

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

FSIS DIRECTIVE

1450.1
Revision 5

5/28/19

FREEDOM OF INFORMATION ACT AND PRIVACY ACT

I. PURPOSE

This directive provides instructions concerning the Agency's Freedom of Information Act (FOIA) ([5 U.S.C. §552](#)) and Privacy Act (PA) of 1974 ([5 U.S.C. § 552a](#)) procedures. FSIS has revised this directive to be consistent with current regulations and guidelines and to include new instructions for responding to requests for data regarding the Agency's sampling and testing programs.

II. CANCELLATION

FSIS Directive 1450.1, Revision 4, *Freedom of Information and Privacy Act*, 4/26/16

III. BACKGROUND

A. FOIA, enacted in 1966, is a Federal law that is set forth in Title 5, Section 552, of the *United States Code* ([5 U.S.C. §552](#)), as amended. FOIA establishes a statutory right to public access to Executive Branch information in the Federal Government, except where such information is protected from disclosure by specific exemptions or any special law enforcement record exclusions (see Attachment). The FOIA Improvement Act was signed into law in June 2016. The 2016 FOIA Improvement Act addressed a range of procedural issues and disclosure requirements, including the codification of the Department of Justice's "foreseeable harm" standard, the "Rule of 3" for frequently requested records and amendments to exemption 5.

B. The Privacy Act of 1974 ([5 U.S.C. § 552a](#)) protects citizens against unwarranted invasion of privacy due to a Federal Agency's collection, maintenance, use, or disclosure of information. The Act allows individuals to access their own records and prohibits unauthorized agency personnel or individuals from accessing records concerning another person without that person's written permission.

C. The USDA FOIA regulations ([7 C.F.R. § 1.4 – 1.25](#)) establish policy, procedures, requirements, and responsibilities for administration and coordination of the FOIA. It also serves as the FOIA implementing regulations for USDA program agencies and staff offices.

IV. TIME LIMITS

A. The statutory time limit to respond to FOIA and PA requests is 20 working days. The 20-day period begins when the request is received by the FOIA and PA Staff (FOIA Staff). Within that 20-day period, the Agency is required to decide whether to provide the requested documents. The FOIA Staff informs the requester of its decision in writing and provides all requested documents that have been approved for release.

DISTRIBUTION: Electronic; All Field Employees

OPI: OPPD

B. The FOIA statute requires agencies to provide written notification to requesters when the time limit is extended by more than ten additional working days and allow the requester the opportunity to limit the scope of the request or arrange an alternative time frame for processing the request or a modified request. The FSIS FOIA Public Liaison will assist requesters in resolution of disputes with the Agency, as requested. The FSIS FOIA Staff will notify the requester of the right to seek dispute resolution services from the Office of Government Information Services within the National Archives and Records Administration. The FOIA statute provides for an extension of the 20-day period for:

1. Collecting responsive records from field offices;
2. Collecting “voluminous” records that need to be located, compiled, and reviewed; and
3. Consulting with other agencies or USDA components that have substantial interest.

V. FOIA STAFF RESPONSIBILITIES FOR FOIA REQUESTS

A. The Director of the Office of Public Affairs and Consumer Education (OPACE) FOIA Staff serves as the release or denial authority for FSIS FOIA requests. The FOIA Staff Director also serves as the FSIS FOIA Public Liaison and oversees the FOIA Staff.

B. The FOIA Staff is responsible for providing records requested under the FOIA in compliance with the [FOIA statute](#) and [USDA FOIA Regulations](#). All FOIA Staff is available for assistance with FOIA and PA inquiries.

C. The FOIA Staff:

1. Receives and logs information requests, including subpoenas for Agency records;
2. Acknowledges receipt of FOIA and PA and responds to the requester in writing via postal mail or e-mail. The acknowledgement letter also explains the FOIA/PA process;
3. Determines whether to grant a request for a fee waiver or expedited processing within ten calendar days of receiving such a request;
4. Determines which program area or District Office maintains the responsive records and forwards requests to the appropriate office for document search. The steps that the FOIA Staff takes once records are received are outlined in Section V, paragraph D of this directive;
5. Notifies requesters of processing delays beyond the 20-day statutory deadline;
6. Publishes frequently requested records (records requested 3 or more times) to the [FOIA Electronic Reading Room \(ERR\)](#); and
7. Makes disclosures of appropriate information before requests are received by posting records in the [FOIA ERR](#) when they are likely to be of significant public interest, without waiting for 3 requests or more. The FOIA Staff makes this determination based on their professional judgement and experience.

D. Upon receipt of the records, the FOIA Staff:

1. Reviews the records supplied by the program areas to determine whether they are responsive;

2. Performs a line-by-line review of the records and applies applicable FOIA exemptions as necessary. The FOIA Staff identifies records for discretionary release when such releases are not otherwise specifically prohibited by Executive Order, statute, or regulation. If a requested record contains portions that are exempt from mandatory disclosure and other portions that are not exempt, the FOIA Staff will ensure that all reasonably segregable nonexempt portions are disclosed, and that all exempt portions are identified according to the specific exemption or exemptions that apply;
3. Provides pre-disclosure notification to entities that have submitted confidential commercial information to FSIS when this information becomes subject to a FOIA request, in accordance with the USDA FOIA regulations; and
4. Consults with other agencies that may have responsive records or whose information is contained in FSIS's records.

E. After making the final decision regarding what information can be supplied, the FOIA Staff responds to the requester in writing to provide the records, as well as an explanation of the Agency's decision and the reasons for any applied exemptions. Upon request, a copy of the redacted records is also shared with the program area staff who assembled the submission.

F. If no records are found, the FOIA Staff notifies the requester of this in writing.

VI. EMPLOYEE PROGRAM AREA REPRESENTATIVE RESPONSIBILITIES FOR FOIA AND PA REQUESTS

A. Employees are to notify the FOIA Staff of any requests for non-public information. Employees may release copies of publicly available Agency materials such as brochures, backgrounders, key facts, and materials published in the *Federal Register* or Agency directives and any other materials available at public meetings. Agency nonpublic records are not to be released to organizations outside the Agency without proper review and authorization.

B. If records within a program area are subject to a FOIA or PA request, the FOIA Staff contacts the relevant program area's FOIA representative to coordinate a search for responsive records. The program area provides the records within five business days. The program area contacts the FOIA Staff for additional guidance as needed.

C. The FOIA Staff provides [FSIS Form 1450-1](#) which includes a record search form, a billing sheet, and an open investigation worksheet that the program area office completes. (Level 2 e-authorization is required to access this form). The record search form requests confirmation that the program area office conducted a reasonable search and that it sent all responsive records to the FOIA Staff. On the billing sheet, the program area office records the number of hours it took to complete the search. This is necessary to assist the FOIA Staff with the calculation of fees associated with responding to the request. The record search form is signed by the Director of the responding program area staff.

D. If a requester contacts an Agency employee directly to seek copies of Agency records, the employee is to refer the requester to the FOIA Staff. The FSIS employee may direct the requester to the FOIA Web site at: <http://www.fsis.usda.gov/foia> or the FOIA Staff's address, telephone, and facsimile numbers (see Section IX of this directive).

E. If an employee has any questions regarding FOIA information sharing policies, he or she is to

contact the FOIA Staff.

VII. REQUESTS FOR AGENCY SAMPLING PROGRAM DATA

A. The FOIA Staff notifies the appropriate point-of-contact, and the technical consultation and review team (TCRT), upon receipt of a FOIA request for data related to the Agency's various sampling and testing programs. The TCRT consists of staff designated by the Assistant Administrators (AAs) of OPACE, Office of Public Health Science (OPHS) and Office of Policy Analysis and Risk Management (OPARM). A Government Information Specialist (GIS), under the Direction of the FOIA Director, will engage the TCRT in determining the scope of the responsive data. Prior to public disclosure, the TCRT reviews the data for accuracy and to specify risks/concerns. The FOIA Director and the TCRT will engage senior leadership when necessary.

B. The FOIA Staff:

1. Directs requesters to the Sampling Programs webpage and the Annual Catalog of Sampling Projects to ensure they understand the types of data the Agency collects;
2. Determines if a technical consultation with the requesters is needed to clarify the scope or specific needs of the request;
3. Coordinates consultation with requesters and the appropriate Agency staff;
4. Ensures data is reviewed by the TCRT prior to release to the requester; and
5. Determines whether a subset of data should be released initially to ensure it meets the requesters' needs before preparing the full data package.

C. The TCRT:

1. Confirms that the FOIA Staff, OPHS, and OPARM agree on the scope of the responsive data; and
2. Reviews the data for accuracy and notifies the FOIA Staff of any concerns before release.

VIII. APPEALS

A. The FOIA Director will assign appeals of Agency FOIA or PA request decisions to a GIS other than the Specialist who processed the initial request.

B. The Specialist will draft the Agency response to the appeal and forward it to the USDA Office of the General Counsel (OGC) for a legal sufficiency review.

C. The Specialist will make final edits based on legal guidance from OGC. The GIS will send the appeal package to the OPACE AA for signature.

D. Upon receipt of the signed decision, the Specialist will send the final appeal response to the requestor.

IX. FOIA STAFF CONTACT INFORMATION:

FSIS Freedom of Information Act Staff
Room 1170, South Building

14th and Independence Avenue, SW
Washington, DC 20250-2109
Phone: (202) 720-2109
Fax: (202) 690-3023
E-mail: fsis.foia@usda.gov

X. QUESTIONS

Refer questions regarding this directive to the FOIA Staff using the contact information provided above. Additional Information about the FSIS FOIA process and FOIA reference material can be found at: <http://www.fsis.usda.gov/foia>.

A handwritten signature in black ink, appearing to read "Sabrina J. Wagner". The signature is written in a cursive style with a large initial "S".

Assistant Administrator
Office of Policy and Program Development

FOIA EXEMPTIONS

A. Under the Freedom of Information Act ([5 U.S.C. §552](#)), all requested records are to be released except those that are exempt from mandatory disclosure by one or more of the following exemptions:

(b)(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive Order;

(b)(2) Related solely to the internal personnel rules and practices of the Agency;

(b)(3) Specifically exempt information from disclosure by statute;

(b)(4) Trade secret and commercial or financial information obtained from a person that is privileged or confidential;

(b)(5) Inter- or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency and falls under one of three privileges:

1. Deliberative Process Privilege: communications that are pre-decisional and deliberative. This privilege does not apply to records created 25 years or more before the date on which the records were requested;
2. Attorney Work-Product Privilege – communications prepared by or under the direction of an attorney in anticipation of litigation; or
3. Attorney-Client Privilege – confidential communications between an attorney and their client regarding a legal matter

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

(b)(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

- (A). Interfere with enforcement proceedings;
- (B). Deprive a person of a right to a fair trial or an impartial adjudication;
- (C). Constitute an unwarranted invasion of personal privacy;
- (D). Reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency, authority or any private institution which furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority during a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;
- (E). Disclose investigative techniques and procedures; or
- (F). Endanger the life of physical safety of law enforcement personnel.

(b)(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

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