U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 3.1	FREEDOM OF INFORMATION ACT	DT-11-07
Volume 3	Information Management	
Part 1:	Publications, Mail, and Information Disclosure	
Approved By:	R.W. Borchardt Executive Director for Operations	
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Issuing Office:	Office of Information Services Information and Records Services Division	
Contact Name:	Mary Jean Raphael 301-415-7097	

EXECUTIVE SUMMARY

Directive and Handbook 3.1 are being revised to accomplish the following:

- add the delegation for determinations on appeals to the Deputy Executive Director for Corporate Management;
- add a requirement that a statement of foreseeable harm is required;
- remove Exemption 2 (high);
- remove the requirement that bracketing be performed in red pencil;
- remove the statement that redaction be performed by blacking out with a grease pencil and special copy equipment; and
- add a requirement that appeal responses must be approved by office directors or designees.

TABLE OF CONTENTS

I. POLICY 2

A. Freedom of Information Act (FOIA) and Privacy Act (PA) 2

B. Material Not Covered in This Directive 2

II. OBJECTIVES 3

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY 3

A. Chairman 3

B. Commission 3

C. Executive Director for Operations (EDO) 3

D. Deputy Executive Director for Corporate Management (DEDCM) and Chief Freedom of Information Act Officer 4
E. General Counsel (GC) 4
F. Secretary of the Commission (SECY) 5
G. Inspector General (IG) 5
H. Director, Office of Nuclear Security and Incident Response (NSIR) 5
I. Director, Office of Information Services (OIS) 6
J. Office Directors, Regional Administrators, and Chairmen of Boards, Panels, or Committees 6
K. Executive Assistant to the Secretary of the Commission (SECY) 6
L. Assistant Inspector General for Investigations (AIGI), Office of the Inspector General (OIG) 7
M. Freedom of Information Act and Privacy Act Officer (FOIA/PA Officer), OIS 7
N. Senior Management FOIA Official 7

IV. APPLICABILITY 8

V. DIRECTIVE HANDBOOK 8

VI. REFERENCES 8

I. POLICY

A. Freedom of Information Act (FOIA) and Privacy Act (PA)

1. It is the policy of the U.S. Nuclear Regulatory Commission to implement the record request provisions of the Freedom of Information Act (FOIA) and the Privacy Act (PA) by responding to requests for records in accordance with the requirements established by 10 CFR Part 9.

2. Any NRC employee who receives, processes, or responds to FOIA or PA requests for records shall adhere to the policies and procedures of this directive.

B. Material Not Covered in This Directive

1. This directive does not cover subsections (a)(1) and (2) of the FOIA (except for subsection (a)(2)(D)), which require publication of certain information in the *Federal Register*.

2. It also does not cover information requested in Commission adjudicatory proceedings under 10 CFR Part 2.

3. Provisions of the Privacy Act of 1974, as amended, other than records requests, are covered in Management Directive 3.2, “Privacy Act.”

II. OBJECTIVES

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

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Chairman

Designates the Deputy Executive Director for Corporate Management (DEDCM) as the NRC's Chief FOIA Officer.

B. Commission

1. Advises the Executive Assistant to the 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 for records received from or provided to the Commission, former Commissioners, or members of the personal staff of former Commissioners.
2. Each Commissioner advises the Executive Assistant to the 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 (SECY).
3. Advises SECY—
   (a) After consulting OGC, whether to disclose records (as described in Section III.A.1), in whole or in part, for an appeal of an initial decision denying those records.
   (b) Whether to grant, as a matter of discretion, an appeal of an initial decision of boards, panels, advisory committees, or offices reporting directly to the Commission.
4. Approves substantive changes to NRC regulations in 10 CFR Part 9, Subparts A and B, that implement the FOIA and the PA.

C. Executive Director for Operations (EDO)

1. 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.
2. Delegates to the Deputy Executive Director for Corporate Management (DEDCM) and Chief FOIA Officer the authority to make final determinations on appeals of initial denial of access to records by offices reporting to the EDO or denials under the PA including correction or amendment of PA records, in whole or in part. Makes final

determinations on appeals of a denial for a waiver or a reduction of fees or a denial of a request for expedited processing.

3. Implements FOIA, PA, and NRC procedures for responding to all requests for documents that the offices reporting to the EDO originate or for which it has primary responsibility.
4. Appoints an office FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters.
5. Appoints a senior management FOIA official to resolve FOIA issues (see Section III.M of this directive).

D. Deputy Executive Director for Corporate Management (DEDCM) and Chief Freedom of Information Act Officer

1. Makes the final determinations on behalf of the EDO on appeals of initial denials of FOIA or PA requests and correction or amendment of PA records in whole or in part involving records denied by an office director who reports to the EDO and on appeals of a denial for a waiver or a reduction of fees or a denial of a request for expedited processing.
2. Provides oversight and direction for agency information management activities.

E. General Counsel (GC)

1. 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.
2. Implements FOIA and NRC procedures for responding to all requests for documents that his or her office originated or for which he or she has primary responsibility.
3. Appoints an office FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters.
4. Appoints a senior management FOIA official to resolve FOIA issues (see Section III.M of this directive).
5. Provides advice and assists the staff in developing NRC regulations and procedures to comply with the FOIA.
6. Provides advice and assists the staff in initially determining whether particular records are exempt from disclosure, in whole or in part, under 10 CFR 9.17.
7. Provides advice and assists the staff who make determinations for a FOIA or a PA appeal of the denial of records. Prepares responses to those FOIA appeals to be determined by SECY and reviews for legal sufficiency and appropriateness the use of the exemption in responses to FOIA and PA appeals to be signed by the EDO or the DEDCM.
8. Interprets regulations in 10 CFR Part 9, Subparts A and B, as authorized by 10 CFR 9.5.

9. Provides legal advice on other problems arising under the FOIA and the PA as requested.
10. Coordinates NRC activities relating to lawsuits filed under the FOIA and the PA.
11. Provides recommendations to SECY and the Commission on the initial determination on the releasability of records.
12. Assists the FOIA/PA staff in conducting FOIA and PA training for the NRC staff.

F. Secretary of the Commission (SECY)

1. Disseminates requests to the Chairman and the Commissioners, as appropriate, asking them to identify records requested under the FOIA.
2. Searches SECY's official files to identify records requested under the FOIA.
3. After consulting OGC, obtains the views of the Commission under Section III.A of this directive on whether to disclose records, in whole or in part, in response to initial requests or appeals for Commission records and records of a former Commissioner.
4. Makes a final determination on an appeal of an initial decision in which records were denied by the Executive Assistant to the Secretary of the Commission, the GC, or any office director reporting to the Commission.
5. Appoints an office FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters.
6. Appoints a senior management FOIA official to resolve FOIA issues (see Section III.M of this directive).

G. Inspector General (IG)

1. Implements FOIA, PA, and NRC procedures for responding to all requests for documents that the Office of the Inspector General (OIG) originated or for which OIG has primary responsibility.
2. Appoints an office FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters.
3. Appoints a senior management FOIA official to resolve FOIA issues (see Section III.M of this directive).
4. Makes a final determination on a FOIA or a PA appeal of an initial decision of the Assistant Inspector General for Investigations (AIGI).
5. Determines whether records from OIG that are responsive to FOIA requests can be placed in the Agencywide Documents Access and Management System (ADAMS).

H. Director, Office of Nuclear Security and Incident Response (NSIR)

1. Advises and assists authorized classifiers with classifying, declassifying, and downgrading NRC-originated sensitive, classified, or potentially classifiable information requested under the FOIA.

2. Coordinates, through the FOIA/PA Officer, with other Federal agencies the classification, declassification, and downgrading of sensitive or classified information obtained from these agencies and included in NRC records requested under the FOIA.

3. Coordinates with the Department of Energy the downgrading of Restricted Data requested under the FOIA.

I. Director, Office of Information Services (OIS)

1. Ensures that a program to administer the FOIA and the PA is effectively implemented within NRC.

2. Manages the NRC's Public Document Room program and the NRC Web site that allows the public to inspect and copy records as required by Section (a)(2) of the FOIA.

3. Designates the agency's FOIA/PA Officer.

4. Designates the agency's FOIA/PA Public Liaisons.

J. Office Directors, Regional Administrators, and Chairmen of Boards, Panels, or Committees

1. 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 NRC.

2. Implement FOIA, PA, and NRC procedures for responding to all requests for records that their respective offices originated or for which they have primary responsibility.

3. Appoint an office FOIA coordinator and an alternate FOIA coordinator to coordinate FOIA matters.

4. Appoint a senior management FOIA official to resolve FOIA issues (see Section III.M of this directive).

5. 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 office's recommendation to continue to withhold records, or portions thereof.

K. Executive Assistant to the Secretary of the Commission (SECY)

1. Is the denying official for denied records of the Commission, a Commissioner, or former Commissioners and their staffs.

2. Is the denying official for denied records originated by SECY.

3. Is the denying official for denied records originated by advisory committees established under 10 CFR Part 7, including the Advisory Committee on Reactor Safeguards.

L. Assistant Inspector General for Investigations (AIGI), Office of the Inspector General (OIG)

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 III.A of this directive.

M. Freedom of Information Act and Privacy Act Officer (FOIA/PA Officer), OIS

1. Administers the FOIA and PA program for NRC and exercises the functions delegated by 10 CFR Part 9, Subparts A and B, including coordination of agency responses to initial requests and appeals of initial denials, maintenance of official FOIA and PA files, and preparation of the annual report to the Department of Justice.
2. 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.
3. Independently determines whether or not to initially deny access to records, in consultation with OGC, as appropriate, of all NRC offices except the Offices of the Commissioners, OGC, SECY, or offices reporting to the Commission.
4. Makes the initial determination whether to grant or deny a request to waive or reduce fees for search, review, and duplication of records.
5. Makes the initial determination whether to grant or deny a request for expedited processing.
6. Conducts training for all new office FOIA coordinators, alternates or backups, other interested employees, and senior FOIA management officials; coordinates attendance at Department of Justice or other agency-sponsored FOIA/PA training, when appropriate; and informs NRC staff of other FOIA/PA training, as available.
7. Ensures that appropriate fees are charged for search, review, and duplication services.
8. Serves as the FOIA/PA Public Liaison.

N. Senior Management FOIA Official

1. Serves as the office contact to resolve problems that cannot be resolved between FOIA staff members and the office FOIA coordinator.
2. Represents the office director in resolving initial disclosure determination issues or delays by the staff in responding to office FOIA actions.
3. 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.
4. Possesses substantial knowledge of the work and current technical and policy considerations within the office, usually the experience level of Grade 15 or higher.

IV. APPLICABILITY

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

V. DIRECTIVE HANDBOOK

Directive Handbook 3.1 contains the procedures and guidelines to implement the FOIA in accordance with NRC regulations specified in 10 CFR Part 9, Subparts A and B, that implement request provisions of the FOIA and the PA.

VI. REFERENCES

Code of Federal Regulations

10 CFR 2.390, “Public Inspections, Exemptions, Requests for Withholding.”

10 CFR Part 9, “Public Records.”

10 CFR 73.21, “Protection of Safeguards Information: Performance Requirements.”

Executive Orders

Executive Order 12600, “Predisclosure Notification Procedures for Confidential Commercial Information,” June 23, 1987.

Executive Order 13392, "Improving Agency Disclosure of Information," December 14, 2005.

Memoranda

Presidential Memorandum, The Freedom of Information Act, January 21, 2009.

Attorney General Memorandum, The Freedom of Information Act, March 19, 2009.

NRC Documents

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

NRC Management Directives—

3.2, “Privacy Act.”

3.4, “Release of Information to the Public.”

8.8, “Management of Allegations.”

8.14, “Agency Action Review Meeting (AARM).”

12.1, “NRC Facility Security Program.”

12.2, “NRC Classified Information Security Program.”

12.5, “NRC Automated Information Security Program.”

12.6, “NRC Sensitive Unclassified Information Security Program.”

12.7, “NRC Safeguards Information Security Program.”

NRC Yellow Announcement No. 054, New Freedom of Information Act Procedures, May 19, 2009.

NUREG-0910, “NRC Comprehensive Records Disposition Schedule.”

Other Documents

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

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

United States Code

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

Open Government Act of 2007, Pub. L. No. 110-175.

Privacy Act of 1974 (5 U.S.C. 552a).

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TABLE OF CONTENTS

I. REQUEST FOR AGENCY RECORDS 4

A. Freedom of Information Act (FOIA) Request Process 4

B. Principles 4

1. Duty To Identify and Retain Records 4
2. Public Interest Determination for a Record 5
3. Segregating Nonexempt and Exempt Portions of a Record 5
4. Retention of Records 5
5. Removal of Records Inadvertently Released in Response to a FOIA Request 6

C. Records Exempt From Disclosure 6
1. Exemptions 6
2. Foreseeable Harm Statements 6

II. PROCESSING AN INITIAL FREEDOM OF INFORMATION ACT (FOIA) REQUEST 7

A. Receipt of a FOIA Request 7
1. Receipt of Requests by Offices Other Than the FOIA/PA Staff 7
2. In Writing 7
3. Questions 7
4. Incomplete or Nonexistent Record 7
5. FOIA/PA Case Number 7
6. Acknowledging Receipt of Requests 7
7. Perfected Request 7
8. Request Categorization by Type (FOIA or PA) 8
9. Requirement to Verify Identity 8
10. Requests for Fee Waiver 8
11. Requests for Expedited Processing 8
12. Delinquent Payment Accounts 8
13. News Media Requests 9
14. Allegation File Requests 9
15. Office of Investigations (OI) Requests 9
16. Multitrack Processing 9
17. On Receipt of a Request 10
18. Categorization for Fee Purposes 10
19. Due Date for Response 10

B. Assigning FOIA Request Actions to an Office for Processing 10

C. Office Processing 11
1. Scope of the FOIA Requests 11
2. FOIA Coverage 11
3. Initial Estimates To Determine Fees for Processing FOIA Requests 11
4. Suspension of Action 11
5. Obtaining Requester Agreement To Pay Estimated Fees 11
6. Search 12
7. Duty To Advise If Other Offices or Employees May Have Responsive Records 12
8. Review 12

9. Bracketing Exempt Information 13
10. Bracketing Information Outside the Scope of Requests 13
11. Creating Appendices 13
12. Records for Referral 15
13. Submission of Records by FOIA Coordinators to the FOIA/PA Staff 16
14. Searching Office's Response Memorandum 18
15. Marking E-Mails 18
D. Responding to the Requester 18
1. Denying Officials 18
2. Preparing Responses 18
3. FOIA Requests and Records Made Publicly Available 19
4. FOIA Requests and Records Disclosed in Response to Those FOIA Requests Not Made Publicly Available 19
E. Special Procedures for Processing Records Containing Classified Information 20
1. Records Already Classified in Accordance With an Executive Order 20
2. Records Containing Classified Information That Are Not Properly Classified in Accordance With an Executive Order 20
F. Special Procedures for Processing Records Containing Proprietary Information 21
1. Submission of Records Stamped Proprietary 21
2. Predisclosure Notification Procedures for Information Containing Trade Secrets or Confidential Commercial or Financial Information 21
3. Notice of Opportunity to Object to NRC's Initial Disclosure Determination 21
4. Submitter's Objection to Disclosure 21
5. Notice of Final Decision to Disclose 22
6. Corresponding Notice to Requesters 22
7. Notice to Submitter of FOIA Lawsuit 22
8. Records Not Stamped Proprietary But Believed To Contain Confidential Business or Proprietary Information 22
9. Contractor Proposals 22
G. Special Procedures for Processing Records Containing Agency Action Review Meeting (AARM) Information 23
H. Special Procedures for Processing Allegation Records 24
III. PROCESSING A FREEDOM OF INFORMATION ACT (FOIA) APPEAL 25
A. Receipt of a FOIA Appeal 25
B. Assigning FOIA Appeal Actions to Offices 25

C. Processing a FOIA Appeal to the Executive Director for Operations 25
1. Appeal of Denial of Records 25
2. Appeal of Adequacy of Search or No Record Response 26
3. Preparing a FOIA Appeal Reponse 26
D. Processing a FOIA Appeal to the Secretary of the Commission 26
E. Processing a FOIA Appeal to the Inspector General (IG) 26
F. Dispatch 26
IV. FEES FOR SEARCH, REVIEW, AND DUPLICATION OF RECORDS CAPTURED BY AN INITIAL FOIA REQUEST 26
A. General 26
B. Charging Fees Under the FOIA 27
C. Requests for Which Fees Are Not Charged 28
D. Waiving or Reducing Fees 28
V. GLOSSARY 28

EXHIBITS

Exhibit 1 Lines of Responsibility 33
Exhibit 2 FOIA Statutory Exemptions 34
Exhibit 3 Personal Record Consideration Checklist 46
Exhibit 4 Activities for Which Fees Can Be Assessed 47

I. REQUEST FOR AGENCY RECORDS

A. Freedom of Information Act (FOIA) Request Process

Exhibit 1 shows the lines of responsibility involved in processing Freedom of Information Act (FOIA) requests at NRC.

B. Principles

1. Duty To Identify and Retain Records

(a) All agency records (see Section V, "Glossary," of this handbook), including drafts, retired records, records in the possession of the File Center, and electronic records (e.g., e-mails in the Inbox, Sent Items, Cabinet, and Deleted Items folders, all versions of records in the Agencywide Documents Access and Management System [ADAMS] including the Legacy Library, databases, WordPerfect or Word files, spreadsheets, or records on disks or audio or video tapes or other media) 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.

(b) Once an agency record has been captured by a FOIA or a Privacy Act (PA) 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 or PA file or the official file for the record, whichever is latest.

(c) 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 fines and/or imprisonment.

2. Public Interest Determination for a Record

Regulations (10 CFR 9.25(f)) require 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 the FOIA. Any discretionary disclosure should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be affected by disclosure of the information. Discretionary releases of information would primarily apply to information which would have qualified for withholding under Exemptions 2 and/or 5 (see Exhibit 2).

3. Segregating Nonexempt and Exempt Portions of a Record

(a) The 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.

(b) 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 Section II of this handbook.

(c) 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.

4. Retention of Records

(a) Offices reporting to the Commission, individual Commissioner offices, and the Office of the Inspector General (OIG) may, in accordance with procedures established in Section II(C)(13)(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/PA staff.

(b) For offices reporting to the Executive Director for Operations (EDO), the FOIA/PA staff will retain copies of records that are denied in whole or in part unless the denying official deems it necessary to retain the record because of its sensitive nature.

(c) 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.

5. Removal of Records Inadvertently Released in Response to a FOIA Request

In the event an office determines a record that was approved for release and made publicly available was inadvertently released in response to a FOIA or a PA request, the EDO, the Inspector General (IG), and the FOIA/PA Officer should be advised promptly of the occurrence in writing. Refer to Management Directive (MD) 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals," for additional guidance. Follow guidance provided in MD 3.4, "Release of Information to the Public." The FOIA/PA Officer will coordinate the removal of records inadvertently released under the FOIA or the PA from the public domain.

C. Records Exempt From Disclosure

1. Exemptions

Information may be withheld from public disclosure under the FOIA if it falls within one or more of the FOIA statutory exemptions described in Exhibit 2. Case-by-case determinations need to be made on whether information can be protected and, if so, which of the exemptions is most suitable.

2. Foreseeable Harm Statements

(a) In order to withhold information in agency records, a foreseeable harm statement must be provided for Exemption 2. A foreseeable harm statement must also be provided for Exemption 5 (deliberative process), used to protect information in draft records. A single statement may cover multiple records or multiple portions of a record, provided that the harm foreseen, and the reasons why the harm is foreseen, are the same for each. While foreseeable harm statements do not need to be lengthy, they should be reasonably specific. A foreseeable harm statement is not required for Exemption 1 (classified), Exemption 3 (statute), Exemption 4 (proprietary), Exemption 5 (attorney work product, attorney-client privilege), Exemption 6 (personal privacy), and Exemptions 7 (investigatory information) unless it is not obvious why the exemption is being cited.

(b) The NRC has adopted a presumption in favor of disclosure which applies to all decisions involving records sought under the FOIA, in order to increase openness in the Government. Discretionary releases in response to requests for records are strongly encouraged and the NRC should not withhold records simply because a FOIA exemption might allow withholding.

II. PROCESSING AN INITIAL FREEDOM OF INFORMATION ACT (FOIA) REQUEST

A. Receipt of a FOIA Request

1. Receipt of Requests by Offices Other Than the FOIA/PA Staff

   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/PA Officer, Office of Information Services. A FOIA request is not deemed received by NRC until it has been received by the FOIA/PA Officer in accordance with NRC regulations. Written requests may be by paper, e-mail or facsimile.

2. In Writing

   Any request for access to records under the 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.

3. Questions

   Requests citing the 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.

4. Incomplete or Nonexistent Record

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

5. FOIA/PA Case Number

   When the FOIA/PA Officer receives a FOIA request, the FOIA/PA staff will mark it with the date of receipt and assign it a sequential FOIA/PA case number for use as the reference in all matters pertaining to that request.

6. Acknowledging Receipt of Requests

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

7. Perfected Request

   NRC is not deemed to have received a FOIA request until a request has been "perfected." The FOIA/PA Officer considers a request perfected after the request has actually been received by the FOIA/PA Officer, when it describes the records sought

well enough to allow a reasonable search to be made, and all questions about the payment of applicable fees have been resolved with the requester. 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.

8. Request Categorization by Type (FOIA or PA)

   A request made by an individual for information pertaining to himself or herself that specifies either the FOIA and/or the PA will be processed under the PA if the request seeks information contained in a PA system of records and properly identifies the requester as the person to whom the records pertain. Requests processed under the PA also are processed under the 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 the PA will not prevent an individual from having access to information that would have been available if the request had been submitted under the FOIA.

9. Requirement to Verify Identity

   A request made by an individual for information pertaining to himself or herself, whether from the person or a third party, must be accompanied by verification of the identity of the person. An individual may establish his or her identity by a signature, an address, a date of birth, and an employee identification number, if any, and one other item of identification, such as a copy 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 in order to disclose the information to the third party requester. Without verification of identity and consent, when applicable, the request will be administratively closed. A requester will be informed in the letter of acknowledgment of the requirements for verification of identity.

10. Requests for Fee Waiver

    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.

11. Requests for Expedited Processing

    Requests seeking expedited processing will be reviewed by the FOIA/PA Officer, and a determination will be made whether to grant or deny the expedited processing. The requester will have his or her request acknowledged with an explanation of the initial determination.

12. Delinquent Payment Accounts

    If NRC receives a new request and determines on the basis of a review of FOIA billings provided by the Chief Financial Officer that the requester has previously failed to pay NRC a properly charged fee under the FOIA, or NRC is informed by another Federal agency that the requester has not paid billed fees within 30 calendar

days of receipt of the bill for a previous request, NRC may refuse to accept the new request for processing until payment of the full amount owed on the prior request, plus any applicable interest assessed, has been paid.

13. News Media Requests

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

14. Allegation File Requests

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

15. Office of Investigations (OI) Requests

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

16. Multitrack Processing

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

        (i) Whether the responsive records are expected to be easily found in a single indexed location or in varied locations that are not indexed, or whether the responsive records are filed among a large volume of other records that cannot be easily searched

        (ii) The anticipated volume of material that will be located, gathered, reviewed, and copied in response to the request

        (iii) The anticipated requirements for consultation between components of NRC and other agencies and/or submitters

    (b) On the basis of the initial estimates of time needed to respond to the request, the FOIA/PA Officer will place the request on one of three processing tracks:

        (i) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

        (ii) The second track is for requests involving "unusual circumstances" that are expected to take between 21 to 30 working days to complete (for example, requests involving possible records from two or three offices and/or various types of files of moderate volume of which some are expected to be exempt).

        (iii) The third track is for requests that because of their unusual volume or other complexity are expected to take more than 30 working days to complete (for example, requests involving several offices, regional offices, another agency's records, classified records requiring declassification review, records from

businesses that are required to be referred to the submitter for their proprietary review prior to disclosure, records in large volumes which require detailed review because of the sensitive nature of the records such as investigative records or legal opinions and recordings of internal deliberations of agency staff).

17. On Receipt of a Request

    NRC will notify the requester in a letter of acknowledgment of the estimated time to complete the action on the request. If subsequent information substantially changes the estimated time needed to process the request, NRC will so 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.

18. Categorization for Fee Purposes

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

19. Due Date for Response

    The 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 for purposes of complying with response times set forth in the FOIA until it has been perfected. In certain unusual circumstances as specified in the 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. All offices are measured on a 10 working day response time.

B. Assigning FOIA Request Actions to an Office for Processing

1. The FOIA/PA Officer will review each request to determine the subject matter of the information being requested and 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 by overnight mail, or transmit requests electronically to the FOIA coordinator of each office that is expected to have responsive records.

2. The FOIA/PA staff will not consider a request as having been assigned to an office until it has been perfected. This means that the request describes the records sought well enough 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 by the FOIA/PA Officer.

3. Within 4 working days of assigning the request to offices, the FOIA/PA staff will confirm that all assigned office FOIA coordinators have received the e-mail assignment.

C. Office Processing

A step-by-step guide entitled "How to Respond to an Initial FOIA Request" for processing FOIA requests can be found on NRC's internal Web site at http://www.internal.nrc.gov/ois/divisions/irsd/foia/index.html.

1. Scope of the FOIA Requests

   If an office assigned action on a request determines that a request is unclear, needs clarification, or is unreasonable, the office FOIA coordinator will immediately contact the FOIA/PA staff. The FOIA/PA staff will telephone the requester and, if necessary, 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. The FOIA/PA staff always shall be a party to any telephone calls with requesters.

2. FOIA Coverage

   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.

3. Initial Estimates To Determine Fees for Processing FOIA Requests

   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. If a contractor is used to perform the search, the estimated number of contractor hours and the billable rate for the contractor should be provided as a separate item. The office FOIA coordinator shall provide the anticipated volume of records (in number of pages or linear measure for larger volumes). These estimates must be provided by e-mail or telephone within 4 working days of office receipt of the FOIA/PA assignment to the office FOIA coordinator.

4. Suspension of Action

   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.

5. Obtaining Requester Agreement To Pay Estimated Fees

   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 requires advance payment.

6. Search

   (a) When the FOIA/PA staff has determined a request has been perfected (e.g., fee issues have been resolved and the scope of the request clarified), they will notify the office FOIA coordinator to initiate actions to process the request (e.g., begin the search for records). The office 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. The search for records shall include agency records that are in existence on the date the FOIA/PA Officer receives the request.

   (b) 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 File Center, all versions in ADAMS, and other electronic versions of records (e.g., e-mail, Word files, computer databases, audio or video tapes, or other media). If a search is made of a database such as ADAMS, the office response must include the search criteria and the date the search was conducted so that this information can be included in the agency's official FOIA case files in the event there is a challenge that the agency's search for records was inadequate.

   (c) Although personal records are typically not considered agency records subject to a FOIA request, if an employee has responsive records that he or she believes to be personal records, these records must be reviewed by the employee using the personal record consideration checklist (see Exhibit 3) to determine if the records are personal or agency records. If the employee determines that the records are personal, the checklist and the number of pages of personal records should be provided to 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, the office FOIA coordinator, or the FOIA/PA staff.

7. Duty To Advise If Other Offices or Employees May Have Responsive Records

   If an employee in the searching office or another office is aware that employees or other agency offices not assigned action for the request may have records subject to the request because of current or past involvement in the subject matter, particularly as a result of service in previous positions or on ad hoc groups or teams that dealt with the subject, that employee should inform the office FOIA coordinator or the FOIA/PA staff about the office or about those employees who may have responsive records.

8. Review

   Staff of the searching office shall review all records located in the office, or under the control of the office (e.g., those in the File Center and those in the possession of a contractor who maintains them on behalf of the agency for record management purposes), including those records the office originated, received, or maintained whether 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 recommendation as to what information should be released, what information should be withheld, and whether any information that is withholdable should be released. Before discretionary releases are made, there must be full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be affected by disclosure of the information.

9. Bracketing Exempt Information

   (a) 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 recommendations 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. Bracketing should be indicated with pencil so that if changes are necessary the brackets can be easily erased. The searching office will provide the 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.

   (b) A foreseeable harm statement is required when claiming Exemption 2 and Exemption 5 (deliberative process). A harm statement is **not** required for Exemptions 1, 3, 4, 6, or 7, unless it is not obvious why the exemption is cited.

   (c) When information that is believed to be exempt from disclosure has been identified and bracketed, the director or a management official at the Grade 15 level or higher in 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.

10. Bracketing Information Outside the Scope of Requests

    (a) If any information on a page of a record that is responsive to the request falls outside of the scope of the request, the information must be marked that it is outside of the scope. The requester will then be provided a redacted copy of the document with the information withheld identified as being outside the scope of the request.

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

11. Creating Appendices

    The office FOIA coordinator shall provide the FOIA/PA staff with a list 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 staff should be segregated into six 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 office FOIA coordinator's appendices will be sent with the response to the requester and, if appropriate, placed in ADAMS. If the records contain information that could identify an individual being protected (e.g., an alleger), make sure the appendices also do not compromise the identity of the individual by listing his or her name or other identifying information. The appendices should be e-mailed to the contact on the FOIA/PA staff, who will process the appendices as described in Section II.D.2(g) of this handbook. The six categories of records are as follows:

(a) Records Already Publicly Available

(i) The originating office should verify that the records are, in fact, publicly available. The following fields in the ADAMS profile must be reviewed to ensure that the values contained in the fields are correct:

Sensitivity - Non-Sensitive
Availability - Publicly Available
Official Record - Yes
Replicated - Yes

(ii) Include on the appendix the date of the record, the accession number or other location designator, a description, and the page count for each record.

(b) Records Being Released in Their Entirety

Include on the appendix the date of the record, a description, and the page count. For copyrighted records, type an asterisk (*) before the description of the copyrighted record. If a record is in ADAMS as nonpublic and will be released in response to the FOIA, indicate the ADAMS accession number on the appendix. The FOIA/PA staff will arrange for changing the appropriate profile fields to make the record publicly available.

(c) Records Containing Sensitive Security Information To Be Released to the Requester Only

Include on the appendix the date of the record, a description, and the page count.

(d) Records Being Withheld in Part

Include on the appendix the date of the record, a description, the page count, and FOIA exemption(s). A foreseeable harm statement is required when claiming Exemption 2 and Exemption 5 (deliberative process). The same statement may be used for more than one record. A harm statement is not required for Exemptions 1, 3, 4, 6, or 7, unless it is not obvious why the exemption is cited.

(e) Records Being Withheld in Their Entirety

Include on the appendix the date of the record, a description, the page count, and FOIA exemption(s). A foreseeable harm statement is required when claiming Exemption 2 and Exemption 5 (deliberative process). The same statement may be used for more than one record. A harm statement is **not** required for Exemptions 1, 3, 4, 6, or 7, unless it is not obvious why the exemption is cited.

(f) Records to be Referred to Other Office/Agency/Company

Include on this appendix the date, the other entity for the referral, a description, and the page count. If a company record does not indicate an address on the record, provide an address.

12. Records for Referral

(a) If an office in its search for responsive records locates a record or records originated by another NRC office, or for which another NRC office is principally responsible, or for which another NRC office is known to have an interest, the office locating the record must indicate in its response whether it objects to the release of the record in whole or in part. If it has an objection, the searching office that located the record must indicate the basis for that objection so that it may be considered by the office to which the record will be referred for final disclosure determination.

(b) Offices must provide a recommended disclosure determination for any document located by the staff that has been received from or provided to the Commissioners or their staff.

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

(d) If the searching office locates a record that it recommends to be withheld in whole or in part, the originating office or the office primarily responsible for the record will be consulted by the FOIA/PA Section to determine which office director will be cited as the denying official.

(e) 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.

(f) If OE, OI, the Office of Human Resources (HR), 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.

(g) Records located in files of the originating office sent to or from an NRC attorney or containing legal analysis must be referred to the Office of the General Counsel (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. If OGC requests withholding of the records in their entirety or in part, pursuant to Exemption 5 of the FOIA,

attorney-client privilege, the originating office director will be cited as the denying official. The FOIA/PA staff will obtain the concurrence of the originating office if this situation occurs.

(h) Documents created by and received from the Commissioners or their staffs, or communicated to the Commissioners or their staffs, will be referred to the Office of the Secretary of the Commission (SECY) to coordinate the Commissioners' review of the records because these records must receive prior approval from the Commissioners before their release. If they are to be denied in their entirety or in part, the Executive Assistant to the Secretary of the Commission will be the denying official. If a Commissioner is no longer with the agency, SECY, in consultation with OGC, will make the determination whether to release the records, and if they are to be denied in their entirety or in part, the Executive Assistant to the Secretary of the Commission will be the denying official.

(i) Records located in NRC offices that were originated by or contain information received from other Federal agencies must be referred to the agencies for consultation before disclosure of information originated by them. Records located in NRC offices that were designated by a submitter (licensee, applicant, or other commercial organization) as trade secrets or confidential commercial or financial information, or that contain information the NRC believes to be trade secrets or confidential commercial or financial information, the NRC will give the submitter of the information written notice of NRC's initial determination, or NRC's need for information on which to base a determination and an opportunity to object. The FOIA/PA staff will prepare the necessary letters for these referrals. In most instances, the requester will be informed of the referral.

(j) Occasionally when processing FOIA requests, records originated through the Executive Office of the President (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 staff. The FOIA/PA staff will consult with the appropriate executive branch agency to determine final releasability.

(k) 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 if the need to withhold is only on the basis of requirements of one of the offices involved.

13. Submission of Records by FOIA Coordinators to the FOIA/PA Staff

(a) 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 requirement includes records originated by the office; records originated by another NRC office for which the locating office has an interest in its releasing;

records created by, communicated to, or received from the Commissioners or their staffs; and records the office received from sources outside of NRC, except as follows:

(i) The records being denied by the Executive Assistant to the Secretary of the Commission on behalf of the Offices of the Commissioners or SECY, or being denied by OGC, or other offices reporting to the Commission may, at the discretion of these offices after review by an 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 SECY, rather than sent to the FOIA/PA staff. SECY 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.

(ii) The records being denied by the Assistant Inspector General for Investigations for the OIG may, at OIG's discretion, be maintained in OIG rather than sent to the FOIA/PA staff. The OIG will retain the records for the period provided in NUREG-0910, General Records Schedule 14.

(iii) If law enforcement records are being denied under Exemption 7(A) of the FOIA, the investigative office may retain records in its investigative file. If the investigative office chooses to retain the records, it shall mark in the file the records captured by the request and provide the FOIA/PA staff an Exemption 7(A) Certification, NRC Form 656 (accessible through the online forms icon), 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, that fact 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.

(iv) As stated in 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 staff. 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 staff. These cover sheets must remain with the records throughout the FOIA/PA process.

(b) Before submitting a record to the FOIA/PA staff, the originating office should verify that any record the office identifies as being already publicly available from ADAMS or for sale through the National Technical Information Service or the Government Printing Office is actually available. Also, the originating office should send the FOIA/PA staff sufficient information about the file location of the records so that the requester can locate them (e.g., accession number or other location designator).

14. Searching Office's Response Memorandum

    (a) 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 ADAMS, and whether the response is a partial or final response to the request. A foreseeable harm statement is required for records being withheld in part or entirety pursuant to Exemption 2 and/or Exemption 5 (deliberative process). The memorandum must also indicate whether or not any record(s), or portions of record(s), contain sensitive security information. Also indicate whether or not a discretionary release of information was or was not made in a record(s). If a discretionary release was made, indicate whether Exemption 2 and/or 5 would have qualified.

    (b) A completed NRC Form 496, "Report of Staff Resources for Processing FOIA Requests" (accessible through the online forms icon) should also accompany the final response memorandum.

15. Marking E-Mails

    When submitting e-mails subject to a FOIA request, the sender's affiliation should be manually written on the message by the office submitting the e-mail before forwarding the e-mail to the FOIA/PA staff if they are not shown elsewhere on the message.

D. Responding to the Requester

1. Denying Officials

   Except for records located in the Office of a Commissioner, SECY, OGC, OIG, or offices reporting to the Commission, the FOIA/PA Officer, in consultation with OGC, as appropriate, 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 staff that have not been resolved.

2. Preparing Responses

   The FOIA/PA staff will—

   (a) Conduct a detailed review of the bracketed portions of records to be withheld in part and records proposed to be withheld in their entirety and make an independent judgment as to whether or not this proposed withholding is proper.

   (b) 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.

(c) Conduct a review of foreseeable harm statements to determine the appropriateness of the claim, challenge inappropriate justifications, and obtain additional justifications or negotiate with the office to release the information.

(d) 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.

(e) Make referrals between NRC offices, to other agencies, and to companies either for direct response or consultation, as appropriate.

(f) After resolution of proposed release determinations, redact the information to be withheld by cutting with an X-acto knife, or by using electronic redacting techniques that clearly reflect where denied information was withheld.

(g) Consolidate the appendices received from the searching offices and prepare them to accompany the response to the requester.

(h) Prepare responses to the requester using NRC Form 464, "Response to Freedom of Information Act (FOIA) Request," or other type response such as e-mail, 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.

(i) 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 publicly available in ADAMS.

3. FOIA Requests and Records Made Publicly Available

All incoming FOIA/PA requests are deemed “sensitive” and “non-public” at the time of their receipt. The FOIA/PA staff will ensure that any FOIA requests and records being made publicly available are promptly entered into ADAMS so they can be made public. Only the FOIA/PA staff may make FOIA requests and responses publicly available.

4. FOIA Requests and Records Disclosed in Response to Those FOIA Requests Not Made Publicly Available

(a) The requests and records disclosed in response to a FOIA request that involve records of an essentially personal nature or that could cause an invasion of a person's privacy will not be made publicly available. Allegations files will not be made publicly available except with the consent of the responsible offices.

(b) When records containing sensitive security-related information are released in response to a FOIA request because they did not rise to the level of exempt information under the FOIA, the records only will be released to the requester. Once two additional FOIA requests are received for the same record(s), the records released in response to the initial FOIA request will be made publicly

available in ADAMS, except for OIG records, unless specifically authorized by the OIG. In such cases, subsection (a)(2)(D) of the FOIA will apply.

(c) In order to determine when a third request has been received for the identical record(s), the FOIA/PA Section will track records that have been only released to a requester because they contain sensitive security-related information.

(d) OIG records disclosed in response to a FOIA request will not be made publicly available unless specifically authorized by the IG.

E. Special Procedures for Processing Records Containing Classified Information

1. Records Already Classified in Accordance With an Executive Order

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

(b) NSIR 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. NSIR also will send a copy of this memorandum to the FOIA/PA staff.

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

(d) 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 the FOIA.

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

(a) When in response to a 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.

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

(i) Provide a copy of the record with the classified portions shown in brackets to an NRC authorized original classifier with Top Secret classification authority.

(ii) Follow the procedures specified in MD 12.2, "NRC Classified Information Security Program," if the record has been declassified and disclosed.

(c) 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. 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.

F. Special Procedures for Processing Records Containing Proprietary Information

1. Submission of Records Stamped Proprietary

   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 2.390 and the NRC staff's decision on the submitter's request that the information be deemed proprietary, if available. The FOIA/PA staff will process information a company has claimed to contain trade secrets or confidential commercial or financial information as provided in 10 CFR 9.28 which is set forth in Sections II.F.2 through II.F.6.

2. Predisclosure Notification Procedures for Information Containing Trade Secrets or Confidential Commercial or Financial Information

   Whenever the searching office makes an initial determination that information should be disclosed in response to a FOIA request or a FOIA appeal that has been designated by the submitter as trade secrets or confidential commercial or financial information, the FOIA/PA Officer will give the submitter of the information written notice of the initial determination or the need for information on which to base a determination and an opportunity to object.

3. Notice of Opportunity to Object to NRC's Initial Disclosure Determination

   The notice will describe the business information requested or include copies of the requested records or record portions containing the information.

4. Submitter's Objection to Disclosure

   The submitter will be allowed 30 calendar days from the date of the notice described in Section II.F.2 of this handbook to object to disclosure unless the Commission determines that a shorter period of time is necessary in a particular instance. If a submitter has any objection to disclosure, the submitter must provide a detailed written statement. The statement must specify all grounds that support why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received until after the date specified for response will not be considered unless that date is extended by the FOIA/PA Officer upon request by the submitter.

5. Notice of Final Decision to Disclose

   The FOIA/PA staff, OGC, and the office responsible for the record will consider a submitter's written statement and specific grounds for nondisclosure. If the FOIA/PA staff, OGC, and the office agree to withhold the information from public disclosure, the FOIA/PA Officer will inform the requester of the decision to deny access to the requested information. Whenever the submitter's request for nondisclosure is denied and it is decided to disclose the information, the FOIA/PA Officer will give the submitter written notice, which must include—

   (a) A statement of the reason(s) for the determination;

   (b) A description of the business information to be disclosed; and

   (c) A specified disclosure date, which will be 30 calendar days subsequent to the date of the notice, or less, as provided under Section II.F.4 above, after which the information will be made available to the public.

6. Corresponding Notice to Requesters

   When the FOIA/PA Officer provides a submitter with notice and opportunity to object to disclosure under Section II.F.4 of this handbook, NRC will also notify the requester(s). Whenever the FOIA/PA Officer notifies a submitter of his or her final decision to disclose the requested information under Section II.F.5 of this handbook, the FOIA/PA Officer shall also notify the requester(s). When a submitter files a lawsuit seeking to prevent the disclosure of trade secrets or confidential commercial or financial information, the FOIA/PA Officer shall notify the requester(s).

7. Notice to Submitter of FOIA Lawsuit

   Whenever a requester files a lawsuit seeking to compel disclosure of trade secrets or confidential commercial or financial information, the FOIA/PA Officer will promptly notify the submitter.

8. Records Not Stamped Proprietary But Believed To Contain Confidential Business or Proprietary Information

   (a) 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.

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

   (c) The procedures specified in Sections II.F.2 through II.F.7 will be followed.

9. Contractor Proposals

   Subsection (m)(1) of 41 U.S.C. 253b 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 NRC and the submitter of the proposal.

G. Special Procedures for Processing Records Containing Agency Action Review Meeting (AARM) Information

1. If an office locates records pertaining to AARMs, 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 Office of the Executive Director for Operations (OEDO) for final approval for release. If the record is withheld in its entirety or in part, the EDO will be the denying official.

2. The EDO approves the release of records pertaining to the AARM process, which is described in MD 8.14,"Agency Action Review Meeting." These records include AARM-related plant performance information, the applicable sections of the AARM executive summary, and the minutes of the AARM. While some of the types of records described below may be released, the EDO must approve this release.

   (a) For AARMs (previously “Senior Management Meetings”) conducted before April 1999, the following guidelines apply:

      (i) 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 alleger.

      (ii) Records pertaining to a "discussion plant"—a plant that was discussed at the AARM 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 the FOIA.

      (iii) Records pertaining to a “discussion plant” may be released, provided that the plant was placed on the Watch List in subsequent AARMs or received a trending letter. The records eligible for release generally should be only those records supporting or associated with the AARM 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 Section II.G.2(a)(i) shall apply.

      (iv) If a plant that has been removed from the Watch List or for which NRC has issued a followup letter indicating that the declining performance trend at the plant has been arrested subsequently is identified as a “discussion plant,” the AARM records normally shall be withheld under Exemption 5 of the FOIA, unless the plant is again placed on the Watch List or issued a trending letter.

   (b) For AARMs conducted after April 1999, the following guidelines apply:

      (i) Records pertaining to plants with performance that warrants the direct attention and/or involvement of the EDO and/or the Commission, "agency-focus plants," or plants for which the NRC's intended actions following the AARM 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 alleger.

(ii) Records pertaining to a "discussion plant"—a plant that was discussed at the AARM but was not designated as an agency-focus plant or a plant that did not have intended actions following the AARM different from those conveyed previously—shall normally be withheld, except as discussed under Section II.G.2(b)(iii) as predecisional information under Exemption 5 of the FOIA.

(iii) Records pertaining to a “discussion plant” may be released, provided the plant is designated as an agency-focus plant in subsequent AARMs. The records eligible for release should be only those records supporting or associated with the AARM process and that provide sequential information and records of deliberations regarding the NRC's decision. These records should be screened as described in Section II.G.2(b)(i).

(iv) If a plant that once was designated as an agency-focus plant is subsequently identified as a discussion plant, the AARM records shall normally be withheld under Exemption 5 of the FOIA, unless the plant is again designated as an agency-focus plant.

H. Special Procedures for Processing Allegation Records

1. Allegation information should not be released to the public and will not be made publicly available in ADAMS 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 or designee will review and concur in all responses to FOIA requests involving allegation records. In providing concurrence, the AAA is certifying that the information to be disclosed from the record, or portion thereof, would not cause harm to an open allegation or disclose the identity of an alleger whose identity still warrants protection.

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

   (a) Name of the alleger or confidential source

   (b) Social Security number

   (c) Date of birth

   (d) Home address

   (e) Home, work, or cellular telephone number

   (f) Work or personal e-mail address

   (g) Employee badge number or office location

   (h) Job title, job description

   (i) Educational background that would identify the individual

   (j) Previous and current employment information that would identify the individual

(k) Work report numbers

(l) References to date and time of events and meetings that could reasonably lead a knowledgeable person to identify the alleger or confidential source

(m) Licensee employee concern program file numbers

(n) References to a supervisor, co-worker, or relative that could lead a knowledgeable person to identify the alleger or confidential source

(o) References or initials on forms or documentation that indicate the source of the documentation or information

III. PROCESSING A FREEDOM OF INFORMATION ACT (FOIA) APPEAL

A. Receipt of a FOIA Appeal

Any NRC employee who receives a FOIA appeal shall immediately send it to the FOIA/PA Officer. The FOIA/PA staff will mark the date of receipt on the appeal letter and assign it a sequential control number. The requester will be sent a written acknowledgement with the name and telephone number of the FOIA/PA specialist who will be the NRC contact for the appeal. The 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, no record response, or lack of response to the initial FOIA request. A requester may also appeal the denial of a request for waiver or reduction of fees, or denial of a request for expedited processing.

B. Assigning FOIA Appeal Actions to Offices

The FOIA/PA staff will provide to the office originally denying release of the records, or to SECY if the office reports to the Commission, or to the OIG if the appeal is to the IG, 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 OGC a copy of the appeal letter and the agency's initial response, except for initial denials and appeals to OIG.

C. Processing a FOIA Appeal to the Executive Director for Operations

1. Appeal of Denial of Records

   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 not the records, in whole or in part, should continue to be withheld from public disclosure. A foreseeable harm statement is required for records being withheld in part or entirety pursuant to Exemption 2 and/or Exemption 5 (deliberative process). The office response must reflect the office director’s or designee’s signature. In addition, if a record(s), or portions of record(s), are being released, the office response must also indicate whether the record(s) do or do not contain sensitive security-related information.

2. Appeal of Adequacy of Search or No Record Response

   The original staff offices tasked with searching for records will be asked to again search for records subject to the initial FOIA request. Based on information provided in the appeal letter, additional offices may be tasked with search for records. If records are located and are to be withheld in whole or in part, a foreseeable harm statement is required pursuant to Exemption 2 and/or Exemption 5 (deliberative process). In addition, if a record(s) or portions of a record(s) are being released, the office response must also indicate whether the record(s) do or do not contain sensitive security-related information. The office response must reflect the office director's or designee's signature.

3. Preparing a FOIA Appeal Reponse

   After resolving all identified problems, the FOIA/PA staff will prepare a FOIA appeal response. When concurrences are obtained from the original offices denying the records, OGC, and any other offices that are appropriate, the FOIA/PA staff will send the response to the Deputy Executive Director for Corporate Management 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).

D. Processing a FOIA Appeal to the Secretary of the Commission

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).

E. Processing a FOIA Appeal to the Inspector General (IG)

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).

F. Dispatch

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

IV. FEES FOR SEARCH, REVIEW, AND DUPLICATION OF RECORDS CAPTURED BY AN INITIAL FOIA REQUEST

A. General

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.

B. Charging Fees Under the FOIA

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

   (a) 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.

   (b) Fees may be charged for the review of records to determine which portions of a record, if any, should be released to the requester.

   (c) The charges to duplicate records are as specified in 10 CFR 9.35(b).

2. For computer searches, fees may include—

   (a) The cost of operating the central processing unit that is directly attributable to searching for records

   (b) The cost of the computer tape(s), diskette(s), and/or printout(s)

   (c) The salary apportionable to the search for information specialists, operator, or programmers

      (i) If an NRC employee conducts the search, the hourly rate specified in 10 CFR Part 9, Subpart A, Section 9.37 will be charged.

      (ii) If a contractor performs the search, the contractor's actual charge to NRC will be charged.

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

   (a) Certification that records are true copies

   (b) Delivery of records by special methods, such as Express Mail or package delivery service

   (c) Conversion of records to a specified format other than copying processes that are readily available in the agency

4. NRC may aggregate requests for determining search and duplication charges if it finds a requester, or a 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 involve clearly related matters.

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

C. Requests for Which Fees Are Not Charged

1. Except as provided above, NRC will not charge for a search if the requester is a representative of—

   (a) The news media

   (b) An educational institution

   (c) A noncommercial scientific institution

2. NRC will not charge for the first 2 hours of search unless the requester is a commercial use requester.

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

4. 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.

5. 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.

D. Waiving or Reducing Fees

Fees for searching for and duplicating records may be waived only upon written request. A person requesting 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 the FOIA/PA Officer 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.

V. GLOSSARY

Agency record

A record in the possession and control of NRC that is associated with Government business. An agency record does not include–

1. Publicly available books, periodicals, or other publications that are owned or copyrighted by non-Federal sources

2. Records solely in the possession and control of NRC contractors

3. Personal records in the possession of NRC personnel that have not been circulated or shared with any NRC staff members, were not required to be created or retained by 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

4. 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 functions of the office FOIA coordinator 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 an individual Commissioner's office but are retained by the originating organization.

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 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 performing the work based on the basic rate of pay for that category, 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 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 NRC.

Expedited processing

The placement of a FOIA request at the front of the queue for the particular processing track where the requester clearly demonstrates a compelling need because (1) the failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or (2) with respect to a person primarily engaged in disseminating information, an urgency to inform the public concerning actual or alleged Federal Government activity.

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.

Freedom of Information Act and Privacy Act (FOIA/PA) specialist

Title for the caseworkers in the FOIA/PA staff 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 NRC.

Office FOIA coordinator

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

Perfected request

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

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 commingled with agency records, (2) have not been circulated or shared with others in the course of transacting NRC business, (3) are prepared for the individual's own use, (4) were not required to be created or retained by NRC, (5) can be retained or discarded at the author's sole discretion, or (6) were not used as a substantive part in writing an agency record.

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.

Redact

The process of removing information from records that is to be withheld. Redactions can be made by cutting with an X-acto knife or by using electronic redacting techniques that clearly reflect where denied information was withheld.

Representative of the news media

Any person or entity 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 in which they can qualify as disseminators of "news") who make their products available for purchase, subscription, or free distribution to the general public.

Review

The process of examining records identified as responsive to a 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 and identifying records or portions thereof to be disclosed.

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 a 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

	Received/ Dispatched	Action	Coordination	Denying Official
Commission Records	FOIA/PA	SECY	OGC, Commission[1, 2]	Executive Assistant to the Secretary
Individual Commissioner Records	FOIA/PA	SECY	Individual Commissioner Office	Executive Assistant to the Secretary
Commission-Level Office Records	FOIA/PA	Originating Office	OGC	Office Director[4]
EDO Records	FOIA/PA	EDO	OGC	EDO/DEDOs
EDO-Level Office Records	FOIA/PA	Originating Office	Originating Office, OGC	Office Director and FOIA/PA Officer
IG Records	FOIA/PA	IG	N/A	Assistant Inspector General for Investigations
OGC Records	FOIA/PA	OGC	N/A	OGC

An Appeal

	Received/ Dispatched	Action	Coordination	Denying Official
Commission Records	FOIA/PA	SECY	OGC, Chairman, Commission[3]	SECY
Individual Commissioner Records	FOIA/PA	SECY	Individual Commissioner Office, OGC	SECY
Commission-Level Office Records	FOIA/PA	Originating Office	OGC, Commission[3]	SECY
EDO Records	FOIA/PA	SECY	OGC, Commission[3]	SECY
EDO-Level Office Records	FOIA/PA	Originating Office	Originating Office, OGC	DEDCM
IG Records	FOIA/PA	IG	N/A	IG
OGC Records	FOIA/PA	OGC	N/A	SECY

1. The 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 Commission shall approve the release of any record that can legally be withheld after obtaining the views of OGC and before NRC responds to an initial request.
3. The Commission shall approve the release of any record that can legally be withheld after obtaining the views of OGC and before NRC responds to an appeal of an initial request.
4. The Executive Assistant to the Secretary decides whether to deny records originated by the Office of the Secretary or an advisory committee before NRC responds to an initial request.

Exhibit 2 FOIA Statutory Exemptions

Exemption 1: Classified National Security Information
Statutory description: Matters "specifically authorized under criteria established by an Executive Order to be kept secret" in the interest of national defense or foreign policy

Criteria

- Information meeting standards set forth by Executive Order to be kept secret in the interest of national defense or foreign policy, including information about Federal Government programs to safeguard nuclear materials or facilities, vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, including defense against transnational terrorism, if unauthorized disclosure of information could be expected to cause damage to national security that original classification authority is able to identify or describe
- Information properly classified pursuant to Executive Order by designated classification authorities applying approved classification guidance to specific documents and marked accordingly
- Information not in the public domain
- Mosaic/compilation approach acceptable when compiled information reveals additional association that meets classification standards in Executive Order and is not otherwise revealed in individual items of information (see mosaic or compilation theory at the end of Exhibit 2 of this Handbook)

A foreseeable harm statement is not required for Exemption 1 unless it is not obvious why the agency is citing this exemption.

Examples of classified information:

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

Examples of information that is not classified:

- Safeguards Information
- Critical infrastructure information that does not fall within the purview of the criteria set forth in the Executive Order governing classification of information
- Information labeled "Official Use Only"

Exemption 2: Matters "related solely to internal personnel rules and practices of an agency"

Statutory description: Matters "related solely to internal personnel rules and practices of an agency"

Criteria

- Internal information
- Practices and rules only affecting agency personnel – not applicable to the public and not mission related
- Human Resources or employee relations information, rules, or guides
- No valid public interest

A foreseeable harm statement must be provided for Exemption 2.

Examples of information that may qualify for Exemption 2 protection:

- Crediting plans (if the agency expects to use the plans again in the future)
- Employee emergency exit procedures, shelter-in-place plans, and so on
- Personnel security practices
- Procedures for employee performance evaluations
- Internal procedures for responding to employment-related complaints
- Internal procedures guides
- Internal publications
- Employee bulletins or announcements
- Concurrence chains
- Leave practices
- Parking rules

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

Statutory description: Matters "specifically exempted from disclosure by statute" that leaves no discretion on withholding, or establishes particular criteria for withholding or refers to particular types of matters to be withheld

Criteria

- Nondisclosure mandate must be contained in a Federal statute
- General disclosure of information must be prohibited on the face of the statute, or by establishing particular criteria or reference to specific types of information to determine which information is within the scope of the statute's prohibition
- Restricted Data, under Section 11y. of the Atomic Energy Act, encompass information pertaining to design, manufacture, or utilization of atomic weapons, or the production or use of special nuclear material
- Safeguards Information, under Section 147 of the Atomic Energy Act, encompasses information prescribed by regulation in 10 CFR Sections 73.2 and 73.21 (or by order) that specifically identifies a licensee's or applicant's detailed (1) security measures for the physical protection of special nuclear material; (2) security measures for the physical protection and location of certain plant equipment vital to the safety of a facility possessing nuclear materials subject to NRC jurisdiction; (3) the design features of the physical protection system; (4) operational procedures for the security organization; (5) improvements or upgrades to the security system; (6) vulnerabilities or weaknesses in the security measures or systems described above that have not yet been corrected; and (7) such other information as the Commission may designate by order or regulation upon making the necessary findings pursuant to Section 147. [Note: description augmented subject to Commission promulgation of final rule amending Part 73.]
- Contractor proposals, under Section 253(m) of the National Defense Authorization Act for Fiscal Year 1997, encompass proposals submitted by a contractor in response to the requirements of a solicitation for competitive proposal

A foreseeable harm statement is not required unless it is not obvious why the agency is citing this exemption.

Examples of information within mandatory prohibition against disclosure:

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

Examples of information outside mandatory prohibition against disclosure:

- Security measures for physical protection of facility in plain sight of public
- Physical protection design details readily available to the public
- Contractor proposals set forth or incorporated by reference in the contract

Exemption 4: Trade secrets, commercial or financial information; information about physical protection, classified matter protection, or material control and accounting program for special nuclear material that is not Safeguards, Classified National Security Information, or Restricted Data, or security-related information that could reasonably jeopardize Government program effectiveness if disclosed to the public

Statutory description: Matters involving "trade secrets and commercial or financial information obtained from a person that are privileged or confidential"

Criteria

- Information must originate outside the Federal Government
- Information must be "confidential" within the meaning of the exemption
- Disclosure would likely impair the Government's ability to obtain necessary information in the future or cause substantial competitive harm to the person who provided information, or disclosure could impair Government interests of compliance or program effectiveness

A foreseeable harm statement is not required unless it is not obvious why the agency is citing this exemption.

Examples of information that may qualify for Exemption 4 protection:

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

Examples of information that would not qualify for Exemption 4 protection:

- General information about a product's physical or performance characteristics or product formula
- Financial information in a company's prospectus or annual report
- General descriptions of safety-related systems in nuclear power plants, particularly where available in open-source literature or on Web sites accessible to the public
- General information about workings of a nuclear power plant, such as that provided in licensing documents
- Low-resolution drawings of plant site and adjacent areas

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

Statutory description: Matters involving interagency or intra-agency memoranda that "would not be available by law to a party other than an agency in litigation with the agency"

Criteria

- Communication must be internal to the Federal Government (within the agency or among Government agencies)
- Reasonably segregable material not covered by the exemption must be disclosed
- Deliberative process privilege covers material reflecting predecisional analysis, recommendation, or opinion on matters leading to final decision, but not purely factual information unless its disclosure would tend to reveal the nature of protected deliberations
- Attorney-client privilege covers confidential facts related by the client to the attorney and legal opinions and communications between them concerning the consultation
- Attorney work product privilege covers material prepared in contemplation of litigation, including administrative proceedings
- A request could cover a draft containing preliminary recommendations. Such a record might be eligible for withholding under Exemption 5 because it contains analysis and recommendations that constituted part of a deliberative process, but that should not be the end of the agency's review. Rather, the age, content, and character of that particular draft should be reviewed in determining whether the agency reasonably foresees that disclosure would harm an interest protected by Exemption 5.

A foreseeable harm statement must be provided for Exemption 5 (deliberative process). Attorney-client privilege and attorney-work product do not require a foreseeable harm statement.

Examples of privileged material:

- Portions of briefing papers or drafts of security-related or nonsecurity-related documents
- Security or nonsecurity-related policy analyses and recommendations produced by agency employees
- Analysis of agency’s litigative risk in security-related or nonsecurity-related hearings
- Description of agency’s legal strategy in proceeding on security-related or nonsecurity-related matters
- Normally records received from outside the agency cannot qualify except for records by external experts working as if they are an NRC employee

Examples of material outside privilege:

- Final agency decisions that expressly incorporate predecisional analysis
- After-the-fact descriptions or explanations of agency policy or decision
- Segregable facts from documents otherwise subject to deliberative process privilege

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

Criteria
- Information must be about an individual
- Balancing of public interest versus the individual's privacy interest must be conducted
- Information is located in a file other than an allegation or investigative file (also see Exemption 7(C) below)
- Information is about or has an impact on a living person

A foreseeable harm statement is not required for Exemption 6 unless it is not obvious why the agency is citing the exemption.

Examples of information that may qualify for Exemption 6 protection:
- Social security numbers
- Home address and telephone numbers
- Personal cellular and pager numbers
- Personal e-mail addresses
- Dates of birth
- Marital status
- Non-job-related interests
- Medical, financial information
- Religious affiliation or reference to religious activities
- Performance and disciplinary information

Examples of information that may not qualify for Exemption 6 protection:
- Information on deceased individuals, except in extreme cases where a living person would be offended by details
- Information publicly available
- Responses to Federal vacancy announcement rating factors for the selected individual
- Federal employee position descriptions
- Federal employee performance elements and standards
- Federal employee grade and salary information

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

Statutory description: Matters involving "records or information compiled for law enforcement purposes" to the extent that production of such records would implicate one of six enumerated protections

Criteria

- Information compiled for law enforcement purposes to the extent production of records would jeopardize statutory protections, including information that, if disclosed, could reasonably be expected to interfere with enforcement proceeding (Exemption 7(A)), right to fair trial (Exemption 7(B)), right to be free from unwarranted invasions of privacy (Exemption 7(C)), protection of identity of confidential source (Exemption 7(D)), protection of law enforcement techniques and procedures where disclosure could risk circumvention of law (Exemption 7(E)) and to the extent disclosure could reasonably be expected to endanger life or physical security of any individual (Exemption 7(F))
- Law enforcement activity must be fairly focused and not merely general monitoring to ensure compliance with legal requirements but may be civil, criminal, or administrative/regulatory in nature
- Information located in the files of the Office of Investigations, the Office of the Inspector General, the Office of Enforcement, and the Office Allegation Coordinators

A foreseeable harm statement is not required for Exemption 7 unless it is not obvious why the agency is citing the exemption.

Examples of qualifying law enforcement information:

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

Examples of nonqualifying law enforcement information:

- Routine security or nonsecurity inspection reports

Examples of information that may qualify for Exemption 7(A) protection:

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

- Information that could reasonably be expected to interfere with an ongoing enforcement action

Examples of information that would not qualify for Exemption 7(A) protection:
- Allegation, investigatory, or enforcement information on closed matters

Examples of information that may qualify for Exemption 7(B) protection:
- Rarely invoked, an application of Exemption 7(A) normally would protect defendants' interests just as well, as would Exemption 5, outside the context of law enforcement purposes
- Records or information compiled for law enforcement purposes the disclosure of which would deprive a person of a right to a fair trial or an impartial adjudication

Examples of information that would not qualify for Exemption 7(B) protection:
- Records or information compiled for law enforcement purposes the disclosure of which might interfere with the fairness of the proceedings but no trial or adjudication is pending or truly imminent

Examples of information that may qualify for Exemption 7(C) protection:
- Personal information in closed allegation, investigatory, or enforcement files
- See Exemption 6 for specific examples

Examples of information that would not qualify for Exemption 7(C) protection:
- Personal information located in files other than an allegation or investigative file

Examples of information that may qualify for Exemption 7(D) protection:
- Information that could reasonably be expected to disclose the identity of a confidential source
- In certain cases, all information provided by a confidential source, whether the information itself could identify the source

Examples of information that would not qualify for Exemption 7(D) protection:
- Information pertaining to individuals who have not been granted confidentiality (no balancing of public interest)

Examples of information that may qualify for Exemption 7(E) protection:
- Technique must not be well known to the public
- Law enforcement guidelines (no legitimate public interest in disclosure of information that would assist in evasion of law or detection)

Examples of information that would not qualify for Exemption 7(E) protection:
- Routine techniques

Examples of information that may qualify for Exemption 7(F) protection:
- Records or information compiled for law enforcement purposes the disclosure of which could endanger the life or physical safety of an individual or individuals, for instance, where necessary to protect an individual (or group of individuals) from possible harm by a requester who has threatened harm in the past

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

Criteria

- Exemption not used by NRC

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

Criteria

- Exemption not used by NRC

Exclusions

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

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

Mosaic or Compilation Theory

1. Under the FOIA, an agency is required to disclose any information that does not fall within one of the FOIA exemptions. However, some information, while seemingly suitable for public release on its own, can be extremely harmful when grouped with other information. To provide protection from public disclosure of information that merits protection because of the context in which it is presented, the courts have sanctioned the use of the "mosaic" or "compilation" theory, which is explicitly recognized in the classification Executive Order 13526 that sets forth the standards for classifying national security information.
2. Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that: (1) meets the standards for classification under this order; and (2) is not otherwise revealed in the individual items of information. "Compilation" means an aggregation of pre-existing unclassified items of information (Section 1.7(e) of Executive Order 13526).
3. Mosaic theory also is available to withhold information under any other FOIA exemption.
4. Criteria
   a. Mosaic theory applies to material that when aggregated and discussed in the context of other responsive information reveals other underlying facts, associations, or relationships that are protected
   b. Protected information need not be compiled in a single document
   c. Mosaic theory is not used to limit release of information exactly the same as the agency already has disclosed, although material that is merely similar may be subject to protection

d. Mosaic theory is not used to protect readily available information, such as information in widely available publications or on Internet

e. Mosaic theory may be used for information considered practically obscure, such as information that was public in the past but is now relatively unavailable to the public

f. Information that has been wrongfully leaked and is not confirmed by the agency would not be considered publicly available

g. Conclusive proof of compromise or jeopardy of protected information is not needed

Exhibit 3 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, the 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.)	☐	☐
Content — Does the document contain "substantive" information that relates to the activities and operations of the Government? (If not, then it very likely is not an "agency record," on that basis alone.)	☐	☐
Does it contain personal as well as official business information?	☐	☐
Purpose — Was the document created solely for an individual employee's personal convenience? Alternatively, to what extent was it created to facilitate agency business? _____ _____	☐	☐
Distribution — Was the document distributed to anyone else for any reason, such as for a business purpose?	☐	☐
How wide was the circulation?_____ _____		
Use — Did the document's author actually use it to conduct agency business (i.e., prepare an agency document)?	☐	☐
If yes, to what extent did others use it? _____ _____		
Maintenance — Was the document kept in the author's possession?	☐	☐
Was it placed in an official agency file?	☐	☐
Disposition — Was the document's author free to dispose of it at his personal discretion?	☐	☐
What was the actual disposal practice? _____ _____		
Control — Has the agency attempted to exercise "institutional control" over the document through applicable maintenance or disposition regulations?	☐	☐
Did it do so by requiring the document to be created in the first place?	☐	☐
Segregation — Is there any practical way to segregate out any personal information in the document from official business information?	☐	☐
Revision — Was the document revised or updated after the fact for recordkeeping purposes?	☐	☐

Exhibit 4 Activities for Which Fees Can Be Assessed

Requested 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)