

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

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To: NRC Management Directives Custodians

Subject: Transmittal of Directive 3.1, "Freedom of Information Act"

Purpose: Directive and Handbook 3.1 are being revised to reflect changes to the "personal records" requirement by eliminating the requirement that employees must submit their personal records for a review by the FOIA/PA Officer and OGC and changes in processing FOIA requests as a result of ADAMS.

Office and Division of Origin: Office of the Chief Information Officer

Contact: Mary Jean Pool, 415-7097

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Office of Administration
David L. Meyer (301) 415-7162 or
Doris Mendiola (301) 415-6297

OFFICE OF ADMINISTRATION

Freedom of Information Act

Directive 3.1

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U. S. Nuclear Regulatory Commission

Volume: 3 Information Management
Part: 1 Publications, Mail, and Information
Disclosure

CIO

Freedom of Information Act Directive 3.1

Policy (3.1-01)

It is the policy of the U.S. Nuclear Regulatory Commission to implement the provisions of the Freedom of Information Act (FOIA) by responding to requests for records in accordance with the requirements established by 10 CFR Part 9. Any NRC employee who receives, processes, or responds to FOIA requests for records shall adhere to the policies and procedures of this directive. (011)

This directive does not cover paragraphs (a)(1) and (2) of FOIA, which require publication in the Federal Register of certain information. It also does not cover information requested in Commission adjudicatory proceedings under Subpart G of 10 CFR Part 2. Provisions of the Privacy Act of 1974, as amended, are covered in Management Directive 3.2. (012)

Objectives (3.1-02)

- To define responsibilities and authorities for the review and processing of FOIA initial requests and appeals consistent with the requirements and the time limits of FOIA and 10 CFR Part 9, Subpart A. (021)
- To inform the NRC staff about the types of records that can be released to the public or that are exempt from disclosure. (022)

Organizational Responsibilities and Delegations of Authority

(3.1-03)

The Commission **(031)**

- Advises the Assistant Secretary of the Commission, after consulting members of the Office of the General Counsel (OGC), to initially determine whether to disclose records subject to FOIA requests of the Commission, former NRC Commissioners, or members of former Commissioners' personal staffs. (a)
- Each Commissioner advises the Assistant Secretary of the Commission whether to disclose, in whole or in part, records that he or she originated or possesses but that are not located in the official files of the Secretary of the Commission. (b)
- Advises the Secretary of the Commission—(c)
 - After consulting OGC, whether to disclose records (as described in (a) above), in whole or in part, for an appeal of an initial decision denying those records (i)
 - Whether to grant, as a matter of discretion, an appeal of an initial decision of boards, panels, or offices reporting directly to the Commission and to the Advisory Committee Management Officer (ii)
- Approves substantive changes to NRC regulations in 10 CFR Part 9, Subpart A, that implements FOIA. (d)

Executive Director for Operations (EDO) **(032)**

- Makes the initial determination whether to release or withhold records maintained in his or her office. These include records originated by the office or received from sources outside NRC. (a)
- Implements FOIA and NRC procedures for responding to all requests for documents that the respective office originated or for which it has primary responsibility. (b)

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**Executive Director for
Operations (EDO)**
(032) (continued)

- Appoints an office FOIA coordinator and alternate FOIA coordinator to coordinate FOIA matters. (c)
- Appoints a senior management FOIA official (see Section (0312) of this directive). (d)

Chief Information Officer (CIO)
(033)

- Ensures that a program to administer FOIA is effectively implemented within NRC. (a)
- Issues rules to amend 10 CFR Part 9, Subpart A, in accordance with delegated authority. (b)
- Supervises the NRC's Public Document Room program that allows the public to inspect and copy records as required by Section (a) (2) of FOIA. (c)
- Designates the agency's Freedom of Information Act and Privacy Act (FOIA/PA) Officer (see Section (0311) of this directive). (d)

General Counsel
(034)

- Makes the initial determination whether to release or withhold records maintained in his or her office that OGC originated or received from other NRC offices or from sources outside NRC. (a)
- Implements FOIA and NRC procedures for responding to all requests for documents that his or her office originated or for which it has primary responsibility. (b)
- Appoints an office FOIA coordinator and alternate FOIA coordinator to coordinate FOIA matters. (c)
- Appoints a senior management FOIA official (see Section (0312) of this directive). (d)
- Designates a FOIA attorney to advise and assist the staff in developing NRC regulations and procedures to comply with FOIA. (e)

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General Counsel
(034) (continued)

- Designates a FOIA attorney to advise and assist the staff in initially determining whether particular records are exempt from disclosure, in whole or in part, under 10 CFR 9.17. The FOIA attorney reviews all proposed initial withholdings submitted by the FOIA/PA staff for a determination of legal sufficiency and appropriateness of the use of the exemptions, except for OIG records. (f)
- Designates a FOIA attorney to advise and assist the staff who make determinations for an appeal of the denial of records. Prepares responses to those appeals to be determined by the Secretary of the Commission and reviews for legal sufficiency and appropriateness of the use of the exemptions appeals to be signed by the Deputy Executive Directors. (g)
- Interprets FOIA regulations in 10 CFR Part 9, Subpart A, as authorized by 10 CFR 9.5. (h)
- Provides legal advice on other problems arising under FOIA as requested. (i)
- Coordinates NRC activities relating to lawsuits filed under FOIA. (j)
- Provides recommendations to the Office of the Secretary of the Commission and the Commission on the initial determination on the releasability of records. (k)
- Assists the FOIA/PA staff in conducting FOIA and PA training for the NRC staff. (l)

Secretary of the Commission (SECY)
(035)

- Disseminates requests to the Chairman and Commissioners, as appropriate, asking them to identify records requested under the FOIA. (a)
- Searches the Secretary's official files to identify records requested under the FOIA. (b)

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Secretary of the Commission (SECY)
(035) (continued)

- After consulting members of OGC, obtains the views of the Commission under Section (031) of this directive, on whether to disclose records, in whole or in part, in response to initial requests or appeals. (c)
- Makes a final determination on an appeal of an initial decision in which records were denied by the Assistant Secretary of the Commission or by any office director reporting to the Commission. (d)
- Makes a final determination on an appeal of an initial decision of the FOIA/PA Officer to deny a request to waive or reduce fees or to deny expedited processing. (e)
- Appoints an office FOIA coordinator and alternate FOIA coordinator to coordinate FOIA matters. (f)
- Appoints a senior management FOIA official (see Section (0312) of this directive). (g)

Inspector General (IG)
(036)

- Implements FOIA and NRC procedures for responding to all requests for documents that OIG originated or for which it has primary responsibility. (a)
- Appoints an office FOIA coordinator and alternate FOIA coordinator to coordinate FOIA matters. (b)
- Appoints a senior management FOIA official (see Section (0312) of this directive). (c)
- Makes a final determination on an appeal of an initial decision of the Assistant Inspector General for Investigations. (d)
- Determines whether records from OIG can be placed in the NRC's public electronic reading room. (e)

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Deputy Executive Directors
(037)

Make the final determinations on behalf of the EDO for appeals of initial denials of FOIA or PA requests involving the records of an office director who reports to the EDO. The final determination will be made by the Deputy EDO who has jurisdiction over the office from which records have been denied, or by the Deputy Executive Director for Management Services (DEDM) if the records denied are from offices under the jurisdiction of two or more deputy executive directors. The DEDM will coordinate the EDO's final determination with the other respective deputy executive directors.

Assistant Secretary of the Commission
(038)

- Initially denies records of the Commission, a Commissioner, or former Commissioners and their staffs. (a)
- Initially denies records originated by the Office of the Secretary. (b)
- As the Advisory Committee Management Officer, initially denies records originated by advisory committees established under 10 CFR Part 7, including the Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste. (c)

**Office Directors, Regional Administrators,
and Chairmen of Boards, Panels, or
Committees**
(039)

- Determine whether to release or withhold records originated by their respective offices, records for which their offices have principal responsibility, and records maintained by their offices from sources outside the NRC. (a)
- Implement FOIA and NRC procedures for responding to all requests for documents that their respective offices originated or for which they have primary responsibility. (b)
- Appoint an office FOIA coordinator and alternate FOIA coordinator to coordinate FOIA matters. (c)
- Appoint a senior management FOIA official (see Section (0312) of this directive). (d)

**Office Directors, Regional Administrators,
and Chairmen of Boards, Panels, or
Committees
(039) (continued)**

- When responding to an appeal of an initial disclosure determination, office directors, regional administrators, and chairmen of boards, panels, or committees, or their designees, will personally approve the determination to continue to withhold records, or portions thereof, and the statement of “foreseeable harm,” when one is required to accompany the recommendation to withhold. (e)

**Assistant Inspector General for
Investigations
(0310)**

Determines whether to release or withhold records originated within OIG, records for which the office has principal responsibility, and records received within the office from sources outside the NRC, except for records addressed under Section (031) of this directive.

**Freedom of Information Act and
Privacy Act Officer
(0311)**

- Administers the FOIA program for NRC and exercises the functions delegated by 10 CFR Part 9, Subpart A, including coordination of agency responses to initial requests and appeals of initial denials, maintenance of official FOIA files, and preparation of the annual report to the Attorney General. (a)
- Reviews records containing information proposed to be withheld, in whole or in part, to identify questions or issues regarding the appropriateness of the exemptions cited as the basis for withholding the information. (b)
- Independently determines whether or not to initially deny access to records, in consultation with OGC, of all NRC offices except OGC, SECY, OIG, advisory committees subject to 10 CFR Part 7, and the Offices of the Commissioners. (c)

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**Freedom of Information Act and
Privacy Act Officer**
(0311) (continued)

- Makes the initial determination whether to grant or deny a request to waive or reduce fees for search, review, and duplication of records. (d)
- Makes the initial determination whether to grant or deny a request for expedited processing. (e)
- Conducts orientation training for all new office FOIA coordinators, alternatives, or backups and Senior FOIA management officials; coordinates attendance at DOJ or other agency sponsored FOIA/PA training, when appropriate; and informs NRC staff of other FOIA/PA training as available. (f)
- Ensures that appropriate fees are charged for search, review, and copying. (g)

Senior Management FOIA Official
(0312)

- Serves as the office focal point to resolve problems that cannot be resolved between FOIA staff and the office FOIA coordinator. (a)
- Represents the office director in resolving initial disclosure determination issues or delays by the staff in responding to office FOIA actions. (b)
- Assists the office FOIA coordinator in clarifying the scope of requests and identifying appropriate office staff to conduct the search for and review of responsive records. (c)
- Possesses substantial knowledge of the work and current technical and policy considerations within the office, usually the experience level of Grade 15 or higher. (d)

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**Director, Division of Facilities and
Security (DFS), ADM
(0313)**

- Advises and assists authorized classifiers with classifying, declassifying, and downgrading NRC-originated classified or potentially classifiable information requested under the FOIA. (a)
- Coordinates, through the FOIA/PA Officer, with other Federal agencies the classification, declassification, and downgrading of classified information obtained from these agencies and included in NRC records requested under the FOIA. (b)
- Coordinates with the Department of Energy the downgrading of Restricted Data requested under the FOIA. (c)

**Applicability
(3.1-04)**

The policy and guidance of this directive and handbook apply to all NRC headquarters and regional employees when processing FOIA requests.

**Handbook
(3.1-05)**

Handbook 3.1 contains the procedures and guidelines to implement FOIA and in accordance with NRC regulation specified in 10 CFR Part 9, Subpart A, that implement FOIA.

**References
(3.1-06)**

Code of Federal Regulations—

10 CFR Part 9, "Public Records."

10 CFR 2.790, "Public Inspections, Exemptions, Requests for Withholding."

10 CFR 73.21, "Requirements for the Protection of Safeguards Information."

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References

(3.1-06) (continued)

Department of Justice, "Freedom of Information Act Guide and Privacy Act Overview" (available in the FOIA/PA Office).

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

NRC Commission Internal Procedures, Office of the Secretary of the Commission.

NRC Management Directive—

3.2, "Privacy Act."

3.4, "Release of Information to the Public."

8.8, "Management of Allegations."

8.14, "Senior Management Meeting."

12.1, "NRC Facility Security Program."

12.2, "NRC Classified Information Security Program."

12.6, "NRC Sensitive Unclassified Information Security Program."

NUREG-0910, "NRC Comprehensive Records Disposition Schedule."

Privacy Act (5 U.S.C. 552a).

Uniform Freedom of Information Act Fee Schedule and Guidelines,
52 FR 10012 (March 27, 1987).

Freedom of Information Act

Handbook 3.1

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Part I

Request for Agency Records

Freedom of Information Act (FOIA) Request Process (A)

Exhibit 1 shows the lines of responsibility involved in processing FOIA requests at NRC.

Principles (B)

Duty To Identify and Retain Records (1)

All agency records, including drafts, and electronic records (e.g., emails with the properties page, WordPerfect files, disks, or audio and video tapes) that are in existence on the date a request is received and that are within the scope of the subject matter of the request must be addressed in response to the request. (a)

Once an agency record has been captured by a FOIA request, an employee may not destroy or remove the record from NRC's possession and control before the prescribed disposition date for either the FOIA file or the official file for the record, whichever is latest. (b)

An employee who willfully destroys or removes a record that is captured by a FOIA request from NRC's possession and control may be subject to NRC administrative disciplinary sanctions or a finding by a district court that the employee acted arbitrarily or capriciously and is thus subject to investigation and sanctions by the Merit Systems Protection Board. (c)

Principles (B) (continued)

Public Interest Determination for a Record (2)

Regulation (10 CFR 9.25) requires that even if a record, or a portion thereof, is exempt from mandatory disclosure, the head of the responsible office shall determine whether disclosure of the record will adversely affect the public interest or the rights of any individual. This provision permits the discretionary release of records even though they are legally exempt from disclosure under one or more of the exemptions specified in FOIA. Unless disclosure will cause some foreseeable harm to an interest protected by an exemption, the record should be disclosed.

Segregating Nonexempt and Exempt Portions of a Record (3)

FOIA provides that an agency must give any reasonably segregable portion of a record to any person requesting the record after the exempt portions are removed. (a)

This provision requires that each exempt record be reviewed to segregate exempt words, sentences, paragraphs, and so forth, from nonexempt words, sentences, and paragraphs. The NRC staff is to segregate the exempt from the nonexempt portions of a record in accordance with the procedures specified in Part II of this handbook. (b)

However, if the exempt material in a record is inextricably intertwined with nonexempt material, the entire record may be withheld. Furthermore, if after segregation the remaining nonexempt material would be essentially meaningless, the entire record may be withheld. (c)

Retention of Records (4)

Offices reporting to the Commission and the Office of the Inspector General may, in accordance with procedures established in Part II(C)(12)(a)(i) and (ii) of this handbook, at their discretion, retain copies of records that they deny in whole or in part, rather than send the records to the FOIA/Privacy Act (PA) Section, Information Services Branch, Information Management Division, Office of the Chief Information Officer. (a)

For offices reporting to the Executive Director for Operations, in most instances FOIA/PA Section will retain copies of records that are denied in whole or in part. (b)

Principles (B) (continued)

Retention of Records (4) (continued)

As provided in NUREG-0910, "NRC Comprehensive Records Disposition Schedule," and in accordance with the applicable statute of limitations, these offices must retain records denied in whole or in part for 6 years from the date of denial. (c)

Removal of Records Released in Response to a FOIA (5)

If an office determines that records approved for release and made publicly available in response to a FOIA request were inadvertently or inappropriately released, that office shall immediately so inform the FOIA/PA Section by telephone; the Senior management FOIA Official shall then follow up the call with written confirmation of the release. Upon notification, the FOIA/PA Section will coordinate removal of the records from the public domain.

Records Exempt From Disclosure (C)

The following exemptions (with FOIA designations indicated) for types of agency records are specified in FOIA and 10 CFR 9.17: (1)

- **Exemption 1 (a)**

Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and, in fact, properly classified pursuant to such Executive order

- **Exemption 2 (b)**

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

- **Exemption 3 (c)**

Records specifically exempted from disclosure by statute, provided that such statute either—

- Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue (i)
- Establishes particular criteria for withholding or refers to particular types of matters to be withheld (ii)

Records Exempt From Disclosure (C) (continued)

- **Exemption 4 (d)**
Trade secrets and commercial or financial information obtained from a person and privileged or confidential (referred to in this handbook as “confidential business or proprietary information”)
- **Exemption 5 (e)**
Interagency or intragency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency
- **Exemption 6 (f)**
Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy
- **Exemption 7 (g)**
Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—
 - (7A) Could reasonably be expected to interfere with enforcement proceedings (i)
 - (7B) Would deprive a person of a right to a fair trial or an impartial adjudication (ii)
 - (7C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy (iii)
 - (7D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source (iv)

Records Exempt From Disclosure (C) (continued)

(7E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law (v)

(7F) Could reasonably be expected to endanger the life or physical safety of any individual (vi)

- **Exemption 8 (h)**

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

- **Exemption 9 (i)**

Geological and geophysical information and data (including maps) concerning wells

Whenever a request is made that involves access to records subject to Exemption 7A the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of FOIA when the following apply: (2)

- The investigation or proceeding involves a possible violation of criminal law. (a)
- There is reason to believe that—(b)
 - The subject of the investigation or proceeding is not aware of its pendency. (i)
 - Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings. (ii)

Consult the FOIA/PA Officer or the Office of General Counsel and/or the U.S. Department of Justice's annual publication entitled "Freedom of Information Act Guide and Privacy Act Overview" for guidance in applying the above exemptions. (3)

Part II

Processing an Initial Freedom of Information Act (FOIA) Request

Receipt of a FOIA Request (A)

Action (1)

Any NRC employee who receives a written request for access to or copies of records under the FOIA shall immediately send it to the FOIA/Privacy Act (PA) Section, Information Services Branch, Information Management Division, Office of the Chief Information Officer.

In Writing (2)

Any request for access to records under FOIA must be in writing and clearly state that it is a FOIA request. Records will be made available in any form or format requested (e.g., disk, CD-ROM) by a person if NRC can readily reproduce the record in that form or format.

Questions (3)

Requests citing FOIA that only seek answers to questions will be forwarded to the appropriate office as ordinary correspondence for a direct reply, as appropriate. The requester will have his or her request acknowledged with an explanation that the FOIA process only applies to requests for access to records; it does not include answering questions, unless the question can be answered by providing access to a specific record.

Incomplete or Nonexistent Record (4)

Requests citing FOIA that seek records not yet created or information that would require the creation of a record will not be processed under FOIA. The requester will have his or her request acknowledged with an

Receipt of a FOIA Request (A) (continued)

Incomplete or Nonexistent Record (4) (continued)

explanation that the FOIA process only applies to requests for access to records that already exist, not to records that are not in existence at the time the request is received. However, retrieving information from a database does not constitute creation of a record. Such requests may be forwarded to the appropriate office as ordinary correspondence for a direct reply, as appropriate.

Receipt of Requests by Offices Other Than the FOIA/PA Section (5)

If another NRC office that initially received the request fails to forward it to the FOIA/PA Section on a timely basis, the date of receipt by NRC shall be determined to be the actual date it was received by the receiving office or the date of the request if the actual date of receipt cannot be determined. That time will be charged to the office initially receiving the request.

FOIA/PA Case Number (6)

When the FOIA/PA Section receives a FOIA request, the staff will mark it with the date of receipt and assign it a sequential FOIA/PA case number to be used as the reference in all matters about that request.

Acknowledging Receipt of Requests (7)

Within 10 working days of receipt of a request, the FOIA/PA Officer will send a written acknowledgment to the requester that indicates the name and telephone number of the FOIA/PA Specialist that will be the NRC point of contact for the requester to discuss any matters pertaining to the request.

Perfect Request (8)

The NRC is not deemed to have received a FOIA request until a request has been "perfected." The FOIA/PA staff considers a request perfected when it describes the records sought sufficiently to allow a reasonable search to be made, all questions about the payment of applicable fees have been resolved with the requester, and the request has actually been received in the FOIA/PA Section. If necessary, the FOIA/PA staff will contact the requester to perfect a request by clarifying or limiting the subject or scope of the request, obtaining agreement regarding payment of fees, or resolving other matters that preclude processing the request.

Receipt of a FOIA Request (A) (continued)

Request Categorization by Type (FOIA or PA) (9)

A request made by an individual for information pertaining to himself or herself and that specifies either the FOIA and/or PA, will be processed under PA if the request seeks information contained in a PA system of records and properly identifies himself or herself as the person to whom the records pertain. Requests processed under PA also are processed under FOIA and an individual will have access to the maximum amount of information he or she would be allowed under either of the acts. Processing under PA will not result in less access to information by the individual than would have been available if the request had been submitted under FOIA.

Requirement to Verify Identity (10)

A request made by an individual for information pertaining to himself or herself, whether from the person or a third party, must be accompanied with verification of the identity of the person. An individual may establish his or her identity by a signature, address, date of birth, employee identification number, if any, and one other item of identification such as a photocopy of a driver's license. When a third party has written the request, the request must contain verification of identity and consent of the individual to whom the information pertains to disclose the information to the third-party requester. Without verification of identity and consent, when applicable, records will only be disclosed to the extent they would be disclosed to any third-party requester. A requester will be informed in the letter of acknowledgment of the requirements for verification of identity.

Requests for Fee Waiver (11)

Requests seeking a waiver of fees will be reviewed by the FOIA/PA Officer and a determination will be made whether to grant, deny, or afford the requester the opportunity to submit additional information to justify a waiver of fees. The requester will have his or her request acknowledged with an explanation of the initial determination or, if appropriate, a description of additional information required to make a determination regarding the request for a waiver of fees.

Receipt of a FOIA Request (A) (continued)

Requests for Expedited Processing (12)

Requests seeking expedited processing will be reviewed by the FOIA/PA Officer and a determination will be made whether to grant, deny, or afford the requester the opportunity to submit additional information to justify expedited processing. The requester will have his or her request acknowledged with an explanation of the initial determination or, if appropriate, a description of additional information required to make a determination.

Requests of Special-Interest to the Office of the General Counsel (OGC) (13)

The FOIA/PA staff will review requests against lists of subjects in which OGC has indicated a special interest because of a pending or potential legal action or hearing. A copy of such requests will be furnished to the appropriate OGC attorney handling the matter if known and, if not known, will be brought to the attention of the OGC FOIA Attorney. The attorney will be placed on concurrence for responses to the applicable FOIA request.

Delinquent Payment Accounts (14)

The FOIA/PA staff will review requests against lists provided by the Division of Finance and Accounting, Office of the Chief Financial Officer, to determine whether the requester is a previous FOIA/PA requester with a delinquent payment. Such requesters may not have a new request processed until they have satisfied the prior debt.

Media Requests (15)

When requests are received from the media, the FOIA/PA staff will provide the Office of Public Affairs an information copy of the request if it is not an office to which the request will be assigned for action.

Allegation File Requests (16)

When requests are received that may include allegation files, the FOIA/PA staff will provide the appropriate allegation coordinators an information copy of the request. If the incoming FOIA request might identify an alleged, a blue cover sheet, "Sensitive Allegation Material," will be attached to the front of the FOIA request and mailed to the responsible FOIA coordinator and allegations coordinator in a sealed

Receipt of a FOIA Request (A) (continued)

Allegation File Requests (16) (continued)

envelope marked "To Be Opened By Addressee Only." These requests will not be faxed to the FOIA coordinator.

Office of Investigation (OI) Requests (17)

When requests are received for copies of OI investigation reports, the Office of Enforcement (OE) also will be assigned action for the request.

Multi-Track Processing (18)

Upon receipt of requests, the FOIA/PA staff will make an initial estimate of the time required to process each request on the basis of description of the subject matter. The estimated processing time will depend on the following factors: (a)

- Whether the responsive records are expected to be easily found in a single indexed location or in varied locations that are not indexed or that are filed among a large volume of other records that cannot be easily searched (i)
- The anticipated volume of material that will be located in response to the request that must be gathered, reviewed, and copied (ii)
- The anticipated requirements for consultation between components of NRC and/or with other agencies (iii)

On the basis of the initial estimates of time to respond to the request, it will be placed on one of three processing tracks—(b)

- The first track is for simple requests or requests of moderate complexity that are expected to be completed within 20 working days (e.g., a request that does not involve a large volume of documents, retrieval of documents from regional offices, or extensive coordination between NRC offices). (i)
- The second track is for requests involving unusual circumstances that are expected to take between 21 to 30 working days to complete. (ii)

Receipt of a FOIA Request (A) (continued)

Multi-Track Processing (18) (continued)

- The third track is for requests that, because of their unusual volume or complexity, are expected to take more than 30 working days to complete. (iii)

On Receipt of a Request (19)

NRC will notify the requester in a letter of acknowledgment of the estimated time for completion of action on the request. Should subsequent information substantially change the estimated time to process the request, NRC will notify the requester by telephone or in writing. A requester may modify the request to allow it to be processed faster or to reduce the cost of processing.

Categorization for Fee Purposes (20)

The FOIA/PA Officer will determine the fee category (commercial, media, educational institution, scientific institution, or other) for each request and will include the information about the fee category to the requester in the letter of acknowledgment.

Due Date for Response (21)

FOIA requires that an agency respond to a request within 20 working days from the date of receipt of the request. A request is not considered received by NRC until it has been perfected. In certain unusual circumstances as defined in FOIA, this response time can be extended for an additional 10 working days. Therefore, each office receiving a FOIA action request from the FOIA/PA staff shall treat it as a priority item and respond within the time limits specified in these procedures.

Assigning FOIA Request Actions to an Office for Processing (B)

The FOIA/PA staff will review each request to determine the subject matter of the information being requested and determine which NRC offices would reasonably be expected to have records responsive to the request or which offices would be able to identify the location of records that are responsive to the request. The FOIA/PA staff will hand-carry, send via overnight mail or transmit requests electronically to the FOIA coordinator of each office that is expected to have responsive records. (1)

Assigning FOIA Request Actions to an Office for Processing (B) (continued)

The FOIA/PA staff will not consider a request as having been assigned to an office until it has been perfected. This means the request adequately describes the records sought sufficiently to allow a reasonable search to be made, all questions about the payment of applicable fees have been resolved with the requester, and any other matters, such as verification of identity, have been resolved. If the request does not require clarification, further agreement to pay fees, or resolution of any other issues, it will be considered to be a perfected request as of the date of receipt in the FOIA/PA Section. (2)

Office Processing (C)

Scope of the FOIA Requests (1)

If an originating office determines a request is unclear, needs clarification, or is unreasonable, the office FOIA coordinator should contact the FOIA/PA Section. The FOIA/PA staff will telephone the requester and, if necessary, will have the office FOIA coordinator and other staff, as appropriate, from the searching office, participate in the telephone call with the requester to clarify the scope of the request. FOIA/PA staff always shall be a party to any telephone calls with requesters.

FOIA Coverage (2)

As a result of time restraints, all FOIA/PA specialists and office FOIA coordinators must have alternates or backups when away from the office for 3 or more days.

Initial Estimates to Determine Fees for Processing FOIA Requests (3)

In order to determine the fees that may be charged for processing requests, office FOIA coordinators shall provide the FOIA/PA staff an estimate of the time that will be required to complete the search to locate the records that will be responsive to the request and to review the records to initially determine their releasability. The anticipated volume of records (in number of pages or linear measure for larger volumes) also must be provided. These estimates must be provided by email or telephone within 4 working days from the date of the FOIA/PA Section memorandum to the office FOIA coordinator.

Office Processing (C) (continued)

Suspension of Action (4)

While perfecting requests, whether clarifying the request, awaiting agreement from the requester to pay estimated fees, or other reasons, offices should suspend processing action until notified that the request has been perfected. While processing action is suspended, no time will be charged to the offices.

Obtaining Requester Agreement To Pay Estimated Fees (5)

Once the estimates are received from all offices to which the request has been assigned for action, the FOIA/PA staff will compile the estimates and compute the total fee estimate. The FOIA/PA staff will contact the requester to obtain his or her agreement to pay estimated fees or to submit an advance payment if the amount of the estimated fees require advance payment.

Search (6)

When the FOIA/PA staff have perfected the request (e.g., resolved fee issues and clarified the scope of the request), they will inform the office FOIA coordinator to initiate actions to process the request (e.g., begin the search for records). The FOIA coordinator should follow his or her office procedures to ensure that the responsible staff in that office who are knowledgeable of the subject of the FOIA request and/or who might possess relevant material are instructed to initiate a search of all files or databases that might reasonably be expected to contain copies of the records requested. (a)

The searching office shall conduct a thorough search for and identify all records maintained by it, including records of that office that are in the Central Files or in the Agencywide Documents Access and Management System (ADAMS), the public electronic reading room, and other electronic versions of records (e.g., email, WordPerfect files, computer databases, and audio or video tapes). Although personal records are typically not considered agency records subject to a FOIA request, should an employee have responsive records that he or she believes to be personal records, these records should be reviewed by the employee using the personal record consideration checklist (see Exhibit 2) to determine if the records are personal or agency records. If the determination is made by the employee that the records are personal, the number of pages of personal records must be identified to

Office Processing (C) (continued)

Search (6) (continued)

the FOIA/PA staff. The FOIA/PA staff will inform the requester in writing of this determination. The personal records must be maintained for 6 years from NRC's response to the requester either by the employee, office FOIA coordinator or the FOIA/PA staff. (b)

Review (7)

Staff of the searching office shall review all records located in the office, or under the control of the office (e.g., those in Central Files), to include those the office originated and those it received and maintained that were from other NRC offices or sources outside of NRC (e.g., other Federal agencies, licensees, or foreign governments). Staff of the searching office will conduct a detailed review and make an initial determination as to what information can be released and what information should be withheld in response to the FOIA request without causing any harm to an interest of the Government or a person to whom the record may pertain.

Bracketing Exempt Information (8)

NRC regulations require that any reasonably segregable portion of a record must be provided to any person requesting the records after deletion of the exempt portions. The searching office will provide its determinations to the FOIA/PA staff with proposals to withhold information that is exempt, indicated by bracketing the portions of records considered exempt. The searching office will clearly annotate the exemption that applies to each of the bracketed portions to be withheld next to the bracketed portion of the record where the withholding is to be made. The searching office will provide FOIA/PA staff with the entire record in order to discuss proposed deletions with the originating office and to reach an agreement on the appropriate disposition of the information. (a)

When information that is believed to be exempt from disclosure has been identified and bracketed, the director (or designee) of the responsible office will review the records or portions thereof proposed to be withheld and further determine whether disclosure of the exempt information will adversely affect the public interest or the rights of any person. The director (or designee) of the searching office is the principal official responsible for determining whether there is a

Office Processing (C) (continued)

Bracketing Exempt Information (8) (continued)

foreseeable harm in disclosure of the records, or portions thereof, that have been located in his or her office that fall within the scope of the request. (b)

Bracketing Information Outside the Scope of Requests (9)

If any information on a page of a record that is responsive to the request falls outside the scope of the request, the information either must be released and marked that it is outside the scope, or if it is to be withheld, an exemption must be used to withhold it. The requester will then be provided a redacted copy of the document with the information withheld identified as outside the scope of the request and an annotation of the exemption that is the basis for not disclosing the information. (a)

Should entire pages from a document be outside the scope of the FOIA request, indicate on those pages that they are outside the scope of the request. Those pages will not be provided to the requester. The appendices for "Records Being Withheld in Part" will indicate, where appropriate, the number of pages deemed outside the scope, as well as those withheld under an exemption. (b)

Creating Appendices (10)

The office FOIA coordinator shall provide the FOIA/PA Section with an index of each document that is located in response to the request, whether originated by the searching office, another NRC office, another Federal agency, a private organization, or an individual. Records sent to the FOIA/PA Section should be segregated into five categories and listed in chronological order on the appropriate appendices listing all attachments. All undated records should be listed first and then the dated records, with the oldest listed first. The FOIA coordinator's appendices will be sent with the response to the requester and, if appropriate, placed in the public electronic reading room. If the records contain information that could identify an individual being protected (e.g., an allegor), make sure the appendices also do not compromise the identity of the individual by listing their name or other identifying information. The appendices also should be emailed to the contact in the FOIA/PA Section. The five categories are as follows:

Office Processing (C) (continued)

Creating Appendices (10) (continued)

- **Records Already Publicly Available.** The originating office should verify that the records are, in fact, publicly available. Include on the appendix the date of the record, accession number or other location designator, description and number of pages for each record. (a)
- **Records Being Released in Their Entirety.** Include on the appendix the date of the record, description and page count. For copyrighted records, type an asterisk * before the description of the copyrighted record. (b)
- **Records Being Withheld in Part.** Include on the appendix the date of the record, the description, page count, and FOIA exemption(s). (c)
- **Records Being Withheld in Their Entirety.** Include on the appendix the date of the record, the description, page count, and FOIA exemption(s). (d)
- **Records To Be Referred to Other Office/Agency/Company.** Include on this appendix the date, other entity for the referral, description and page count. If a company record does not indicate an address on the record, provide an address. (e)

Records for Referral (11)

If an office locates records originated by or of interest to other NRC offices, the searching office should indicate its recommendation on releasing or withholding the records and index the records on the appendix for "Records To Be Referred to Other Office/Agency/Company." (a)

The FOIA/PA staff will make all referrals to other offices for consultation or determination regarding release of the records. (b)

If the searching office determines that the records should be withheld in whole or in part, the originating office of the records will be consulted to determine which office will be cited as the denying official. (c)

When records that another office located in its files are referred to an originating office for review, the level of review should be the same as that given by the office locating the records. (d)

Office Processing (C) (continued)

Records for Referral (11) (continued)

If a request captures files of a project or task force, the director of the lead office for the project or task force will provide a disclosure determination and send the records to the FOIA/PA staff for handling. (e)

If OE, OI, the Office of Human Resources, or other offices create a file that includes records obtained from other offices as part of the file (e.g., files for enforcement actions, investigations, or labor relations cases), the office maintaining the file will provide a disclosure determination and send the records to the FOIA/PA staff for handling. (f)

Records located in files of the originating office written to or from an NRC attorney or containing legal analysis must be referred to OGC for a disclosure determination. The searching office should indicate its recommendation as to the releasability of the record. The FOIA/PA staff will refer the records to OGC for a disclosure determination. Should OGC request withholding in their entirety, or in part pursuant to Exemption 5 of FOIA, attorney-client privilege, the originating office will be cited as the denying official. The FOIA/PA staff will obtain the concurrence of the originating office should this occur. (g)

Records located in NRC offices and that were originated by or contain information received from other Federal agencies or a submitter of confidential business or proprietary information must be referred to those entities for consultation before disclosure of information originated by them. The FOIA/PA staff will prepare the necessary letters for these referrals. In most instances, the requester will be informed of the referral. (h)

Occasionally when processing FOIA requests, records originated through the Executive Office (White House) (or records containing information originated from the White House) may be found in files that are responsive to a FOIA request. These records may raise special concerns, including questions of executive privilege, and therefore require special handling. Whenever White House records are located in response to a FOIA request, it is especially important that the office FOIA coordinators ensure that such records are specifically identified when sent to the FOIA/PA Section. The FOIA/PA staff will consult with the appropriate Executive Branch staff office to determine final releasability. (i)

Office Processing (C) (continued)

Records for Referral (11) (continued)

These processes ensure that when an office is utilizing records originated by, or of interest to, another office, both offices have an opportunity to preclude an untimely or harmful disclosure should the need to withhold only be on the basis of requirements of one of the offices involved. (j)

FOIA Coordinators Submission of Records to the FOIA/PA Section (12)

Within 10 working days after NRC perfects the request, each responsible office FOIA coordinator must provide the FOIA/PA staff copies of any records maintained in that office that are responsive to the request. The records should have been reviewed and bracketed as appropriate before submission. This includes records originated by the office, records originated by another NRC office, and records the office received from sources outside the NRC, except as follows: (a)

- The records being denied by the Office of the Commissioners, OGC, or other offices reporting to the Commission may, at the discretion of these offices after review by the OGC attorney, be placed in a sealed envelope, marked with the FOIA/PA number and the name of the Commission office or the OGC division responsible for the decision, and sent to the Secretary of the Commission, rather than being sent to the FOIA/PA staff. The Secretary of the Commission will retain the sealed envelope in a specially designated secure container for the period provided in NUREG-0910, "NRC Comprehensive Records Disposition Schedule," General Records Schedule 14. The records will be given to OGC for review if denial of the records is appealed or if a suit is filed in Federal court challenging their denial. (i)
- The records being denied by the Office of the Inspector General (OIG) may, at OIG's discretion, be maintained in OIG rather than being sent to the FOIA/PA staff. The OIG will retain the records for the period provided in NUREG-0910, "NRC Comprehensive Records Disposition Schedule," General Records Schedule 14. (ii)

Office Processing (C) (continued)

FOIA Coordinators Submission of Records to the FOIA/PA Section (12) (continued)

- If law enforcement records are being denied under Exemption 7A of FOIA, the investigative office may retain records in its investigative file. If the investigative office chooses to retain the records, it also shall retain a listing of the records captured by the request and provide the FOIA/PA staff a certification (Exhibit 3) signed by two individuals stating that disclosure of any of the remaining records in the file could reasonably be expected to interfere with enforcement proceedings. An estimate of the volume of records withheld must be indicated. If providing this estimate would harm an interest protected by the exception, then that should be stated and no further description of the records withheld need be provided. However, the response should explain the harm that could occur by providing the requester an estimate. (iii)
- As stated in Management Directive (MD) 8.8, "Management of Allegations," cover sheets must be attached to allegation records provided in response to a FOIA/PA request. A blue cover sheet, "Sensitive Allegation Material," must be attached to the front of the allegation records being transmitted to the FOIA/PA Section. A red cover sheet, "Confidential Allegation Material," must be attached to the front of records identifying a confidential source when transmitted to the FOIA/PA Section. These cover sheets must remain with the records throughout the FOIA/PA process. (iv)

The originating office should verify, before submission to the FOIA/PA Section, that any record the office identifies as being already publicly available from the public electronic reading room or for sale through the National Technical Information Service (NTIS) or Government Printing Office (GPO) is available. Also, the originating office should send the FOIA/PA Section sufficient information about the file location of the records so that the requester can locate the records (e.g., accession number or other location designator). (b)

Searching Office's Response Memorandum (13)

The searching office's memorandum transmitting the records should, in addition to providing the appendices, indicate whether or not the records being released to the requester should be made publicly available by placement in the public electronic reading room, and

Office Processing (C) (continued)

Searching Office's Response Memorandum (13) (continued)

whether the response is a partial or final response to the request. A completed "Report of Staff Resources for Processing FOIA Requests" (NRC Form 496) should also accompany the final response memorandum.

Foreseeable Harm Statements (14)

A statement of foreseeable harm must be provided to the FOIA/PA staff when Exemptions 2 and 5 of FOIA are being claimed (and Exemptions 6 or 7C when it is not obvious why the exemption is being cited). Harm statements for other exemptions are not necessary unless the reason for withholding the information is not obvious.

Marking Emails (15)

When submitting emails subject to a FOIA request, the properties page must accompany the email. In addition, the sender and addressee's affiliation should be manually written on the message by the office submitting the email before forwarding the email to the FOIA/PA Section if it is not shown elsewhere on the message.

Responding to the Requester (D)

Denying Officials (1)

Except for records from the Offices of the Inspector General (OIG), General Counsel, and the Secretary of the Commission, the FOIA/PA Officer, in consultation with OGC, is responsible for making an independent determination whether to deny the records in whole or in part. The head of each office or other designated official who determines that records submitted by his or her office should be denied will be noted in the response as the denying official along with the FOIA/PA Officer (Exhibit 1). If a denial is indicated, a designated official in the denying office will be asked only to concur in the response if there are any proposed changes from the recommendation initially sent by the office FOIA coordinator to the FOIA/PA Section that have not been resolved.

Preparing Responses (2)

The FOIA/PA staff will—

Responding to the Requester (D) (continued)

Preparing Responses (2) (continued)

- Conduct a detailed review of the bracketed portions of records to be withheld in part and documents proposed to be withheld in their entirety and make an independent judgment whether or not this proposed withholding is proper. (a)
- Perform a general review of records proposed to be released by an office, primarily focusing on records with markings (i.e., classified, proprietary, safeguards, copyrighted), records originated by other Federal agencies, and records containing obvious personal privacy information. (b)
- Identify questions or issues regarding the appropriateness of the exemptions cited as the basis for withholding of the information and inconsistencies between offices, or by one office, in proposed withholdings. (c)
- Make referrals between NRC offices, to other agencies, and to companies either for direct response or consultation, as appropriate. (d)
- After resolution of proposed release determinations, redact the information to be withheld by blacking out with a grease pencil, cutting with an exacto knife, deleting using special photocopy equipment, or by use of electronic redacting techniques that clearly reflect where denied information was withheld. (e)
- Consolidate the appendices received from the searching offices and prepare them to accompany the response to the requester. (f)
- Prepare responses to the requester using NRC Form 464, "Response to Freedom of Information Act (FOIA) Request" or other type response such as email, letters, and so forth, when appropriate. If the request involves a significant number of records, or the responses from some offices are delayed, the FOIA/PA staff may prepare a series of partial responses to the requester. If records are denied, the applicable FOIA exemption(s) and reason(s) for the denial are specified. The response also names the denying official(s) and informs the requester of his or her right to appeal. (g)

Responding to the Requester (D) (continued)

Preparing Responses (2) (continued)

- Obtain all necessary concurrences on the response(s). Once all concurrences have been obtained, the FOIA/PA Officer will sign and the FOIA/PA staff will dispatch the response and when appropriate, make the released records available in NRC's public electronic reading room. OGC reviews all responses that deny records, in whole or in part, except records of the OIG. (h)

FOIA Requests Made Publicly Available (3)

The FOIA/PA staff will ensure that any FOIA requests and records being made publicly available through the public electronic reading room be promptly entered into ADAMS so they can be made public.

FOIA Requests Not Made Publicly Available (4)

Records disclosed in response to a FOIA request that involve records of an essentially personal nature or that could inadvertently cause an invasion of a person's privacy will not be made publicly available. Records of OIG and allegations files will not be made publicly available except with the consent of those respective offices.

Special Procedures for Processing Records Containing Classified Information (E)

Records Already Classified in Accordance With an Executive Order (1)

The classifying office will conduct a declassification review to segregate exempt classified information from nonexempt unclassified information, consulting with the Division of Facilities and Security (DFS), Office of Administration, if necessary. The information in the record determined to be classified should be bracketed and the record sent to the FOIA/PA Section. If the record is transmitted to DFS for a declassification review, cite the pertinent FOIA request number in the transmittal memorandum. (a)

DFS will prepare a memorandum advising the classifying office of the results of its declassification review and indicating which portions of the record are currently classified. DFS also will send a copy of this memorandum to the FOIA/PA Section. (b)

Special Procedures for Processing Records Containing Classified Information (E) (continued)

Records Already Classified in Accordance With an Executive Order (1) (continued)

After the classifying office receives the memorandum from DFS, it will send the FOIA/PA Section a copy of the classified record with the exempt portions bracketed and a copy of the DFS memorandum. The FOIA/PA Section requires a copy of the classified record in the event the denial of the record is appealed. (c)

The FOIA/PA staff will disclose to the requester the unclassified portions of the record unless those portions are to be withheld under another FOIA exemption. The classified portions will be withheld under Exemption 1 of FOIA. (d)

Records Containing Classified Information That Are Not Properly Classified in Accordance With an Executive Order (2)

When, in response to an FOIA request, the searching office locates a record that it believes may contain classified material that has been declassified or that has not been properly marked as containing classified information and that has not been previously disclosed to the public (e.g., is not stamped "Confidential," "Secret," or "Top Secret"), an authorized classifying official in the office that prepared or contracted for the preparation of the record will review the record. (a)

The authorized classifying official will immediately determine whether the record contains classified information and, if it does, will—(b)

- Provide a copy of the record with the classified portions shown in brackets to an NRC authorized original classifier with Top Secret classification authority. (i)
- Follow the procedures specified in MD 12.2, "NRC Classified Information Security Program," if the record has been declassified and disclosed. (ii)

After the authorized original classifier has classified the record, the responsible office will send the FOIA/PA staff a properly marked record with the classified information shown in brackets. (c)

Once the record has been properly classified, the classifying office will treat the record according to the procedures specified in MD 12.1, "NRC Facility Security Program," and MD 12.2. (d)

Special Procedures for Processing Records Containing Proprietary Information (F)

Records Stamped Proprietary (1)

Records captured by a request that have been identified as proprietary will be sent to the FOIA/PA staff along with a copy of the affidavit required under 10 CFR 2.790 and the Commission's determination on that affidavit, if they are available. (a)

The FOIA/PA staff, OGC, and the cognizant NRC office will review the justification provided by the originating company, and if accepted, the FOIA/PA staff will send the requester the information that the originating company agreed was releasable. If the originating company's justification is rejected, the FOIA/PA Officer will notify the submitting company of the information that the NRC does not consider appropriate to withhold. The notification will advise the submitter that the information will be released to the public 15 days after the date of the FOIA/PA Officer's letter unless the submitter contacts the FOIA/PA staff or initiates judicial action to prevent disclosure. (b)

Records Not Stamped Proprietary but Believed To Contain Confidential Business or Proprietary Information (2)

When a searching office determines that an internal memorandum or any other record may contain information a company considers confidential business or proprietary information, bracket this information and send the record to the FOIA/PA staff. (a)

The FOIA/PA Officer will advise the company in writing of NRC's review determination. (b)

The NRC will follow procedures specified in paragraph (b) above. (c)

Contractor Proposals (3)

Subsection (m)(1) of 41 U.S.C. 253(b) prohibits the disclosure of contractor proposals in the possession and control of NRC to any person who makes a FOIA request, except when incorporated into the contract between the NRC and the submitter of the proposal.

Special Procedures for Processing Records Containing Information Concerning Safeguards (G)

Information concerning safeguards identifies a licensee's or an applicant's procedures for safeguarding licensed special nuclear material or detailed security measures for the physical protection of a licensed facility or plant in which licensed special nuclear material is possessed or used. (1)

Some information pertaining to safeguards of certain licensed materials and activities is classified under an Executive order or the Atomic Energy Act of 1954, as amended. Records containing classified information concerning safeguards will be processed in accordance with the procedures specified in Section (E)(1) or (E)(2) of this part. (2)

For records containing unclassified safeguards information as defined in 10 CFR 73.21 and Section 147 of the Atomic Energy Act of 1954, as amended, the office originating the record will send the FOIA/PA staff a copy of the record with the exempt safeguards information bracketed. Indicate in the margin the section(s) of 10 CFR 73.21 under which the bracketed information falls. The FOIA/PA staff will withhold unclassified Safeguards Information considered exempt from mandatory public disclosure under Section 147 of the amended Atomic Energy Act and Exemption 3 of FOIA. (3)

For records containing proprietary information under 10 CFR 2.790(d)(1), the office originating the record will send the FOIA/PA staff a copy of the record with the exempt proprietary information bracketed. Proprietary information considered exempt from public disclosure will be withheld from disclosure under Exemption 4 of FOIA. (4)

Special Procedures for Processing Records Containing NRC Senior Management Meeting (SMM) Information (H)

If an office locates records pertaining to SMMs, these records should be identified and sent to the FOIA/PA staff. The originating office should provide a disclosure determination. The FOIA/PA staff will send the records to the EDO's office for final approval for release.

Special Procedures for Processing Records Containing NRC Senior Management Meeting (SMM) Information (H) (continued)

Should the record be withheld in its entirety or in part, the EDO will be the denying official. (1)

The EDO approves the release of records pertaining to the NRC SMM process, which is described in MD 8.14, "Senior Management Meeting." These records include SMM-related plant performance information, the applicable sections of the SMM executive summary, and the minutes of the SMM. While some of the types of records described below may be released, the EDO must approve the release of these records. (2)

For SMMs conducted before April 1999, the following guidelines apply: (a)

- Records pertaining to a plant that was placed on the Watch List or that received a letter identifying a declining trend in operational safety performance (trending letter) may be released upon screening and redaction of proprietary material, personal privacy material, and material that might compromise investigative efforts or reveal the identity of an alleged. (i)
- Records pertaining to a "discussion plant"—a plant that was discussed at the SMM but was not placed on the Watch List nor issued a trending letter—shall normally be withheld, except as discussed below, as predecisional information under Exemption 5 of FOIA. (ii)
- Records pertaining to a discussion plant may be released, provided that the plant was placed on the Watch List in subsequent SMMs or received a trending letter. The records eligible for release generally should be only those records supporting or associated with the SMM process that provide a sequential record of information and deliberations regarding the NRC's decision to place the plant on the Watch List or to issue the plant a trending letter. The screening process described in paragraph (i) above shall apply. (iii)
- Should a plant that has been removed from the Watch List or for which the NRC has issued a followup letter indicating that the declining performance trend at the plant has been arrested subsequently be identified as a discussion plant, the SMM records

Special Procedures for Processing Records Containing NRC Senior Management Meeting (SMM) Information (H) (continued)

normally shall be withheld under Exemption 5 of FOIA, unless the plant is again placed on the Watch List or issued a trending letter. (iv)

For SMMs conducted after April 1999 and forward, the following guidelines apply: (b)

- Records pertaining to plants whose performance warrants the direct attention and/or involvement of the EDO and/or Commission, “agency-focus plants,” or plants for which the NRC’s intended actions following the SMM are different from those conveyed previously, may be released after screening and redaction of proprietary material, personal privacy material, and material that might compromise investigative efforts or reveal the identity of an alleged. (i)
- Records pertaining to a “discussion plant”—a plant that was discussed at the SMM but was not designated as an agency-focus plant or a plant that did not have intended actions following the SMM different from those conveyed previously—shall normally be withheld, except as discussed under (iii) as predecisional information under Exemption 5 of FOIA. (ii)
- Records pertaining to a discussion plant may be released, provided the plant was designated as an agency-focus plant in subsequent SMMs. The records eligible for release should be only those records supporting or associated with the SMM process and that provide sequential information and records of deliberations regarding the NRC’s decision. These records should be screened as described in (i) above. (iii)
- If a plant that once was designated as an agency-focus plant is subsequently identified as a discussion plant, the SMM records shall normally be withheld under Exemption 5 of FOIA, unless the plant is again designated as an agency-focus plant. (iv)

Special Procedures for Processing Allegation Records (I)

Allegation information should not be released to the public and will not be made publicly available in the public electronic reading room

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without the approval of the regional or program office allegation coordinator or the Agency Allegation Advisor (AAA) or the Assistant Agency Allegation Advisor. The records must be transmitted with either the red or blue cover sheet in accordance with MD 8.8. The AAA will review and concur in all responses to FOIA requests involving allegation records. In providing his or her concurrence, the AAA is certifying that the information to be disclosed from each record, or portion thereof, would not cause harm to an open allegation or disclose the identity of an alleged whose identity still warrants protection. (1)

Records should be scrutinized to identify the following types of information to avoid improperly identifying an alleged, either directly or by an indirect means. Such information may be exempt from disclosure pursuant to Exemption 7C or 7D of the FOIA: (2)

- Name of the alleged or confidential source (a)
- Social Security number (b)
- Date of birth (c)
- Home address, home telephone number (d)
- Employee badge number, work telephone number, office location (e)
- Job title, job description (f)
- Educational background that would identify the individual (g)
- Previous and current employment information that would identify the individual (h)
- Work report numbers (i)
- References to date and time of events and meetings that could reasonably lead a knowledgeable person to identify the alleged or confidential source (j)
- Licensee employee concern program file numbers (k)
- References to a supervisor, co-worker or relative that could lead a knowledgeable person to identify the alleged or confidential source (l)
- References or initials on forms or documentation that indicate the source of the documentation or information (m)

Part III

Processing a Freedom of Information Act (FOIA) Appeal

Receipt of a FOIA Appeal (A)

Any NRC employee who receives an FOIA appeal shall immediately send it to the FOIA/Privacy Act (PA) Section. The FOIA/PA staff will mark the date of receipt on the appeal letter and assign it a sequential control number. FOIA requires that an agency respond to an appeal within 20 working days of the receipt date. A requester may appeal a denial of records, in whole or in part, adequacy of search, or lack of response to the initial FOIA request.

Assigning FOIA Appeal Actions to Offices (B)

The FOIA/PA staff will provide to the office originally denying release of the records, or to the Office of the Secretary of the Commission (SECY) if the office is a Commission-level office, or the Office of the Inspector General (IG) if an IG appeal, a copy of the appeal letter, a copy of the initial request letter, a copy of the initial request denial response with appropriate appendices, and the records that were denied, if the FOIA/PA staff has them. The FOIA/PA staff also will send the Office of the General Counsel (OGC) a copy of the appeal letter and the agency's initial response, except for initial denials and appeals to the Office of the Inspector General.

Processing a FOIA Appeal to the Executive Director for Operations (C)

The original staff offices denying release of the records, in whole or in part, will review the records, consider any new information presented in the appeal letter, and recommend to the FOIA/PA staff whether or

Processing a FOIA Appeal to the Executive Director for Operations (C) (continued)

not the records, in whole or in part, should continue to be withheld from public disclosure. The office response must reflect that the office director or designee has personally approved both the decision to withhold each record (or portion thereof) and the statement of foreseeable harm accompanying the recommendation to withhold. The FOIA/PA staff will review this recommendation to ensure its adequacy and to identify any issues that OGC should address. (1)

After resolving all identified problems, the FOIA/PA staff will prepare a FOIA appeal response. Once necessary concurrences are obtained from the original offices denying the records and OGC, the FOIA/PA staff will send the response to the EDO or the appropriate deputy executive director for approval and signature. If the appeal is denied the response will specify the basis for the denial and will advise the requester of his or her right to seek judicial review under 5 U.S.C. 552(a)(4)(B). (2)

Processing a FOIA Appeal to the Secretary of the Commission (D)

SECY will coordinate a review of the denied records and any new information presented in the appeal letter with OGC and the appropriate office for which the initial denial was made. After resolving all identified problems, OGC will prepare a response for the approval and signature of the Secretary of the Commission. If the appeal is denied, the response will specify the basis for the denial and will advise the requester of his or her right to seek judicial review under 5 U.S.C. 552(a)(4)(B).

Processing a FOIA Appeal to the Inspector General (E)

A response will be prepared by OIG counsel, following consideration of any new information presented in the appeal letter, for the approval and signature of the IG. If the appeal is denied, the response will specify the basis for the denial and will advise the requester of his or her right to seek judicial review under 5 U.S.C. 552(a)(4)(B).

Dispatch (F)

The FOIA/PA staff will dispatch all appeal responses to the requester.

Part IV

Fees for Search, Review, and Duplication of Records Captured by an Initial FOIA Request

General (A)

The FOIA/PA Officer determines the appropriate fee category for each FOIA request on the basis of information contained in the request letter. Any NRC employee who is assigned responsibility to search for or review records captured by any FOIA request shall accurately report to their respective office FOIA coordinator the actual time spent searching for and reviewing the records. This information is used to bill certain requesters.

Charging Fees Under FOIA (B)

Fees may be charged for searching for, reviewing, and duplicating records. (Exhibit 4 shows activities for which fees can be assessed.) (1)

- Fees may be charged for the direct costs of searching for records even though no records are found during the search, or records found during the search are not released. (a)
- Fees may be charged for the review of records to determine which portions of a record, if any, should be released to the requester. (b)
- The charges to duplicate records are as specified in 10 CFR 9.35(b). (c)
- The following hourly rates shall be charged for search and review of agency records by employees: (d)
 - Clerical time spent at GG-7, Step 7, plus 16 percent fringe benefits. (i)

Charging Fees Under FOIA (B) (continued)

- Professional or managerial time spent at GG-13, Step 6, plus 16 percent fringe benefits. (ii)
- Senior Executive or Commissioner time spent at ES-4, plus 16 percent fringe benefits. (iii)

For computer searches, fees may include—(2)

- The cost of operating the central processing unit that is directly attributable to searching for records (a)
- The cost of the computer tape(s), diskette(s), and/or printout(s) (b)
- The salary apportionable to the search for information specialists, operator or programmers (c)
 - If an NRC employee conducts the search, the hourly rate specified in paragraph (1)(d) of this section will be charged. (i)
 - If a contractor must perform the search, the contractor's actual charge to NRC will be charged. (ii)

Requesters of the following services will be charged for direct costs: (3)

- Certification that records are true copies (a)
- Delivery of records by special methods, such as express mail or package delivery service (b)
- Conversion of records to a specified format other than photocopying (c)

The NRC may aggregate requests for determining search and duplication charges if it finds a requester, or group of requesters acting in concert, has filed multiple requests for similar or related records that actually constitute a single request and that these requests involves clearly related matters. (4)

The NRC will assess interest, penalties, and administrative costs on delinquent invoices. Interest will be charged at the rate prescribed in 31 U.S. 3717. (5)

Requests for Which Fees Are Not Charged (C)

The NRC will not charge for a search if the requester is a representative of—(1)

- The news media (a)
- An educational institution (b)
- A noncommercial scientific institution (c)

The first 2 hours of search unless the requester is a commercial-use requester. (2)

The NRC will not charge requesters for reviews unless the requester is a commercial-use requester. (3)

Duplication is provided without charge for the first 100 pages of standard paper copies or equivalent pages on microfiche for all FOIA requesters except commercial-use requesters. (4)

Fees assessed will not be billed to a requester if the cost of collecting the fee would be equal to or greater than the fee itself. (5)

Waiving or Reducing Fees (D)

Fees for searching for and duplicating records may be waived only upon written request. A person requesting the NRC to waive or reduce search or duplication fees shall provide the factual information requested under 10 CFR 9.41(b). This information will permit NRC to determine whether waiving or reducing the fees is in the public interest because disclosure of the information would likely contribute significantly to public understanding of the operations or activities of the Government and not primarily to the commercial interest of the requester.

Glossary

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

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

Alternate Office FOIA Coordinator. Person designated to perform the office FOIA coordinator functions whenever the primary coordinator will be away from the office for 3 or more days.

Commercial-Use Request. A request made under 10 CFR 9.23(b) for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

Commission-Level Office Records. All records originated by a board, a panel, an advisory committee, or an office reporting directly to the Commission that are not sent to the Commission or to individual Commissioner's office but are retained by the originating organization.

Glossary (continued)

Commission Records. All records originated by the Commission or records transmitted to the Commission from any NRC board, panel, office, or advisory committee, or from outside NRC. The term “Commission” refers to the collegial body and not to individual Commissioners.

Direct Costs. Expenditures that an agency incurs in searching for and duplicating agency records. For a commercial-use request, direct costs include the expenditures involved in reviewing records to respond to the request. Direct costs include the salary of the employee category performing the work based on that basic rate of pay, plus 16 percent of that rate to cover fringe benefits and the cost of operating duplicating machinery.

Duplication. The process of making a copy of a record necessary to respond to a request made under 10 CFR 9.23. Copies may take the form of paper copy, microform, audiovisual materials, disk, magnetic tape, or machine-readable documentation, among others.

EDO-Level Office Records. All records originated by an office reporting to the Executive Director for Operations that are not submitted to the Commission or to an individual Commissioner’s office but are retained by the originating organization, or records received from outside the agency for which the office has primary responsibility.

EDO Records. All records originated by the Executive Director for Operations or his personal staff, or received from outside the agency, for which the EDO’s office has primary responsibility.

Educational Institution. An institution that operates a program or programs of scholarly research. “Educational institution” refers to 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.

Employees. Employees, consultants, and members of advisory boards, committees, and panels of the NRC; members of boards designated by the Commission to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

Glossary (continued)

Federal Agency. 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.

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

Freedom of Information Act and Privacy Act (FOIA/PA) Specialist. Title for the caseworkers in the FOIA/PA Section responsible for coordination of FOIA/PA actions between the office FOIA coordinators and requesters and preparation of responses to requesters.

Individual Commissioner’s Records. All records originated by a Commissioner or his or her staff and all records received by a Commissioner or his or her staff from outside sources and not distributed to other NRC offices.

Noncommercial Scientific Institution. An institution that is not operated on a commercial basis, as the term “commercial” is referred to in the definition of “commercial-use request,” and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Office. Unless otherwise indicated, all offices, boards, panels, and advisory committees of the NRC.

Office FOIA Coordinator. The person designated by each office director to serve as the principal point of contact between the FOIA/PA Section and his or her office to coordinate the search, review, and all other processing within the office.

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

Glossary (continued)

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

Public Electronic Reading Room. System of NRC's publicly available information. Within the system there are two libraries: the Publicly Available Records System Library and the Public Legacy Library.

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

Representative of the News Media. Any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. "News" means information that is about current events or that would be of current interest to the public. Examples of news media entities include 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 subscriptions by the general public.

Review. The process of examining records identified as responsive to a commercial-use request to determine whether they are exempted from disclosure in whole or in part. "Review" includes examining records to determine which FOIA exemptions are applicable, identifying records or portions thereof to be disclosed.

Glossary (continued)

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

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

Working Days. Monday through Friday, except legal holidays.

Exhibit 1 Lines of Responsibility

An Initial Request					An Appeal				
	Recv'd/ Dispchd.	Action	Coord.	Denying Official		Recv'd/ Dispchd.	Action	Coord.	Denying Official
Comm. Records	FOIA/PA/ FOIA/PA	SECY	OGC Comm. ^{1&2}	Asst. Secretary		SECY/ FOIA/PA	SECY	OGC Chrm. Comm. ³	Secretary
Indiv. Comr. Records	FOIA/PA/ FOIA/PA	SECY	Indv. Comr. Office	Asst. Secretary		SECY/ FOIA/PA	SECY	Indv. Comr. Office OGC	Secretary
Comm.- Level Office Records	FOIA/PA/ FOIA/PA	Orig. Office	OGC	Office Director ⁴		SECY/ FOIA/PA	Orig. Office	OGC ³ Comm.	Secretary
EDO Records	FOIA/PA/ FOIA/PA	EDO	OGC	EDO		SECY/ FOIA/PA	SECY	OGC ³ Comm. ³	Secretary
EDO- Level Office Records	FOIA/PA/ FOIA/PA	Orig. Office	Orig. Office OGC	Office Director and FOIA/PA Officer		FOIA/PA/ FOIA/PA	Orig. Office	Orig. Office OGC	EDO/ Deputy EDO
IG Records	FOIA/PA/ FOIA/PA	IG	N/A	AIGI		IG/ FOIA/PA	IG	N/A	IG
OGC Records	FOIA/PA/ FOIA/PA	OGC	N/A	OGC		SECY/ FOIA/PA	OGC	N/A	SECY

- 1 The entire Commission shall approve withholding any record that can legally be withheld and shall review any record that cannot legally be withheld before NRC responds to an initial request.
- 2 The entire Commission shall approve the release of any record that can legally be withheld but for which OGC recommends discretionary release before NRC responds to an initial request.
- 3 The entire Commission shall approve the release of any record that can legally be withheld but for which OGC recommends discretionary release before NRC responds to an appeal of an initial request.
- 4 The Advisory Committee Management Officer decides whether to deny records originated by an advisory committee, and the Assistant Secretary decides whether to deny records originated by the Office of the Secretary before NRC responds to an initial request.

Exhibit 2

Personal Record Consideration Checklist

Use the checklist below to assist you in making a determination as to whether your records are personal or agency records. If you have any questions, contact your office FOIA coordinator, FOIA/PA staff and/or OGC or your Regional Counsel.

	YES	NO
Creation – Was the document created by an agency employee on agency time, with agency materials, at agency expense? (If not, then it very likely is not an “agency record,” on that basis alone.)	<input type="checkbox"/>	<input type="checkbox"/>
Content – Does the document contain “substantive” information? (If not, then it very likely is not an “agency record,” on that basis alone.)	<input type="checkbox"/>	<input type="checkbox"/>
Does it contain personal as well as official business information?	<input type="checkbox"/>	<input type="checkbox"/>
Purpose – Was the document created solely for an individual employee’s personal convenience? Alternatively, to what extent was it created to facilitate agency business? _____	<input type="checkbox"/>	<input type="checkbox"/>

Distribution – Was the document distributed to anyone else for any reason, such as for a business purpose?	<input type="checkbox"/>	<input type="checkbox"/>
How wide was the circulation? _____		

Use – Did the document’s author actually use it to conduct agency business (i.e., prepare an agency document)?	<input type="checkbox"/>	<input type="checkbox"/>
If yes, to what extent did others use it? _____		

Maintenance – Was the document kept in the author’s possession?	<input type="checkbox"/>	<input type="checkbox"/>
Was it placed in an official agency file?	<input type="checkbox"/>	<input type="checkbox"/>

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Exhibit 2 (continued)

	YES	NO
Disposition – Was the document's author free to dispose of it at his personal discretion? What was the actual disposal practice? _____	<input type="checkbox"/>	<input type="checkbox"/>
Control – Has the agency attempted to exercise "institutional control" over the document through applicable maintenance or disposition regulations?	<input type="checkbox"/>	<input type="checkbox"/>
Did it do so by requiring the document to be created in the first place?	<input type="checkbox"/>	<input type="checkbox"/>
Segregation – Is there any practical way to segregate out any personal information in the document from official business information?	<input type="checkbox"/>	<input type="checkbox"/>
Revision – Was the document revised or updated after the fact for record-keeping purposes?	<input type="checkbox"/>	<input type="checkbox"/>

Exhibit 3

Exemption 7(A) Certification

Upon review of the records subject to Freedom of Information Act (FOIA) Request Number ____–____, the documents listed below, or the indicated portions thereof, should be released in response to this request. The undersigned hereby certifies that, with respect to the remaining documents in the file, disclosure of each document, or any portion thereof, could reasonably be expected to interfere with enforcement proceedings. Therefore, the remaining documents should be withheld from public disclosure pursuant to Exemption 7(A) of the FOIA.

Volume of Records in File

(Pages or Inches)

Name, Office

Date

Management Approval

Date

RELEASABLE DOCUMENTS

7A Certification

Informs
Form 656

Exhibit 4
Activities for Which Fees Can Be Assessed

Requester Category for Fee Purposes	Search	Review	Duplication
Commercial Use	Yes	Yes	Yes
Representative of News Media, an Educational Institution, or a Noncommercial Scientific Institution	No	No	Yes (in excess of 100 pages)
All Others	Yes (in excess of 2 hours)	No	Yes (in excess of 100 pages)