

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS DIRECTIVE	1400.1	7/18/01
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**RELEASE OF AGENCY RECORDS TO
EXTERNAL ENTITIES**

I. PURPOSE

This directive informs employees with access to Agency records of their responsibilities and limitations on the release of information (both Government and private sector). Employees may be personally liable for violations.

II. (RESERVED)

III. REASON FOR ISSUANCE

This directive clarifies the release of Agency information and records. It also specifies who may release these items.

A. FSIS fosters the principles of open government and takes seriously its obligation to provide the public with accurate information, including records, which shed light on its operations and decision-making processes. However, FSIS preserves the confidentiality of sensitive, personal, commercial, or government information.

B. This directive informs employees with access to records owned by the Federal Government or by private sector businesses of their responsibilities and limitations on the release of information. Employees may be personally liable for violations.

IV. REFERENCES

FSIS Directive 1240.1, Communicating with External Entities
FSIS Directive 1450.1, Freedom of Information and Privacy Acts
FSIS Directive 4735.3, Employee Responsibilities and Conduct
FSIS Directive 4735.6, Safeguarding Confidential Industry Information

V. ABBREVIATIONS AND FORMS

DISTRIBUTION:

All Offices

OPI:

OM – Internal Control Staff

OA – Executive Management Staff

The following will appear in their shortened form in this directive:

CPAO	Congressional and Public Affairs Office
EEO	Equal Employment Opportunity
EMS	Executive Management Staff
FOIA	Freedom of Information Act
HACCP	Hazard Analysis and Critical Control Point
SSOP's	Sanitation Standard Operating Procedures

VI. **BACKGROUND**

A. FOIA provides any person access to Federal records, except those records protected from disclosure. The Agency balances the desire for an open government with the obligation to preserve the confidentiality of sensitive, personal, commercial, or governmental information.

B. This directive contains procedures that identify records and information that may be released. These policies and procedures protect the Agency and its employees from personal liability for wrongfully disclosing privileged or confidential information. This is especially important because of the access FSIS employees have to company records and facilities. FSIS inplant personnel have access on a daily basis and are required to check company records as part of their inspection responsibilities. However, this access does not include the authority to copy plant records and provide them to others except as outlined in the laws, policies and procedures.

VII. **RELEASE OF RECORDS AND INFORMATION**

A. **General.**

1. Employees may release copies of publicly available Agency materials such as brochures, backgrounders, and key facts; materials published on the FSIS website; materials published in the *Federal Register* or Agency directives; and materials available at public meetings.

2. Agency records, of any medium, may not be released to organizations outside the Agency (including other government agencies), to the public, or to external groups without proper review and authorization. **NOTE:** Much of the information accessible to FSIS employees on Outlook or on shared electronic files is pre-decisional and is not intended for public distribution.

3. Employees responding to food safety issues, emergencies, and investigations, may share necessary information with public health agencies, enforcement agencies, or any involved public officials provided that procedures and approvals on the release of records are followed.

B. **Media Requests.** Refer media representatives to CPAO. CPAO consults with the EMS (the Agency FOIA office) and Agency staff to determine if a formal FOIA request is necessary. The address, and telephone and fax numbers are:

USDA FSIS CPAO
ROOM 1175 SOUTH BUILDING
WASHINGTON DC 20250
Telephone Number: (202) 720-3897
FAX Number: (202) 720-5704

C. Non-Media Requests.

1. Refer telephone or written inquiries requesting Agency records not available to the public to EMS. (See exception in subparagraph 2.) The address, and telephone and fax numbers are:

USDA FSIS EMS
ROOM 1140 SOUTH BUILDING
WASHINGTON DC 20250
Telephone Number: (202) 720-2109
FAX Number: (202) 690-3023

2. Authorized offices may handle information requests of a specified type outside of the FOIA process. (FSIS Directive 1450.1 contains specific procedures governing the FOIA process in FSIS.) **EXAMPLES:** Refer telephone calls from EEO investigators, administrative law judges, and others requesting records or information concerning an EEO complaint to the Civil Rights Division. The address, and telephone and fax numbers are:

USDA FSIS CIVIL RIGHTS DIVISION
MAILDROP 5261
5601 SUNNYSIDE AVENUE
BELTSVILLE MD 20705-5261
Telephone Number: 1 (800) 269-6912
(301) 504-7756
FAX Number: (301) 504-7746

D. Authority to Release Records Outside of the FOIA Process. Obtain authorization from the Director, EMS, and the appropriate deputy administrator or staff director. (See FSIS Directive 1450.1.)

VIII. GUIDANCE

A. Agency Records.

1. **Availability.** Copies of Agency records are available through FOIA

when the records do not:

- a. Invade personal privacy.
- b. **Violate** statutes.
- c. Cause competitive harm to businesses.
- d. Compromise the integrity of governmental decision-making processes or law enforcement proceedings.

2. **Protection Procedures.** Formal procedures and processes exist to guard against improper or harmful release of information and to protect employees from personal liability for unlawful disclosure. (See FSIS Directive 1450.1.)

3. **Material Exempt from Disclosure.** FOIA requirements have safeguards against improper or harmful release of information. FOIA officials review materials for possible exemption when the material relates solely to the internal administrative and personnel matters of the Agency. **EXAMPLES:**

a. **Crediting plans** showing how candidates are rated for promotion. The plans are considered a part of the test or examination materials and are exempt from disclosure. Release of the information would compromise the objectivity or fairness of the testing or examination process.

b. **Manuals** containing criteria to identify businesses for review.

c. **Personnel, medical, or similar files** that may invade personal privacy. The Privacy Act protects systems of records that relate to individuals.

(1) Employees are entitled to most records about themselves.

(2) Employees must give permission to release such records to others.

(3) Disclosure to anyone other than the named employee may constitute an invasion of personal privacy. Unauthorized release of such records may cause an employee to be personally liable for violations of the Privacy Act.

d. **Investigation records** compiled for law enforcement purposes when release of these records may:

(1) Interfere with enforcement proceedings.

(2) Deprive a person of the right to a fair trial.

(3) Constitute an unwarranted invasion of personal privacy.

(4) Disclose the identity of a confidential source.

(5) Disclose investigative techniques and procedures, or endanger the life of law enforcement personnel. **NOTE:** Records that are not directly a part of an investigation file may be withheld when the release could lead the public (or the target of an investigation) to determine the focus of an investigation. **EXAMPLE:** Process deficiency records, noncompliance records, and review and compliance records are sometimes withheld during an investigation if the investigation relates to conditions of the establishment as reflected on these records.

e. **Inter- or intra-agency memoranda, letters, or other records** that are pre-decisional or a part of a deliberative process. Internal communications between subordinates and superiors may be protected from release when release of such information may interfere with the Agency's decision-making process. The impact of releasing such information before a final decision is made may confuse the public, and may hinder the rulemaking process.

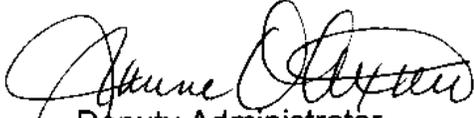
B. **Non-Agency Records.** FSIS inspection personnel review company records on a daily basis as part of their inspection responsibilities. Records, such as the HACCP plans, SSOP's, *E. coli* testing results, and other company records are **company-owned records**. Company-owned records are not a part of Agency files. FSIS personnel have no right to copy these records unless they receive specific authorization from the circuit supervisor or higher level official. The public has no right to company-owned records unless the company chooses to release such records.

1. Safeguard company records when they become part of Agency files (i.e., copies are needed for an investigation or enforcement action relating to the HACCP plans or SSOP's). Company-owned records that become part of an Agency file are protected from release under FOIA on the basis of their commercial value and proprietary nature, and on the basis of an open investigation or enforcement notice. Forward questions on the release of these records to the FOIA office.

2. Trade secrets and commercial or financial information are privileged or confidential information. Unlawful disclosure of commercial or financial information could cause competitive harm to the company that owns the information. The protection of this information is not discretionary and individuals can be held personally liable for unlawful release. Examples include:

a. Product formulations.

- b. HACCP plans and SSOP's.
- c. Production data and line speeds.
- d. Financial information.



Deputy Administrator
Office of Management

Attachment

1 Questions and Answers

QUESTIONS AND ANSWERS

1. **Q** *Are letters to the Administrator or the Under Secretary public information?*

A Yes. However, home addresses and telephone numbers are protected from release unless they are also business addresses. Some correspondence may contain information on a personal or business situation that could involve privacy act protected or commercial information. When this happens, any information of a private nature is removed before release.
2. **Q** *Why are information or decision memorandums to the Secretary withheld from release?*

A These items are part of the deliberative process. Such communications may be withheld to ensure that communications between subordinates and superiors are not affected by the possible premature release of the information. In addition, premature release of the information could cause those on the outside to prejudge the Agency's decisions or could cause confusion on the final outcome of the decision-making process.
3. **Q** *When is a Federal Register Notice, signed by the Administrator, available to the public?*

A It is considered public when it goes on display at the *Federal Register*. This is generally the day before publication.
4. **Q** *May I get a copy of the crediting plan used to evaluate my application for promotion?*

A No. Making these crediting plans available would give an applicant an unfair competitive advantage for the position.
5. **Q** *What should I do if a reporter requests a copy(s) of the Office of Field Operations' suspension letter to the plant?*

A Immediately inform your supervisor of the request and contact the CPAO for guidance before taking any action.

6. Q ***What should I do if a plant owner asks for copies of letters in the District Office relating to the plant's business? Is the owner entitled to them?***
- A It depends on the nature of the correspondence. Generally, companies are entitled to records about their business, noncompliance reports and similar records. Obtain advice of an FOIA officer to determine if the business owner should make this request under FOIA.
7. Q ***What should I do if the records I manage are frequently requested and made available through the FOIA office?***
- A Contact the FOIA office for authorization of your office to handle requests for these records. Your deputy administrator and the Director, EMS, may authorize this arrangement in writing.
8. Q ***Can others get copies of my performance ratings?***
- A Only on "a need to know basis." For example, personnel specialists and EEO specialists have access to these records as part of the personnel management processes. However, these ratings are in a Privacy Act System of records and are protected from release to anyone other than the employee and those with "a need to know."
9. Q ***Do others have the right to information about my position?***
- A The title, series, grade, and description of your position are public information.
10. Q ***Is Agency budget information confidential?***
- A The Agency's proposed budget for a future fiscal year is confidential until the President announces it.
11. Q ***If someone requests a copy of a file, are notes and drafts disclosed?***
- A Yes, notes and drafts are not necessarily excluded and some FOIA requesters ask for them. However, there may be legitimate reasons for withholding these from release under the deliberative process privilege and other FOIA exemptions.

12. Q ***If I give a statement to an investigator, will my name and statement be released under FOIA?***
- A The statements often are released; however, they are redacted to remove names of witnesses and any personal information that could lead the recipient of the information to identifying the witnesses. The identities of witnesses are generally protected.
13. Q ***If I make recommendations to my supervisor on a policy matter the Agency has under consideration, are my recommendations protected under FOIA?***
- A They may not be protected indefinitely but are protected while they are considered "pre-decisional."
14. Q ***Are Salmonella testing data relating to specific plants available to the public?***
- A Yes, once the sample sets are completed. Before completion of the sets, not even the plant is given this data. This is because the data is part of a regulatory process in which a decision is made only when the sample set is complete.
15. Q ***Are microbiological testing results that are part of an Agency study releaseable?***
- A They are not released while the study is underway. Premature release of this data could cause public confusion.
16. Q ***If a company asks for another company's label approval application, what should I do?***
- A Advise the requestor to file a FOIA request with the Agency. Label applications may contain proprietary information such as product formulations that are protected from release under FOIA.
17. Q ***A paper outlining the Agency's current position on a policy issue is released at a recent public meeting. Is that information protected because it is pre-decisional?***
- A If the Agency made it publicly available at a meeting, it is available to anyone.

18. **Q** *If FSIS directives relate only to FSIS personnel and do not concern members of the public, can members of the public get copies?*
- A** Yes. FSIS directives are public information. The public has a right to know, even if the directive does not concern them directly.
19. **Q** *What should I do if a reporter requests certain information or access to government facilities and informs me that Headquarters officials have approved the request?*
- A** Immediately inform your supervisor and obtain official confirmation of the request and its approval. When obtaining the official confirmation, give an exact description of the request.
20. **Q** *Can I release HACCP and other plant specific Agency data that may reside on my personal computer?*
- A** All Agency or plant specific data that is not available to the public requires review and approval of your supervisor, the FOIA office, and the CPAO before release to the media or external groups.
21. **Q** *What are examples of Agency records available in any medium?*
- A** Agency records can be described as:
1. Any final product related to FSIS' administrative, enforcement or regulatory policies and activities. Examples of final products include decision papers, letters, memoranda, films, data files, reports, certain e-mail messages and publications.
 2. Supporting materials sufficient to document and explain the decision making process for administrative, legal, final, programmatic and historical purposes. This may include drafts, annotations, reports, raw data, meeting minutes and telephone logs.
 3. The following material also applies as a record when it:
 - a. Documents or facilitates FSIS actions, formulation of policies and decisions and committee or staff meetings.
 - b. Protects government and individual rights and interests.
 - c. Provides information required by Congress.
22. **Q** *What records are generally available for public distribution?*

A Records generally available for public distribution are any official USDA or FSIS publication or anything on the website. Additional examples include:

1. Laws, regulations, FSIS Directives and Notices (once published).
2. Anything officially mailed or emailed to **all** employees or made available to **all** employees on OUTLOOK public folders.
3. FSIS publications meant for public consumption.
4. Blank FSIS Forms (some of them request privacy protected or commercial information so we cannot make a blanket statement that completed forms can be released).
5. Letters sent to industry trade associations or consumer groups.
6. The Thursday Report, Beacon, and Constituent Update.

23. Q ***What Agency records are not intended for public distribution without prior approval?***

A An all inclusive list of what is generally considered an Agency record that is **not intended for public distribution without prior approval**, independent of the medium (**examples:** hard copy documents, electronic files, publications, or video), can only generally be categorized, but not limited to, the following:

1. Any document/information with the USDA or FSIS logo or seal affixed to the letterhead or presentation (**exception:** Those items that are available for public distribution).
2. Any document/information identified with a USDA or FSIS form number.
3. Any document/information that has a United States government form number that contains information that was derived from, collected or presented as a result of USDA or FSIS sponsored programs or activities.
4. All internal memoranda (**example:** Correspondence between Agency employees).
5. Correspondence from external Agencies or sources to FSIS

officials.

6. Any USDA or FSIS contractor prepared document/information or presentations containing information as a result of USDA or FSIS sponsored programs or activities.

24. **Q** ***What information on Outlook or shared electronic files is not intended for public distribution without prior approval?***

A A list of information on Outlook or shared electronic files that is **not intended for public distribution without prior approval** includes, but may not be limited to any official USDA or FSIS information, with limited distribution, provided via the Outlook or contained in the Outlook public folders.

25. **Q** ***What is included in an all-inclusive list of inter-or intra agency memoranda, letters, internal communications, or other records?***

A Records generally considered pre-decisional or part of a deliberative process can be considered, but not limited to, any Agency document not published and distributed in the public domain. Examples of inter-or intra agency memoranda, letters, internal communications, or other records covered by this section may include preliminary drafts, rough notes, and similar materials that were used to prepare final copies. Another example is a working file that is maintained to ensure adequate and proper documentation **if**:

1. It was circulated and made available to employees other than the creator for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and
2. It contains unique information, such as substantive annotations or comments, that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.