directive. (See Appendix C.)
 9. The **ACTION OFFICE** sends two copies of the proposed response letter and two sets of enclosures to CIMS with an enclosed diskette on a Wordperfect file, and one set of withheld documents (without deletions) for review. Following review by HQ, if there are major changes, retyping will be done by the **ACTION OFFICE**.

10. For FOIA requests being responded to in the field, if all documents are being released, the Field Office Director or Assistant Director for WSC or ESC will sign the response after CIMS and (if necessary) SOL review. All affirmative responses prepared in Headquarters will be signed by the Freedom of Information Act Officer. If documents are being withheld, the responses will be prepared for the signature of the Freedom of Information Act Officer. Copies of responses denying documents will be sent from CIMS.

11. If a letter is not responded to within 20 working days (which includes the 10-day extension), then the **ACTION OFFICE** sends a letter of delay. (See Appendix C, Illustration 9.)

APPENDIX B

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FOIA EXEMPTIONS

Under the Freedom of Information Act (5 U.S.C. 552) there are nine exemptions which serve as a basis for withholding information from the public. Records (or portions of records) that meet the following exemption criteria may be withheld from public disclosure, but must be listed on a withheld list that gives the statutory citation and the reason for withholding each item. The nine exemptions are listed below:

- | | | |
|---------------------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (b)(1) EXEMPTION 1 | | CLASSIFIED SECRET MATTERS OF NATIONAL DEFENSE OR FOREIGN POLICY |
| (b)(2) EXEMPTION 2 | | INTERNAL PERSONNEL RULES AND PRACTICES |
| (b)(3) EXEMPTION 3 | | INFORMATION SPECIFICALLY EXEMPTED BY OTHER STATUTES |
| (b)(4) EXEMPTION 4 | ** | TRADE SECRETS, COMMERCIAL OR FINANCIAL INFORMATION
"Trade secrets and commercial or financial information obtained from a person and privileged or confidential." |
| (b)(5) EXEMPTION 5 | ** | PRIVILEGED INTER-AGENCY OR INTRA-AGENCY MEMORANDA OR LETTERS
(Predecisional, attorney-client privilege and attorney work-product privilege fall under this exemption.) "Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency." |
| (b)(6) EXEMPTION 6 | ** | PERSONAL INFORMATION AFFECTING AN INDIVIDUAL'S PRIVACY
"Personnel and medical files and similar files disclosure of which would constitute a clearly unwarranted invasion of personal privacy." |

- (b)(7) EXEMPTION 7 ** INVESTIGATORY RECORDS COMPILED
FOR LAW ENFORCEMENT PURPOSES
(See page B-9 for a list of the six criteria for
invoking this exemption)**
- (b)(8) EXEMPTION 8 RECORDS OF FINANCIAL INSTITUTIONS**
- (b)(9) EXEMPTION 9 GEOGRAPHICAL AND GEOPHYSICAL
INFORMATION CONCERNING WELLS**

**** Exemptions most often cited by OSM**

**See following FOIA Exemption Checklist for additional guidance on
reviewing documents.**

FOIA EXEMPTION CHECKLIST

Very often background information on documents that would justify withholding them is not provided when Headquarters receives the draft letter and enclosures. Please provide information to CIMS when documents being reviewed fall under one or more of the categories below.

1. **ATTORNEY-CLIENT PRIVILEGED** - Was the information provided to the Department's attorney with the intent that it would be held confidential? Has the information been kept confidential within OSM?
2. **ATTORNEY WORK-PRODUCT** - Was the information prepared by or on behalf of the Department, in anticipation of future litigation? If prepared by OSM staff, was it prepared at the request of the Office of the Solicitor or Department of Justice?
3. **COMMERCIAL INFORMATION** - Does the information relate to business or trade in which the submitter has a commercial interest?
4. **FINANCIAL INFORMATION** - Is this information taken directly from the company's ledger? Is this a final audit summary or auditor's working papers?
5. **CONFIDENTIAL INFORMATION** - Will release of the information cause harm to the competitive position of the company from whom the information was obtained, or impair the Government's ability to obtain similar information in the future?
6. **PERSONAL INFORMATION** - Would release of the information be an unwarranted invasion of personal privacy? For example is there a social security number, home address or phone number? In documentation of complaints (letters and telephone logs), has the complainant requested confidentiality? If it is not clear whether the complainant has requested confidentiality, the complainant should be asked if he or she objects to their name being released.
7. **PHONE CONVERSATION RECORDS** - Only information that is otherwise eligible to be withheld under a FOIA exemption may be withheld; e.g., identifiers of confidential complainants, privileged attorney-client communications, etc. Phone conversation records are not per se withheld, if they have been circulated within the Agency, filed in Agency files, or otherwise used for official purposes.

8. **PREDECISIONAL DOCUMENTS** - (1) Has this document ever been released outside OSM to a non-Federal Government entity? If it has, in most cases, it should be released. (2) Is this document or section of document a final policy, or an opinion or recommendation? (3) If this document is not signed or dated, is it a final or draft document?

9. **PUBLIC FILES** - If a document has been stored in files routinely and readily available to the public, such as reading-room files, in most cases the document should be released.

10. **PERSONAL FILES VS AGENCY FILES** - Notes created solely for the convenience of the writer that are not required to be made by the writer as an official duty, and are not (a) shared with anyone, (b) kept in Agency files, or (c) used in an adverse action against the employee are not considered Agency records under the FOIA and are not subject to a FOIA response.

**DOCUMENTS IN THE FOLLOWING CATEGORIES ARE EXEMPT FROM
FOIA DISCLOSURE REQUIREMENTS:**

Source: 5 U.S.C 552(b) or 43 CFR 2.13(c).

Note: (FOIA exemptions (1),(8), and (9) are not normally applicable to OSM documents and are not included in this Appendix)

Exemption (b)(2) - (5 U.S.C 552(b)(2))

"...related solely to the internal personnel rules and practices of an agency."

NOTE: The courts have interpreted the exemption to encompass two distinct categories of information:

- a. Internal matters of a relatively trivial nature, and in which the public has no vested interest.
- b. More substantial internal matters the disclosure of which would allow circumvention of a statute or agency regulation, such as certain administrative manuals, performance ratings and lists of awards.

Exemption (b)(3) - (5 U.S.C 552(b)(3))

"...specifically exempted from disclosure by statute."

Its intent is to allow statutes which required or authorized the withholding of confidential information to remain unaffected by the disclosure mandate of the FOIA.

This exemption applies to items such as:

- a. Information on archeological resources on public land and Indian land (pursuant to the Archeological Resources Protection Act of 1979, 16 U.S.C 470).
- b. Information protected under sections 508(a)(12) and 508(b) of SMCRA.

- c. Federal income tax return information protected under the I.R.S. Code, 26 U.S.C. 6103.

Exemption (b)(4) - (5 U.S.C 552(b)(4))

"...trade secrets and commercial or financial information obtained from a person and privileged or confidential."

This exemption is intended to protect both the interests of commercial entities that submit proprietary information to the Government, and the interests of the Government in receiving continued access to such data.

Executive Order No. 12600 mandates that all agencies notify the submitter of commercial or financial information that may be confidential when their data is requested under FOIA, in order to obtain their position on disclosure. (43 CFR 2.15(d)) (See illustration 4 of Appendix C).

The exemption covers two broad categories of information in Federal agency records:

- a. **Trade secrets** which are considered to be: "A secret, commercially valuable plan, formula, process or device that is issued for the making, preparing, compounding or processing of trade commodities that can be said to be the end product of either innovation or substantial effort" (Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983)), and
- b. Information which is:
 - (1) **Commercial or financial**: (Relating to business or trade, in which the submitter has a commercial interest),
 - (2) **Obtained from a person** (not generated by the Federal Government), and
 - (3) **Privileged or confidential** (disclosure of the information is likely to have either of the following effects:
 - (a) impair the Government's ability to obtain similar information in the future; or

(b) cause substantial harm to the competitive position of the person from whom the information was obtained).

Some Records That Are Releasable

Best and final offer of the successful bidder (Without the unit costs).

Total prices charged the Government -- What the Government pays for goods and services.

Information already made available outside the Executive Branch of Government. (List of directors and officers of a company)

**Some Records That Should Be Withheld Under (b)(4)
(Unless the Submitter Was Previously Informed That
Release of the Information Is a Condition of Submitting It)**

Work force data
Technical designs
Overhead and operating costs
Information on financial
condition

Business sales information
Direct or indirect ledger
information
Government contract information of
unsuccessful bidders

Exemption (b)(5) - (5 U.S.C. 552(b)(5))

"...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"; e.g., pre-decisional, confidential attorney-client communications, or attorney work-product.

This is the exemption most frequently invoked by OSM. The three primary, most frequently invoked privileges which have been held to be incorporated into Exemption (b)(5) are:

a. The pre-decisional privilege, also known as the "executive privilege" on documents generated within the Executive Branch. These documents include advice, opinions, or recommendations (not strictly factual data) which are antecedent to the adoption of an official Agency policy. Pre-decisional documents may include drafts, discussions of proposed policy, requests for analysis, advisory opinions, notes commenting on a pre-decisional document, and consultant reports that interpret technical data and have not been adopted by the Agency.

Documents not generally considered pre-decisional are: (1) A pre-decisional document (or portions of the document) adopted or incorporated verbatim into a final decision, (2) factual portions of otherwise deliberative documents and (3) documents available or previously released outside the Executive Branch.

b. Attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of actual litigation; or by staff at the request of an attorney in contemplation of litigation.

c. Attorney-client privilege is not limited to the context of litigation as is the work-product privilege. It applies to confidential facts divulged by OSM or the Department as client to Office of the Solicitor or Department of Justice as attorney; and it also encompasses opinions given by the Office of the Solicitor or Department of Justice to OSM for the Department based upon those facts.

NOTE: The D.C. Court of Appeals has held that in order for an attorney-client communication to be withheld from disclosure under FOIA, not only must the advice be sought and given with the expectation that it would be kept confidential, but the agency must thereafter protect its confidentiality by giving it only to those who are authorized to speak or act for the agency with respect to the subject matter. (Coastal States Gas Corporation. v. Department of Energy, 617 F. 2d854 (D.C. Cir. 1980); Mead Data Central, Inc. v. Dept. of Air Force, 566 F.2d242 (D.C. Cir. 1977).

Exemption (b)(6) - (5 U.S.C 552(b)(6))

"...personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

To warrant protection, the information (1) must fall within the category of personnel, medical, and similar files (applies to any file or document which pertains to a specifically identifiable individual and contains information that is personal) ; and (2) must involve a privacy interest. Also to be considered is the degree of public interest involved (vs. the requester's personal interest in the matter). The benefit to the public by revealing information about Government programs and activities must be weighed against the potential harm to the individual about whom information is sought.

A third party request for information on another individual should alert the reviewer to a possible (b)(6) exemption. Exemption (b)(6) information can be released with the prior written consent of the individual (who is the subject of the record).

SEE FOLLOWING PAGES FOR MORE INFORMATION ON PRIVACY PROTECTION AND LISTS OF WITHHELD DOCUMENTS.

Exemption (b)(7) - (5 U.S.C 552(b)(7))

"...Investigatory records compiled for law enforcement purposes, but only to the extent that production of such records would..." cause one of the following six harms:

(b)(7)(A) Could reasonably be expected to interfere with enforcement proceedings (Cite 5 U.S.C 552(b)(7)(A)).

(b)(7)(B) Would deprive a person of a right to a fair trial or an impartial adjudication (Cite 5 U.S.C 552(b)(7)(B)).

(b)(7)(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy (Cite 5 U.S.C 552(b)(7)(C)).

(b)(7)(D) Could reasonably be expected to disclose the identity of a confidential source (Cite 5 U.S.C 552(b)(7)(D)).

(b)(7)(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions (Cite 5 U.S.C 552(b)(7)(E)).

(b)(7)(F) Could reasonably be expected to endanger the life or physical safety of any individual (Cite 5 U.S.C 552(b)(7)(F)).

Use the appropriate citation above for whichever situation (or situations) apply.

NOTE: Investigatory documents originated by another agency or Department (for example, the Office of the Inspector General) should be sent to that agency for appropriate review, as well as a copy of the response to the requester, and the FOIA requester should be notified of that action and what office will be contacting him following that review.

PRIVACY PROTECTED INFORMATION

5 U.S.C. 552(b)(6) and 5 U.S.C. 552(b)(7)(C) are the FOIA exemptions most often used to withhold documents for privacy considerations.

The Balancing Test:

- Some privacy interest must be found.
- Determine if there is a qualifying public interest.
(How does release shed light on the Agency's performance of its statutory duties?)
- Balance the privacy interest against the public interest.
- What adverse effects would there be from release or withholding?
- Was there permission given by the individual to allow another to review his files?

Some Privacy Protected Information

Age	Experience <u>not</u> directly related to the position held
Administrative actions	Financial statements
Allegations of misconduct	Health/insurance benefits
Background investigations	Home addresses & phone numbers
Censured employees	Letters of reprimand & suspensions
Citizen complaints under SMCRA when complainant requests it	Mailing lists of employees
Credit card numbers	Marital status
Educational background (not related to current job position)	Medical files
Employee complaints against supervisors	Payroll information (deductions, etc.)
	Performance evaluations
	Personal misconduct (not job related)
	Place & date of birth
	School grades
	Social security number

Information Typically Releasable

Annual salary rates	Position descriptions
Award amounts	Present and past grades
Factors for ranking job applicants	Present and past position titles
Federal employees involved in union activities during work hours	Present and past duty stations
FOIA requesters' identities	Professional awards & honors
Names of present & former employees	Sanitized travel vouchers & invoices ("sanitized" meaning that home addresses, phone numbers & other privacy protected information is removed)
Performance standards	Successful candidates (with "sanitized" SF 171's)

**COMPARISON OF THE
FOIA AND PRIVACY ACT**

FOIA

PRIVACY ACT

The FOIA is an access statute.

The Privacy Act is a records management statute.

Scope

Federal records and documents including some information subject to the Privacy Act.

Information about individuals contained in records that are retrieved by personal identifiers from systems of records.

Purpose

To open most Government records to public scrutiny.

To protect sensitive Government records about individuals from public scrutiny;

To enable people to know what information about them exists and to correct it, if in error;

To restrict collection and disclosure of personal information;

To prevent the existence of secret Government record systems and secret use of Government records about people;

To maintain Government records about people in a secure and accurate manner.

Agency Response

Information is required to be released unless it falls within one of nine discretionary exemptions (see pg. B-1 of directive).

To withhold a document in response to a person's request for his own records, both a Privacy Act exemption and a FOIA exemption have to be cited.

Subject individuals have the right to see and amend their own records; some systems are exempt from access by the subject individual; access to medical records may be conditional; disclosure to third parties is prohibited except under 12 exemptions. One is when required under FOIA to be made public.

When a third party submits a FOIA request for information subject to the Privacy Act and the information is not required to be released under the FOIA, the material may not be disclosed without the prior written approval of the individual on whom the record is maintained.

See the Privacy Act directive (ADS-1) for more information on the Privacy Act.

APPENDIX C

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**APPENDIX C
Illustration 1**

**SAMPLE LETTER
CLARIFICATION OF A VAGUE OR OVERLY BROAD REQUEST**

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act request of _____ (date of request) _____. You requested information concerning _____ (subject) _____.

Because of the broad and general nature of the description of requested information, we are unable to identify which records are being sought. Under Departmental regulations, 43 CFR 2.14(b)(2), the requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate them with a reasonable amount of effort. Your request does not meet this requirement.

Please be more specific concerning the type of documents you are requesting. In addition, if such information is available, please state the date, title or name, author, recipient, and subject matter of the record. Moreover, the geographical location and time frame for which you are seeking records have not been defined. It is unclear whether your request covers only records in this field installation or other Agency offices.

We will not proceed further with your request until we receive additional clarification from you. If you have any questions, please contact _____ (name & telephone number) _____.

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

(THE 10-DAY RESPONSE PERIOD WILL NOT BEGIN UNTIL OSM RECEIVES THE FOIA REQUESTER'S REPLY TO THESE QUESTIONS).

**APPENDIX C
Illustration 2**

**SAMPLE LETTER
REFERRAL OF A FOIA REQUEST TO ANOTHER AGENCY OR BUREAU
(Letter to the Requester)**

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act request of (date of request) . You requested documents concerning (subject) .

We have determined that the records described in your letter may be located at (name office) in the Department of the Interior. Therefore, we have forwarded your request to that office, which will provide you with a direct response. If you wish to contact them, the mailing address is:

(Name)
FOIA Coordinator
(Office)
(Address)
(Telephone Number)

Should you have any further questions, please contact me at (telephone #) .

Sincerely,

(NAME)
Freedom of Information
Act Officer

**APPENDIX C
Illustration 3**

**SAMPLE LETTER
REFERRAL OF A FOIA REQUEST TO ANOTHER AGENCY OR BUREAU
(Letter to the Bureau)**

(NAME)
FOIA Coordinator
(ADDRESS)

Dear _____:

Enclosed is a Freedom of Information Act request from (name) that your agency may be able to answer. We have advised (name) that a response will be provided directly from your office.

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosure

SAMPLE LETTER
REQUEST TO SUBMITTER OF COMMERCIAL (b)(4) INFORMATION

(ADDRESS)

Dear _____:

This is in regard to a Freedom of Information Act (FOIA) request from _____ (name of requester) dated _____ (date of request), requesting documents concerning _____ (subject) (letter enclosed).

To assist us in determining whether data should be released, we request your firm's views on which items if any, are protected from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4). Enclosure A lists the documents which are responsive to _____ (name of requester) FOIA request for your review. If you recommend that items or portions of items be withheld, please provide us with the following:

- (1) The data to be withheld and the basis on which the information is exempt under the FOIA;
- (2) A detailed explanation of how disclosure would be competitively harmful to your company; and
- (3) A statement that the information is confidential, has not been disclosed to the public by your company, and is not routinely available to the public from other sources.

Please provide us with your comments within 10 business days from the date of receipt of this letter. If you have any questions, please contact _____ (name & telephone #).

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosures

**(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF THE
FIELD OFFICE OR SUPPORT CENTER HAS ACTION)**

APPENDIX C
Illustration 4
Page 2 of 2

(A LETTER NOTIFYING THE FOIA REQUESTER OF A DELAY BECAUSE OF THE SUBMITTER'S PENDING REVIEW SHOULD ALSO BE SENT. (SEE ILLUSTRATION 5)

(RESPONSE SHOULD BE SENT CERTIFIED MAIL, RETURN RECEIPT REQUESTED)

**APPENDIX C
Illustration 5**

**SAMPLE LETTER
LETTER TO REQUESTER OF COMMERCIAL (b)(4) INFORMATION**

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request of _____ (date of request) _____. You requested _____ (subject) _____.

In accordance with 43 CFR 2.15(d), we are allowing _____ (name of company) _____ 10 business days to provide comments as to whether the documents you requested should be considered as confidential commercial and financial information.

We expect to complete our response to you by _____ (date) _____.

You have the right to treat this delay as a denial of your request. You may appeal this matter by writing to: The Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-5412, MIB, Washington, D.C. 20240. A copy of your initial request should accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter and it must be received no later than 20 workdays after the date of this letter. We hope, however, that you will defer action until a decision has been reached on your initial request.

We regret the delay and appreciate your consideration in this matter. Should you have any additional questions, you can contact me on (202) 208-2562.

Sincerely,

(NAME)
Freedom of Information
Act Officer

**(RESPONSE SHOULD BE SENT CERTIFIED MAIL, RETURN RECEIPT
REQUESTED)**

SAMPLE LETTER
ASSURANCE OF PAYMENT
(Letter to Requester)

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request of _____ (date of request) _____, concerning _____ (subject) _____.

In your request, you did not indicate that you were willing to pay fees for the information you requested. The following is an estimate of costs for producing the information you requested in your FOIA request:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND APPLICABLE CHARGES)

	<u>Total No. of Units</u>	<u>Unit Charges</u>	<u>Amount</u>
Document Search Time:			
Clerical	2	\$ 9.20/hr.	\$ 18.40
Professional	10	\$18.60/hr.	148.80
	(The first 2 hrs. are not charged)		
Duplication:	20 pages	\$.13/page	0
	(The first 100 pgs. are not charged)		
		Total	\$167.20

Prepayment is not requested at this time, however, please furnish written assurance of your willingness to pay the full amount for the documents to (insert name of individual and address where assurance should be sent). You may wish to modify your request to reduce the fee at this time. We will not start processing your request until this written assurance has been received.

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

(THE FIRST 10 DAYS REQUIRED FOR RESPONSE WILL BEGIN ONCE THE FEE ISSUE IS RESOLVED)

Our initial estimate of fees for processing your request will be the following:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND APPLICABLE CHARGES)

	<u>Total No. of Units</u>	<u>Unit Charges</u>	<u>Amount</u>
Document Search Time:			
Clerical	10 hrs.	@ \$ 9.20 hr.	\$ 92.00
Professional or Managerial	12 hrs. (The first 2 hrs. are not charged)	@ \$18.60 hr.	186.00
Duplication:	600 pages (The first 100 pgs. are not charged)	@ \$.13/page	65.00
		Total	<u>\$343.00</u>

If we determine from your response that a fee waiver is not justifiable, we will request that you prepay 80 percent of the above estimated costs before we continue with your response (43 CFR 2.20(h)), and by separate letter, we will send you a confirming invoice formally billing you for the amount and indicating where your payment should be forwarded.

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

THE FIRST 10 DAYS REQUIRED FOR RESPONSE WILL BEGIN ONCE THE FEE WAIVER ISSUE IS RESOLVED

SAMPLE LETTER
EXTENSION OF 10-DAY TIME LIMIT

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request dated _____
(date of request) _____. You requested documents concerning

(subject) _____.

(USE THE FOLLOWING LANGUAGE FOR THE CIRCUMSTANCE THAT APPLIES):

- I. "Since we must search for and collect documents from offices other than the office processing the request, we are availing ourselves of the 10 working day extension of response time provided in the Department of the Interior FOIA regulations (43 CFR 2.17(c)(1))."
- II. "Since we must search for and collect voluminous documents, we are availing ourselves of the 10 working day extension of response time provided in the Department of the Interior FOIA regulations (43 CFR 2.17(c)(2))."
- III. "Since we must coordinate and consult with our Field Office personnel [or Solicitor's Office] [or Agency heads], we are availing ourselves of the 10 working day extension of response time provided in the Department of the Interior FOIA regulations (43 CFR 2.17(c)(3))."

We will send a final reply to you on or before **(10 WORKING DAYS FOLLOWING THE FIRST DUE DATE)**.

Sincerely,

(NAME)
Freedom of Information
Act Officer

- (OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD WILL SIGN IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)
- (THE NEW DUE DATE WILL BE COUNTED FROM THE LAST DAY OF THE FIRST DUE DATE PERIOD)
- (ONLY ONE 10-DAY EXTENSION IS ALLOWED UNDER THE FOIA – ACTION OFFICES WILL HAVE TO PREPARE A DELAY LETTER IF A RESPONSE CANNOT BE MADE WITHIN 20 DAYS OF THE RECEIPT OF THE FOIA REQUEST)

SAMPLE LETTER
DELAY IN PROCESSING REQUEST
(When response exceeds the 20-day limit)

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request of (date of request) . You requested (subject) .

(SELECT ONE OF THE APPROPRIATE PARAGRAPH(S) BELOW):

- I Because of the voluminous records that may be responsive to your request, additional time is necessary to enable us to determine which records or portions thereof should be provided. Accordingly, we anticipate a delay in providing you with our final response.
- II The requested documents have been retired to a Federal records center. We have asked that they be returned to us and will advise you when the material becomes available.
- III The records you requested are located at a number of our field offices and at headquarters. The (name of responsible office) will be coordinating the response since that office has jurisdiction over these records. As a result, we will need additional time to search for, collect, and review the material.
- IV In accordance with 43 CFR 2.15(d), we are required to notify the submitter of material containing commercial and financial information when we receive a FOIA request for that material. The submitter has taken longer than anticipated to review the material. We expect to hear from them by (estimated date) and our response to your request will be forthcoming.

We expect to complete our response to you by (specify date) .

APPENDIX C
Illustration 9
Page 2 of 2

You have the right to treat this delay as a denial of your request. You may appeal this matter by writing to: The Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-5412, MIB, Washington, D.C. 20240. A copy of your initial request should accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter and it must be received no later than 20 workdays after the date of this letter. We hope, however, that you will defer action until a decision has been reached on your initial request.

We regret the delay and appreciate your consideration in this matter. Should you have any additional questions, please contact _____ (name and telephone number)_____.

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

(RESPONSE SHOULD BE SENT CERTIFIED MAIL, RETURN RESPONSE REQUESTED)

SAMPLE LETTER
COSTS EXCEEDING \$250

(ADDRESS)

Dear Mr. ____:

This letter is in response to your Freedom of Information Act (FOIA) request dated ____ (date of request) ____, in which you requested ____ (subject) ____.

We estimate that the fees to provide the requested information are as follows:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND CHARGES)

	<u>Total No. of Units</u>	<u>Unit Charge</u>	<u>Amount</u>
Search Time:			
Professional	19 hours	\$18.60/hr.	\$316.20
	(The first 2 hrs. of search time are not charged)		
Clerical	3 hours	9.20/hr.	27.60
Duplication:	243 pages	\$.13/pg.	<u>18.59</u>
	(The first 100 pages are not charged)		
	Total		\$362.39

Your FOIA request did not indicate whether or not you would be willing to pay fees. In accordance with 43 CFR 2.20(g), this letter is to inform you of the estimated costs. Once we have been notified of your willingness to pay fees, we will proceed with your request.

APPENDIX C
Illustration 10
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In accordance with 43 CFR 2.20(h)(1), where it is anticipated that allowable fees are likely to exceed \$250 and the requester does not have a history of prompt payment of FOIA fees, OSM may require the requester to make an advance payment. Once we have been notified by you that you are willing to pay the above costs, and that you authorize OSM to proceed with your request, we will send you a confirming invoice formally billing you for 80 percent of the above estimated charges, and indicating where your payment should be forwarded.

Sincerely,

(NAME)
Freedom of Information
Act Officer

cc: Chief, Programmatic Accounting

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

(PROCESSING OF THE REQUEST WILL BEGIN WHEN THE ADVANCED PAYMENT IS MADE)

**APPENDIX C
Illustration 11**

**SAMPLE LETTER
REFERRAL OF RECORDS TO ANOTHER AGENCY FOR REVIEW
AND DIRECT RESPONSE**

(NAME)
FOIA Coordinator
(ADDRESS)

Dear _____:

While processing a Freedom of Information Act (FOIA) request from (name) , dated (date) , the Office of Surface Mining Reclamation and Enforcement located three documents that originated in your agency. The three documents are: [Describe documents or list on a separate enclosure].

Enclosed are copies of those documents. We have advised (name of requester) that they will receive a direct FOIA response from your office.

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosures

**(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF THE
FIELD OFFICE OR SUPPORT CENTER HAS ACTION)**

**(ADVISE THE FOIA REQUESTER IN YOUR RESPONSE WHICH
DOCUMENTS HAVE BEEN SENT TO WHAT AGENCY OR DEPARTMENT
FOR REVIEW)**

SAMPLE LETTER
DENIAL OF ALL RECORDS
(OR DENIAL OF SOME RECORDS, OR PARTS OF RECORDS)

(ADDRESS)

Dear _____:

Thank you for your Freedom of Information Act request of _____ (date of request) _____. You requested information concerning _____ (subject) _____.

Enclosure A lists the documents we are releasing in response to your request. Enclosure B lists the documents we are withholding, with the reasons cited.

You may appeal the **[partial denial]** denial of your request to the Assistant Secretary of the Interior for Policy, Management and Budget under 43 CFR 2.18 by writing to: Freedom of Information Act Appeals Officer, Office of the Assistant Secretary, PMB, U.S. Department of the Interior, MS-5412, MIB, Washington, D.C. 20240. Your appeal must be received within 20 work days (Saturdays, Sundays, and legal holidays excepted) of your receipt of this letter. Your appeal letter, with the legend **FREEDOM OF INFORMATION APPEAL**, must be accompanied by copies of the original request and this initial denial. In order to expedite the appellate process and insure full consideration of your appeal, your appeal letter should contain a brief statement of the reasons why you believe this initial decision to be in error.

The officials responsible for the **[partial denial]** denial of your request are James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement (OSM); Joan F. Shaw, Freedom of Information Act Officer, OSM; and Cheryl Sylvester, Staff Attorney, Branch of Regulatory Programs, Division of Surface Mining.

The fees for providing this information are as follows:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND CHARGES)

	<u>Total No. of Units</u>	<u>Unit Charges</u>	<u>Amount</u>
Document Search Time: Professional	45 min. (The first 2 hrs. are not charged)	\$18.60/hr.	0
Duplication:	365 pages (The first 100 pgs. are not charged)	\$.13/pg.	\$34.45
		Total	<u>\$34.45</u>

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter.

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosures

cc: Chief, Programmatic Accounting

(THE FOIA OFFICER SIGNS ALL DENIAL AND PARTIAL DENIAL FOIA RESPONSES)

(RESPONSE SHOULD BE SENT CERTIFIED MAIL, RETURN RECEIPT REQUESTED)

Enclosure A

List of documents being released:

(NOTE - DOCUMENTS SHOULD BE MARKED WITH CORRESPONDING NUMBER OR OTHER IDENTIFIER IN THE UPPER RIGHT HAND CORNER AND DOCUMENTS SHOULD BE LISTED IN CHRONOLOGICAL ORDER)

	<u>Date</u>	<u>Subject</u>
A-1.	09/14/87	Letter to Seabolt from Workman concerning a determination of VER.
A-2.	06/24/88	Letter to Boyles from Helmick on a request for a permit to mine.
A-3.	07/06/88	Letter to Helmick from Blankenship re permit to mine.
A-4.	09/02/88	Portion of legal documents from Helmick on the deed for the property. (See item B-1 of withheld list)
A-5.	09/30/88	Memo to Goodwin from Blankenship on a VER determination.
A-6.	10/03/88	Letter to Helmick from Blankenship regarding forwarding VER request.
A-7.	02/08/89	Conversation Record - Morton Dean and Boyles on MSHA decision of Seabolt's mine.
A-8.	02/09/89	Portions of a letter to Boyles from Park on a drill log. (See item B-2 of withheld list)
A-9.	02/09/89	Letter to Seabolt from Krese on the roof-control plan.
A-10.	05/26/89	Letter to Helmick from Blankenship on VER determination.

Enclosure B

Below are the documents being withheld for the reasons cited:

(A LEGEND SUCH AS THE ONE FOLLOWING MAY BE USED WHEN A CITATION IS FREQUENTLY USED):

Legend:

(b)(5) = 5 U.S.C 552(b)(5): "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."

	<u>Date</u>	<u>Subject</u>
B-1.	09/02/88	Portion of legal documents from Helmick on the deed for the property. Handwritten description of distribution withheld under (b)(5), as pre-decisional. (See #4 of release list.)
B-2.	02/09/89	Portions of a letter to Boyles from Park on a drill log. Drill log reports exempt under 5 U.S.C 552(b)(4) as commercial or financial information obtained from a person and privileged or confidential. (See #8 of release list.)

**APPENDIX C
Illustration 13**

**SAMPLE LETTER
RECORDS CANNOT BE LOCATED**

(ADDRESS)

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request of _____ (date of request) _____. You requested records concerning _____ (subject) _____. We have reviewed our files and have been unable to locate any records responsive to your request.

Under 43 CFR 2.14(c), the Agency is not required to create or compile a record to respond to a FOIA request. The Act applies only to records in existence at the time the request is made.

Under 43 CFR 2.18, you may appeal this response by writing to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS - 5412, MIB, Washington, D.C. 20240. Your appeal must be received no later than 20 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records do in fact exist, including where they might be found, if the location is known to you.

Sincerely,

(NAME)
Freedom of Information
Act Officer

**(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF THE
FIELD OFFICE OR SUPPORT CENTER HAS ACTION)**

**(RESPONSE SHOULD BE SENT CERTIFIED MAIL, RETURN RECEIPT
REQUESTED)**

**APPENDIX C
Illustration 14**

**SAMPLE LETTER
A NEW COMPUTER DOCUMENT TOO COSTLY TO PROGRAM**

(ADDRESS)

Dear _____:

This letter is in response to your Freedom of Information Act (FOIA) request of _____ (date of request) _____. You requested Applicant/Violator System (AVS) information containing: the name of every corporation or person that violated Federal laws and/or regulations as they pertain to the Office of Surface Mining Reclamation and Enforcement (OSM), the law and/or regulation that was violated for each violation incident, the assessed penalty or settlement, and the date at which the enforcement action was completed.

After consultation with the AVS contractor who provides programming services for the AVS system, OSM has determined that significant and costly reprogramming would be required to compile, retrieve, and process the data responsive to your FOIA request. Under FOIA, an agency is not required to create a computer program to retrieve data not already so compiled for agency purposes. Clarke v. Department of the Treasury, Civil No. 84-1873, slip op. at 2-3, (E.D. Pa., Jan. 24, 1986). OSM would not otherwise do the necessary reprogramming, and OSM has no use for the resulting compilation and format that would justify the cost of the reprogramming to create the document you have requested. Therefore, under FOIA, OSM is not required to prepare and provide the information you requested, as the document you requested does not exist.

Should you have questions concerning this response or choose to make any changes to your original request, please contact me at (202) 208-2562.

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

SAMPLE LETTER
FEEES UNDER \$15
(and releasing all documents)

(ADDRESS)

Dear _____:

Thank you for your Freedom of Information Act request of (date of request) . You requested information concerning (subject) .

Enclosure A lists the documents which we are providing in response to your request. Fees for providing these documents are less than \$15 and are not being charged in accordance with 43 CFR 2.20(a)(2).

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD)

Enclosures

APPENDIX C
Illustration 15
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Enclosure A

	<u>DATE</u>	<u>SUBJECT</u>
A-1.	08/23/88	Site Monitoring Program, Emergency Action Plan and Evacuation Procedures - River Hurricane Coal Company, Mine No. 1 Outcrop Area Anderson Hollow.
A-2.	12/16/87	Outcrop Barrier Stability Investigation for River Hurricane Coal Company, Mine No. 1 in the Lower Elkhorn Seam on Anderson Hollow.

**APPENDIX C
Illustration 16**

**SAMPLE LETTER
RELEASE OF ALL RECORDS
(with fees over \$15)**

(ADDRESS)

Dear _____:

Thank you for your Freedom of Information Act Request of _____ (date of request) _____ . You requested information concerning _____ (subject) _____ .

Enclosure A lists the documents we are releasing in response to your request.

The fee charges for providing this information are as follows:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS AND CHARGES)

	<u>Total No. of Units</u>	<u>Unit Charges</u>	<u>Amount</u>
Document Search Time:			
Professional	45 min.	\$18.60/hour	0
	(The first 2 hrs. are not charged)		
Duplication:	365 pages	\$.13/page	\$34.45
	(The first 100 pages are not charged)		
		Total	<u>\$34.45</u>

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter.

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosures

cc: Chief, Programmatic Accounting

APPENDIX D

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**CATEGORIES OF REQUESTS AND
CALCULATING FEE CHARGES**

Note: The Department's FOIA regulations provide that we charge different fees according to the category of the request. The different categories are: Commercial use requests, educational and noncommercial scientific institution requests, news media requests and other requests (See 43 CFR 2.20(b) to (e)) for further explanations of each category). Paragraphs I. through V. of Appendix D provide examples of fee charges applicable to each category of request.

For fees which are under \$15, see Appendix C, Illustration 15.

For fees which exceed \$250, see Appendix C, Illustration 10.

For fees for computerized records, see Appendix D, Paragraph V.

For fee waivers, see Appendix C, Illustration 7.

I. Commercial Use Requests:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
Document Search Time:			
Clerical	00 hrs.	@ \$ 9.20/hr.	* \$0000
Professional or Managerial	00 hrs.	@ \$18.60/hr.	* 0000
Document Review Time:			
Clerical	00 hrs.	@ \$ 9.20/hr.	* 0000
Professional or Managerial	00 hrs.	@ \$18.60/hr.	* 0000
Duplication:	00 pages	@ \$.13/page	** 0000
Postage: ***			0000

		Total	\$0000

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter. ****

II. Educational and Noncommercial Scientific Institution:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
Duplication:	00 pages (The first 100 pages are not charged)	\$.13/page **	\$0000
Postage: ***			<u>0000</u>
		Total	\$0000

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter. ****

III. News and Media Requests:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
Duplication:	00 pages (The first 100 pages are not charged)	\$.13/page **	\$0000
Postage: ***			<u>0000</u>
		Total	\$0000

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter. ****

IV. Other Requests:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
Document Search Time:			
Clerical	00 hrs.	@ \$ 9.20/hr. *	\$0000
Professional or Managerial	00 hrs. (The first 2 hrs. are not charged)	@ \$18.60/hr. *	0000
Duplication:	00 pages (The first 100 pgs. are not charged)	@ \$.13/page **	0000
Postage: ***			<u>0000</u>
		Total	\$0000

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter. ****

V. Fees for Computerized Records:

Charges for services in processing requests maintained in computerized form will be calculated in accordance with criteria provided at 43 CFR Part 2, Appendix A, and the Departmental Manual 383 DM 15, FOIA Handbook. ADP facility managers will ensure that all cost estimates are accurate, and be prepared to substantiate the rates. As with other requests, if costs exceed \$250, OSM may request prepayment of 80 percent. (See Appendix C, Illustration 9.)

Criteria for estimating computer costs:

- (1) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.
- (2) Maintain an itemized listing of operations required to process the job (i.e., time for central processing unit, input/output remote terminal, storage, plotters, printing, tape/disk mounting, etc.) with related associated costs.
- (3) Material costs (i.e., paper, disks, tape, etc.) will be calculated using the latest acquisition.
- (4) Requests entitled to two hours of free search time under 43 CFR 2.20(e) will not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.
- (5) Requests entitled to free duplication of the first 100 pages @ \$.13/page will be allowed the deduction.

Sample listing of computer costs:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
MAINFRAME CHARGES			
Disk Input/Output Charge	18,925	\$.0020074 x 18,925 (\$.0020074 per unit)	\$ 37.99
Connect Time Charge	1,217 sec.	\$.0011093 x 1217 (\$.0011093 per sec.)	1.35
CPU Time Charge	161,054 units	\$.00061 x 161,054 (\$.00061 per unit time)	\$ 98.24
DUPLICATION	60 pages	\$.13/page	0
(No charge for the equivalent of the first 100 pages)			
SYSTEMS ANALYSIS	2 hrs.	\$24.00/hr.	<u>0</u>
(No charge for the equivalent of the first 2 hrs. of search time)			
		Total	\$137.58

Footnotes:

- * Billings may include increments as small as 1/4 hr. For clerical: \$2.30 per 1/4 hr. For professional: \$4.65 per 1/4 hr.
- ** See 43 CFR Part 2, Appendix A, (10), concerning unique copying costs such as photographs, blueprints, computer tapes, etc.
- *** OSM will charge mailing costs only for services (DHL, Express Mail, etc.) that exceed the cost of first class postage, and have been specified by the FOIA requester.
- **** Once the response has been signed, a copy should be sent via memorandum to:
- Chief, Programmatic Accounting
Division of Financial Management
P.O. Box 25065, Room D-2025
Denver, Colorado 80225

The Programmatic Accounting Office will then send the requester a bill for the FOIA response costs.

FOIA
DOCUMENTATION OF FEES AND ACTUAL COSTS

CIMS # _____ ACTION OFFICE _____

FEE CATEGORY _____ FEE WAIVER _____

NAME OF REQUESTER _____

SUBJECT _____

Action Office Instructions: Complete the information below and return to CIMS FOIA Coordinator even if there is no collection action, or the requester has withdrawn the FOIA request.

	<u>Hours/ Units</u>	<u>Rate</u>	<u>Amount</u>
Clerical Search	_____	\$2.30 (1/4 hr)	_____
Professional Search	_____	\$4.65 (1/4 hr)	_____
Clerical Review	_____	\$2.30 (1/4 hr)	_____
Professional Review	_____	\$4.65 (1/4 hr)	_____
Computerized Records		Cost	_____
Duplication	_____	\$.13 per page	_____
Unique Copying	_____	Cost	_____
Postage (Cost Exceeding First Class)	_____	Cost	_____
Certifications	_____	\$.25	_____
TOTAL			_____

§ 1.4

§ 1.4 Disqualifications.

No individual may practice before the Department if such practice would violate the provisions of 18 U.S.C. 203, 205, or 207.

§ 1.5 Signature to constitute certificate.

When an individual who appears in a representative capacity signs a paper in practice before the Department, his signature shall constitute his certificate:

(a) That under the provisions of this part and the law, he is authorized and qualified to represent the particular party in the matter;

(b) That, if he is the partner of a present or former officer or employee, including a special Government employee, the matter in respect of which he intends to practice is not a matter in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise and that the matter is not the subject of such partner's official Government responsibility;

(c) That, if he is a former officer or employee, including a special Government employee, the matter in respect of which he intends to practice is not a matter in which he participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed and, if a period of one year has not passed since the termination of his employment with the Government, that the matter was not under his official responsibility as an officer or employee of the Government; and

(d) That he has read the paper; that to the best of his knowledge, information, and belief there is good ground to support its contents; that it contains no scandalous or indecent matter; and that it is not interposed for delay.

§ 1.6 Disciplinary proceedings.

(a) Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the De-

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partment on grounds that he is incompetent, unethical, or unprofessional, or that he is practicing without authority under the provisions of this part, or that he has violated any provisions of the laws and regulations governing practice before the Department, or that he has been disbarred or suspended by any court or administrative agency. Individuals practicing before the Department should observe the Canons of Professional Ethics of the American Bar Association and those of the Federal Bar Association, by which the Department will be guided in disciplinary matters.

(b) Whenever in the discretion of the Solicitor the circumstances warrant consideration of the question whether disciplinary action should be taken against an individual who is practicing or has practiced before the Department, the Solicitor shall appoint a hearing officer to consider and dispose of the case. The hearing officer shall give the individual adequate notice of, and an opportunity for a hearing on, the specific charges against him. The hearing shall afford the individual an opportunity to present evidence and cross-examine witnesses. The hearing officer shall render a decision either (1) dismissing the charges, or (2) reprimanding the individual or suspending or excluding him from practice before the Department.

(c) Within 30 days after receipt of the decision of the hearing officer reprimanding, suspending, or excluding an individual from practice before the Department, an appeal may be filed with the Solicitor, whose decision shall be final.

PART 2—RECORDS AND TESTIMONY;
FREEDOM OF INFORMATION ACTSubpart A—Opinions in Adjudication of Cases,
Administrative Manuals

Sec.

- 2.1 Purpose and scope.
- 2.2 Opinions in adjudication of cases.
- 2.3 Administrative manuals.

Subpart B—Requests for Records

- 2.11 Purpose and scope.
- 2.12 Definitions.

Office of the Secretary of the Interior

§ 2.2

Sec.

- 2.13 Records available.
- 2.14 Requests for records.
- 2.15 Preliminary processing of requests.
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- 2.19 Action on appeals.
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Subpart C—Declassification of Classified Documents

- 2.41 Declassification of classified documents.

Subpart D—Privacy Act

- 2.45 Purpose and scope.
- 2.46 Definitions.
- 2.47 Records subject to Privacy Act.
- 2.48 Standards for maintenance of records subject to the Act.
- 2.49 [Reserved]
- 2.50 FEDERAL REGISTER notices describing systems of records.
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- 2.54—2.55 [Reserved]
- 2.56 Disclosure of records.
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- 2.63 Requests for access to records: Submission.
- 2.64 Requests for access to records: Initial decision.
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- 2.66 Requests for access to records: Special situations.
- 2.67—2.69 [Reserved]
- 2.70 Amendment of records.
- 2.71 Petitions for amendment: Submission and form.
- 2.72 Petitions for amendment: Processing and initial decision.
- 2.73 Petitions for amendments: Time limits for processing.
- 2.74 Petitions for amendment: Appeals.
- 2.75 Petitions for amendment: Action on appeals.
- 2.76 [Reserved]
- 2.77 Statements of disagreement.
- 2.78 [Reserved]

Sec.

- 2.79 Exemptions.

Subpart E—Compulsory Process and Testimony of Employees

- 2.80 Compulsory process.
- 2.82 Testimony of employees.

APPENDIX A TO PART 2—FEES

APPENDIX B TO PART 2—BUREAUS AND OFFICES OF THE DEPARTMENT OF THE INTERIOR

AUTHORITY: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701; and 43 U.S.C. 1460.

SOURCE: 40 FR 7305, Feb. 19, 1975, unless otherwise noted.

Subpart A—Opinions in Adjudication of Cases, Administrative Manuals

§ 2.1 Purpose and scope.

This subpart contains the regulations of the Department of the Interior concerning the availability to the public of opinions issued in the adjudication of cases and of administrative manuals. Persons interested in obtaining access to other records are directed to the procedures for submission of Freedom of Information requests set out in Subpart B of this part.

§ 2.2 Opinions in adjudication of cases.

(a)(1) Copies of final decisions and orders issued on and after July 1, 1970, in the following categories of cases are available for inspection and copying in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203:

- (i) Contract appeals;
- (ii) Appeals from decisions rendered by departmental officials relating to the use and disposition of public lands and their resources and the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf;
- (iii) Appeals from orders and decisions issued by departmental officials and administrative law judges in proceedings relating to mine health and safety; and
- (iv) Appeals from orders and decisions of administrative law judges in Indian probate matters other than those involving estates of Indians of

§ 2.3

the Five Civilized Tribes and Osage Indians.

(2) Copies of final opinions and orders issued in the following categories of cases are available for inspection and copying in the Docket and Records Section, Office of the Solicitor, Interior Building, Washington, DC 20240:

(i) Tort claims decided in the headquarters office of the Office of the Solicitor, and appeals from decisions of Regional Solicitors or Field Solicitors on tort claims;

(ii) Irrigation claims under Public Works Appropriation Acts (e.g., 79 Stat., 1103) or 25 U.S.C. 388 decided in the headquarters office of the Office of the Solicitor, and appeals from decisions of Regional Solicitors on irrigation claims;

(iii) Appeals under § 2.18 respecting availability of records;

(iv) Appeals from decisions of officials of the Bureau of Indian Affairs, and Indian enrollment appeals; and

(v) Appeals from decisions of officers of the Bureau of Land Management and of the Geological Survey in proceedings relating to lands or interests in land, contract appeals, and appeals in Indian probate proceedings, issued prior to July 1, 1970.

(3) An Index-Digest is issued by the Department. All decisions, opinions and orders issued in the categories of cases described in paragraphs (a)(1), (i), (ii), and (iii) of this section (that is, contract appeals, land appeals, and mine health and safety appeals), are covered in the Index-Digest; in addition, the Index-Digest covers the more important decisions, opinions and orders in the remaining categories of cases described in paragraphs (a)(1)(iv) and (a)(2) (i) through (iv) of this section, and the more important opinions of law issued by the Office of the Solicitor. The Index-Digest is available for use by the public in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, in the Docket and Records Section, Office of the Solicitor, Interior Building, Washington, DC 20240, and in the offices of the Regional Solicitors and Field Solicitors. Selected decisions, opinions, and orders are published in a series en-

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titled "Decisions of the United States Department of the Interior" (cited as I.D.), and copies may be obtained by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(4) Copies of final opinions and orders issued by Regional Solicitors on tort claims and irrigation claims, and copies of final opinions and orders on appeals in Indian probate proceedings issued by Regional Solicitors prior to July 1, 1970, are available for inspection and copying in their respective offices. Copies of final opinions and orders issued by Field Solicitors on tort claims are available for inspection and copying in their respective offices.

(b)(1) Copies of final decisions and orders issued prior to July 1, 1970, on appeals to the Director, Bureau of Land Management, and by hearing examiners of the Bureau of Land Management, in proceedings relating to lands and interests in land are available for inspection and copying in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, and in the offices of the Departmental administrative law judges.

(2) Copies of final decisions, opinions and orders issued on and after July 1, 1970, by departmental administrative law judges in all proceedings before them are available for inspection and copying in their respective offices and in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, VA 22203.

(3) Copies of final decisions, opinions and orders issued by administrative law judges in Indian probate proceedings are available for inspection and copying in their respective offices.

§ 2.3 Administrative manuals.

The Departmental Manual is available for inspection in the Departmental Library, Interior Building, Washington, DC, and at each of the regional offices of bureaus of the Department. The administrative manuals of those bureaus which have issued such documents are available for inspection at the headquarters offices and at the regional offices of the bureaus.

Office of the Secretary of the Interior

§ 2.13

Subpart B—Requests for Records

SOURCE: 52 FR 45586, Nov. 30, 1987, unless otherwise noted.

§ 2.11 Purpose and scope.

(a) This subpart contains the procedures for submission to and consideration by the Department of the Interior of requests for records under the Freedom of Information Act.

(b) Before invoking the formal procedures set out below, persons seeking records from the Department may find it useful to consult with the appropriate bureau FOIA officer. Bureau offices are listed in Appendix B to this part.

(c) The procedures in this subpart do not apply to:

(1) Records published in the FEDERAL REGISTER, opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under subpart A of this part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 2.13(c)(7) if—

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that—

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by a criminal law enforcement component of the Department under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

§ 2.12 Definitions.

(a) *Act* and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552.

(b) *Bureau* refers to all constituent bureaus of the Department of the Interior, the Office of the Secretary, and the other Departmental offices. A list

of bureaus is contained in Appendix B to this part.

(c) *Working day* means a regular Federal workday. It does not include Saturdays, Sundays or public legal holidays.

§ 2.13 Records available.

(a) *Department policy*. It is the policy of the Department of the Interior to make the records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) *Statutory disclosure requirement*. The Act requires that the Department, on a request from a member of the public submitted in accordance with the procedures in this subpart, make requested records available for inspection and copying.

(c) *Statutory exemptions*. Exempted from the Act's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) 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;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

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(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) 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,

(v) 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, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) 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; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Department to withhold information falling within an exemption only if—

(1) Disclosure is prohibited by statute or Executive order or

(2) Sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under

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the procedures in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released.

§ 2.14 Requests for records.

(a) *Submission of requests.* (1) A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the requester, he or she may direct a request to the head of the appropriate bureau or to the bureau's FOIA officer. Addresses for bureau heads and FOIA officers are contained in Appendix B to this part.

(2) *Exceptions.* (i) A request for records located in all components of the Office of the Secretary (other than the Office of Hearings and Appeals) shall be submitted to: Director, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240. A request for records located in the Office of Hearings and Appeals shall be submitted to: Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(ii) A request for records of the Office of Inspector General shall be submitted to: Inspector General, Office of the Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(iii) A request for records of the Office of the Solicitor shall be submitted to: Solicitor, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

(b) *Form of requests.* (1) Requests under this subpart shall be in writing and must specifically invoke the Act.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Department familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it

was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall—

(A) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requester claims the request to fall and the basis of this claim (see § 2.20(b) through (e) for definitions) and

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under § 2.20 (f) and (g), the time for responding to requests may be delayed—

(A) If a requester has not sufficiently identified the fee category applicable to the request,

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Department or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Department.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 2.21 are met.

(5) To ensure expeditious handling, requests should be prominently marked, both the envelope and on the face of the request, with the legend "FREEDOM OF INFORMATION REQUEST."

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, fre-

quency distributions, trends or comparisons. In those instances where the Department determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Department may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

§ 2.15 Preliminary processing of requests.

(a) *Scope of requests.* (1) Unless a request clearly specifies otherwise, requests to field installations of a bureau may be presumed to seek only records at that installation and requests to a bureau head or bureau FOIA officer may be presumed to seek only records of that bureau.

(2) If a request to a field installation of a bureau specifies that it seeks records located at other installations of the same bureau, the installation shall refer the request to the other installation(s) or the bureau FOIA officer for appropriate processing. The time limit provided in § 2.17(a) does not start until the request is received at the installation having the records or by the bureau FOIA officer.

(3) If a request to a bureau specifies that it seeks records of another bureau, the bureau may return the request (or the relevant portion thereof) to the requester with instructions as to how the request may be resubmitted to the other bureau.

(b) *Intradepartmental consultation and referral.* (1) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that originated with or are of substantial concern to another bureau, it shall consult with that bureau before deciding whether to release or withhold the records.

(2) As an alternative to consultation, a bureau may refer the request (or the relevant portion thereof) to the bureau that originated or is substantially concerned with the records. Such referrals shall be made expeditiously and the requester shall be notified in writing that a referral has been made. A referral under this paragraph does not restart the time limit provided in § 2.17.

(c) *Records of other departments and agencies.* (1) If a requested record in the possession of the Department of the Interior originated with another Federal department or agency, the request shall be referred to that agency unless—

(i) The record is of primary interest to the Department,

(ii) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure, or

(iii) The originating agency is not subject to the Act.

The Department has primary interest in a record if it was developed or prepared pursuant to Department regulations, directives or request.

(2) In accordance with Executive Order 12356, a request for documents that were classified by another agency shall be referred to that agency.

(d) *Consultation with submitters of commercial and financial information.* (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the bureau processing the request shall provide the submitter with notice of the request whenever—

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or

(ii) The bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(2) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the in-

formation is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(3) If a submitter's statement cannot be obtained within the time limit for processing the request under § 2.17, the requester shall be notified of the delay as provided in § 2.17(f).

(4) Notification to a submitter is not required if:

(i) The bureau determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this subpart);

(iv) Disclosure is clearly prohibited by a statute, as described in § 2.13(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm.

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Department more than 10 years prior to the date of the request, unless the bureau has reason to believe that it continues to be confidential.

(5) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

§ 2.16 Action on initial requests.

(a) *Authority.* (1) Requests to field installations shall be decided by the head of the installation or by such higher authority as the head of the bureau may designate in writing.

(2) Requests to the headquarters of a bureau shall be decided only by the head of the bureau or an official

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whom the head of the bureau has in writing designated.

(3) Requests to the Office of the Secretary may be decided by the Director of Administrative Services, an Assistant Secretary or Assistant Secretary's designee, and any official whom the Secretary has in writing designated.

(4) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the office of the appropriate associate, regional, or field solicitor.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the official processing the request shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the official shall state the amount of fees due and the procedures for payment, as described in § 2.20.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(3) If a claim of confidentiality has been found frivolous in accordance with § 2.15(d)(4)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(c) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A reference to the specific exemption or exemptions authorizing the withholding;

(ii) If neither a statute or an Executive order requires withholding, the sound ground for withholding;

(iii) A listing of the names and titles or positions of each person responsible for the denial; and

(iv) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

§ 2.17 Time limits for processing initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than 10 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* (1) The 10 working day time limit begins to run when a request meeting the requirements of § 2.14(b) is received at a field installation or bureau headquarters designated in § 2.14(a) to receive the request.

(2) The running of the basic time limit may be delayed or tolled as explained in § 2.20 (f), (g) and (h) if a requester—

(i) Has not stated a willingness to pay fees as high as are anticipated and has

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not sought and been granted a full fee waiver, or

(i) Has not made a required advance payment.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended for more than 10 working days:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the installation processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Department having substantial subject-matter interest therein.

(d) *Notice of extension.* A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made.

(e) *Treatment of delay as denial.* If no determination has been reached at the end of the 10 working day period for deciding an initial request, or an extension thereof under paragraph (c) of this section, the requester may deem the request denied and may exercise a right of appeal in accordance with § 2.18.

(f) *Notice of delay.* When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal to the Assistant Secretary—Policy, Budget and Administration, including a description of the procedures for filing an appeal in § 2.18.

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§ 2.18 Appeals.

(a) *Right of appeal.* A requester may appeal to the Assistant Secretary—Policy, Budget and Administration when—

(1) Records have been withheld,

(2) A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located,

(3) A fee waiver has been denied, or

(4) A request has not been decided within the time limits provided in § 2.17.

(b) *Time for appeal.* An appeal must be received no later than 20 working days after the date of the initial denial, in the case of a denial of an entire request, or 20 working days after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend "FREEDOM OF INFORMATION APPEAL."

§ 2.19 Action on appeals.

(a) *Authority.* Appeals shall be decided by the Assistant Secretary—Policy, Budget and Administration, or the Assistant Secretary's designee, after consultation with the Solicitor, the Director of Public Affairs and the appropriate program Assistant Secretary.

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 2.18(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 2.17(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 2.17(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States, as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched and of the right to seek judicial review.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Assistant Secretary—Policy, Budget and Administration shall immediately make the records available or instruct the appropriate bureau to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the U.S. District Court for the district in which the withheld records are

located, or in which the requester resides or has his or her principal place of business or in the U.S. District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), the submitter shall be provided notice as described in § 2.16(b)(2).

§ 2.20 Fees.

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 2.21, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the schedule of charges contained in Appendix A to this part.

(2) Fees shall not be charged if the total amount chargeable does not exceed \$15.00.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search, duplication and review.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(3) A commercial use request is a request from or on behalf of a person who seeks information for a use or purpose that further the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the aus-

pices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in—

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure,

(iii) Deleting reasonably segregable exempt matter,

(iv) Monitoring the requesters' inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(3) An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(4) A "noncommercial scientific institution" is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) *News media requests.* (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in—

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure,

(iii) Deleting reasonably segregable exempt matter,

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(3)(i) A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category.

(ii) Free-lance journalists may be considered "representatives of the news media" if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c) or (d) of this section shall be charged fees for document search and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in—

(i) Examining requested records to determine whether they are exempt from disclosure,

(ii) Deleting reasonably segregable exempt matter,

(iii) Monitoring the requester's inspection of agency records, or

(iv) Resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient

information to determine whether it is covered by paragraph (b), (c), (d) or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Department, and the requester has not sought and been granted a full waiver of fees under § 2.21, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed \$250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 calendar days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request.

(3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 2.17 until receipt of payment.

(i) *Form of payment.* Payment of fees should be made by check or money order payable to the Department of the Interior or the bureau furnishing the information. The term United States or the initials "U.S." should not be included on the check or money order. Where appropriate, the official responsible for handling a re-

quest may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection, Form DI-1040, shall be prepared for each request that requires collection of fees. The requester shall be provided the first sheet of the DI-1040. This Accounting Copy of the Form shall be transmitted to the agency's finance office for entry into accounts receivable records. Upon receipt of payment from the requester, the recipient shall forward the payment along with a copy of the DI-1040 to the finance office.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 calendar days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of state or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees (see 4 CFR Parts 101-105).

§ 2.21 Waiver of fees.

(a) *Statutory fee waiver.* (1) Documents shall be furnished without charge or at a charge reduced below the fees chargeable under § 2.20 and appendix A to this part if disclosure of the information is in the public interest because it—

(i) Is likely to contribute significantly to public understanding of the operations or activities of the government and

(ii) Is not primarily in the commercial interest of the requester.

(2) Factors to be considered in determining whether disclosure of information "is likely to contribute significantly to public understanding of the operations or activities of the government" are the following:

(i) Does the record concern *the operations or activities of the government?* records concern the operations or activities of the government if they

relate to or will illuminate the manner in which the Department or a bureau is carrying out identifiable operations or activities or the manner in which an operation or activity affects the public. The connection between the records and the operations and activities to which they are said to relate should be clear and direct, not remote and attenuated. Records developed outside of the government and submitted to or obtained by the Department may relate to the operations and activities of the government if they are informative on how an agency is carrying out its regulatory, enforcement, procurement or other activities that involve private entities.

(ii) If a record concerns the operations or activities of the government, is its disclosure *likely to contribute to public understanding* of these operations and activities? The likelihood of a contribution to public understanding will depend on consideration of the content of the record, the identity of the requester, and the interrelationship between the two. Is there a logical connection between the content of the requested record and the operations or activities in which the requester is interested? Are the disclosable contents of the record meaningfully informative on the operations or activities? Is the focus of the requester on contribution to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? Does the requester have expertise in the subject area and the ability and intention to disseminate the information to the general public or otherwise use the information in a manner that will contribute to public understanding of government operations or activities? Is the requested information sought by the requester because it may be informative on government operations or activities or because of the intrinsic value of the information independent of the light that it may shed on government operations or activities?

(iii) If there is likely to be a contribution to public understanding, will that contribution be *significant*? A contribution to public understanding will be significant if the information disclosed is new, clearly supports

public oversight of Department operations, including the quality of Department activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department. A contribution will not be significant if disclosure will not have a positive impact on the level of public understanding of the operations or activities involved that existed prior to the disclosure. In particular, a significant contribution is not likely to arise from disclosure of information already in the public domain because it has, for example, previously been published or is routinely available to the general public in a public reading room.

(3) Factors to be considered in determining whether disclosure "is primarily in the commercial interest of the requester" are the following:

(i) Does the requester have a *commercial interest* that would be furthered by the requested disclosure? A commercial interest is a commercial, trade or profit interest as these terms are commonly understood. An entity's status is not determinative. Not only profit-making corporations, but also individuals or other organizations, may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(ii) If the requester has a commercial interest, will disclosure be *primarily* in that interest? The requester's commercial interest is the primary interest if the magnitude of that interest is greater than the public interest to be served by disclosure. Where a requester is a representative of a news media organization seeking information as part of the news gathering process, it may be presumed that the public interest outweighs the organization's commercial interest.

(4) *Notice of denial*. If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:

(i) A statement of the basis on which the waiver or reduction has been denied.

(ii) A listing of the names and titles or positions of each person responsible for the denial.

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(iii) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(b) *Discretionary waivers.* Fees otherwise chargeable may be waived at the discretion of a bureau if a request involves:

(1) Furnishing unauthenticated copies of documents reproduced for gratuitous distribution;

(2) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held.

(4) Furnishing records to donors with respect to their gifts;

(5) Furnishing records to individuals or private non-profit organizations having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department;

(6) Furnishing records to state, local and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Department and to do so will help to accomplish the work of the Department;

(7) Furnishing a record when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Department's fee for the service would be included in a billing against the Department);

(8) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees);

(9) Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he or she is entitled (e.g., veterans or their dependents, employees with Government employee compensation

claims or persons insured by the Government).

§ 2.22 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

(a) *Definitions.* As used in the section:

(1) *Act* means the Mineral Leasing Act of February 25, 1920, as amended by the Act of August 4, 1976, Pub. L. 94-377, 90 Stat. 1083 (30 U.S.C. 181 *et seq.*), and the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 *et seq.*)

(2) *Exploration license* means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Act pursuant to the authority in section 2(b) of the Act, as amended (30 U.S.C. 201(b)).

(3) *Fair-market value of coal to be leased* means the minimum amount of a bid the Secretary has determined he is willing to accept in leasing coal within leasing tracts offered in general lease sales or reserved and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations, controlled by any of such entities pursuant to section 2(a) of the Act (30 U.S.C. 201(a)(1)).

(4) *Information* means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources, which fit within an exemption to the Freedom of Information Act, 5 U.S.C. 552(b).

(b) *Applicability.* This section applies to the following categories of information:

(1) *Category A.* Information provided to or obtained by a bureau under section 2(b)(3) of the Act from the holder of an exploration license;

(2) *Category B.* Information acquired from commercial or other sources under service contract with Geological Survey pursuant to section 8A(b) of the Act, and information developed by the Geological Survey under an exploratory program authorized by section 8A of the Act;

(3) *Category C.* Information obtained from commercial sources which the commercial source acquired while

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not under contract with the United States Government;

(4) *Category D*. Information provided to the Secretary by a federal department or agency pursuant to section 8A(e) of the Act; and

(5) *Category E*. The fair-market value of coal to be leased and comments received by the Secretary with respect to such value.

(c) *Availability of information*. Information obtained by the Department from various sources will be made available to the public as follows:

(1) *Category A—Information*. Category A information shall not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first.

(2) *Category B—Information*. Category B information shall not be withheld from the public; it will be made available by means of and at the time of open filing or publication by Geological Survey.

(3) *Category C—Information*. Category C information shall not be made available to the public until after the areas to which the information pertains have been leased by the Department.

(4) *Category D—Information*. Category D information shall be made available to the public under the terms and conditions to which, at the time he or she acquired it, the head of the department or agency from whom the Secretary later obtained the information agreed.

(5) *Category E—Information*. Category E information shall not be made public until the lands to which the information pertains have been leased, or until the Secretary has determined that its release prior to the issuance of a lease is in the public interest.

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Subpart C—Declassification of Classified Documents

§ 2.41 Declassification of classified documents.

(a) *Request for classification review*.

(1) Requests for a classification review of a document of the Department of the Interior pursuant to section 5(c) of Executive Order 11652 (37 FR 5209, March 10, 1972) and section III B of the National Security Council Directive Governing Classification, Downgrading, Declassification and Safeguarding of National Security Information (37 FR 10053, May 1972) shall be made in accordance with the procedures established by this section.

(2) Any person desiring a classification review of a document of the Department of the Interior containing information classified as National Security Information by reason of the provisions of Executive Order 12065 (or any predecessor executive order) and which is more than 10 years old, should address such request to the Chief, Division of Enforcement and Security Management, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240.

(3) Requests need not be made on any special form, but shall, as specified in the executive order, describe the document with sufficient particularity to enable identification of the document requested with expenditure of no more than a reasonable amount of effort.

(4) Charges for locating and reproducing copies of records will be made when deemed applicable in accordance with appendix A to this part and the requester will be notified.

(b) *Action on requests for classification review*. (1) The Chief, Division of Enforcement and Security Management, shall, unless the request is for a document over 30 years old, assign the request to the bureau having custody of the requested records for action. In the case of requests for declassification of records in the custody of the Office of the Secretary and less than 30 years old, the request shall be processed by the Chief, Division of Enforcement and Security Management.

Requests for declassification of documents over 30 years shall be referred directly to the Archivist of the United States. The bureau which has been assigned the request, or the Chief, Division of Enforcement and Security Management, in the case of requests assigned to him, shall immediately acknowledge the request in writing. Every effort will be made to complete action on each request within thirty (30) days of its receipt. If action cannot be completed within thirty (30) days, the requester shall be so advised.

(2) If the requester does not receive a decision on his request within sixty (60) days from the date of receipt of his request, or from the date of his most recent response to a request for more particulars, he may apply to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240, for a decision on his request. The Committee must render a decision within thirty (30) days.

(c) *Form of decision and appeal to Oversight Committee for Security.* In the event that the bureau to which a request is assigned or the Chief, Division of Enforcement and Security Management, in the case of a request assigned to him, determines that the requested information must remain classified by reason of the provisions of Executive Order 11652, the requester shall be given prompt notification of that decision and, whenever possible, shall be provided with a brief statement as to why the information or material cannot be declassified. He shall also be advised that if he desires he may appeal the determination to the Chairman, Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240. An appeal shall include a brief statement as to why the requester disagrees with the decision which he is appealing. The Department Oversight Committee for Security shall render its decision within thirty (30) days of receipt of an appeal. The Departmental Committee shall be authorized to over-rule previous determinations in whole or in part when, in its judgement, continued protection is no longer required.

(d) *Appeal to Interagency Classification Review Committee.* Whenever the Department of the Interior Oversight Committee for Security confirms a determination for continued classification, it shall so notify the requester and advise him that he is entitled to appeal the decision to the Interagency Classification Review Committee established under section 8(A) of the Executive Order 11652. Such appeals shall be addressed to the Interagency Classification Review Committee, the Executive Office Building, Washington, DC 20500.

(e) *Suggestions and complaints.* Any person may also direct suggestions or complaints with respect to the administration of the other provisions of Executive Order 11652 and the NSC Directive by the Department of the Interior to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240.

[40 FR 7305, Feb. 19, 1975, as amended at 47 FR 38327, Aug. 31, 1982]

Subpart D—Privacy Act

SOURCE: 40 FR 44505, Sept. 26, 1975, unless otherwise noted.

§ 2.45 Purpose and scope.

This subpart contains the regulations of the Department of the Interior implementing section 3 of the Privacy Act. Sections 2.47 through 2.57 describe the procedures and policies of the Department concerning maintenance of records which are subject to the Act. Sections 2.60 through 2.66 describe the procedure under which individuals may determine whether systems of records subject to the Act contain records relating to them and the procedure under which they may seek access to existing records. Sections 2.70 through 2.77 describe the procedure under which individuals may petition for amendment of records subject to the Act relating to them. Section 2.79 lists records systems that have been exempted from certain requirements of the Act.

[48 FR 56583, Dec. 22, 1983]

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the testimony of the officer or employee of the Department is desired, before permission to testify will be granted under this section.

(c) The Solicitor of the Department of the Interior is authorized to exercise all of the authority of the Secretary of the Interior under this section.

APPENDIX A TO PART 2—FEES

The following uniform fee schedule is applicable to all constituent units of the Department. It states the fees to be charged to members of the public for services performed in searching for, reviewing and duplicating requested records in connection with FOIA requests made under Subpart B of this part and to services performed in making documents available for inspection and copying under Subpart A of this part. The duplicating fees stated in the schedule are also applicable to duplicating of records in response to requests made under the Privacy Act. The schedule also states the fee to be charged for certification of documents.

(1) *Copies, basic fee.* For copies of documents reproduced on a standard office copying machine in sizes to 8½" x 14", the charge will be \$0.13 per page.

Examples: For one copy of a three-page document, the fee would be \$0.39. For two copies of a three-page document, the fee would be \$0.78. For one copy of a 60-page document, the fee would be \$7.80.

(2) *Copies, documents requiring special handling.* For copies of documents which require special handling because of their age, size, etc., cost will be based on direct costs of reproducing the materials.

(3)-(4) [Reserved]

(5) *Searches.* For each quarter hour, or portion thereof, spent by clerical personnel in manual searches to locate requested records: \$2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in manual searches to locate requested records because the search cannot be performed by clerical personnel: \$4.65.

Search time for which fees may be charged includes all time spent looking for material that is responsive to a request, including line-by-line or page-by-page search to determine whether a record is responsive, even if the search fails to locate records or the records located are determined to be exempt from disclosure. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester. Line-by-line or page-by-page identification should not be necessary if it is clear on the face of a document that it is covered by a request.

(6) *Review of records.* For each quarter hour, or portion thereof, spent by clerical personnel in reviewing records: \$2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in reviewing records: \$4.65.

Review is the examination of documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld and the subsequent processing of documents for disclosure by excising exempt material or otherwise preparing them for release. Review does not include time spent in resolving general legal or policy issues regarding the application of exemptions.

(7) [Reserved]

(8) *Certification.* For each certificate of verification attached to authenticated copies of records furnished to the public the charge will be \$0.25.

(9) [Reserved]

(10) *Computerized records.* Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

(a) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.

(b) An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output, remote terminal, storage, plotters, printing, tape/disc mounting, etc.) with related associated costs applicable to each operation.

(c) Material costs (i.e., paper, disks, tape, etc.) will be calculated using the latest acquisition price paid by the facility.

(d) ADP facility managers must assure that all cost estimates are accurate, and if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, itemized listings of operations and associated costs for processing the job may be furnished to members of the public.

(e) Requesters entitled to two hours of free search time under 43 CFR 2.20(e) shall not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.

(11) *Postage/ mailing costs.* Mailing charges may be added for services (such as express mail) that exceed the cost of first class postage.

(12)-(13) [Reserved]

(14) *Other services.* When a response to a request requires services or materials other

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than those described in this schedule, the direct cost of such services or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

(15) *Effective date.* This schedule applies to all requests made under the Freedom of Information Act and Privacy Act after December 30, 1987.

[52 FR 45592, Nov. 30, 1987]

APPENDIX B TO PART 2—BUREAUS AND OFFICES OF THE DEPARTMENT OF THE INTERIOR

1. *Bureaus and Offices of the Department of the Interior.* (The address for all bureaus and offices, unless otherwise indicated, is U.S. Department of the Interior, Washington, DC 20240.)

Secretary of the Interior, Office of the Secretary

Office of Administrative Services (for Office of the Secretary components)
Assistant Secretary, Territorial and International Affairs

Commissioner, Bureau of Indian Affairs
Director, U.S. Fish and Wildlife Service
Director, National Park Service, P.O. Box 37127, Washington, DC, 20013-7127

Commissioner, Bureau of Reclamation
Director, Bureau of Land Management
Director, Minerals Management Service
Director, Bureau of Mines, Columbia Plaza, 2401 E Street NW., Washington, DC 20241
Director, Geological Survey, The National Center, Reston, VA 22092

Director, Office of Surface Mining Reclamation and Enforcement

Director, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203

Inspector General, Office of Inspector General

Solicitor, Office of the Solicitor

2. *Freedom of Information Officers of the Department of the Interior.* (The address for all Freedom of Information Officers, unless otherwise indicated, is U.S. Department of the Interior, Washington, DC 20240.)

Director, Office of Administrative Services (for Office of the Secretary components), U.S. Department of the Interior

Director, Office of Administration, Bureau of Indian Affairs

Freedom of Information Act Officer, Bureau of Land Management

Assistant Director, Finance and Management, Bureau of Mines, Columbia Plaza, 2401 E Street NW., Washington, DC 20241

Freedom of Information Act Officer, Bureau of Reclamation

Chief, Division of Media Information, National Park Service

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Chief, Regulatory Development and Issues Management, Office of Surface Mining Reclamation and Enforcement

Chief, Directives Management Branch, Policy and Directives Management, U.S. Fish and Wildlife Service,

Chief, Paperwork Management Unit, U.S. Geological Survey, The National Center, Reston, VA 22092

Freedom of Information Act Officer, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091

Information Officer, Office of Inspector General

3. *Office of Hearings and Appeals—Field Offices:*

Administrative Law Judge, 1111 Northshore Drive, Suite 202, Bldg. #1, Knoxville, TN 37919

Administrative Law Judges, 6432 Federal Bldg., Salt Lake City, UT 84138

Administrative Law Judge (Indian Probate), Federal Bldg., Rm. 3427, 230 N. First Ave., Phoenix, AZ 85025

Administrative Law Judge (Indian Probate), 2020 Hurley Way, Suite 150, Sacramento, CA 95825

Administrative Law Judges (Indian Probate), Federal Building, Rooms 674 and 688, Fort Snelling, Twin Cities, MN 55111

Administrative Law Judge (Indian Probate), 421 Gold SW., Rm. 303, Albuquerque, NM 87102

Administrative Law Judge (Indian Probate), 215 Dean A. McGee Ave., Rm. 218, Oklahoma City, OK 73102

Administrative Law Judge (Indian Probate), Federal Bldg. & Courthouse, 515 9th St., Suite 201, Rapid City, SD 57701

Administrative Law Judge (Indian Probate), Federal Bldg. & Courthouse, Rm. 3329, 316 N. 26th St., Billings, MT 59101

4. *Office of the Solicitor—Field Offices.*

Regional Solicitors:

Regional Solicitor, U.S. Department of the Interior, 701 C Street, Anchorage, AK 99513

Regional Solicitor, U.S. Department of the Interior, Room E-2753, 2800 Cottage Way, Sacramento, CA 95825

Regional Solicitor, U.S. Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225

Regional Solicitor, U.S. Department of the Interior, Richard B. Russell Federal Building, 75 Spring Street, SW., Suite 1328, Atlanta, GA 30303

Regional Solicitor, U.S. Department of the Interior, Suite 612, One Gateway Center, Newton Corner, MA 02158

Regional Solicitor, U.S. Department of the Interior, Room 3068, Page Belcher Federal Building, 333 West 4th Street, Tulsa, OK 74103

APPENDIX G

THE FREEDOM OF INFORMATION ACT

5 U.S.C. §552

As Amended

§552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) 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;

(B) 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;

(C) 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;

(D) 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

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

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unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) 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.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that --

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public

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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.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section --

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo, provided that the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) [Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest

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practicable date and expedited in every way.] Repealed.
Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat.
3335, 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) 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.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request--

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(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are--

(1) (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;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), 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;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) 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;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) 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

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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, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) 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; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) 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 or proceeding 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.

(2) 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 this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

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(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any Executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

* * * * *

Section 1804. Effective Dates [not to be codified].

(a) The amendments made by section 1802 [the modification of Exemption 7 and the addition of the new subsection (c)] shall be effective on the date of enactment of this Act [October 27, 1986], and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

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(b)(1) The amendments made by section 1803 [the new fee and fee waiver provisions] shall be effective 180 days after the date of the enactment of this Act [April 25, 1987], except that regulations to implement such amendments shall be promulgated by such 180th day.

(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.

Presidential Documents

Executive Order 12600 of June 23, 1987

Predisclosure Notification Procedures for Confidential Commercial Information

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide predisclosure notification procedures under the Freedom of Information Act concerning confidential commercial information, and to make existing agency notification provisions more uniform, it is hereby ordered as follows:

Section 1. The head of each Executive department and agency subject to the Freedom of Information Act shall, to the extent permitted by law, establish procedures to notify submitters of records containing confidential commercial information as described in section 3 of this Order, when those records are requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, if after reviewing the request, the responsive records, and any appeal by the requester, the department or agency determines that it may be required to disclose the records. Such notice requires that an agency use good-faith efforts to advise submitters of confidential commercial information of the procedures established under this Order. Further, where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

Sec. 2. For purposes of this Order, the following definitions apply:

(a) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(b) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

Sec. 3. (a) For confidential commercial information submitted prior to January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, provide a submitter with notice pursuant to section 1 whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) the department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) For confidential commercial information submitted on or after January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, establish procedures to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. Such agency procedures may provide for the expiration, after a specified period of time or changes in circumstances, of designations of competitive harm made by submitters. Additionally, such

procedures may permit the agency to designate specific classes of information that will be treated by the agency as if the information had been so designated by the submitter. The head of each Executive department or agency shall, to the extent permitted by law, provide the submitter notice in accordance with section 1 of this Order whenever the department or agency determines that it may be required to disclose records:

- (i) designated pursuant to this subsection; or
- (ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm.

Sec. 4. When notification is made pursuant to section 1, each agency's procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

Sec. 5. Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the submitter a written statement briefly explaining why the submitter's objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

Sec. 6. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, each agency's procedures shall require that the submitter be promptly notified.

Sec. 7. The designation and notification procedures required by this Order shall be established by regulations, after notice and public comment. If similar procedures or regulations already exist, they should be reviewed for conformity and revised where necessary. Existing procedures or regulations need not be modified if they are in compliance with this Order.

Sec. 8. The notice requirements of this Order need not be followed if:

- (a) The agency determines that the information should not be disclosed;
- (b) The information has been published or has been officially made available to the public;
- (c) Disclosure of the information is required by law (other than 5 U.S.C. 552);
- (d) The disclosure is required by an agency rule that (1) was adopted pursuant to notice and public comment, (2) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act, and (3) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;
- (e) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to section 7, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(f) The designation made by the submitter in accordance with agency regulations promulgated pursuant to section 7 appears obviously frivolous; except that, in such case, the agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

Sec. 9. Whenever an agency notifies a submitter that it may be required to disclose information pursuant to section 1 of this Order, the agency shall also notify the requester that notice and an opportunity to comment are being

provided the submitter. Whenever an agency notifies a submitter of a final decision pursuant to section 5 of this Order, the agency shall also notify the requester.

Sec. 10. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan

THE WHITE HOUSE
June 23, 1987.

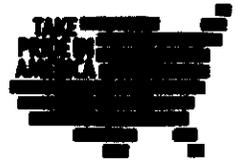
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United States Department of the Interior
 OFFICE OF SURFACE MINING
 Reclamation and Enforcement
 WASHINGTON, D.C. 20240



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1. **Purpose.** The purpose of this directive is to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, in accordance with the procedures established in the Department of the Interior regulations contained in 43 CFR Part 2, Subpart B-Requests for Records. It also provides internal guidelines and procedures for routing requests, reviewing documents for FOIA allowed exemptions, and responding to requests made to the Office of Surface Mining Reclamation and Enforcement (OSM) under the FOIA, in keeping with the spirit of the FOIA (43 CFR 2.13(a)(b).)

2. **Summary of Changes.** This directive revises and supersedes Directive INF-3, Title Transmittal Number 721, dated May 14, 1992. The significant revisions are as follows:

a. Section 3.e., Agency Record, has been expanded to refer reader to INF-1, Records Management Manual, for guidance on filing procedures and records disposition.

b. Sections 4.b.(11), 4.b.(16), and 4.b.(22) have been revised to add the requirement that responses that quote the appeal rights must be mailed by Certified Mail, Return Receipt Requested.

c. Section 4.b.(20), Billing for Collection of Fees, has been expanded to address non-payment of fees by the requester and subsequent action.

d. Appendix C, Illustration 5. A new sample letter has been added which should be sent to the requester of commercial (b)(4) information when the company that provided the information must be contacted for clearance to release the information.

e. Appendix C, Illustration 6. A new sample letter has been added to be sent to the requester asking for the assurance of payment of fees.

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