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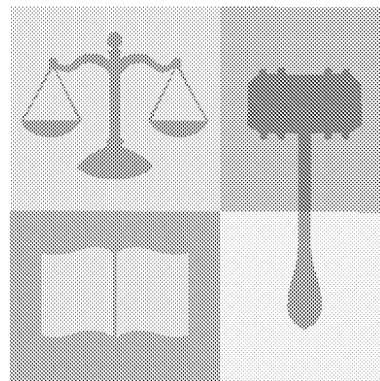
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RMS

GENERAL OPERATING PROCEDURES

FOR

FREEDOM OF INFORMATION ACT (FOIA)



Revised: 11/30/2023

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Chapter 1: Purpose and Background

1A. Purpose

The purpose of the **FOIA Procedures** is to document the policies, procedures, practices and responsibilities for RMS to serve as the Liaison on all FOIA matters with the Legal Division, the FOIA & Privacy Act (FOIA-PA) Group. This Procedures Manual will serve as a guide to all ICRS staff assigned to process FOIA Requests for RMS.

1B. Background

FOIA is a federal statute signed into law in 1966, which affords any person the right to obtain federal agency records, unless the records, or part of the records, are protected from disclosure by any of the nine exemptions contained in the law or by one of the three special law enforcement record exclusions, which Congress created through amending the FOIA in 1986. The FDIC issued Section 309.5 of the FDIC Rules and Regulations, which implements the FOIA: <https://www.ecfr.gov/current/title-12/section-309.5> 5 U.S.C. Section 552, governs the provisions of the FOIA Improvement Act of 2016, which created a new Chief FOIA Officer Council within the Executive Branch that serves as a forum for collaboration across agencies and with the requester community to explore innovative ways to improve FOIA administration.

In response to the FOIA Executive Order 13392¹ and to enhance the availability of FDIC records to the public, FDIC established the **FOIA Service Center**, which is an external website that contains background information on FOIA, FOIA Regulations and Exemptions, Privacy Regulations, FOIA Reports, case studies, training material, FDIC's ranking in completing FOIA Requests, and the volume and types of requests received across government agencies. The website is located at the following link: www.fdic.gov/foia. Additional information on the Executive Order 13392 can be found at this location: https://www.hud.gov/program_offices/administration/foia/eo13392

a. FOIA Reading Room

Individuals or entities may obtain information that the FDIC maintains on its public website at www.fdic.gov or through the FOIA Reading Room without submitting a FOIA Request. The FOIA Reading Room can be found at the following link: <https://www.fdic.gov/foia/readingroom.html>

Paper copies of all FOIA Reading Room records are available at the FDIC Public Information Center (PIC), which is located at 3501 N. Fairfax Dr., Room E-1002, Arlington, Virginia 22226.

A FOIA Request can be made for any agency record. The requestor can also specify the format in which they wish to receive the records (for example, printed or electronic form). Individuals may also browse documents that federal agencies have publicly released through the SecureRelease Portal or at the following link:

<https://www.securerelease.us/public-reading-room>

b. Submit a FOIA Request

i. SecureRelease Portal or Email

As of March 16, 2020, the FDIC has restricted building access and instituted a telework policy for its employees due to the COVID-19 National Emergency. Therefore, in the interim, the FDIC strongly advises that FOIA and Privacy Act requests are submitted electronically via the FDIC's SecureRelease (SR) Portal <https://www.securerelease.us> or through email efoia@fdic.gov, which are both maintained as links on the **FOIA Service Center**.

ii. Facsimile

Requests can be submitted by facsimile and should be clearly marked FOIA Request to the FOIA-PA Group and sent to (703) 562-2797.

iii. Letter

Requests can also be mailed to: Federal Deposit Insurance Corporation, ATTN: FOIA-PA Group, 550 17th Street, NW. Washington, DC, 20429.

c. Valid FOIA Request

The request shall contain the following information:

1. Must be in writing
2. Must be from a "person," which can also include:
 - Citizen or Non-Citizen
 - Local or State Agencies
 - **Exceptions:**

-
- Federal Agencies – don't make FOIA Requests from each other; they use Referrals or Consultations
 - Foreign Nationals / Foreign Governments
 - Individuals who've made plea agreements with another agency and they have waived their rights to file a FOIA
 - Fugitives - can't make a FOIA Request
3. Must have a reasonable description of records being sought.

d. Defective FOIA Requests

The FOIA PA-Group and RMS are not required to accept or process a FOIA Request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of Section 309.5 of FDIC's Rules and Regulations. The FOIA PA-Group or RMS may return a defective request, specifying the deficiency. The Requester may submit a corrected request, which will be treated as a new request.

The FOIA-PA Group and RMS reviews all requests to identify defective (*i.e.*, not valid) requests. If a request is not defective, the FOIA-PA Group assigns the valid request, to the appropriate Division/Office for processing. For any request assigned to a Division/Office, the Division/Office promptly notifies the FOIA-PA Group if the request does not describe the records in a way that allows for a reasonable search.

FOIA does not require agencies to create new records or lists, conduct research, analyze data, or answer questions when responding to requests. These types of requests are defective or not valid FOIA Requests.

1C. Privacy Act

The Privacy Act permits a person to seek access to agency records pertaining to him or herself, provided the record is maintained within a "system of records" (*i.e.*, a group of any records under the control of the agency from which the information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual). Several exemptions apply to this regulation; however, Privacy Act requests for information in the FDIC's files must be in writing, and sent to the same address as FOIA Requests or via the FDIC's SecureRelease™ Portal. To learn more about the Privacy Act, see Part 310 of FDIC's Rules and Regulations: <https://www.ecfr.gov/current/title-12/chapter-III/subchapter-A/part-310>

1D. Public Notice Requirements and Access to Public Files on Applications

Many interagency applications are subject to Public Notice requirements prescribed in Section 303.7 of FDIC Rules and Regulations, such as establishing a domestic branch, relocating a domestic branch or main office, relocating an insured branch of a foreign bank, engaging in a merger transaction, initiating a change of control transaction, or requesting deposit insurance. These applications may involve simultaneous review and processing by the FDIC and other federal/state banking authorities.

<https://www.ecfr.gov/current/title-12/section-303.7>

For filings subject to a Public Notice requirement under Sections 303.7 (Public Notice Requirements), Section 303.8 of FDIC Rules and Regulations, indicates that any person may inspect or request a copy of the non-confidential portions of a filing (the public file) until 180-days following the final disposition of the application.¹ The FDIC provides the public with notice of all filings that are subject to a Public Notice requirement (Section 303.7) on its external website that the FDIC has received since 2013 at: <https://www.fdic.gov/regulations/applications/actions.html>. This link can also be used to determine the current status of applications such as Pending, Withdrawn, Complete, or Denied; the next processing steps are described below in Chapter 2.

CRA Public File, CRA Plan, or CRA Notice

When reviewing applications, there are instances when ICRS or the Requestor(s) need to know whether the CRA Public File you have is the final version. Please recommend that the FOIA-PA Group refers the FOIA request to DCP to allow them to opine on the CRA Public File. RMS should also recommend that the FOIA-PA Group refer applications that contain CRA Plans and/or CRA Notices to DCP to allow them to review and opine on those records.

Requests for Confidential Portions of Applications

Written requests for confidential portions of the application filing (information withheld from the public file) submitted at any time (either within the 180-day

¹ Following the 180-day period, non-confidential portions of an application file will be made available in accordance with § 303.8(c) FOIA Requests.

decision period or following closure of the file 180-days after final disposition) should be submitted and processed pursuant to FOIA, (5 U.S.C. 552) ², and to Part 309 – Disclosure of Information, which requires submitting a FOIA Request.

Chapter 2: Processing the FOIA Request

Processing the FOIA Request:

2A. FOIA-PA Group Receives a FOIA Request(s) and assigns to Division/Office:

FDIC's FOIA-PA Group receives written FOIA Requests and they assign, manage and disseminate FOIA Requests to the appropriate Division/Office within the FDIC. The members of the FOIA-PA Group are located at the link below:

<https://fdicnet.fdic.gov/content/legal/home/corporate-mgmt/foia.html>

FOIA Requests are managed through SecureRelease at the following link:

<https://discovery3.deloittefed.com/my.policy>

Only valid FOIA Requests are processed. Refer to the ***“Background”*** section in Chapter 1 above for criteria describing a Valid FOIA Request, Defective Requests, as well as guidance on how to submit a FOIA Request.

a. Denial of Requests in Full or in Part

If an assigned Division/Office or ICRS recommends denial of a request, either in whole or in part, ICRS maintains a secure copy of the responsive record(s), if applicable, and provides the FOIA-PA Group with the reason(s) for each recommended denial. The FOIA-PA Group can make final determinations based on the recommendations provided from the FDIC Division/Office or ICRS. The FOIA-PA Group provides the Requestor with a formal letter containing FDIC's official response to the FOIA Request(s).

For each denial of requests, in whole or in part, please ensure that the correct exemption(s) and Foreseeable Harm Standards are included in the response to the

² The FOIA was enacted by Congress and signed into law by President Lyndon B. Johnson in 1966. Since that time, Congress has regularly updated the original statute through legislative amendments. Most recently, Congress passed the OPEN Government Act of 2007, which addressed several procedural issues that concern FOIA administration, and the OPEN FOIA Act of 2009 which revised the requirements of FOIA Exemption 3.

FOIA-PA Group. Secure Records (Responsive Records) for denied requests are maintained on the shared drive and are not uploaded to SecureRelease, or the System of Record, unless approved through AD Vaughn, DD Vogel, and/or RMS Director Eberley. Refer to Chapter 2 “**Processing the FOIA Request**,” Chapter 3, “**Exemptions**” and Chapter 4 “**SecureRelease**” below for more information.

2B. RMS FOIA Coordinator or Designee Receives and Assigns the FOIA Request:

ICRS is responsible for managing and processing FOIA Requests that are assigned to the RMS Division. ICRS uses specific steps to confirm RMS adheres to the FOIA guidance. The following steps are implemented to ensure that if the requester appeals our response, ICRS will be confident knowing that we followed the mandated FOIA guidelines and regulations.

FOIA Processing Steps:

1. Receive FOIA Request(s)

RMS receives the FOIA Request from the FOIA-PA Group through email distribution (Outlook). Refer to the attachment below for an example. The Zip File for “2023-FDIC-FOIA-00016” is located on the Shared Drive.



Figure 1. 2023-FDIC-FOIA-00016

Upon receipt of the FOIA Request, log the request(s) on the FOIA Tracking Log / Excel Spreadsheet. A Zip File, as referenced above in **Step One**, is provided to the RMS FOIA Coordinators from the FOIA-PA Group that should contain the FOIA Request, the applicable Foreseeable Harm Standard(s) and any other information deemed appropriate from the FOIA-PA Group. AD Vaughn and all ICRS Employees / Detailees that process FOIA Requests will receive this email and Zip File or it will be forward to you. If the FOIA Request was not provided, please retrieve the original request from SR and store a copy of it and/or the contents of the Zip File on the Shared Drive.

If after the initial review of the FOIA Request, the FOIA Coordinator or Designee determines that the FOIA Request does not belong to RMS, promptly notify the

FOIA-PA contact of the misdirected FOIA Request and update the FOIA Tracking Log as noted in **Step Five** below. (i.e. DRR processes FOIA Requests for closed banks. HR/DOA handles FOIA Requests concerning Privacy Act Decisions or Job Postings).

2. Fees Estimates and Fee Agreements

The FDIC CFO establishes fees for FOIA Requests. FOIA divides requests into categories based on the type of requestor. As part of the initial request, a requester may ask that the FDIC waive or reduce fees. The DOJ has established a six-part test for agencies to follow when evaluating a request for a fee waiver. The FOIA-PA Group makes the determination regarding the requestor's fee waiver and the requestor is notified in writing. Requestor Categories, fee waiver, and fee estimate details can be found at this link: <https://www.fdic.gov/foia/fees.html>

- b. Fee Estimates - Project all time (hours) that Executive Level, Professional Staff or Clerical Staff spent to search, review, and/or copy requested responsive records. Obtain hours that Regional POCs spent researching or redacting records, if applicable.
- c. FDIC Fee Schedule - The fees depicted in the chart below are effective for FOIA Requests submitted thirty days or more from March 1, 2012. Persons requesting records from the FDIC shall be charged for the direct costs of search, review and duplication as set forth in Section 309.5(f) of FDIC Rules and Regulations, unless such costs are less than \$10.00. The chart below includes the current fees by Requestor Category: <https://www.fdic.gov/foia/fees.html>

Type of Requestor	Actions		
	<u>Search</u>	<u>Review</u>	<u>Reproduction</u>
	<u>Hourly Labor Rate:</u>	<u>Hourly Labor Rate:</u>	\$0.20 pp
	Executive Level Staff: \$121	Executive Level Staff: \$121	\$5 CD/DVD
	Professional Staff : \$83	Professional Staff: \$83	
	Clerical Staff: \$36	Clerical Staff: \$36	

1. Commercial Use	Full Direct Cost	Full Direct Cost	Full Direct Cost
2. Scientific, Educational or News Media	None	None	First 100 Pages Free
3. All Others	First 2 hours free	None	First 100 Pages Free

The requestor will be charged for search and review costs even if responsive records are not located or, if located, are determined to be exempt from disclosure. Multiple requests seeking similar or related records from the same requestor or group of requesters will be aggregated.

- c. Payment - If the FDIC estimates that the processing costs will exceed \$250.00, the FOIA-PA Group will ask the Requestor to pay an amount equal to 20 percent of the total estimated costs before a records search is initiated.
- d. Obtain a Fee Agreement (if required) - ICRS will recommend that a fee agreement is established in instances where the “agree to pay” amount is insufficient to adequately search, review, and prepare responsive records for release. Additionally, consider duplication costs, if applicable. Ensure to review the original FOIA Request or SecureRelease for the agreed fee arrangement.

Should the cost of professional staff time to research whether responsive records exist exceed the initial fee agreement, the FOIA Coordinator or Designee will send an email to the FOIA-PA Group stating that costs to research will exceed the agreed fee amount. The FOIA-PA Group will communicate to the requester and explain to requestor that to continue researching and consequently finding or not finding responsive records, will require an additional fee based on estimated time to actually complete the work. The request is placed on hold until a fee agreement is received.

Estimate hours using prior examples as a guide, if applicable. Until a fee agreement (with deposit if required) has been received, the FOIA Request is placed on hold. The FOIA-PA Group will notify the FOIA Coordinator or Designee when a fee agreement has been received.

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- e. Records Request Pre-Dates Records Available in RADD – RADD launched in 2010, and this imaging system maintains some records prior to its implementation year. If the request for potential responsive records pre-dates RADD, please contact the FOIA-PA Group and inform them that a fee agreement may be required. Also, indicate to the FOIA-PA Group that you will provide them with an estimate of time to search for the requested records after communicating with the Regional POC and/or other Program Area(s). **Refer to Step 3 below.**

3. Provide a Cost Estimate

Providing a cost estimate is important because FOIA is a fee generating service. The requester has to agree to pay the FDIC for its time to research, copy, redact, and release (if possible) the information requested. If records requested pre-date information that is stored in RADD, contact the Regional POC to request an estimate of time to retrieve the records.

- a. ICRS should keep the agreed cost estimate in mind as the FOIA Request is processed. If the billable hours are greater than what the requestor has stated he/she is willing to pay, then ICRS must notify the FOIA-PA Group to contact the requestor and inform him/her of the projected costs to complete the FOIA Request.
- b. The 20 Business Day clock stops **“Tolling”** once the FOIA Coordinator or Designee recommends to the FOIA-PA Group that a fee agreement is needed to process the FOIA Request or if the Requestor has agreed to pay fees, but the amount is insufficient. If the requestor does not respond or agree to the new fee agreement, then the request is complete. If the requestor agrees to the cost estimate, the processing clock restarts to **“Day One”** for processing the request; please validate that the Date has been reset in SecureRelease. For each FOIA Request, also validate the **“Perfection Date”** (Date the Request was Entered) and the **“Perfection Due Date”** (Date Request Received) in SecureRelease and the **Completion Date** (End of 20 Business Days).

4. Track Fees / Costs

ICRS should ensure to track the respective costs associated with researching, reviewing, redacting, and preparing documents that are classified as responsive

records if the requestor agrees to pay the estimated fee provided to the FOIA-PA Group. Also include in time estimates, the time that RMS-ICRS Senior WO Management reviewed the records if an ACT Request was submitted for review/approval to release responsive records.

- a. Review the original request or SecureRelease to obtain the amount the requestor is willing to pay.
- b. ICRS should also remind Regional Contacts (Regional POC) to track their hours with FOIA Requests that are referred to the Region, if possible. However, most requests that relate to applications will not likely have a Regional cost as most Regions prepare the public file when the application is received. See information on **Fees** above in **Step Two**.

5. Assign the FOIA Request to ICRS Staff

The FOIA Coordinator or Designee will assign the FOIA Request to a member of the FOIA Team or the FOIA Coordinator may process the request. ICRS is responsible for performing due diligence on each FOIA Request assigned to RMS.

- a. Become Familiar with the New Request - Open the FOIA Tracking Logs / Excel Spreadsheets and determine if any prior/similar requests exist. If so, read the actions taken in the log(s) and/or SecureRelease; determine if a similar disposition is appropriate to the current FOIA Request.
- b. Responsive Records Requested Previously - Refer to the FOIA Number where the responsive record was requested/obtained in the response to the FOIA-PA Group (i.e. "2022-FDIC-FOIA-00###") if the responsive records have been requested previously through a different FOIA Request. No further search is required. Refer to "**Provide Recommendations / Responses to the FOIA-PA Group,**" **Step 11** below subsequent to reviewing FOIA Request.
- c. System Searches - If the request is a new/different type of request and involves a bank, the FOIA Coordinator or Designee should conduct a limited, preliminary search through reviewing BankFind and the above-mentioned Application Tracking Tools to gain perspective of whether or not FDIC - RMS could have responsive records. The goal with a search is to **ONLY** determine which Region or Program Area is the owner of the requested document. ICRS does not own or produce any records, except for records created with completing Regional Reviews, Ratings Change Review, Horizontal Reviews and

Special Projects. (Note: Don't forget to be aware of how much time you are spending becoming familiar with the request because of the initial fee agreement between the requester and the FDIC.)

- d. Request is an Application or includes a Bank - If the request involves an application or Bank Name, search the FOIA Tracking Logs to determine whether the same requestor has requested the responsive record(s) previously or if the responsive record has been requested and/or obtained previously. If so, refer to **Paragraph "b"** above in this Step for details.
- d. FDIC Recordkeeping Requirements - Document the FOIA Request on the FOIA Tracking Log / Excel Spreadsheet. Update the FOIA Tracking Log as new events occur and include the final disposition of the request(s) on the FOIA Tracking Log. We are currently working in the tab for Fiscal Year 2023, which extends from October 1 through September 30. Please include the new RMS FOIA Case Assignment on the FOIA Tracking Log maintained on the ICRS Shared Drive in the 'FOIA Requests' Folder. Currently, there is an Excel Spreadsheet (Workbook) entitled FOIA Tracking Log – 2022 forward (Secure Release System). Each RMS assigned FOIA Request will appear under the appropriate worksheet tab, labeled by Fiscal Year. This Folder also includes FOIA Tracking Logs for prior fiscal years.
- e. Documentation - The RMS Coordinator or Designee is responsible for timely completing all relevant fields on the Excel Spreadsheet for each FOIA Request. The FOIA Tracking Log must remain updated regarding the status of RMS assigned FOIA cases – especially for those cases 'in process'.
 - i. Shared Drive Documentation - Create a FOIA Folder on the Shared Drive and name it with the FDIC FOIA Number (i.e. 2022-FDIC-FOIA-00###). The RMS FOIA process is paperless; therefore, please ensure every email and document related to the respective FOIA Request is saved in the corresponding folder on the Shared Drive, including:
 - Communications and documents received from Regional POCs or other Program Areas;
 - ACT Requests and all corresponding files;

- Approval Emails received from AD Vaughn regarding RMS' recommendations to the FOIA-PA Group concerning the subject FOIA Request;
- Final redacted responsive record(s) with exemptions applied from SecureRelease; and
- Screenshots demonstrating the appropriate email or responsive records were uploaded to SecureRelease.

Refer to the Steps in this Chapter, Chapter 3 “**Exemptions**” and **FOIA Close Out Administrative Process** below in Chapter 4 “**SecureRelease**” to ensure adequate documentation is maintained for each FOIA Request.

6. Retrieve Responsive Records

Determine if any **responsive record(s)** exist; keep in mind that any research is generally subject to a fee agreement prior to conducting any research. The FOIA PA-Group is responsible for informing ICRS if the requestor owes any previous fees. The FOIA-PA Group will share the fee agreement with the requestor.

7. Contact the Regional POC or other Program Areas

ICRS works very closely with the Program Areas. Obtain Program Area POCs through discussion with the FOIA Coordinator or Designee or AD Vaughn. The ICRS website contains the FOIA POCs for the Regions. Refer to the link below for details: <https://fdicnet.fdic.gov/content/rms/home/business-ops/icrs/foia.html>.

- a. Contact the Washington Office (WO) Program Area POC or Regional Office (RO) FOIA POC and share the FOIA Request and some background information with them. Provide them a deadline for responding to you or providing the responsive documents.
- b. When contacting the Regional POCs to obtain responsive records, ensure to include the RMS FOIA Coordinator or Designee and AD Vaughn on the email request(s) for information that are sent to the Regional POC. Also include on the email communications with the Regional POC, a request for an estimate of fees, if any.

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- c. If a POC is unavailable to research a FOIA Request, contact their Supervisor or the ICRS POC listed on the ICRS web page. Responses to FOIA Requests are time sensitive; therefore, please ensure to send FOIA Requests to the Regional POC as soon as possible.
 - d. The RO's are the owners of the responsive records that they provide to ICRS to send to the requestor. However, ICRS can alter responsive records to include additional redactions of PII, Confidential, or other Sensitive Data to apply recommended FOIA Exemption or as requested by WO Senior Management.
 - e. ICRS staff reviews and confirms the information provided from Regional POC's or other Program Areas. ICRS staff should ensure proper redactions have been applied to the responsive records prior to submitting to RMS-ICRS Senior WO Management for review and approval with an ACT Request.
8. Submit an ACT Request

If RMS recommends releasing responsive records partially or in full, an ACT Request **must** be completed and submitted through AD Vaughn and DD Vogel or their Designee. ***No responsive records should be released for RMS without the prior review and approval of the FOIA Coordinator, AD Vaughn and DD Vogel or their Designee.*** See Chapter 4 "***SecureRelease***" below for details.

- a. Sharing RMS-ICRS Response outside of RMS - While it is appropriate to work with FOIA Coordinators in other Divisions/Offices to resolve FOIA Requests, prior to releasing any information to the public through the FOIA-PA Group, RMS-ICRS Senior WO Management (AD Vaughn and/or DD Vogel or their Designee) must sign off on Requests before sharing RMS' response outside of the Division. If approved, ensure to include the FOIA Coordinator and AD Vaughn or his Designee on any communications outside of RMS.
9. FOIA-PA Requests RMS to Review Responsive Records or Referral / Consultation

There are times when the FOIA-PA Group will ask RMS to review responsive records or documents that they believe that RMS has an equity ownership. If RMS does not have the expertise to opine on the responsive records, we should not provide an opinion on the release of the records. It is acceptable for the FOIA-PA Group to unassign the processing of the task (the FOIA Request, Referral or Consultation)

from RMS in SecureRelease if RMS does not opine on the responsive record(s) and for the FOIA Coordinator or Designee to acknowledge the confirmation by email if requested.

If after review of the responsive records, RMS determines that it has equity in all or most of the records provided and you have the expertise to opine on the documents; process the FOIA Request or Referral / Consultation based on the processing guidance in this Chapter.

10. RMS ACT Request Submission Process and File Naming Conventions:

- a. RMS Staff will submit requests to a Shared Mailbox called RMS ACT Requests. Each email request will include the following information:
 - i. Title of Request
 - ii. Brief Description of Request
 - iii. Due Date (If the Request is urgent, please note as such)
 - iv. Routing Information (i.e., who needs to review/approve the request)
 - v. All related documents must be attached*
- b. Naming/Format Conventions – the following naming and file format conventions should be used for FOIA documents:
 - i. Any document(s) needing review and possible editing should be named with the prefix “RVW” (i.e., RVW_2022-FDIC-FOIA-00###.doc; RVW_20221234 - Bank of Anytown - Merger). ***Please ensure that Word documents are in Track Changes status.***
 - ii. Any document(s) provided in response to an inquiry or FOIA Request(s) for documentation should be named with the prefix “RESP” (i.e., RESP_FOIA-MEMORANDUM_06282022.pdf) and should be in pdf format.
 - iii. Any other document(s) provided in support of or as additional background information for a request should be named with the prefix “SUPP” (i.e., SUPP_FOIA Request to Region.pdf) and should be in pdf format, if possible.

- iv. If a summary document detailing the request is included, it should be named with the prefix "SUMM" (i.e., SUMM_Orig Request-2022-FDIC-FOIA-00###.pdf) and should be saved in pdf format, if possible.

Additional familiarity with the ACT System may be obtained from the RMS website at the following link: <https://fdicnet.fdic.gov/content/rms/home/business-ops/ats/act.html> and in the attached procedures maintained on the ICRS Shared Drive.



Figure 2. RMS ACT REQUEST SUBMISSION PROCESS

11. Provide Recommendation(s) / Responses to the FOIA-PA Group

The RMS FOIA Coordinator or Designee and AD Vaughn must review all recommendations to the FOIA-PA Group regarding the disposition of the FOIA Request prior to sending an email to the FOIA-PA Group and/or uploading recommendations or responsive records to SecureRelease. When responding to the FOIA-PA Group that the responsive record has been uploaded to SecureRelease or that RMS has no responsive documents, please be mindful of the individuals on the emails. When communicating with the FOIA-PA Group, RMS-ICRS is the POC. The email should be addressed to the FOIA-PA contact that emailed the FOIA Request or Consultation / Referral to RMS, with a cc to the FOIA Coordinator or Designee.

- a. Responses to the FOIA-PA Group should include whether the FOIA Request was not researched because the request is not a valid FOIA Request, in applicable instances.
- b. RMS-ICRS is the unit responsible for coordinating and providing RMS' response and recommendations to the FOIA-PA Group. Therefore, Regional and WO Program Area POCs should deliver the recommended response or responsive documents to RMS-ICRS for final processing. (No one outside of the ICRS

Section should deliver RMS' responses to the FOIA-PA Group. If interdivisional documents are found, ICRS will contact the FOIA-PA Group for further guidance.)

- c. All internal communications between RMS-ICRS and Program Areas must remain in RMS. ICRS will draft an appropriate comment based on the Program Area's findings and send it to the FOIA-PA Group after management approval. ICRS is the "one" voice of the Division and is the POC between the FOIA-PA Group and RMS.
- d. WO and Regional Program Area's POC provides the information and preliminary recommendation on responsive documents. If recommending partial release of information, POC's should use Adobe Pro to highlight suggested non-releasable/redacted areas. If POC's do not have Adobe Pro, they should determine if the software is available for installation from the current available software FDIC offers to all employees (i.e. BigFix installation) or they should contact DIT to assist with installing the software on their laptop.
- e. Provide RMS recommendation to release (partial or in full) or withhold records in response to the FOIA Request(s). Include appropriate Foreseeable Harm Standards if FOIA Exemptions apply and provide estimated hours expended on search, review, approval, and redacting/applying exemptions to responsive records.
- f. When the responsive documents (partial release or full release) have been gathered and vetted with the RMS-ICRS WO Supervisor and a FOIA Exemption applies, ICRS prepares a sign-off package for RMS-ICRS Senior WO Management to review/concur. (If no documents are being released or publicly available, just confirm this with the ICRS supervisors.) **Refer to ACT Request Guidance in Step 10 above for details.**

12. Tips to assist the RMS FOIA Coordinator or Designee with processing FOIA Requests (Laws, Timeframes, etc.)

- a. Know the FOIA Law - the Legal Division is responsible for the FDIC adhering to the law. The Divisions are the custodians of responsive records. Get to know and understand the FOIA exemptions. ***RMS has its own FOIA exemption (b)(8) to maintain the confidentiality of our work. The details of this exemption***

and the other eight primary FOIA Exemptions are described at this link <https://www.fdic.gov/foia/exempt.html> and specifically listed in the “Exemptions” section below. In addition to (b)(8), the other commonly used exemptions are (b)(4), (b)(5), and (b)(6).

- b. Know the Processing Timeframe - the law requires that agencies **respond to a requester within 20 Business Days from the day the FOIA-PA Group receives the request**. If there is a **delay** in processing on the agencies part, **a 10 Business Day extension can be requested**. Requestors can also seek **expedited treatment**, which shortens the timeframe to 10 Business Days. The FOIA-PA Group will notify ICRS if expedited treatment has been requested. RMS will notify the FOIA-PA Group if an extension is needed.
- c. Know Specific Terms - all FOIA Requestors are seeking “responsive records,” which are electronic records determined to be within the scope of a FOIA Request. When processing a FOIA Request, please **read** the request very carefully. RMS will only provide what is “reasonably interpreted.” All other requests are invalid and will be denied in full. Refer to the **“Supplemental Section”** below for a list of important FOIA Terms and Definitions. Also refer to the **“Background”** section above for various defined terms.
- d. Know the Privacy Act Law - there is a specific FOIA exemption, **(b)(6), which protects PII; refer to the “Exemptions” section below**. Also, refer to the **“Privacy Act”** section above for more details.
- e. Other Resources to assist during preliminary search or background review:
 - i. **FDIC Statement of Policy** – search on the subject to review outstanding guidance;
 - ii. **Case Manager Procedures Manual** – review applicable section to determine how a specific subject was handled in Regions/Washington (i.e. merger applications);
 - iii. **RMS Manual of Examination Policies** – review applicable section to determine how a specific subject was handled in Regions;
 - iv. **Financial Institution Letters (FILS)** – review to determine whether guidance was already made available to public, bankers, etc.; and

- v. **Regional Director Memos** – review applicable memo to determine outstanding guidance on the subject.

13. Appeals

A person whose initial FOIA Request is denied, either in whole or in part, has the right to appeal the denial within 30 business days after receipt of notification of the denial. The FOIA-PA Group processes appeals and denials of FOIA Requests. Refer to the link for details: <https://www.fdic.gov/foia/exempt.html>

Chapter 3: Exemptions and Foreseeable Harm Standards

3A. Exemptions

A request for records may be denied if the requested records contain information that is included in one or more of the nine categories listed below. If the requested record contains both exempt and nonexempt information, the nonexempt portions that may reasonably be segregated from the exempt portions will be released to the requester. Records will be redacted, when appropriate, to implement the nine exemption(s).

a. Discretionary Release of Exempt Information

The Federal Financial Institutions Examination Council Act of 1978 established the Federal Financial Institutions Examination Council (Council). Notwithstanding the applicability of an exemption, the Council will only withhold records requested in accordance with FOIA regulations if the Council reasonably foresees that disclosure would harm an interest protected by an exemption listed in 5 U.S.C. 552(b). In addition, whenever the Council determines that full disclosure of a requested record is not possible, the Council will consider whether partial disclosure is possible and will take reasonable steps necessary to segregate and release the nonexempt portion of a record. The Council or the Council's designee may elect, under the circumstances of a particular request, to disclose all or a portion of any requested record where permitted by law. Such disclosure has no precedential significance.

b. Foreseeable Harm Standards

The FDIC General Counsel established Foreseeable Harm Language that must accompany certain FOIA Exemptions where responsive records are withheld from release or are partially released with redactions. The Supervisory Counsel for the FOIA-PA Group provided the attachments below for RMS implementation in July 2022; please refer to **Figure one** and **Figure two** below for additional information.



Figure 3. Foreseeable Harm Confirmation Process



Figure 4. Foreseeable Harm Standards

c. Foreseeable Harm Language for RMS

AD Vaughn and DD Vogel have determined for RMS, the below quoted statement must be included in all emails to the FOIA-PA Group where responsive records are fully withheld or partially released with redactions. ***“For all the information recommended to be redacted, RMS reasonably foresees that disclosure would harm an interest protected by the FOIA exemption(s) that we are recommending be invoked to withhold the information.”***

Also, responsive records fully withheld, should include the following statement in the body of the email to the FOIA-PA Group: ***“Please be advised that, by its very nature, the information that you requested, if it exists and could be located, is exempt from disclosure under FOIA Exemption 8, 5 U.S.C. § 552 (b)(8).”***

Exemption One: Classified Information

Records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of National Defense or Foreign Policy and are in fact properly classified pursuant to such Executive Order (EO). Proper classification markings are Top Secret, Secret, and Confidential.

- a. Exemption protects from disclosure national security information concerning the National Defense or Foreign Policy provided that it has been properly classified pursuant to the procedural requirements of Executive Order 13526, Classified National Security Information.
- b. Examples: *Military Plans, Weapons Systems or Operations; Intelligence Activities, Intelligence Source or Methods, or Cryptology. See complete list below.*

EO 13526 directs that information should not be classified where “there is significant doubt about the need to classify information.” Information can only be **originally classified** if it meets all **four** of the following conditions:

1. An “original classifying authority is classifying the information;”
2. “The information is owned by, produced by or for, or is under the control of the United States Government;”

3. "The information falls within one or more of the categories of information" for which classification is allowed; and
4. "The original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the National Security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage."

As provided by EO 13526, **only eight categories** of information may be **considered** for **classification**:

1. "Military Plans, Weapons Systems, or Operations";
2. "Foreign Government Information";
3. "Intelligence Activities (including covert action), Intelligence sources or methods, or Cryptology";
4. "Foreign Relations or Foreign Activities of the United States, including Confidential Sources";
5. "Scientific, Technological, or Economic Matters Relating to the National Security";
6. "United States Government Programs for Safeguarding Nuclear Materials or Facilities";
7. "Vulnerabilities or Capabilities of Systems, Installations, Infrastructures, Projects, Plans, or Protection Services Relating to the National Security"; or
8. "The Development, Production, or Use of Weapons of Mass Destruction."

An agency may only withhold records under Exemption One where the document is "classified in accordance with the procedural criteria of the governing EO as well as its substantive terms."

Prohibited purposes for classification

An appeal may also be based on an argument that the information has been classified for prohibited purposes. EO 13526 specifically states that the government cannot classify or fail to declassify a document in order to:

1. "Conceal violations of law, inefficiency, or administrative error;"
2. "Prevent embarrassment to a person, organization, or agency;"
3. "Restrain competition;" or
4. "Prevent or delay the release of information that does not require protection in the interest of the National Security."

Exemption Two: Internal Matters

Records related solely to the internal personnel rules and practices of the FDIC.

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- a. Exemption protects internal documents, the disclosure of which would risk circumvention of a statute or agency regulation, or impede the effectiveness of an agency's activities.
 - b. Broad application from HR matters to specific workplace rules governing employees.

Exemption Three: Information Protected by Other Statutes

Records specifically exempted from disclosure by statute, provided that such statute:

- a. Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues; or
- b. Establishes particular criteria for withholding or refers to particular types of matters to be withheld.
- c. What can qualify as a "statute" protected under this Exemption:
 1. Certain Federal Statutes;
 2. Federal Rules of Procedure Enacted into Law by Congress (i.e. Federal Rules of Criminal Procedures 6(e));
 3. Certain Self-Executing Treaties; or
 4. Broad, Sweeping Policy of Preserving the Secrecy of a "Matter Occurring Before the Grand Jury."

Exemption Four: Business or Trade Information

Protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

1. Exemption protects the interests of **both** the government and the submitter/owner of the information.
2. Provides assurances that the information that the information will be safeguarded, protecting submitters from competitive disadvantage if disclosed.
3. Exemption protects two separate categories of information:
 - a. Trade Secrets – narrowly defined and limited to manufacturing or production process, not the final product (Example: Recipe for Coca-Cola). Commercially valuable plan, formula, process, or device used for the making, preparing, compounding or processing of trade commodities that are the end product of either innovation or substantial effort. Trade secrets may be found in:
 - Contracts
 - Manufacturing Descriptions
 - Schematics and Printed Circuits
 - Product Formulas
 - Software
 - Quality Control Data & Quality Assurance Procedures

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- b. Commercial or Financial Information Obtained from a Person – Commercial is anything relating to commerce and can be nonprofits or charities. Person includes an individual, partnership, corporation, association, or public or private organization other than an agency; definition also includes foreign, state, and tribal governments as well as submitter-generated information summarized or reformulated by agency (e.g. through agency inspections, summaries, or audits).
 - c. Privileged – encompasses Attorney-Client Privilege, Attorney-Work Product, etc. (see *Exemption Five for additional details*.)
 - d. Confidential - Determining whether information is Confidential:
 - Voluntary Submission
 - Customary Treatment of Submitter
 - Required Submission (Primary Test)
 - Likelihood of substantial competitive harm to submitter
 - EO 12600 requires notification to submitter if agency has any question regarding existence of competitive harm.

Exemption Five: Privileged Information

Protects Interagency or intra-agency memoranda or letters, which would not be available by law to a private party in litigation with the FDIC.

- a. Incorporates civil discovery privileges into the FOIA.
- b. Prevents requesters from using the FOIA to get documents that would be privileged in discovery.
- c. Two requirements that must be met for Exemption Five
 - i. **Threshold**
 - 1. Interagency or intra-agency memoranda or letters
 - a. Includes all forms of written communications – emails, reports, etc.
 - b. Created and exchanged within or between agencies
 - c. Consultant Corollary – Covers **certain** situations in which an agency communicates or consults with an outside party. Covers situations where outsiders are functioning as if they were agency employees.
 - i. Those who have a formal, contractual, paid relationship with an agency
 - ii. Those the agency consults, on an unpaid volunteer basis
 - d. Advice from a consultant must be coming into the agency, not from the agency. For Example:
 - i. An agency **can** protect advice it **receives from** Congress.

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- ii. An agency **cannot** protect advice it **provides to** Congress.
 - e. **Common Interest Doctrine** – Outside party must have a common interest with the agency,
 - i. **After** the point at which the agency decides to enter into a common interest agreement.
 - ii. Documents created while the outside party is seeking the agreement itself will **not** meet the threshold.
- ii. Applicable Discovery Privileges** – Exemption Five incorporates certain civil discovery privileges into the FOIA:
- 1. **Deliberative Process Privilege**
 - a. **Purpose of the Privilege**
 - i. Encourage open, frank discussion
 - ii. Protect against premature disclosure of proposed policies
 - iii. Guard against public confusion from release of rationales that were not ultimately the basis for agency decisions
 - b. **Protects Process**
 - i. Integrity of agencies' decision-making **processes**
 - ii. Documents protected where release would harm the decision-making process.
 - c. **Elements** – Documents must be Predecisional and Deliberative:
 - i. **Predecisional** – Before the adoption of an agency policy.
 - **Postdecisional Documents** – Generally, postdecisional documents are not protected by privilege.
 - FOIA's purpose is served by disclosure of documents reflecting agency final decisions.
 - **Losing Predecisional Status** – Incorporation and Adoption have been defined as the same concept.
 - **Retaining Predecisional Status: No Express Approval** – Adoption of a bottom-line recommendation in a document without expressly indicating approval of the rationale(s) for the recommendation is not enough to satisfy this standard.
 - ii. **Deliberative** – Communications that are offered in support of the agency's decision-making process.
 - a. Deliberative Information

- i. Recommendations
 - ii. Proffered Opinions (e.g. “I believe that,” “In my opinion,” etc.)
 - b. Duty to Segregate Factual Information
 - i. “Inextricably intertwined”
 - ii. Identity of the author is normally not **deliberative**
 - iii. “Elastic Facts”
 - iv. Process of selection and inclusion of factual material can constitute deliberation
 - c. Examples of Deliberative Documents:
 - i. Briefing materials
 - ii. Drafts
 - d. **Foreseeable Harm Standard** – Cannot withhold information under Exemption Five unless there is a foreseeable harm in disclosure. ***See Discretionary Release of Exemption Information and Foreseeable Harm Guidance above.***
 - i. Deliberative process privilege records can be good candidates for release under the foreseeable harm standard.
 - ii. **Sunset Provision** – The privilege “shall not apply to records created 25 years or more before the date on which the records were requested.”
- 2. Attorney Work-Product Privilege:
 - a. Protects documents that were prepared by or at the direction of an attorney **and**
 - i. Attorneys in various capacities
 - ii. Non-attorneys who are supervised by attorneys
 - b. Created in reasonable anticipation of litigation
 - i. Though a specific claim need not have been actually filed, the privilege will not apply until an articulable claim likely to lead to litigation has arisen.
 - c. Applies to documents created in:
 - i. Civil and Criminal litigation
 - ii. Administrative proceedings
 - iii. An effort to settle claims
 - iv. Recommendations to close a case or to decline prosecution

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- d. The privilege does not apply to documents created subsequent to the closing of a claim.
 - e. A document must meet the criteria for the privilege at the time of its creation to be covered by the privilege.
 - f. The privilege does not apply to documents created in an agency's normal course of business.
 - g. Agencies are generally not required to segregate factual material from documents covered by the privilege.
3. Attorney-Client Privilege:
- a. Confidential communications between an attorney and his or her client relating to a legal matter for which the client has sought professional advice.
 - b. Protects confidential information supplied from client to attorney, as well as the attorney's advice based upon client-supplied information.
 - c. The privilege is not limited to situations involving litigation.
 - d. For privilege to apply, communications must be between an attorney and client **AND** confidential.
 - i. Client – Who is the Client?
 - Can be a Federal Agency and
 - Must identify client
 - ii. “Confidential” Defined – Communications can be considered “confidential” when the specific information conveyed is confidential, even though the underlying subject matter is known to third parties.
 - e. As with work-product privilege, the attorney-client privilege applies to both factual and deliberative materials.

Exemption Six

Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Glomar – When a requestor seeks records concerning an **identifiable individual** and the records are of a **particularly sensitive nature** so that disclosure of their very existence could cause an invasion of privacy, it may be necessary to neither confirm nor deny the existence of the records, or “**Glomarize.**”

- Neither confirms nor denies existence of letters or documents.
- Protects a third-party's privacy interest as to whether or not the government even maintains records on them.
- Issued to protect subjects named in law enforcement records.

Exemption Seven

Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

- a. Could reasonably be expected to interfere with enforcement proceedings;
- b. Would deprive a person of a right to a fair trial or an impartial adjudication;
- c. Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- d. Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;
- e. Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
- f. Could reasonably be expected to endanger the life or physical safety of any individual.

Exemption Eight: Records Related to Financial Institutions

Protects records that are contained in or are related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of financial institutions.

- Exemption has a "particularly broad, all-inclusive" scope, which includes banks, securities exchanges, broker-dealers, etc.; and is not limited to "depository institutions."
- No duty to segregate factual from analytical or deliberative material.

Exemption Nine: Well Information

Protects geological and geophysical information and data, including maps concerning wells.

Chapter 4 – SecureRelease

4A. SecureRelease: FDIC System of Record

FDIC uses SecureRelease, an interagency software system, to manage its FOIA Requests. SecureRelease is used to receive and respond to a FOIA Request. When a FOIA Request is reviewed and approved using an ACT Request, the document(s) are uploaded to SecureRelease and Exemptions are applied to the redactions based on the redactions made with an Adobe Pro Highlighter. The FOIA-PA Group provides the Requester the redacted version, with Exemptions applied, as an enclosure to the final response.

All documents released must be uploaded into SecureRelease. This system has its own redaction feature. RMS documents should ***NOT*** be uploaded into SecureRelease until after RMS-ICRS Senior WO Management has reviewed and approved release. (One option is to use Adobe Pro to illustrate recommended redactions and exemptions.) After management has approved the release of documents, upload documents into SecureRelease. Refer to the ***“FOIA Close Out Administrative Process”*** sections *below for specific steps and illustrations.*

Note: All information provided to ICRS from Program Areas may be subject to FOIA Exemption rules, especially information relating to examinations and supervision of open financial institutions. (Refer to the ***“Exemptions”*** and ***“Foreseeable Harm Standards”*** above in Chapter 3 when partially or fully releasing responsive records or withholding responsive records from release.)

4B. Obtain Access to SecureRelease

- ✓ Complete FOIA Training on FLX
- ✓ ICRS AD Vaughn or FOIA Coordinator will notify the FOIA-PA Group (Mike Toland or Designee) via email that Employee has completed the FOIA training and is ready for SecureRelease Training and access to the System.
- ✓ Mike in the FOIA-PA Group submits an ARCS request for Employee’s access to SecureRelease and notifies Deloitte to provide employee documents that require signature through DocuSign
- ✓ AD Vaughn receives and approves the ARCS request

- ✓ Once ARCS request has been approved, Mike contacts Deloitte to provide Employee with enrollment information to setup employee's FDIC PIV Card for access / SecureRelease log-in.
- ✓ If needed, Mike or Deloitte can assist Employees with obtaining access to SecureRelease Access after all forms have been completed and provided to Deloitte.
 - Employees are generally provided access to SecureRelease within three-to-five Business Days after forms have been signed and provided to Deloitte.
- ✓ User will be enrolled to take SecureRelease Training, which is administered through Deloitte or FOIA-PA Group. Alternatively, the employee will review Training Modules on SR and/or on the Shared Drive.
 - Employee will also receive hands-on training from the FOIA Team on how to use SecureRelease.
 - Training Modules are located in SecureRelease in the "SecureRelease Training Center" Active Workspace and on the Shared Drive in the FOIA Folder.
- ✓ Currently, the FDIC has 50 Licenses for access to SecureRelease that are assigned to individual FDIC employees who access SecureRelease on a 1:1 basis. The Licenses do not expire, but if your SecureRelease account is inactive after 28 days of no log-in or lack of activity in the system. If employees leave ICRS or any other Division, their license can be re-assigned to another employee at the beginning of the next month.
- ✓ If your SecureRelease profile is inactive, contact Deloitte to have your access to the system restored.

4C. Test to Determine if Install was Successful

- ✓ Double click on the Relativity Icon or follow the link below
- ✓ <https://discovery3.deloittefed.com/my.policy>

User should see home page below:



b4

4D. FOIA Close Out Administrative Process in SecureRelease (SR)

a. Not a FOIA Request or No Responsive Records Provided

Detailed below are procedures for a FOIA Request that is Not a FOIA and RMS is Not Attaching / Uploading or Recommending that Responsive Records are released. ***As a Best Practice – RMS will NOT upload a Responsive Record that RMS recommends to the FOIA-PA Group to be withheld in full, i.e. citing FOIA Exemption (b)(8). If the FOIA-PA Group contacts you regarding uploading a responsive record in this situation, please contact the FOIA Coordinator and AD Vaughn or their Designees.***

- **Upload/Attach:** Email sent to FOIA-PA Group in the “Attachments Section” (No Email will be Generated)
- **Steps:**
 1. Scroll down to the **Fourth Menu Level** from the top of the Screen and Select “Attachments.”
 2. To the Far Left of the Screen, Select “New”



b4

The **Edit Attachment / Attachment Information Screen** depicted below will open.

(Note: Use the Drop Down Arrow to the RHS of each option to make a Selection)



b4

3. **Category:** “Select FOIA Coordinator Documentation” *(Note: You will attach the email that you sent to the FOIA-PA Group regarding the processing of the FOIA with no Responsive Records or indication that the request is not a FOIA.)*
4. **File:** “Attach/Upload” the Email from your hard drive or on the Shared Drive that you emailed to the FOIA-PA Group with Recommendations for the FOIA or request that is not a FOIA.
5. **Attachment Notes:** Describe Email you are attaching – “RMS Response to FOIA-PA on 2022-FDIC-FOIA-##00123.”
 - Ensure to take a screen Shot of the “Attachment” Screen Before you hit Save or go back into SR if you forget and take a Screen Shot (You can use Snag It or PrtScn on Keyboard to copy the images on the screen)
 - Select “Save” at the top of the screen.
 - Save the Screen Shots in a Word / PDF file and in the FOIA File on the Shared Drive.

- You should then see your *Attachment/Email, Name, the Date you Attached the Email and Time on the Scree, etc. under the “Attachments” Tab*
(See Image Below).

b4

- Please take a screen Shot of the **FOIA Number and the Attachments Section** after you **Save** the “Attachment” (See *Image Above*) and before you Exit SR to document RMS Completion of the FOIA in SR.
- Please Save both Screen Shots in the same Document (Cut and Paste in a Word Doc, then save as a PDF) on the Shared Drive under the FOIA Number. If you forget any of the steps, you can log back into SR into the FOIA and take Screen Shots.

- b. Request is a FOIA Request and Records are Uploaded to SecureRelease after RMS-ICRS Senior WO Management Review/Approval

Do not perform ANY of the steps below in SecureRelease until the Exemptions and/or Redactions have been included in the Responsive Record(s) that RMS-ICRS Senior WO Management – AD Vaughn and DD Vogel or Designees will review and approve or deny through the ACT Request; refer to Chapter 2, Step Ten above, “Processing the FOIA Request” for additional details.

Steps:

1. Retrieve FOIA Request:

Open FOIA Request you are working on in SecureRelease (SR): 2022-FDIC-

b4

2. Upload Responsive Record(s):

- a. Scroll down to the **Fourth Menu Level** from the top of the Screen and Select **"Tasks"** to begin the **"Upload"** Process:

b4

- b. **Upload Responsive Records:** Scroll over to the menu on the Right Hand Side (RHS) of Screen and select the **Third Menu Option from the Top: Search, Load, and Link Records.**

b4

- c. After selecting Search, Load, and Link Records above, an “ACTIONS” Menu will appear on the RHS of the screen. Select the First Option from the top, “Upload Documents.”

b4

- d. Upload Responsive Record(s) that AD Vaughn and DD Vogel approved with ACT Request:

b4

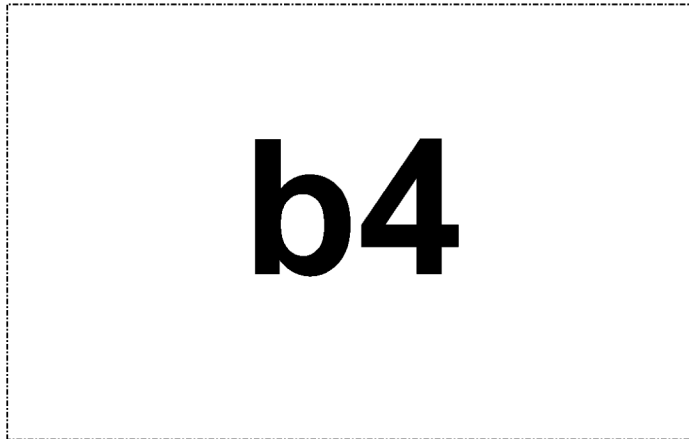
- i. Add Files: Choose Approved Responsive Record(s) from ACT Request on your PC or the Shared Drive
- ii. Custodian: Select Division you work in: Risk Management Supervision (RMS)
- iii. Keyword List: Each Region Makes a List of all words that are redacted; select NA for RMS because Regions Redact Responsive

Records provided to ICRS or we will redact the Responsive Records prior to Upload.

- iv. **Upload All:** Select “Upload All” and the Responsive Record(s) will appear at the bottom of the screen.

3. **Ingest the Document (Responsive Record)**

- a. REL Document (E-Discovery Number) allows you to include the Exemptions in the document over the redaction.
- b. Notify Mike Toland if you make a mistake in SR.
- c. When files are uploaded into SR they are analyzed to determine if there are any duplicates in the workspace. SR will only store one Source File and one Markup File (De-Duping).
- d. After De-Duping is complete, files are imaged and stored in the system so they can be redacted. As noted above, RMS provides ICRS with Redacted files; however, if a Redaction is omitted or is not visible in SR, you can include the Redaction in SR.
- e. Each document is OCR'd in the event a list of Key Words is created to Auto Redact prior to applying Exemptions.
- f. **Go to the “ACTIONS” Menu on the RHS and Select “Ready for Ingestion” Once this option is selected, you will receive a Notification that reads “Ingestion Workflow”**



- g. **A Blue Wheel (See Image Below) will spill while SR ingests the Responsive Record(s). This process takes a while and the Wheel will stop spinning when Ingestion is completed.**
- h. **Once “Ingestion” is finished, click the “Completed” Button to finish the process.**

b4

Note: Ensure the Number of Files Uploaded on the RHS in the Ingestion Workflow agrees with the number of Responsive Records you “Uploaded” in Step 2 Above.

4. Apply Redactions and/or Exemptions

- a. Open Ingested Document / Responsive Record that has been renamed “REL000000###” in the bottom left corner “Ingestion Menu” and select the Ingested Document / Responsive Record to apply “Exemptions.”

Note: Ensure Screen Size is 100% or less to see full screen.

b4

b. **The next screen will display two Radio Button options @ the Top Left Menu: “Viewer” and “Image”**

- i. Viewer Option: the Ingested Document Uploaded with the Redactions or a clean copy of the Responsive Record if no Redactions have been applied.
- ii. Image Option: **will display Redactions available in the Responsive Record Uploaded. You will apply Exemptions to the Redactions with the “Image” Option selected. If no Redactions were applied to the Responsive Record, you will apply Redactions first and then apply Exemptions in the Image Option.**

b4

- iii. Once you are in “Image” Mode and your document has been Redacted, you should see all the Redactions. Please confirm that all of your pages in the “Image” File are as they were in the Document you Ingested before you begin (Open the approved “RVW” document in PDF to confirm).
- iv. Scroll down to the Third Menu from the top on LHS and use your mouse to select the 12th Drop Down Box from the left; select the first Option “Exemption Notes” The message to the Right will say “Redact-Exemption|Note.” Select this option.

b4

- v. Use your Mouse to scroll down to your first Redacted Box.

b4

- vi. Right click to draw a box/frame around the Redacted Image.
- vii. Right Click and Chose the First Option **“Select Exemptions.”**

b4

- viii. **“Select Exemptions”** a pop-up box will appear on the screen in the top LHS of the screen. Select the applicable **Exemption(s)** to replace over the Redaction (i.e. b4, b6, b8, etc.).
- ix. Scroll down on the RHS and select the **Exemption(s)** needed for your Responsive Record by placing a checkmark next to the **Exemptions(s)**.

b4

- x. Once you select the **Exemption(s)** the first time, SR retains it in memory and you can reuse it throughout the document without having to repeat this step again. If you notice in the top left corner under where it says **“Select Exemptions”** SR already remembers that I have selected **Exemption “b6”** to include over the Redactions in the Responsive Record.
- xi. You can select the **Exemption(s)** you will use in the Responsive Record one at a time or you can select them all at once. I’m selecting them one at a time for this exercise and FOIA, **Exemption b6**.

Note: SR auto-saves Redactions or Exemptions after they are entered in the Responsive Record. If you have to step away and/or SR times out on you, you can pick back up where you left off; any Redactions or Exemptions entered will be auto-saved through your last entry.

- xii. **Apply Exemption to Redaction Box** - To apply the Exemption (b6) to the Redaction, scroll back to the first **Redaction Image Box** where **“Select Exemptions”** is shown (**See item vii above.**)

b4

- xiii. Three white dots will initially appear next to the **Redacted Image**. Use your mouse to cover the **Redacted Image** *and* using the eight white dots, apply the **b6 Exemption** completely over the Redaction (*see image above*). You can extend the lines on the Exemption to cover more of the Redaction Box if needed as you review each Redaction and apply the Exemptions.
- xiv. Selecting Multiple Exemptions – If you have more than one “Exemption” to include in the document, place a checkmark next to each “Exemption” at the outset of the “**Select Exemption**” process (*See items viii thru xi above*) and SR will remember all selected “Exemptions” and will display them in the “**Select Exemption**” **Menu**. Choose the appropriate “Exemption(s)” needed for the Redaction you are reviewing and remove, back space over, or delete the “Exemption(s)” that don’t apply to the current Redaction as all “Exemption(s)” selected will appear at each Redaction selected.
- c. Review - After you input them all (Redactions / Exemptions), go back through and review the entire Responsive Record to ensure all Redactions or Exemptions have been captured correctly.
- d. Proceed to “**Review / Review Decision:**” Menu on RHS, **Second Level Menu, First Tab / Selection Option**.

b4

- e. On the Menu on the RHS: Select the “Review” Section/Option. In the Drop down Menu below “Review Decision” Select “Responsive” or “Non-Responsive” for each Responsive Record that you have applied “Exemptions/Redactions.”
- f. Input a checkmark in the box next to “FOIACoordinatorQC” on the Second Row below the Section Entitled “Review Tier”/ Completed By” and “Reviewer Notes.” (FOIA Coordinator Review).
- g. After you include the Checkmark in the box next to “FOIACoordinatorQC” your name populate with a time stamp regarding the note and review. This is an indication to the FOIA-PA Group that RMS has Uploaded and Ingested the Responsive Record,

Redactions/Exemptions have been included on the Responsive Record, and the RMS “FOIACoordinatorQC” Review has been completed. **You will also see a note on the screen that reads “Review status updated successfully.”**

- h. Include “Reviewer Notes” as applicable. ***“I included a Reviewer Note: Exemptions included.”***
- i. The FOIA-PA Group will include a checkmark in “Finalize Markings” Box on the RHS upon final review and close out of the Responsive Record.
- j. The FOIA-PA Group also places a checkmark in the box next to “FOIA-PA Group QC” upon completion of their review and close out of the Responsive Record.
- k. **Save Final Responsive Record** – Save the Responsive Record as a PDF in the REL Format and place in the FOIA Folder on the Shared Drive. To save, click on the PDF Icon next to the Printer Icon on the Menu on the *Third Row* from the top on the LHS. Ensure to Select the Option to Include Redactions (***see image below***). Exemptions are saved by default. The save process takes a while. Save the PDF on the Shared Drive in the FOIA Folder with the FOIA Document Number – 2022-FDIC-2022-000### in the ACT Request Folder before exiting this session in Image Viewer.

b4

-
4. **Complete Task - While Document is Ingesting or @ End of Process:**
- a. **While Responsive Record is “Ingesting”** go back to “Tasks” Option Fourth Menu Level from the Top. Next, select “New” on LHS.

b4

- b. An “Add Task” Box populates. *See Image Below and information to complete the Task.*

b4

- i. **Task Name:** Include FOIA Number “2022-FDIC-FOIA#0000”

- ii. **Category:** FOIA-Coordinator – Review Complete
- iii. **Assigned to (Internal):** FOIA-PA who sent you the email (Mike Toland / Alisa Colgrove / Natasha Smith)
- iv. **Assigned to Group:** FOIA-PA Group (Set) / Division of RMS
- v. **Assigned to Email (Non-User or group inbox)** – Include your email: or RMS FOIA Email or can leave blank because email option does not work.
- vi. **Include Due Date:** *(This date will change if Fee Agreement Approved)*
- vii. **Include Completion Date:** *(Date you receive final approval from AD Vaughn regarding email to FOIA-PA Group or Date you receive approved ACT Request)*
- viii. **Include Notes:** Cut and Paste Information from the email you sent to FOIA-PA Group
- ix. **Request:** Include FOIA Request Number and depress (Set)
- x. **Hit Save:** Save at the top of the screen. *(Note: We are not receiving emails even if you place a checkmark in the “Send Email Notification Box”).*
- xi. **Please Take Screen Shots of the Task, the Task Entry on the Main SR Screen, and entire SR Screen after the Task is Saved. Save All Screen Shots in one Word file. Save Word / PDF Document on FOIA Shared Drive under the associated FOIA Number.**

b4

- xii. If you make a mistake or omit information, you can re-open the “Task” and Edit/Correct the information and resave the Task.

Remember to update the Shared Drive with a Revised Screenshot of the revisions or add to existing file if you still have it open.

b4

- xiii. The **FOIA Close Out Administrative Process is complete**; save email(s) to FOIA-PA Group, AD Ben Vaughn's approval emails for FOIA-PA Group email release and approved ACT request information to Shared Drive.
- xiv. Final letters are included in SR based on our responses and this closes the loop on the process.

Helpful Links and Reference Material

SEC Website

Sometimes you may need to determine whether a bank is listed on the stock exchange. This will tell you what is already publicly available about the bank. Here's the link to the SEC: <http://www.sec.gov/edgar.shtml>

FDIC Enforcement Decisions and Orders (Enforcement Actions / Consent Orders)

<https://orders.fdic.gov/s/>

Bank Find

<https://banks.data.fdic.gov/bankfind-suite/bankfind>

Department of Justice – Training Courses, Annual Reports, Legal Cases, FOIA Manual, etc.:

DOJ Court Decisions

<https://www.justice.gov/oip/court-decisions-overview>

FOIA Manual / FOIA Reference Guide

<https://www.justice.gov/oip/doj-guide-freedom-information-act-0>

DOJ Training Courses

<https://www.justice.gov/oip/training>

Glossary of Terms

Cause of Action

Consultation – Requestor solicits response from other Regulatory Agency.

Deliberative Process Privilege –

Glomar

Reasonably Interpret -

Record – Item, collection, or grouping of information.

Responsive Records

SUPPLEMENTAL

ACRONOMYNS

EXHIBIT 1

EXHIBIT 2

From: Cunanan, Sarah
To: Coordinators FOIA; b6
Cc: Legal FOIA; Kepniss, Matthew J.
Subject: Foreseeable Harm Confirmation Process
Date: Wednesday, July 27, 2022 10:17:03 AM
Attachments: freedom of information act guidelines 0.pdf
Foreseeable Harm Standards.docx

FDIC FOIA Team,

b5

If you have any questions concerning this new process, the AG Guidelines, or the foreseeable harm standards, please feel free to reach out to me or any FOIA/PA Group member.

Thanks, Sarah

Sarah Cunanan

Supervisory Counsel, Legal Division

3501 Fairfax Drive, VS-D-8124

Arlington, VA 22226-3500

Office: (703) 562-2125

Cell: b6





Office of the Attorney General
Washington, D. C. 20530

March 15, 2022

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read "Merrick Garland", is written over the word "GENERAL" in the "FROM:" line.

SUBJECT: FREEDOM OF INFORMATION ACT GUIDELINES

For more than fifty years, the Freedom of Information Act (FOIA), 5 U.S.C. § 552, has been a vital tool for ensuring transparency, accessibility, and accountability in government. As the Supreme Court has explained, the Act's "basic purpose . . . is to ensure an informed citizenry," which is "vital to the functioning of a democratic society [and] needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The guidelines set forth below update and strengthen the federal government's commitment to the fair and effective administration of FOIA.

A. The Presumption of Openness

1. As amended in 2016, the Freedom of Information Act provides that a federal agency or department (hereinafter "agency") may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A)(i).

2. Information that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail. Moreover, agencies are strongly encouraged to make discretionary disclosures of information where appropriate.

3. When an agency determines that it cannot make full disclosure of a requested record, FOIA requires that it "consider whether partial disclosure of information is possible" and "take reasonable steps necessary to segregate and release nonexempt information." *Id.* § 552(a)(8)(A)(ii).

4. To help ensure proper application of the foreseeable harm standard, agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

5. In determining whether to defend an agency's nondisclosure decision, the Justice Department will apply the presumption of openness described above. The Justice Department will not defend nondisclosure decisions that are inconsistent with FOIA or with these guidelines.

6. Although the fair and effective administration of FOIA requires that openness prevail in the face of doubt, Congress established nine exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests. *Id.* § 552(b). As the Act makes clear, however, the "burden is on the agency to sustain" a decision to withhold records under those exemptions. *Id.* § 552(a)(4)(B). Nor may agencies withhold information based merely on speculative or abstract fears or fears of embarrassment.

7. The Justice Department's Office of Information Policy stands ready to provide guidance to agencies making FOIA determinations in close cases and to provide support and training as agencies work to implement this guidance. With respect to specific FOIA litigation, agencies should consult with the relevant Justice Department attorney assigned to the case.

B. Proactive Disclosures

1. The proactive disclosure of information is also fundamental to the faithful application of FOIA. Proactive disclosures enable information about federal government operations to be more readily available to all.

2. FOIA requires agencies to proactively disclose certain categories of records, including previously released records that have been requested three or more times or that "have become or are likely to become the subject of subsequent requests." *Id.* § 552(a)(2)(D)(ii).

3. In making proactive disclosures, agencies should post records online as soon as feasible. Agencies should also continue to maximize their efforts to post more records online quickly and systematically in advance of any public request.

4. The Justice Department has strengthened its efforts to encourage proactive agency disclosures, including by – as the Government Accountability Office (GAO) recommended – providing more specific criteria regarding how relevant metrics should be reported in agency Annual FOIA Reports.¹

C. Removing Barriers to Access and Reducing FOIA Request Backlogs

1. Agencies should continue their efforts to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs. For example, the Justice Department's Executive Office for Immigration Review has long required individuals to file FOIA requests to obtain official copies of their own records of immigration court proceedings. We are now changing that policy, and I encourage all agencies to examine whether they have

¹ See U.S. DEP'T OF JUST., DEPARTMENT OF JUSTICE HANDBOOK FOR AGENCY ANNUAL FREEDOM OF INFORMATION ACT REPORTS (2021), <https://www.justice.gov/oip/page/file/1438431/download>.

similar or other categories of records that they could make more readily accessible without requiring individuals to file FOIA requests.

2. It is equally important to ensure that the public can readily find information that the government makes available. Records should be posted online quickly and systematically. In addition, agency FOIA websites should be easily navigable, and records should be presented in the most useful, searchable, and open formats possible. As we continue to improve our FOIA programs, improving the organization and presentation of disclosed materials should be a core part of our efforts to efficiently provide government records to the public.

3. FOIA.gov continues to serve as the government's central website for FOIA administration. The Justice Department is committed to continuing to build on the functionality of the site to better serve requesters and agencies. Together with the Office of Management and Budget, the Justice Department issued joint guidance in 2019 to ensure full interoperability of FOIA.gov.² Agencies should ensure that they are complying with FOIA.gov's interoperability requirements and are regularly updating their information on FOIA.gov.

4. Timely disclosure of records is also essential to the core purpose of FOIA. Agencies must have effective systems in place for responding to requests in a timely manner. The Justice Department encourages Chief FOIA Officers to undertake a comprehensive review of their FOIA programs to ensure that searches, reviews, and productions of records are conducted as efficiently as possible.

5. Agency FOIA professionals should continue to work with FOIA requesters in a spirit of cooperation. Each agency should actively work with requesters to remove barriers to access and to help requesters understand the FOIA process and the nature and scope of the records the agency maintains. Agencies should also ensure that they promptly communicate with requesters about their FOIA requests. As the Justice Department has emphasized in guidance for more than a decade, agencies should communicate electronically with FOIA requesters to the greatest extent possible, including by accepting FOIA requests and subsequent administrative correspondence electronically.

D. Ensuring Fair and Effective FOIA Administration

Ensuring fair and effective FOIA administration requires support from agency leadership, proper training, and a full understanding of FOIA obligations by the entire agency workforce.

1. I urge agency Chief FOIA Officers to undertake comprehensive reviews of all aspects of their agencies' FOIA administration, with a particular focus on the concerns highlighted in this memorandum. In accordance with FOIA and the Justice Department's FOIA Guidelines, agencies should report to the Justice Department each year on the steps they have taken to improve FOIA operations and facilitate information disclosure at their agencies. 5 U.S.C. § 552(j)(2)(D). The Justice Department's Office of Information Policy will offer specific guidance on the timing and content of such reports to ensure that they inform current and

² See *Guidance for Achieving Interoperability with the National Freedom of Information Act (FOIA) Portal on FOIA.gov* (February 12, 2019).

emerging FOIA challenges and risks, including, as the GAO recommended, the number of requests for which unusual circumstances apply and the effect of litigation on overall FOIA request processing and backlog.

2. In conducting assessments, Chief FOIA Officers should carefully review backlogs of requests and evaluate the allocation of agency resources to FOIA operations.

3. The FOIA Improvement Act of 2016 established a Chief FOIA Officers Council to develop recommendations for increasing compliance and efficiency in responding to FOIA requests, and to identify, develop, and coordinate initiatives for increasing transparency and compliance with FOIA's requirements. The Council has served as a helpful platform for understanding common challenges, advancing new FOIA initiatives, and identifying and sharing best practices. I encourage new agency Chief FOIA Officers to participate on the Council for the benefit of their own agencies and to improve government-wide FOIA administration.

4. The federal government could not process the hundreds of thousands of FOIA requests that are received every year without its dedicated FOIA professionals. FOIA professionals deserve the full support of their Chief FOIA Officers and all their agency colleagues.

5. Successful FOIA administration also requires proper training and a commitment to FOIA compliance by agency personnel. Simply put, FOIA is everyone's responsibility. I encourage each agency head to provide regular and proper training to your workforce that explains the importance of FOIA and every individual's role in administering it. The Justice Department's Office of Information Policy has issued several guidance documents and articles on the topics discussed in this memorandum, including resources to assist you with ensuring proper training and compliance with FOIA. See <https://www.justice.gov/oip>. I urge agencies to consult these resources.

6. The Justice Department understands the challenges agencies face in responding to the high number of requests they receive each year. The Department stands ready to work constructively with your agencies, with Congress, and with the FOIA requester community to improve processing capacities, reduce backlogs, and make government more transparent, responsive, and accountable. I encourage your agencies to take advantage of the government-wide resources the Justice Department has made available as you work to comply with your FOIA obligations.³

* * *

Transparency in government operations is a priority of this Administration and this Department. We stand ready to work with each of you to make real the Freedom of Information Act's promise of a government that is open and accountable to the American people.

³ This memorandum, which supersedes previous Attorney General memoranda on this subject, is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees, agents, or any other person.

FORESEEABLE HARM STANDARDS

b5

b5

b5

Division of Risk Management
Supervision

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Freedom of Information Act (FOIA)

ICRS is responsible for the division-wide administration of the RMS-FOIA program and serves as the RMS FOIA Liaison to the FOIA/PA Group which administers the FOIA regulation for the FDIC. ICRS receives and responds to all FOIA requests assigned to RMS by the FOIA/PA Group. ICRS manages the FOIA request process by reviewing and analyzing the FOIA request, formulating a course of action including involvement of other personnel and program areas, identifying categories of responsive records and reviewing records for disclosure considerations, assessing fee estimates for RMS chargeable hours, and making a disclose or non-disclose recommendation to the FOIA/PA Group.

Recommendations for full or partial disclosure are routed to executive management for review. All approved disclose or non-disclose recommendations are communicated to the FOIA/PA Group detailing segregable releasable and non-releasable information, along with the FOIA exemptions associated with withheld information.

The system of record for all FOIA related requests are maintained by the FOIA/PA Group. The FDIC's Legal Division spearheads all efforts to comply with FOIA Rules and Regulations. The Legal Division's material can be found [here](#).

FDIC's regulation on requesting information can be found [here](#).

CONTACTS

Assistant Director:

Alan S. MacMullin
 (202) 898-3901

Lead Examination
Specialist:

Marshae D. Lawson
 (856) 397-7029

Examination Specialist:

Stacy L. Eley
 (214) 766-2999

Shondrica C. Nathan
 (225) 335-7807

Tonya S. Batts
 (410) 818-3059

Jocelyn A. Stewart
 (678) 916-2291

Regional Office POCs:

Atlanta Regional Office

Kelly Green
 (678) 916-2380

Troy H. Hoskovec
 (678) 916-2350

Chicago Regional Office

Regina Hayes
 (312) 382-7541

Michael J. Mahon
 (630) 536-7901

Dallas Regional Office

Doug Clark
 (972) 761-2919

Kansas City Regional Office

Brian T. Hipp
 (816) 234-8512

New York Regional Office

✉ Pimchand Hoontrakul

☎ (917) 320-2681

✉ Rebecca M. McAvenney

☎ (781) 794-5520

San Francisco Regional Office

✉ Ricky S. Lin

☎ (415) 808-8827

✉ Renetha L.

Uhunmwuangho

☎ (415) 808-8074

Section 15 Freedom of Information Act (FOIA) and Privacy Act

15.01 DESCRIPTION

The Freedom of Information Act (FOIA) is a federal statute (5 U.S.C. Section 552), implemented by the FDIC in Part 309.5 of the FDIC Rules and Regulations. The FOIA generally provides that any person has a right, enforceable in court, of access to federal agency records, except to the extent the records are protected from disclosure by any of the nine exemptions contained in the law. The nine exemption categories that authorize government agencies to withhold information are the following:

- ✦ Classified under an Executive Order to be kept secret for national defense or foreign policy
- ✦ Internal FDIC personnel rules and practices
- ✦ Information that is exempt under other laws
- ✦ Trade secrets and confidential business information
- ✦ Interagency or intra-agency memoranda or letters that are protected by legal privileges
- ✦ Personnel and medical files
- ✦ Law enforcement records or information
- ✦ Information concerning financial institution supervision
- ✦ Geological and physical information

The Privacy Act of 1974 is a federal statute (5 U.S.C. Section 552a), implemented by the FDIC in Part 310 of the FDIC Rules and Regulations. The Privacy Act permits a person to seek records containing their name or identifying number within a FDIC System of Records. EPIC is a System of Records where records are retrievable by the requester's name or identifying number assigned to the individual.

15.02 RECEIVING FOIA AND PRIVACY ACT REQUESTS

All DCP personnel who handle FOIA and Privacy Act requests are required to read the FDIC's FOIA procedures in FDIC Directive 1023.1, Freedom of Information Act Requests, (see *Job Aid*) and the FDIC Privacy Act, located in Part 310 of FDIC's Rules and Regulations.

The Legal Division will determine whether a request will be processed under FOIA, the Privacy Act, or both. An individual's request for information indexed and maintained under the individual's name or identifying number will be processed according to the provisions of the Privacy Act.

All other requests, such as those made by third parties or by individuals seeking information not indexed and maintained under that person's name or identifier in a Privacy Act record system, will be processed according to FOIA provisions. In order to provide the greatest practical access to a first-person request, all such requests will be processed pursuant to the provisions of both the FOIA and the Privacy Act.

- ✦ The FOIA/Privacy Act Unit of the Legal Division assigns a log number to each FOIA or Privacy Act request, which is used by DCP in all correspondence or communication regarding the request.
- ✦ FOIA/Privacy Act Request ID numbers start with **2023-FDIC-FOIA-00051**.
- ✦ The DCP WO FOIA Specialist performs the following tasks:
 - ✦ Receives the FOIA request from the Legal Division via email through the FOIAXpress data system. FOIAXpress is the official record.
 - ✦ Logs the request into the EPIC system. The FOIA Request ID Log Number is entered into EPIC record.
 - ✦ In the EPIC record, Source is FOIA – Consumer Affairs and the Type is Controlled Correspondence. The case owner will be the WO FOIA Specialist.
 - ✦ Adds the files to the case.
 - ✦ Creates a file with the requester's name and log number.
 - ✦ Reviews the correspondence to determine whether the request for information is clearly stated. Helpful information includes:
 - ✦ The requestor's name.
 - ✦ The financial institution name or individual's file name.
 - ✦ The relationship of the information to the FDIC to determine the appropriate division storing the information.
 - ✦ Reviews the information contained in FOIAXpress.
 - ✦ Assigns the request to the appropriate office.
 - ✦ Information located in the WO is assigned to WO senior management.

- The SrCAS DA/Reporting will be contacted for information in the EPIC system.
- If the FOIA request does not pertain to any records located in DCP or if the search is inconclusive, a “no record response” is appropriate, the WO FOIA Specialist performs the following tasks:
 - Reassigns the request back to the FOIA Specialist in the Legal Division through FOIAXpress.
 - Completes the required EPIC fields and closes the EPIC record.
 - If appropriate, recommends to the Legal Division another division or office that may have records relating to the FOIA request. (Referrals outside DCP to another FDIC office or division can only be made by the Legal Division).

15.03 FEE SCHEDULE

Agencies are authorized by law (depending on the category of the requester) to recover the direct costs of providing information to a FOIA requester. The FDIC has established a fee schedule to recover its direct costs. The fee schedule sets hourly rates for the time it takes an employee to search for the information requested, as well as the time it takes to complete the FOIA review of the information (to determine which information may be released and which is exempt from disclosure). When submitting a FOIA request, the requestor must specify the maximum amount they are willing to pay for processing of the request. If they do not specify the maximum amount they are willing to pay, or otherwise agree in writing to pay, all applicable processing fees, the FDIC will not initiate a records search and their request will either be returned or held in abeyance until a fee agreement is reached.

For fee purposes, the FOIA requires the requestors be placed in one of the following three categories:

- Commercial use requesters
- Scientific, educational, or news media requestors
- All others

The Legal Division relies on DCP to provide information for the fee estimate and, if appropriate, to contact the requester to clarify or narrow the scope of the FOIA request. DCP staff assigned to a FOIA request may contact requesters directly only for fee clarification. Once the fee issue is resolved and the scope of the request clarified, a substantive response may be authorized. At that time, the responsible office is authorized to conduct an actual search for the responsive material. For more information about the fee schedule, refer to the extranet FOIA Service Center at <https://www.fdic.gov/foia/index.html>. (<https://www.fdic.gov/foia/index.html>)

15.04 WO FOIA SPECIALIST - REQUESTS REFERRED TO THE CRU

The WO FOIA Specialist will perform the following tasks:

- Set up the EPIC record and enter the Source, Type, Requester Name, and OLA information – the FOIA Log Id Number.
- Enter the Coding string FDIC Operations/FOIA Request/Unregulated
- Attach the actual request and the instructions from Legal related to the FOIA request to the EPIC case.
- Contacts the SrCAS DA/Reporting by email.

Legal will communicate the due dates for the initial response and any further information requests in their processing instructions. These processing instructions will be in the EPIC record.

15.05 CRU RESPONSE TO THE FOIA/PRIVACY REQUEST

- The SrCAS DA/Reporting will then check the EPIC case record to ensure its accuracy. The following fields will be checked in the EPIC record:
 - Source - “FOIA - Consumer Affairs”
 - Type - “Controlled Correspondence”
 - FOIA Request ID Log Number is entered into the OLA #
 - Due date is entered into the EPIC record under the WO OLA Due Date field
- The SrCAS DA/Reporting will review the request and will only provide the information if it is related to the consumer. The SrCAS DA/Reporting cannot redact the information related to the consumer; however, the SrCAS DA/Reporting should provide guidance to the WO FOIA Specialist regarding what information should be redacted.

- If the information requested is not related to the consumer, the SrCAS DA/Reporting will notify WO FOIA Specialist that no cases were found in the consumer's name.
- Emails, including third-party information or personal notes pertaining to any discussion between the SrCAS DA/Reporting and the WO FOIA Specialist regarding the request are not placed in EPIC.

15.06 WO FOIA SPECIALIST RESPONSE

The WO FOIA Specialist will perform the following tasks:

- Provides to the FOIA Legal Specialist the costs for searching and reviewing the documents, through notes made in FOIAXpress.
- Uploads the documentation provided by the SrCAS DA/Reporting into FOIAXpress and redact the information.
- Reviews and analyzes all information and determines whether the information is to be released.
- Recommends, through an email to the assigned FOIA Legal Specialist through FOIAXpress, what information should be released
 - If the recommendation is to withhold the requested information, the WO FOIA Specialist should apply the appropriate FOIA exemption, through FOIAXpress.
 - If the requested information is being redacted in any form, the WO FOIA Specialist should apply the appropriate FOIA exemption through FOIAXpress.
 - If no records were located:
 - The request is reassigned to the FOIA Legal Specialist through FOIAXpress.
 - The WO FOIA Specialist closes the EPIC record with the date the information was reassigned back to the FOIA Legal Specialist.

15.07 WO FOIA LEGAL RESPONSE

Upon recommendations from the WO FOIA Specialist, the FOIA Legal Specialist will respond to the FOIA requester advising if any information is being withheld, with the appropriate FOIA exemption(s) and informing the requester of the right to appeal the decision.

JOB AIDS

15-JA1 FOIA Fee Schedule (<https://fdicnet.fdic.gov/content/dcp/home/consumer-and-community-affairs/ncda/consumer-response-unit/operations-manual/job-aids/job-aids-15ja1.html>)

15-JA2 FDIC Circular Freedom of Information Act Requests (<https://fdicnet.fdic.gov/content/dam/dcp/documents/supervision/Consumer-Affairs/Operations-Manual/cru/section-15-ja-02.pdf>)

FOIA Fee Schedule

In accordance with 12 C.F.R. § 309.5(f), the Federal Deposit Insurance Corporation hereby sets forth the fees to be charged for the production of agency records. These fees will be effective for requests submitted thirty days or more from the above date of issuance. Persons requesting records from the FDIC shall be charged for the direct costs of search, review and duplication as set forth at 12 C.F.R. § 309.5(f), unless such costs are less than \$10.00.

The FOIA fee schedule is on the FDIC.gov website for FOIA requests so it is best to check this website for any updates.

The following fees were in place as of September 30, 2023:

HOURLY LABOR RATES:

Executive level staff -- \$121.00 Professional level staff -- \$83.00 Clerical level staff -- \$36.00

DUPLICATION:

\$0.20 per page CD/DVD - \$5.00

SPECIAL PRODUCTS

Certain reports, manuals and other products are offered at set prices by agency components which produce them. Prices may be obtained upon request.



FDIC DIRECTIVE 1360.20

Privacy Program

Approval Authority: Sylvia W. Burns, Chief Information Officer and Chief Privacy Officer

Originating Division/Office: Chief Information Officer Organization

Approval Date: 11/03/2021

PURPOSE

This revised Directive establishes the FDIC Privacy Program to ensure that privacy is sustained and not eroded by changes in either the financial industry or government practices that impact the FDIC, and that privacy protections are integrated into FDIC operations.

SCOPE

This Directive applies to all FDIC Divisions/Offices.

AUTHORITIES

See Appendix A – Authorities.

FORMS

None.

SUMMARY OF CHANGES

This Directive supersedes FDIC Directives 1360.20, Federal Deposit Insurance Corporation (FDIC) Privacy Program, dated March 13, 2017; 1360.19, Privacy Impact Assessment Requirements, dated August 10, 2016; 1311.1, Measuring and Customizing User Activity on FDIC External Websites, dated April 18, 2017; and 1031.1, Administration of the Privacy Act, dated May 2, 2013.

REVISION, dated November 3, 2021

This Directive had been revised to form multiple overarching governing statements that aligns with law, Federal policies and practices to establish an FDIC Privacy Program.

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BACKGROUND

As the FDIC innovates in technology and analytics, and works to keep pace with rapid changes in the financial industry, it must also protect privacy interests and manage Personally Identifiable Information (PII) responsibly. Accordingly, the FDIC has designated the Chief Privacy Officer (CPO) as the Senior Agency Official for Privacy to be accountable for managing an effective and efficient privacy program. The FDIC Privacy Program is responsible for ensuring that privacy is sustained and not eroded by changes in either the financial industry or government practices that impact the FDIC, and that privacy protections are integrated into FDIC operations. Privacy is an interdisciplinary practice and requires coordination across the FDIC. The FDIC Privacy Program works separately but in concert with the information security and data programs to manage FDIC information as a strategic resource. It also works closely with the Legal Division to ensure that FDIC meets all legal privacy requirements.

POLICY

This Directive establishes the FDIC Privacy Program to ensure that privacy is sustained and not eroded by changes in either the financial industry or government practices that impact the FDIC, and that privacy protections are integrated into FDIC operations. The FDIC Privacy Program is part of the Office of Chief Information Security Officer within the Chief Information Officer Organization.

A. Core Functions

1. Policy Development and Maintenance

- a. Ensure the FDIC monitors federal law, regulation and policies for changes and identifies opportunities to embed privacy considerations throughout its operations based on FDIC risk appetite, including but not limited to rulemakings, examinations, procurement, Information Technology development, information security, and information management.
- b. Provide advice and subject matter expertise regarding privacy principles and standards.
- c. Collaborate with external privacy stakeholders, including the Federal Privacy Council, National Institute for Standards and Technology (NIST), and the financial privacy community.
- d. Make privacy policies available to the public, as appropriate.

2. Budget and Workforce Management

Ensure proper personnel and technical resources are available to perform the function of the FDIC Privacy Program.

3. PII Inventory and Management

- a. Ensure a comprehensive, FDIC-wide inventory of systems containing PII that informs FDIC prioritization of privacy risks and privacy risk management decisions.
- b. Ensure compliance with applicable requirements regarding the creation, collection, use, processing, storage, maintenance, dissemination, disclosure, and disposal of PII, including PII maintained by contractors on behalf of the FDIC.
- c. Integrate privacy requirements into enterprise architecture and support the implementation of records retention schedules.

4. Risk Management

Implement and maintain a NIST risk management framework capable of supporting a Privacy Continuous Monitoring Strategy, complying with privacy compliance requirements, and managing third party entities whose services on behalf of the FDIC impact privacy interests.

5. Training and Awareness

Implement and maintain mandatory FDIC-wide privacy awareness and training programs for all employees and contractors such that the training sufficiently informs them of all privacy requirements pertaining to FDIC and their role.

6. Breach Response

Implement and maintain controls to protect PII, including formal breach response capabilities and mechanisms.

7. Monitoring and Reporting

Provide monitoring and reporting regarding performance of the FDIC Privacy Program, as appropriate.

B. Fair Information Practice Principles

The Fair Information Practice Principles (FIPPs) are a collection of widely accepted principles within the U.S. Federal Government that are used to evaluate information systems, processes, programs, and activities that affect individual privacy. The FDIC uses the FIPPs to ensure that privacy is sustained and not eroded by changes in either the financial industry or government practices that impact the FDIC, and that privacy protections are integrated into FDIC operations. The FIPPs are not a checklist of specific privacy requirements. The FIPPs are included in Appendix B.

This Directive is based on the authorities listed in the Appendix A. The FDIC may supplement the Directive with additional directives, policy, guidelines, procedures, processes and standards as appropriate. The Directive and all related documents are reviewed and updated as needed in order to ensure timely updates, accuracy as well as compliance with applicable Federal laws, Executive Orders, regulations, and standards. Violations of the provisions of this Directive may include but are not limited to disciplinary actions (including removal from Federal service). Any disciplinary action will be administered in accordance with applicable law, regulations, FDIC policies and procedures, contractual agreements, and applicable collective bargaining agreements.

RESPONSIBILITIES

A. Chief Privacy Officer:

1. Develops and evaluates privacy policy, ensuring that the FDIC considers the impact of all FDIC actions and policies on privacy;
2. Manages privacy risks consistent with the FDIC's mission;
3. Identifies privacy risks that exceed the FDIC's Risk Appetite Statement as it relates to the procurement, management of information technology, and information security management of physical or electronic information;
4. Ensures compliance with applicable laws, regulations, policy, and guidance;
5. Ensures sufficient budget and resources to adequately operate the FDIC Privacy Program; and
6. Owns the processes and procedures that effectuate the responsibilities above.

B. Privacy Program Chief (PPC):

1. Directs the daily operation and management of the FDIC Privacy Program, including workforce management of the Privacy Program Staff;
2. Implements the operations necessary, on behalf of the CPO, to ensure that privacy is sustained and not eroded by changes in either the financial industry or government practices that impact the FDIC, and that privacy protections are integrated into FDIC operations;
3. Determines how to use the FIPPs to inform the privacy risk and breach management processes; and
4. Reviews the authorization package for information systems, on behalf of the CPO, to ensure that privacy risks are managed prior to system authorization. When the CPO is also designated as the Authorizing Official, then the PPC may escalate the failure to reach a final resolution regarding the appropriate protection for the agency information and information system to the Risk Executive (Function) for final determination.

C. Risk Executive (Function):

Reviews risks and requirements identified by the CPO or PPC regarding the appropriate protection for the agency information and information system of an authorization package and provides a final determination.

D. Chief Information Security Officer (CISO):

1. Implements the NIST risk management framework, including the implementation and assessment of controls selected to manage privacy risk; and
2. Supports the breach response procedures.

E. Legal Division:

1. Advises the Privacy Program on the legal requirements applicable to the FDIC Privacy Program;
2. Processes access, correction and redress requests submitted in accordance with the Privacy Act; and
3. Refers all requests involving the Office of Inspector General (OIG) to the FDIC Inspector General.

F. Division/Office Directors:

Enforce the requirements established by the FDIC Privacy Program onto their respective employees, contractors, business processes, and information systems.

G. FDIC Employees and Contractors:

Comply with the requirements established by the FDIC Privacy Program.

APPENDIX A – AUTHORITIES

- Consolidated Appropriations Act of 2005, Section 522
- E-Government Act of 2002, Section 208, as amended (Public Law 107-347)
- Federal Information Security Modernization Act (FISMA) of 2014, as amended, codified in Title 44, United States Code (U.S.C.), Chapter 35, Subchapter III, Information Security
- Office of Management and Budget (OMB) Circular A-108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act
- OMB Circular A-130, Managing Information as a Strategic Resource
- Privacy Act of 1974, as amended, codified in Title 5, U.S.C., Section 552a, Records Maintained on Individuals
- NIST Special Publication 800-37, Risk Management Framework for Information Systems and Organizations: A System Life Cycle Approach for Security and Privacy

APPENDIX B – FAIR INFORMATION PRACTICE PRINCIPLES

1. Access and Amendment

FDIC should provide individuals with appropriate access to PII and appropriate opportunity to correct or amend PII.

2. Accountability

FDIC should be accountable for complying with these principles and applicable privacy requirements, and should appropriately monitor, audit, and document compliance. FDIC should also clearly define the roles and responsibilities with respect to PII for all employees and contractors, and should provide appropriate training to all employees and contractors who have access to PII.

3. Authority

FDIC should only create, collect, use, process, store, maintain, disseminate, or disclose PII if they have authority to do so, and should identify this authority in the appropriate notice.

4. Minimization

FDIC should only create, collect, use, process, store, maintain, disseminate, or disclose PII that is directly relevant and necessary to accomplish a legally authorized purpose, and should only maintain PII for as long as is necessary to accomplish the purpose.

5. Quality and Integrity

FDIC should create, collect, use, process, store, maintain, disseminate, or disclose PII with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

6. Individual Participation

FDIC should involve the individual in the process of using PII and, to the extent practicable, seek individual consent for the creation, collection, use, processing, storage, maintenance, dissemination, or disclosure of PII. FDIC should also establish procedures to receive and address individuals' privacy-related complaints and inquiries.

7. Purpose Specification and Use Limitation

FDIC should provide notice of the specific purpose for which PII is collected and should only use, process, store, maintain, disseminate, or disclose PII for a purpose that is

explained in the notice and is compatible with the purpose for which the PII was collected, or that is otherwise legally authorized.

8. Security

FDIC should establish administrative, technical, and physical safeguards to protect PII commensurate with the risk and magnitude of the harm that would result from its unauthorized access, use, modification, loss, destruction, dissemination, or disclosure.

9. Transparency

FDIC should be transparent about information policies and practices with respect to PII, and should provide clear and accessible notice regarding creation, collection, use, processing, storage, maintenance, dissemination, and disclosure of PII.

GLOSSARY OF TERMS

Personally Identifiable Information: Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.

Privacy Continuous Monitoring Strategy: A strategy that catalogs the available privacy controls implemented at the agency and ensures that the privacy controls are effectively monitored on an ongoing basis.

Privacy Risk Management: A cross-organizational set of processes for identifying, assessing, and responding to privacy risks.

GLOSSARY OF ACRONYMS

CISO: Chief Information Security Officer

CPO: Chief Privacy Officer

FIPPs: Fair Information Practice Principles

NIST: National Institute of Standards and Technology

PII: Personally Identifiable Information

PPC: Privacy Program Chief

Chief Information Officer
Organization

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Document Labeling and FOIA

DOCUMENT LABELING EFFECT ON FREEDOM OF INFORMATION
ACT (FOIA) REQUESTS

Although the FDIC has implemented Document Labeling to protect documents and facilitate authorized sharing of documents internally, with external business partners, and the public, the statutory mandates of the FOIA remain unchanged. The label on a document does not determine its disposition under the FOIA (e.g., you cannot withhold a document merely because it is labeled as “Controlled//FDIC Internal Only”). Such a label could potentially be used to show that a document is customarily kept confidential or to support the rationale underlying a particular FOIA exemption; however, FOIA coordinators must ensure that all labeled documents receive a proper, independent FOIA review regardless of the label when making release and/or withholding determinations. The only possible exception would be the PUBLIC label, which likely forecloses asserting a FOIA exemption.

LUNCH AND LEARN
SESSIONS

- [Lunch and Learn Session video](#)
- [Tool Enforced Lunch and Learn Presentation](#)

DOCUMENT
LABELING AND FOIA

- [Document Labeling Effect on Freedom of Information Act \(FOIA\) requests](#)

RESOURCES

- [Tool Enforced Labeling Video](#)
- [Tool Enforced Labeling Exception](#)
- [Directive 1350.04, Document Labeling](#)
- [FDIC Document Labeling Guide](#)
- [Document Labeling 101](#)
- [Document Labeling FAQs](#)
- [Document Labeling Training](#)
- [Document Labeling Job Aid](#)

CONTACT

- DocumentLabeling@fdic.gov



FDIC DIRECTIVE 1350.04

Document Labeling

Approval Authority: Sylvia W. Burns, Chief Information Officer and Chief Privacy Officer

Originating Division/Office: Chief Information Officer Organization

Approval Date: 09/25/2020

PURPOSE

This new Directive establishes FDIC policy for the categorization and labeling of FDIC documents.

SCOPE

The provisions of this Directive apply to all employees and contractor personnel who create FDIC documents in the performance of Corporation business. The labeling requirements do not apply to any FDIC document created prior to the approval date of this Directive, unless the document is modified.

AUTHORITIES

None.

FORMS

None.

SUMMARY OF CHANGES

None. This Directive is new.

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BACKGROUND

In support of the core mission to maintain stability and public confidence in the nation's financial system, the FDIC routinely creates, collects, and stores documents that are shared internally, as well as externally, with FDIC-insured institutions, fellow regulators, other FDIC business partners, and the public.

Labeling of documents enhances the FDIC's ability to ensure documents are shared and protected appropriately.

POLICY

This policy and the FDIC Document Labeling Guide establish the requirements for categorizing and labeling documents.

This Directive and all associated directives are consistent with IT Security and Privacy (e.g., FDIC Directives 1360.1, Automated Information Systems (AIS) Security Program; 1360.09, Protecting Information; and 1360.20, Privacy Program), Records Management (FDIC Directive 1210.01, Records and Information Management Program), and Freedom of Information Act (FDIC Directive 1023.01, Freedom of Information Act Requests) requirements.

A. Categorizing and Labeling Documents

1. Documents originally created by the FDIC must be categorized and labeled in accordance with the FDIC Document Labeling Guide when first created or whenever modified.
2. The documents subject to labeling will be specified and maintained in the FDIC Document Labeling Guide.
3. The FDIC Document Labeling Guide contains the FDIC Document Labeling Framework and provides instructions to correctly label a document and make changes to existing labels.
4. Documents created prior to the approval date of this Directive are not subject to the labeling requirement unless or until they are modified.

B. Disciplinary Actions

Misuse of a properly labeled document may result in administrative or disciplinary action, up to and including removal from federal service or contract (in accordance with applicable laws and FDIC Directive 2750.01, Disciplinary and Adverse Actions).

C. Waivers of Labeling Requirements

Each request explains the rationale for requiring a waiver, as approved by the Chief Data Officer.

RESPONSIBILITIES

A. Chief Information Officer (CIO):

1. Establishes and oversees the document labeling program within the FDIC;
2. Maintains this Directive; and
3. Ensures sufficient resources are allocated to support document labeling.

B. Chief Data Officer (CDO):

1. Reports to the CIO for coordinating the document labeling policy;
2. Maintains document labeling policy components such as the FDIC Document Labeling Guide and supporting standard operating procedures (SOPs);
3. Implements an education and training program, ensuring employees and contractor personnel receive appropriate document labeling awareness training;
4. Coordinates with Division/Office Directors to develop and maintain enterprise requirements to support document labeling capabilities; and
5. Establishes the procedures for requesting, reviewing, and approving waivers of labeling requirements.

C. Division/Office Directors:

1. Appoint an employee to serve as the Division/Office Labeling point of contact (POC);
2. Ensure document labeling activities throughout the Division/Office are consistent with this Directive; and
3. Report suggested changes to document labeling policies, procedures, and training to the CDO.

D. Division/Office Document Labeling POCs:

1. Assist employees with categorizing and labeling documents; and
2. Gather suggested changes to document labeling policies, procedures, and training from Division/Office staff, reporting the information to the Division/Office Director.

E. Employees and Contractor Personnel:

1. Categorize and label each FDIC document consistent with the FDIC Document Labeling Guide;
2. Report any misuse of a sensitive information (SI) and/or personally identifiable information (PII) in accordance with FDIC Directive 1360.12, Reporting Information Security Incidents; and
3. Address any incorrectly labeled FDIC documents in accordance with the procedure described in the FDIC Document Labeling Guide.

APPENDIX – REFERENCES

- FDIC Document Labeling Guide
- FDIC Directive 1023.01, Freedom of Information Act Requests
- FDIC Directive 1210.01, Records and Information Management Program
- FDIC Directive 1360.1, Automated Information Systems (AIS) Security Program
- FDIC Directive 1360.09, Protecting Information
- FDIC Directive 1360.12, Reporting Information Security Incidents
- FDIC Directive 1360.20, Privacy Program
- FDIC Directive 2750.01, Disciplinary and Adverse Actions

GLOSSARY OF TERMS

Document: User-created content – such as a memorandum, worksheet, or presentation – saved in an application-specific file format (e.g., Word, Excel, or PowerPoint) or printed to paper. Can also refer to system-generated reports and other output files, and to images created by scanning paper documents (adapted from FDIC Directive 1210.01, Records and Information Management Program). The document types subject to labeling will be specified and maintained in the FDIC Document Labeling Guide.

FDIC Business Partner: An individual, organization, or entity, external to the FDIC, authorized to access or receive FDIC information for legitimate business purposes.

Personally Identifiable Information: Any information about an individual maintained by the FDIC, which can be used to distinguish or trace that individual's identity, such as their full name, home address, Email address (non-work), telephone numbers (non-work), Social Security Number (SSN), driver's license/state identification number, employee identification number, date and place of birth, mother's maiden name, photograph, biometric records (e.g., fingerprint, voice print), etc. This also includes, but is not limited to, education, financial information (e.g., account number, access or security code, password, or personal identification number), medical information, investigation report or database, criminal or employment history or information, or any other personal information which is linked or linkable to an individual.

Sensitive Information: Any information, the loss, misuse, or unauthorized access to or modification of which could adversely impact the interests of the FDIC in carrying out its programs or the privacy to which individuals are entitled. It includes, but not exclusively, the following: (1) Information that is exempt from disclosure under the Freedom of Information Act (FOIA) such as trade secrets and commercial or financial information, information compiled for law enforcement purposes, personnel and medical files, and information contained in bank examination reports (see FDIC Rules and Regulations, 12 CFR Part 309, for further information); (2) Information under the control of FDIC contained in a Privacy Act system of record that is retrieved using an individual's name or by other criteria that identifies an individual (see FDIC Rules and Regulations, 12 CFR Part 310, for further information); (3) PII about individuals maintained by FDIC that if released for unauthorized use may result in financial or personal damage to the individual to whom such information relates. Sensitive PII, a subset of PII, may be comprised of a single item of information (e.g., SSN) or a combination of two or more items (e.g., full name along with, financial, medical, criminal, or employment information). Sensitive PII presents the highest risk of being misused for identity theft or fraud; (4) Information about insurance assessments, resolution and receivership activities, as well as enforcement, legal, and contracting activities; and (5) Information related to information technology specific to the FDIC that could be misused by malicious entities (e.g., firewall rules, encryption and authentication mechanisms, and network architecture pertaining to the FDIC).

GLOSSARY OF ACRONYMS

CDO: Chief Data Officer

CIO: Chief Information Officer

PII: Personally Identifiable Information

POC: Points of Contact

SI: Sensitive Information

SOP: Standard Operating Procedure



Division of Administration (DOA)

Acquisition Services Branch

(ASB) Strategy Governance and

Integration (SGI)

ASB Freedom of Information Act (FOIA) Standard

Operating Procedure (SOP) V2.0

February 6, 2025

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Version Control

Version	Change Comments	Date	Author
1.0	First version	11/XX/2024	Dyad Searcy
2.0	Second version	2/6/2025	Dyad Searcy

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Attatchments:

1. Acronyms
2. FOIA Exemptions
3. Redaction Cheat Sheet for FOIA Coordinators

A. Purpose

The objective of the Acquisition Services Branch (ASB) Freedom of Information Act (FOIA) Standard Operating Procedure (SOP) is to provide ASB with guidance on processing FOIA requests and understanding the ASB FOIA process.

The FOIA is a pro-disclosure statute that requires all records or information in the possession of the Federal Government to be disclosed, unless the information can be withheld under one of the nine exemptions the act defines. Contracting Officers (COs) must cooperate with the Federal Deposit Insurance Corporation (FDIC) Legal Division FOIA-Privacy Act (FOIA-PA) Group, in any FOIA requests (Acquisition Procedures and Guidance Manual (APMG) 5.107).

B. Authorities, Policies and Reference Guides (APGM 5.107(a))

The following list identifies the sources of policies and procedures for processing FOIA requests at FDIC:

- (1) FDIC FOIA Service Center website - General FOIA information
[Freedom of Information Act \(FOIA\) Service Center | FDIC](#)
- (2) Executive Order (EO), Improving Agency Disclosure of Information, December 14, 2005
[Executive Order: Improving Agency Disclosure of Information](#)
- (3) FDIC Circular 1023.1, Procedures for Processing Freedom of Information Act Requests
[FDIC Directives](#)

C. Designated Responsibilities (APGM 5.107(b))

- (1) **Legal Division:** FDIC has designated the General Counsel as its Chief FOIA Officer with corporate-wide responsibility for efficient and appropriate compliance with the FOIA. FDIC has delegated to the FOIA-PA Group responsibility for the day-to-day administration and operation of the FOIA program.
- (2) **Acquisition Services Branch (ASB):** ASB, Strategic Governance and Integration (SGI) Section, responds to ASB-related FOIA requests received from the FOIA-PA Group with assistance from ASB COs as necessary. ASB, SGI, is also responsible for retaining an administrative record of actions taken on FOIA requests in accordance with the provisions of FDIC Directive

1210.01, Records and Information Management Program.

D. FOIA Submittal Procedures (APGM 5.107(c))

- (1) **All FOIA requests are submitted in writing** (this includes email) and sent directly to the FOIA-PA Group. The preferred method for submitting FOIA requests is electronically via the portal on the FDIC website. Upon receiving a FOIA request related to contracting activity, the FOIA-PA Group catalogues it and refers it to the assigned FOIA contact within ASB, SGI Section, for further handling.
- (2) **Timeframes for Responding to FOIA Requests:** FDIC responds to valid FOIA requests within twenty (20) business days of receipt. ASB typically has ten (10) business days to complete and submit its assigned FOIA information to the FOIA requestor or FOIA-PA Group. The actual number of days for ASB to respond depends on the date on which the official request is received from the FOIA-PA Group.
- (3) **ASB Procedures for Compiling FOIA Responses:** ASB, SGI, reviews official contract files to compile the requested information to respond to FOIA requests. Before forwarding the FOIA material to the FOIA-PA Group, ASB, SGI Section, verifies with the designated CO that the material is complete. If documents cannot be located in the official contract file, ASB, SGI, assigns the FOIA request to the respective ASB Assistant Director for handling.

E. ASB FOIA Coordinator Process

The ASB FOIA Coordinator Process:

- (1) Receive FOIA assignment from a Government Information Specialist (GIS) in the FOIA-PA Group, via by email.
- (2) Acknowledge the FOIA assignment in a return email with the subject line reading, "Assignment Received for XXXX-FDIC-FOIA-XXXXX".
- (3) Enter the FOIA assignment information in the FOIA tracking spreadsheet located in Teams.
- (4) Advise your assigned GIS on the status of pending requests and any delays Being encountered within ASB.
- (5) Coordinate ASB FOIA searches, obtain the responsive records, and upload

and ingest them into the SecureRelease system (See Appendix 3: Redaction Cheat Sheet

for FOIA Coordinators.) **Note:** To get access to the SecureRelease system, the ASB Coordinator must request it from the FOIA-PA Group, via by email.

- (6) Make recommended redactions in the SecureRelease system (See Appendix 3: Redaction Cheat Sheet for FOIA Coordinators.)
- (7) Once the review is completed, send an email or correspondence to your assigned GIS.

APPENDIX 1: ACONYMS

APGM – Acquisition Procedures and Guidance Manual

ASB – Acquisition Services Branch

CO – Contracting Officers

DOA – Division of Administration

EO – Executive Order

FDIC – Federal Deposit Insurance Corporation

FOIA – Freedom of Information Act

FOIA-PA – FDIC Legal Division FOIA-Privacy Act Group

GIS – Government Information Specialist

SGL – Strategic Governance and Integration Section

SOP – Standard Operating Procedure

APPENDIX 2: FOIA EXEMPTIONS

A request for records may be denied if the requested record contains information which falls into one or more of the nine categories listed below. If the requested record contains both exempt and nonexempt information, the nonexempt portions which may reasonably be segregated from the exempt portions will be released to the requester.

- **Exemption One**

Records which are specifically authorized under criteria established by an Executive Order to be kept secret in interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

- **Exemption Two**

Records related solely to the internal personnel rules and practices of the FDIC.

- **Exemption Three**

Records specifically exempted from disclosure by statute, provided that such statute:

- A. Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues; or
- B. Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

- **Exemption Four**

Trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

- **Exemption Five**

Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the FDIC.

- **Exemption Six**

Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

- **Exemption Seven**

Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

- A. Could reasonably be expected to interfere with enforcement proceedings;
- B. Would deprive a person of a right to a fair trial or an impartial adjudication;
- C. Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

- D. Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;
- E. Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
- F. Could reasonably be expected to endanger the life or physical safety of any individual.

- **Exemption Eight**

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

- **Exemption Nine**

Geological and geophysical information and data, including maps, concerning wells.

Appeal Rights

A person who's initial FOIA request for records has been denied, either in part or in whole, or whose request for a fee waiver and/or expedited processing has been denied, has the right to appeal the denial to the FDIC's General Counsel (or designee) within 90 calendar days after receipt of notification of the denial. Appeals must be in writing and include any additional information relevant to consideration of the appeal. For additional information on appeals, please visit the [FOIA appeals Web page](#).

Freedom of Information Act (FOIA) Request Procedures

Prepared By Carlos Vera, Administrative Specialist and
Monica Lopez, Administrative Officer

Effective Date August 18, 2022

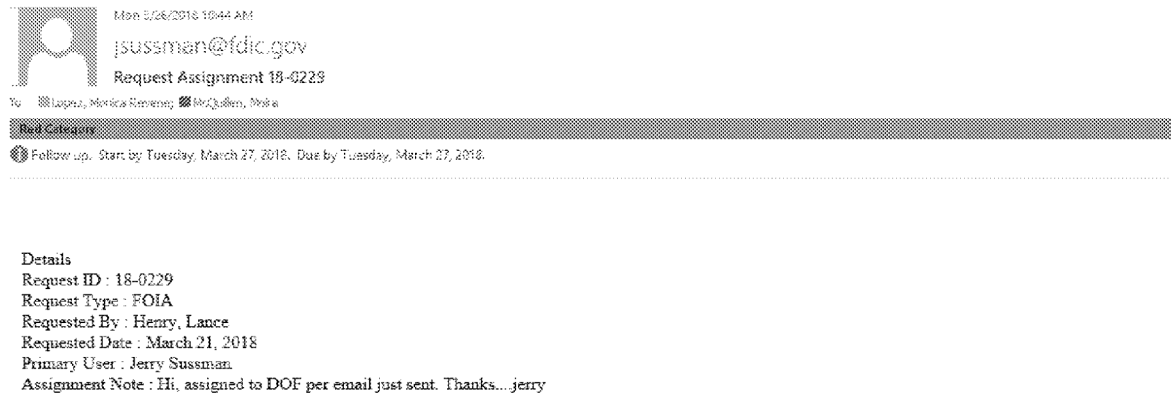
Overview Freedom of Information Act (FOIA) is a federal statute (5 USC 552) that affords any person the right to obtain federal agency records unless the records—or a part of the records—are protected from disclosure by any of nine exemptions or by one of three special law enforcement record exclusions contained in the law. The FOIA gives the public a means of obtaining information about their government while keeping their government accountable and transparent.

Processing a FOIA request typically requires conducting a reasonable search for responsive records and marking any sensitive information for redaction or other appropriate action.

- Procedures**
- The Administrative Management Staff (AMS) receives FOIA requests from the Legal Division that are directed to the Chief Financial Officer Organization (CFOO).
 - The FDIC uses the SecureRelease platform to track FOIA requests. The SecureRelease platform is a cloud based secure technology that combines the end-to-end workflow management for handling requests for disclosure of FDIC records with automation and advanced analytics that boost efficiency and amplify the FDIC's ability to handle requests.
 - If AMS staff members do not have access to the SecureRelease platform, can request access through the FOIA team at Legal.
 - SecureRelease user guides can only be accessed via the SecureRelease platform.

- The Legal Division will notify AMS via email of FOIA requests assigned to CFOO.

Example of email sent by the Legal Division to AMS.



- AMS will determine the appropriate branch and/or section within CFOO to respond to the FOIA request and notify the Manager via email. AMS should provide pertinent information regarding the FOIA request in the email to the Manager by copying and pasting information from SecureRelease (e.g., information requested, period of request, requester, and how much the requester is willing to pay for the cost of compiling the information). The email from AMS to the CFOO Manager should also include a question as to the estimated length of time it will take to compile the information requested.
- AMS should also instruct Managers to have staff members, including themselves, keep track of the amount of time spent working on FOIA Requests by charging their time to "Program Code 54300 – FOIA & Privacy Act" using their Department Code.

Example of email from AMS to CFOO Manager assigned the FOIA Request

From: Ferrer, Robert
Sent: Friday, March 30, 2018 3:46 PM
To: McQuillen, Moira
Cc: Lopez, Monica Revene; Vandament, Cynthia M.
Subject: RE: FOIA request 18-0229.

This FOIA request should be referred to ORR. I believe that ORR BOS should be able to respond.

Let me know if you have any questions.
Bob

From: McQuillen, Moira
Sent: Wednesday, March 28, 2018 7:36 AM
To: Vandament, Cynthia M.; Ferrer, Robert
Cc: Lopez, Monica Revene
Subject: FOIA request 18-0229.

Hi -

Legal has sent us the following FOIA request (see below). Legal comments that "...Items 1a, 2a and 3a will be readily available at little/no cost. Balance of request may raise issues (fees, whether reasonably described, potentially exempt, etc.) and your comments/recommendations re it, e.g., DCF recommends that some portions be referred to ORR or Legal, please include recommendation in your response."

Commercial use request (3000 file agreement) seeks: "The following documents are requested, related to the FDIC's Receivership of United Western Bank of Denver, Colorado, Fund Number 19193:

(1) For the Statement of Assets and Liabilities in Liquidation for the period ending December 31, 2017:

- a. The Statement of Assets and Liabilities in Liquidation;
- b. Supporting documents for the line item "Due to FDIC for (Subrogated) Deposit Claims" on the Statement of Assets and Liabilities in Liquidation for period ending December 31, 2017; and
- c. Supporting documents to the Statement of Assets and Liabilities in Liquidation for period ending December 31, 2017 indicating where Recoveries on Professional Liability / Litigation Claims are included in the Statement of Assets and Liabilities in Liquidation

(2) For the Statement of Liquidation Cash Flows for period ending December 31, 2017:

- a. The Statement of Liquidation Cash Flows for period ending December 31, 2017;
- b. Supporting documents for the line item "Recoveries on Professional Liability / Litigation Claims" on the Statement of Liquidation Cash Flows for period ending December 31, 2017

(3) For the Statement of Operations for period ending December 31, 2017:

- a. The Statement of Operations for the period ending December 31, 2017; and
- b. Supporting documents for the line item "Professional Liability / Litigation Claims Recoveries" on the Statement of Operations for period ending December 31, 2017

- Once the CFOO branch/section assigned responsibility for compiling the requested information has completed their work, the response and associated information should be forwarded to the Legal Division via email and/or SecureRelease. Any information requested by the media is to be submitted to the CFOO Office of the Director for review prior to forwarding the information to the Legal Division.
- At year-end, the Legal Division sends an inquiry to each Division/Office requesting the amount of time expended in responding to FOIA requests during the calendar year.
- AMS should respond to the Legal Division request by providing the dollar amount charged to Program Code 54300 by CFOO employees during the calendar year.

References

1. SecureRelease

Additional Information

All questions about this procedure should be directed to Carlos Vera (703) 562-2331 and Monica Lopez at (703) 562-6116.

Internal DIR FOIA Coordinator Procedures

1. You will receive an email from the FOIA Office in the Legal Division with FOIA requests assigned to DIR.
 - a. Respond to the FOIA contact in the Legal Division confirming that you received the request as soon as possible. The response due date is usually specified at the top of the emailed request from the FOIA Office.
2. Open the zip file and read the "Summary.pdf" document. This is the request in its entirety, as submitted by the requester to the FDIC.
 - a. Determine which DIR Branch/Section would have the responsive information and email the appropriate points of contact (POCs), summarizing the request and asking whether there are any responsive records. The list of DIR contact areas for broad subject matters is as follows:
DIR Contact Areas
 - Center for Financial Research (CFR), PhD research matters – CFR Executive Program Director
 - Failure Transaction Database (FTD) – Chief, CFR Banking Research Section
 - BankFind Suite, Summary of Deposits (SOD) – Chief, Data Applications Section
 - Questions about bank data – Chief, Data Collection and Analysis Section
 - b. If it is not clear who the correct POC might be, email the head of the branch(es) you think might have the information and ask to be directed to the right person for that subject area.
3. Once you receive information from the DIR POC, prepare a response to the FOIA office. If there are no responsive records, respond as such. Also, if the request should be directed to another division/office, let the FOIA Office know. If DIR POCs have responsive records, determine whether there are exemptions that apply.
 - a. The zip file you received in the email with the FOIA assignment includes a "Foreseeable Harm Standards.pdf" document. This document notes exemptions that can be cited if responsive information should not be released.
 - b. The assigned Legal FOIA POC can explain about citing exemptions to withhold information.
 - c. Coordinate with appropriate POCs and management on any necessary redactions.
4. Obtain Branch or Division leadership approval prior to responding to the FOIA Office.
5. Email DIR's response to the Legal FOIA POC that sent you the request. If there are responsive records, you may need to submit and redact as necessary in the SecureRelease System. Instructions for using the system are located in the DIR FOIA Request folder.
6. Follow-up with the FOIA Legal Office POC, as appropriate, and log the request into the DIR FOIA request tracking spreadsheet.

FOIA contacts

- Alisa Colgrove, Government Information Specialist - FOIA Coordinator office hours; SecureRelease questions and assistance
- Sarah Cunanan, Counsel
- Sarah Hayden, Government Information Specialist
- Charles Smith, Government Information Specialist
- Natasha Smith, Government Information Specialist

The Freedom of Information Act (FOIA) Group Executes a Serious, Sensitive Mission

The Freedom of Information Act (FOIA) Group Executes a Serious, Sensitive Mission

By Sally J. Kearney, Office of Communications

Within the Legal Division, an eight-member team carries out a critical and sensitive mission: managing the FDIC's responses to Freedom of Information Act (FOIA) requests. Led by Supervisory Counsel Hugo Zia, the team oversees the processing of each request and ensures that FDIC responses are accurate, complete, and timely.

The group's attorneys, government information specialists, and technician handle a wide range of requests, many of which are complex and involved. According to Zia, many deal with open bank matters, such as bank applications, and quite a few come from the media and advocacy groups. Some requests involve litigation. "In those cases, we consult with attorneys in the Legal Division to see if there is any sensitivity in releasing records," Zia said.

The team works closely with FOIA Coordinators in each division and office who serve as liaisons between the group and employees assigned with recovering records. "We are fortunate to have this network of wonderful and helpful people who are indispensable to our mission," Zia said. (For more on the role of FDIC employees and FOIA Coordinators, see related story entitled "How You Can Assist With a Freedom of Information Act (FOIA) Request").

When evaluating records, the team and Coordinators must consider nine exemptions mandated by the FOIA statute as well as one of three special law enforcement record exclusions contained in the law. Judgment is critical in determining whether to release or withhold information. "Reviewing and redacting the documents is the most challenging for me," said Government Information Specialist Lisa Snider. "Many factors have to be considered in applying or not applying the exemptions, including the language of the statute and FDIC regulations, past handling of similar requests, FOIA case law, any ongoing FDIC litigation, and the concerns and foreseeable harm expressed by the custodial division or divisions who have supplied the records."

The team members are highly qualified, with more than 160 years collectively of FOIA experience, and they take their mission seriously. "The FOIA has always been an important way for the American people to discover what their government is doing and to help keep it accountable to its citizens," Snider said. "It is especially important now, in light of the Trust through Transparency initiative that Chairman McWilliams has spearheaded."

Unusual requests are not that, well, unusual. "We receive a number of requests from prisoners, for example," Zia said. Sometimes prisoners seek proof that the bank they robbed was insured.

"In these cases, prisoners think that proving there was no loss to the bank will help in their defense," Zia added.

Snider recalled receiving a request from a presidential candidate in the 1992 presidential campaign. "I don't remember any specific facts about the request other than receiving a typed letter bearing the original signature of the candidate," Snider said. "Since he was on the evening news at the time, I was quite impressed to be handling something he authored."

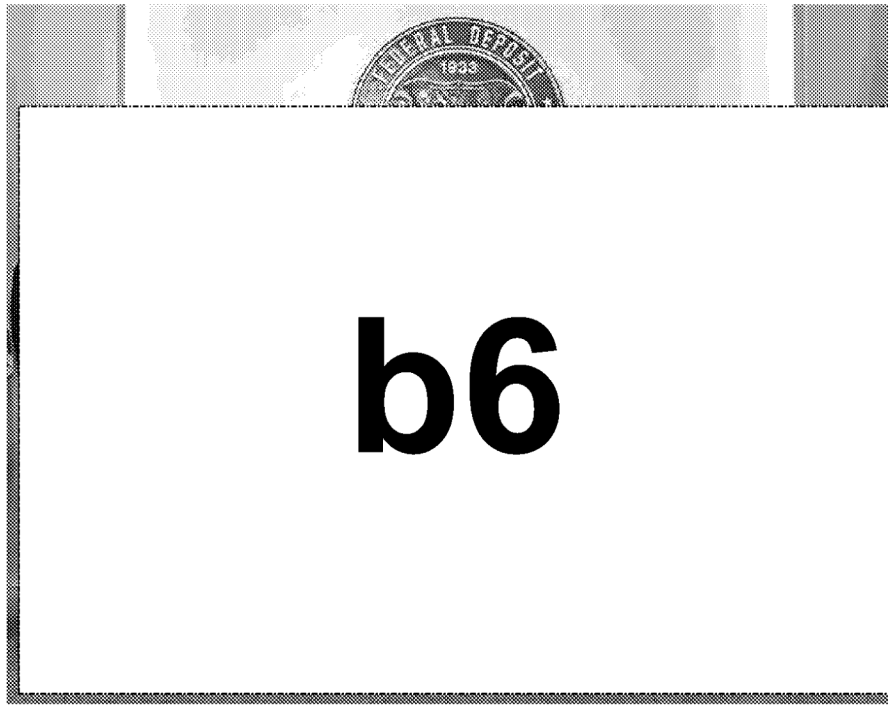
In addition to responding to both typical and unusual requests, the FOIA group strives to help requesters understand the retrieval process. "Our Government Information Specialists reach out to requesters and talk with them directly," said Counsel Sarah Cunanan. "We tailor each response letter, and each is well thought out. We strive to be as personal and informative as possible."

Requesters who are not satisfied with a FOIA response may appeal if the FDIC has denied information based on an exemption. "Requesters have a right to appeal within 90 days of our decision," said Zia. "If an appeal is filed, the Legal Division's Corporate Litigation Unit renders a decision within 30 days. If the Corporate Litigation Unit's decision is not acceptable to the requester, that person may sue the FDIC."

The group issues an annual report each year detailing its responses. In 2018, the group issued 440 responses—a significant number, but a decline from the financial crisis years of 2008-09, when the group responded to about 2,000 requests per year. For more information on the FOIA group and its mission, see the Freedom of Information Act (FOIA) Service Center

The group's attorneys, government information specialists, and technician handle a wide range of requests, many of which are complex and involved.

The team members are highly qualified, with more than 160 years collectively of FOIA experience, and they take their mission seriously.



Members of the FDIC FOIA group, from left: Supervisory Counsel Hugo Zia, Government Information Specialist Jerry Sussman, Government Information Specialist Lisa Snider, Government Information Specialist Natasha Smith, FOIA Technician Felice Rosser, Senior Attorney Karlyn Hunter, Counsel Sarah Cunanan, and Counsel Gary Jackson. Not shown here: Government Information Specialist Alisa Colgrove.

Freedom of Information Act (FOIA)

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Last Updated: 03/04/2019 | POC: OCOMWeb@fdic.gov

How You Can Assist With a Freedom of Information Act (FOIA) Request

How You Can Assist With a Freedom of Information Act (FOIA) Request

Best practices should a FOIA request land in your inbox.

By Sally J. Kearney, Office of Communications

You have been asked to help search for records relating to a recent Freedom of Information Act (FOIA) request. This is your first time receiving such an inquiry, and several questions immediately come to mind. Where do you start? What is involved? And how much time do you have?

These questions often pop up in connection with FOIA requests, according to Supervisory Counsel Hugo Zia, who leads the FDIC's eight-member FOIA team. Zia and his group oversee the processing of every FOIA request that comes to the FDIC. In 2018, the team managed responses to about 440 requests; during the financial crisis years of 2008-9, the team's responses climbed to about 2,000 per year. *(For more on activities of the FOIA group, see companion story entitled "The Freedom of Information Act (FOIA) Group Executes a Serious, Sensitive Mission.")*

Employees play an integral role in completing FOIA requests by conducting mandatory record searches, Zia explained, adding, "We rely on the cooperation of potentially everyone in the FDIC."

Responding to FOIA requests is a critical FDIC responsibility. FOIA is a federal statute (5 USC 552) that affords any person the right to obtain federal agency records unless the records—or a part of the records—are protected from disclosure by any of nine exemptions or by one of three special law enforcement record exclusions contained in the law. The FOIA gives the public a means of obtaining information about their government while keeping their government accountable and transparent. Find information at the FDIC's Freedom of Information Act (FOIA) Service Center, including a search engine.

"Our FOIA responsibilities align very well with Chairman McWilliams' Trust through Transparency initiative," Zia said. "Providing thorough and timely responses demonstrates our commitment to transparency."

Helping to carry out that mission is a network of trained FOIA Coordinators who are responsible for facilitating responses to FOIA requests in their divisions and offices. Zia described the Coordinators as "go-to people when we receive a FOIA request that may involve their division or office."

The Coordinators serve as liaisons between the FOIA group and employees in the divisions and offices who conduct the searches. Under the FDIC's disclosure regulations, the division or office with primary authority over particular agency records plays a key role in the disposition of those records under the FOIA. "We, as the FOIA group, cannot search for a division's records ourselves," Zia said. "We depend on the designated FOIA Coordinators to assist us by reaching out to the appropriate persons in their divisions or offices and working with them to complete the searches."

Employees and FOIA coordinators are best positioned to know where to search for records that may be responsive to a request. "On any day, an employee could get that call or email from a FOIA Coordinator saying, 'Please search,'" Zia said. An employee's role is critical.

But what is that role, exactly? Here are a few "best practices" to keep in mind.

Before getting started, ask your FOIA Coordinator for direction. What are the parameters? How can you make sure that you are recovering all responsive records? When is the deadline?

"Generally, we have a 20 business-day deadline to respond to FOIA requests," said Counsel Sarah Cunanan, a member of the FOIA team. "When a FOIA Coordinator reaches out to you, we ask that you avoid putting the assignment on the back burner, tempting as that may be, since we know that you are already very busy with your regular responsibilities. Remember that your FOIA coordinator can provide invaluable guidance."

Government Information Specialist Lisa Snider, also a FOIA group member, offered the following advice about timelines. "My best practice suggestion is that anyone assigned to a request should review it carefully upon initial receipt and reach out to your FOIA coordinator or our staff promptly with any issues or concerns," Snider said. "Issues and concerns raised early on can often be resolved expeditiously, conserving valuable custodial division and office resources and affording the FOIA group the maximum amount of time to address any potential problems."

Employees play an integral role in completing FOIA requests by conducting mandatory record searches, Zia explained, adding, "We rely on the cooperation of potentially everyone in the FDIC."

The Coordinators serve as liaisons between the FOIA group and employees in the divisions and offices who conduct the searches.

Next, make sure your search is thorough and complete. “When you are asked to look for records, you must conduct a ‘reasonable search,’” Zia said. This is essential not only to meet the statutory mandate but to avoid an appeal. “There are severe consequences if we don’t perform our FOIA duties correctly,” he added. “We can be sued if someone challenges the adequacy of our search. A court may question our methods if an adequate search was not done.”

Snider stressed that there is “not a set way” of doing a search. “Each division maintains records in its own way,” she said. “The FOIA Coordinators for each division and office should know their records and where they are kept. If a request is similar to one we have already received, the FOIA group can search our database to discover how the previous request was handled and offer information about where we searched and what was provided.”

After completing a search, consider whether any or all of the material you have located is responsive to the request, including whether each record was created during the time period mentioned in the request. If the record is responsive, also consider whether it may be exempt under one or more of the statute’s nine exemptions. If so, you should make the recommendation to your Coordinator that all or part of the documents be withheld from release.

As an example, Cunanan pointed to Exemption 8, which covers anything examination-related or supervisory in nature. An examiner’s communications with a bank, including the examination report, fall under this category, she said.

Exemption 4 protects trade secrets, an important safeguard, given the type of information the FDIC collects from banks. “Much of what banks provide to the FDIC is with the understanding that we will not release it,” Zia said.

Another example is Exemption 6, which states that any personally identifiable information (PII) must be withheld. “Because the FDIC may collect a lot of confidential financial information about bank customers and other PII, we have to be really careful about what we release,” Zia said. “We are the gatekeepers of that information. We must never release privileged or confidential information without appropriate authorizations.”

These protections create a certain tension with the law’s intent of transparency. “We have to find the right balance between transparency and protecting information,” Cunanan said. “Fortunately, our FOIA Coordinators receive training that helps when navigating this question, including our most recent training, which took place in January.”

In 2016, a new law—the FOIA Improvement Act—introduced major changes to the FOIA statute. Among them is a “foreseeable harm standard.” To abide by this standard, the FOIA Coordinators must consider whether the release of an exempt record may be harmful to the FDIC. “FOIA Coordinators and FDIC employees can assist by stating the foreseeable harm in releasing some or all of the records that have been uncovered,” Snider said. “As the subject matter expert on the records, the custodial division or office is best able to assist with this analysis.”

After your search is complete and you have reviewed the documents within the context of the nine exemptions and the FOIA Improvement Act’s foreseeable harm standard, you should provide your FOIA Coordinator with the records and your analysis and recommendations. “This analysis is vital for our staff to use when reviewing the records and making an appropriate decision on what should and should not be released,” Snider said.

A note of caution: do not prematurely withhold records from a search because in your view they potentially fall under an exemption. “People sometimes think they do not have to provide their FOIA Coordinator with a record because it may include exempt information,” Cunanan said. “However, under the FOIA, our group needs to take a look at all potentially responsive records collected during the search along with your recommendations. We take all the recommendations into account when making a final decision on what should be withheld and what should be released.”

Which brings us back to that request in your inbox. When undertaking a search, contact your FOIA Coordinator or a member of the FOIA group with any questions or concerns. “We welcome your call,” Zia said. “We are here to help.”

“My best practice suggestion is that anyone assigned to a request should review it carefully upon initial receipt and reach out to your FOIA coordinator or our staff promptly with any issues or concerns,” Snider said.

When undertaking a search, contact your FOIA Coordinator or a member of the FOIA group with any questions or concerns.

Freedom of Information Act (FOIA)

8 Freedom of Information Act (FOIA) Public Liaison

To comply with United States Department of Justice’s FOIA Improvement Act of 2016 (Act), the FDIC’s Chief FOIA Officer in the Legal Division designated the FDIC Office of the Ombudsman (OO) as the FOIA Public Liaison. In the Act, the role of a FOIA Public Liaison was codified as follows:

“FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Likewise, the role of each agency's Chief FOIA Officer is codified. This official has ‘agency-wide responsibility for efficient and appropriate compliance’ with the FOIA and reports to top agency officials and to the Attorney General regarding the agency's performance in implementing the FOIA.”¹

<https://www.govinfo.gov/content/pkg/PLAW-110publ175/pdf/PLAW-110publ175.pdf>

The FOIA Public Liaison serves as a supervisory official to whom a FOIA requester can raise concerns about the service received from the FDIC's FOIA Group. The FOIA Group is a section in the Legal Division that responds to FOIA requests. The Director of the OO designates at least two OO staff members, a primary and a backup, to be FOIA SMEs and handle issues involving the OO as FOIA Public Liaison, while keeping the OO Director informed of case progress and potential issues.

8.1 Designated FOIA SME Responsibilities

A FOIA SME is responsible for being familiar with FOIA, the FDIC’s FOIA rules and policies, and with SecureRelease™ (software used by the FOIA Group to track FOIA requests and responses). In addition, OO FOIA SMEs will work with the FOIA Group when assisting a requestor.

A key resource for understanding FOIA is the [Guide to the Freedom of Information Act \(FOIA Guide\)](#) published by the U.S. Department of Justice’s Office of Information Policy.

8.2 Role of the Ombudsman FOIA Public Liaison

If any party making a FOIA request encounters difficulties with a pending request or final response, the requester may contact the OO as the FDIC’s designated FOIA Public Liaison.

¹ OPEN Government Act § 10 (codified at 5 U.S.C. § 552(l)).

Per the Act, it is the goal of the OO as FOIA Public Liaison to reduce delays, increase transparency, understand the status of requests, and assist in resolving disputes.

FOIA provides access to records in possession of the agency but does not provide for research or narrative answers to questions. This is one area where the OO as the FOIA Public Liaison may assist by explaining or answering questions. As an example, the FDIC as Receiver of failed FDIC-insured institutions provides a limited power of attorney (POA) to specific employees of an assuming institution so they may document the chain of title on a loan when needed. While the FDIC provides the POA document through a FOIA request, the requestor will not know that these POAs are not provided when the acquiring institution purchased the loan from the FDIC, but rather only when an action such as foreclosure is being taken. Such an explanation will not be provided by the FOIA Group, but may be provided by the OO as FOIA Public Liaison.

8.3 FOIA Public Liaison Procedures

All correspondence regarding FOIA issues will be referred to the designated OO FOIA SME, by transferring phone calls or forwarding written, including electronic, correspondence.

The OO FOIA SME will discuss the issue with the requestor, including any desired resolution; research, as necessary, the FOIA Guide and the FDIC's FOIA rules and policies; and research the history of the FOIA request in SecureRelease™. During the discussion with the requestor, it is important that the OO FOIA SME discuss the role of the FOIA Public Liaison, and, if necessary, explain what efforts will be made to facilitate a resolution. The OO FOIA SME may also discuss the FOIA request and issue with the FOIA Group in an effort to reach a resolution to be communicated back to the requestor. When the OO FOIA SME fulfills their role as FOIA Public Liaison, they will send an e-mail to the FOIA Group stating the OO has closed the case.

The OO FOIA SME enters issues into EPIC as soon as possible and updates the record as necessary until it is closed. A spreadsheet on the OO's Sharepoint site will be maintained to assist OO staff and OO management in monitoring the status of FOIA Public Liaison requests. This spreadsheet will include the several data that will not only assist in tracking requests from the public, but also help respond to bi-annual requests from the FDIC's FOIA Officer on time spent on FOIA cases, to satisfy the agency's annual reporting requirements to Congress.

If a requestor is dissatisfied with the resolution offered by the OO as FOIA Public Liaison, the OO FOIA SME will inform the requestor of their right, as specified in Section 309 of the FDIC's Rules and Regulations, to appeal the denial to the FDIC's General Counsel (or

designee) within 90 calendar days after receipt of notification of the denial as specified in the FDIC's Rules and Regulations Section 309.5.(i)

About >

Strategic Objectives

Ongoing Operations

The Office of the Ombudsman (OO or Office) will continue pursuing strategies and protocols to ensure adherence to confidentiality, neutrality, and independence guidelines, while also utilizing a combination of meetings conducted in-person and via electronic platforms to support outreach efforts. As part of operations, the Office will implement its recently approved Diversity, Equity, Inclusion, and Accessibility plan, which will be consistent with the culture, composition, characteristics, and mission of the Office.

✓ STRATEGIC GOALS FOR ONGOING OPERATIONS

EPIC Case Entries: Log all relevant electronic and hard copy correspondence as well as phone calls to the OO from the ASK-FDIC menu calling tree options in EPIC within three (3) business days of receipt and respond when appropriate, no later than fourteen days with the exception of complex cases.

Bank Closing Participation: Participate in all interdivisional planning meetings for anticipated bank closings and ensure that the Office has appropriate personnel identified and assigned to assist virtually or onsite with customer inquiries throughout the closing period.

FOIA Public Liaison Cases: Review and respond to inquiries or concerns about the FOIA process within three (3) business days of receipt or notification of an inquiry under the purview of the Office.

Post-examination Survey Requests: Ensure that requests for follow-up contact requested in the post examination surveys are acted on promptly and in all cases within ten (10) business days of OO notification of the request.

Post-examination Survey Revisions: Facilitate completion of FPG Goal 1, part 1.03, to update and implement Post-Examination Surveys for risk management and consumer compliance examinations to address specialty examinations and examination activities completed offsite/virtually.

Initial Case Contacts: Ensure that an initial contact is made for all industry cases within five (5) business days of the matter being identified.

Business Continuity Plan / Crisis Management Plan: Review Business Continuity Plan at least annually for potential updates and revisions, and discuss with staff during Strategic Planning meeting. Also, review the OO Crisis Management Plan (debt ceiling contingencies) as warranted but not less than annually.

OO Procedures Manual Update: Complete updates to the Ombudsman Procedures Manual within 30 calendar days of the end of the first calendar quarter of 2022. As deemed necessary, updates should be planned for sections pertaining to supervisory appeals, outreach protocols, whistleblower procedures, and dynamics for identifying and addressing Systemic Issue findings.

Supervisory Appeals Process: Closely monitor actions towards standing up the newly established Office of Supervisory Appeals, and establish protocols for OO's revised role in the process. Also, ensure OO staff is fully cognizant of the

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Welcome to the Office of the Ombudsman (OO) website. We welcome the opportunity to answer your questions and assist in clarifying FDIC regulations, policies, procedures, and related activities. The OO takes all reasonable steps to safeguard your confidentiality. We are neutral in our informal approach to resolve complaints and inquiries about the FDIC. Finally, we operate in an independent manner, as we are not involved in any part of the supervision, resolution, or receivership processes.

- Stacy Meisel, Acting Director

QUICK LINKS

- Bank Find
- Post-Exam Survey Administration
- EPIC
- OO SharePoint

material changes in the appeal procedures versus the previous guidance as well as the role of the OO.

Periodic Review of External POCs and Updates of Database: Establish a mechanism for facilitating the semi-annual review of and verification for accuracy, the OO database detailing leadership at the national and state trade associations, the Conference of State Banking Supervisors and the State Bank Regulatory agencies. Periodically review relevant trade periodicals and online sites for information and trends that may impact discussions with external stakeholders.

Employee Engagement and Knowledge Transfer

The Office will continue pursuing strategies to encourage further development of staff skill sets, and mitigate potential impacts from attrition.

✓ STRATEGIC GOALS FOR EMPLOYEE ENGAGEMENT AND KNOWLEDGE TRANSFER

Driver Division Activities: Meet periodically with principals and Subject Matter Experts in RMS, DCP, and DRR, at the Washington and Regional Office levels, to discuss any anticipated revisions in operations or oversight protocols that could potentially result in changes in the level or tone of commentary and feedback to or from the industry. Also, monitor RMS and DCP internal websites for material changes in regulatory guidance and expectations. Continue to invite leadership from driver/other relevant divisions to attend OO's annual planning meeting.

Developmental Programs: Encourage development of Career Development Plans and use of Professional Learning Accounts (PLA) by staff at all levels in the Office. Also, support agency wide initiatives including but not limited to programs for Expression of Interest (EOI), Special Assistants, and Mentoring.

Back-up Contacts: Establish back-ups assignments, key duties and procedures in the Office, by the end of the first quarter. Ensure the backups have the requisite training and authorities or plans to acquire such in the near term, to carry out all responsibilities as if the primary. Thereafter, validate that assignments remain accurate and valid prior to year-end.

Internal OO Communications: Provide biweekly updates to staff on pertinent matters, via meetings, conference calls, or global emails.

Staffing: Conduct immediate reviews of any vacancies, with objective of backfilling as soon as possible, while utilizing the resources and expertise of HRB to ensure advertisement to the appropriate audience.

Bank Closing Training: Update as deemed necessary and in cooperation with Corporate University and DRR, just-in-time training for bank resolutions including those for which OO participation will be conducted virtually.

Public Awareness, Outreach Activities, and Communications

The Office will continue pursuing plans to facilitate a robust outreach program to all relevant internal and external stakeholders, including insured depository institutions, trade associations, and partnering regulatory agencies.

✓ STRATEGIC GOALS FOR PUBLIC AWARENESS, OUTREACH ACTIVITIES, AND COMMUNICATIONS

Industry Awareness: Continue efforts to broaden industry awareness of the Office and its activities including periodic communications or electronic contacts by the Director, or designees to all identified industry trade associations and State Banking regulators.


Regional Ombudsman Activities: Plan and implement strategies for achieving established OO goals for annual outreach contact with external stakeholders

ONLINE FORM

Please complete this form to provide an anonymous comment, complaint, or suggestion for the FDIC.

CONTACTS

FDIC
Office of the Ombudsman
E-2048
3501 Fairfax Drive
Arlington, VA 22226

 (877) 275-3342

 Ombudsman@fdic.gov

inclusive of insured depository institutions, state regulatory parties, and state trade associations. Also, initiate contact within established OO policy guidelines after the initiation of the insured status for de novo state nonmember institutions. Regional Ombudsmen should also incorporate into outreach plans, goals for contacting a representative portion of FDIC supervised MDIs and CDFIs in their geographical areas of purview.

National Trade Associations: Conduct annual contact with leadership at nationwide trade associations (such as the ABA, ICBA, and NBA) to discuss the Office's function and structure, and options for assisting FDIC-supervised banks and external stakeholders in confidentially resolving complaints, concerns, or disputes.

State Trade Association Conferences: Encourage attendance and engagement in person or virtually, by Regional Ombudsman at State trade association conferences, with a goal of attending a conference for at least 50 percent of the states under the purview of the assigned Regional OO.

Advisory Committee on Community Banking: Prepare a high-quality presentation on a relevant topic of interest for delivery during a Community Bank Advisory Committee meeting during the calendar year.

Minority Depository Institutions (MDIs), Mutual Banks and Community Bank Conferences: Attend and actively participate in MDI Conferences and Mutual Bank seminars and other such events targeted primarily to community banks. Also, consider participation or attendance at Community Affairs events particularly where the program focuses on providing assistance to LMI or underserved geographical areas.

Collaboration with OCOM and OLA: Ensure that Regional Ombudsmen provide relevant information on planned participation at major State trade events in advance of the activity and in a defined format which can be shared with OCOM and OLA. Furthermore, utilize the expertise of OCOM to leverage social media avenues to advertise Ombudsman participation at trade events, and opportunities for confidential meetings with bankers and other external stakeholders.

Federal Banking Agency Ombudsmen: Actively participate in quarterly meetings with Ombudsmen from other Federal Agencies to exchange ideas and learn best practices which could be of value in the operation of the Office.

External Stakeholder Awareness of Diversity Programs: Facilitate completion of FPG Goal 5, parts 5.02(b) and 5.02(c) to work collaboratively with OMWI to (i) increase awareness of the FDIC's financial institution diversity program, and the financial institution diversity self-assessment participation rate, and (ii) seek opportunities to collaborate with state trade associations and national and local community organizations that support minority- and women-owned businesses (MWOBs) to increase awareness of the financial institution diversity and MWOB programs.

Reporting

The Office will continue to review internal and external reporting conventions, and pursue opportunities for improving efficiency, and ensuring accuracy and ongoing consistency.

✓ STRATEGIC GOALS FOR REPORTING

EPIC Case Entries: Log all relevant electronic and hard copy correspondence as well as phone calls to the OO from the ASK-FDIC menu calling tree options in EPIC within three (3) business days of receipt and respond when appropriate, no later than fourteen days with the exception of complex cases.

Bank Closing Participation: Participate in all interdivisional planning meetings for anticipated bank closings and ensure that the Office has appropriate

personnel identified and assigned to assist virtually or onsite with customer inquiries throughout the closing period.

FOIA Public Liaison Cases: Review and respond to inquiries or concerns about the FOIA process within three (3) business days of receipt or notification of an inquiry under the purview of the Office.

Post-examination Survey Requests: Ensure that requests for follow-up contact requested in the post examination surveys are acted on promptly and in all cases within ten (10) business days of OO notification of the request.

Post-examination Survey Revisions: Facilitate completion of FPG Goal 1, part 1.03, to update and implement Post-Examination Surveys for risk management and consumer compliance examinations to address specialty examinations and examination activities completed offsite/virtually.

Initial Case Contacts: Ensure that an initial contact is made for all industry cases within five (5) business days of the matter being identified.

Business Continuity Plan / Crisis Management Plan: Review Business Continuity Plan at least annually for potential updates and revisions, and discuss with staff during Strategic Planning meeting. Also, review the OO Crisis Management Plan (debt ceiling contingencies) as warranted but not less than annually.

OO Procedures Manual Update: Complete updates to the Ombudsman Procedures Manual within 30 calendar days of the end of the first calendar quarter of 2022. As deemed necessary, updates should be planned for sections pertaining to supervisory appeals, outreach protocols, whistleblower procedures, and dynamics for identifying and addressing Systemic Issue findings.

Supervisory Appeals Process: Closely monitor actions towards standing up the newly established Office of Supervisory Appeals, and establish protocols for OO's revised role in the process. Also, ensure OO staff is fully cognizant of the material changes in the appeal procedures versus the previous guidance as well as the role of the OO.

Periodic Review of External POCs and Updates of Database: Establish a mechanism for facilitating the semi-annual review of and verification for accuracy, the OO database detailing leadership at the national and state trade associations, the Conference of State Banking Supervisors and the State Bank Regulatory agencies. Periodically review relevant trade periodicals and online sites for information and trends that may impact discussions with external stakeholders.

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Litigation >

Corporate Litigation

The Corporate Litigation Unit is responsible for conducting nationwide litigation involving the FDIC in its corporate capacity, as well as handling other “open bank” related litigation matters.

Bank Closing Challenges

Congressional Inquiry Responses

Deposit Insurance Consult

Disclosure

Dodd Frank Act Consult

Federal Tort Claims Act

Golden Parachute Consult


Rulemaking


Because of the nature of its mission and regulatory responsibilities, the FDIC is in possession of large amounts of confidential information about financial institutions and other outside parties, along with information concerning the agency’s supervisory activities and other actions. A variety of federal laws, regulations, and rules govern the disclosure of confidential agency information, including the Freedom of Information Act (FOIA), FDIC regulations on requests for discretionary disclosure (Part 309), the Privacy Act, the Right to Financial Privacy Act (RFPA), and civil and criminal rules of procedure for discovery in litigation and grand jury subpoenas. Corporate Litigation Unit attorneys advise both FDIC business units and other Legal Division units on disclosure issues; determine appeals from initial decisions on FOIA requests; defend the FDIC in FOIA litigation; determine administrative requests for information under Part 309 when the information is not available under FOIA; respond to subpoenas for documents and witness testimony in matters where FDIC is not a party; and defend the confidentiality of FDIC information in court, when necessary.

CONTACTS

Staff Directory

QUICKLINKS

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FOIA

FOIA and Privacy Act Requests

The FOIA & Privacy Act Group is responsible for processing all Freedom of Information Act (FOIA) and Privacy Act requests received by the FDIC.

Requests involving Legal Division records are assigned to the Legal Division FOIA Coordinator who works with appropriate Legal Division staff and record custodians to process the request. Processing a FOIA request typically requires conducting a reasonable search for responsive records and marking any sensitive information for redaction or other appropriate action.

FDIC employees assigned to process FOIA and Privacy Act requests are expected to comply with the following FDIC Directives:

FDIC Directive 1023.1 Freedom of Information Act Requests

FDIC Directive 1360.20 Privacy Program

Additional information regarding the FOIA process at the FDIC is available online at the FDIC Freedom of Information Act Service Center

SecureRelease™

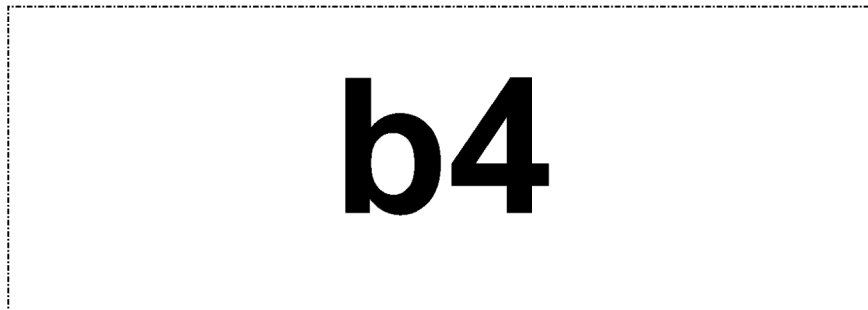
SecureRelease™ is an enterprise application that allows for the electronic storage, retrieval, redaction, and printing of documents for delivery to FOIA requesters. It also allows for the tracking of FOIA processing statistics and fees, and the generation of reports on the number, type, and disposition of FOIA requests processed, as required by the U.S. Department of Justice.

All FDIC FOIA and Privacy Act requests must be processed using SecureRelease and all SecureRelease users must receive application-specific training and FDIC IT Security and Privacy Training before gaining access to the system.

SecureRelease™ FAQs

Q1: How do I clear a search filter on the main screen listing requests or any other screen where a filter has been applied?

A: Filters are not cleared automatically in SecureRelease™. To reset a view on your main screen or clear the filter, click on the funnel icon on the right-hand side of your screen that has the little 'x' next to it.



Information Available to the Public (via FDIC external homepage)

FOIA fees, categories, waivers

FOIA exemptions

Public FOIA Request Form

Other FOIA links

FOIA OFFICIALS

Acting General Counsel/Chief FOIA Officer

Matthew Reed
 (202) 898-7353

FOIA & PRIVACY ACT GROUP

Senior Counsel, Opinions and Research Unit

Thomas Johnson
 (202) 898-3511

Supervisory Counsel
Vacant

FOIA Counsel

Sarah Cunanan
 (703) 562-2125

FOIA Counsel

Jeannette Wise
 (703) 562-2029

Privacy Counsel

Partap Verma
 (703) 562-2039

Senior Attorney

Christine Grauer
 (703) 562-6041

Government Information Specialist

Khurram Ali
 (571) 858-8204

Government Information Specialist

Alisa Colgrove
 (703) 562-2274

Government Information Specialist

Sarah Hayden
 (917) 320-2828

Government Information Specialist

Loredana Kratzer
 (312) 382-6507

Government Information Specialist

Charles Smith
 (703) 516-5731

Government Information Specialist

Natasha Smith
 (703) 562-2067

FOIA Technician

Felice Rosser
 (703) 562-6285

FREEDOM OF INFORMATION ACT

FDIC | Division of Complex Institution Supervision and Resolution (CISR)

DRAFT

April 2025

Contents

No table of contents entries found.

DRAFT

Purpose

The purpose of a Freedom of Information Act (FOIA) procedural manual is to provide clear guidance and instructions on how to submit and process FOIA request to the FDIC FOIA & Privacy Act Group.

The CISR FOIA procedural manual promotes:

- Transparency and Accountability
- Compliance with Legal Requirements
- Efficiency and Consistency
- Guidance for CISR staff

The FOIA procedural manual serves as a cornerstone for transparency and accountability within Complex Institution Supervision and Resolution (CISR). The manual ensures CISR employee understands their responsibilities and obligations under the FOIA. This clarity helps us comply with legal requirements, thereby minimizing the risk of legal compliances and ensuring that FOIA requests are handled in strict accordance with the law and the directives established by our FOIA and Privacy Act Group.

The manual establishes clear procedures and providing precise instructions, it enables consistency in the handling of all FOIA requests. The standardization enhances our ability to meet legal obligations and streamline our internal processes, facilitating a more efficient workflow between CISR and FOIA and Privacy Act Group.

In essence, the FOIA procedural manual promotes best practices, fostering transparency, and upholding principle of accountability in our organization. Through its implementation, we aim to not only fulfill our legal obligations but also to demonstrate our commitment to openness and responsiveness to the public we serve.

SCOPE

This Standard Operating Procedure (SOP) applies to the Risk and Internal Control team and provides a structured framework for collecting, reviewing, and applying applicable FOIA exemptions to records that are subject to a FOIA request. It ensures consistency, compliance with legal requirements, and adherence to established FOIA guidelines. This SOP covers the identification of sensitive or exempt information, proper documentation, and justification for exemptions, and the process for reviewing and responding to FOIA requests. It applies to all relevant records handled by the RIC team and aims to facilitate a transparent, efficient, and legally compliant approach to FOIA process.

DRAFT

SOP Foundation

Freedom of Information Act

Since 1967, The Freedom of Information Act (FOIA)¹ has provided the public the right to request access to records from any federal agency. It is often described as the law that keeps citizens in the know about their government. Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of nine exemptions which protect interests such as personal privacy, national security, and law enforcement.

On March 15, 2022, the Attorney General (AG) issued a memorandum titled “Freedom of Information Act Guidelines” for all heads of federal departments and agencies (“AG FOIA Guidelines”) to update and strengthen the federal government's commitment to the fair and effective administration of the FOIA.

The FOIA & Privacy Act Group is responsible for processing all Freedom of Information Act (FOIA) and Privacy Act requests received by the FDIC.

Requests involving Legal Division records are assigned to the Legal Division FOIA Coordinator who works with appropriate Legal Division staff and record custodians to process the request. Processing a FOIA request typically requires conducting a reasonable search for responsive records and marking any sensitive information for redaction or other appropriate action.

FDIC employees assigned to process FOIA and Privacy Act requests are expected to comply with the following FDIC Directives:

FDIC Directive 1023.1 Freedom of Information Act Requests

FDIC Directive 1360.20 Privacy Program

¹ The Freedom of Information Act, 5 U.S.C. § 552 As Amended By Public Law No. 110-175, 121 Stat. 2524

Roles and Responsibilities

FOIA & Privacy Act Group assigns FOIA request to FDIC division(s) via email and requests an acknowledgement reply. The email will include the FOIA log number, the due date, and other information.

RIC team are responsible for responding to the FOIA request and researching responsive records, analyze the records for sensitive information, and apply applicable FOIA exemptions.

RIC Assistant Director reviews and approves RIC team responsive records and applicable FOIA exemptions to submit to FOIA & Privacy Act Group.

CISR Front Office aware of FOIA reviews by RIC Assistant Director on an on-going basis and at the monthly status report.

Legal team represents CISR and available to give legal advice.

Procedures to Process FOIA request

The FDIC is required to respond to valid FOIA requests within **20 business days** after receipt of these requests, unless there are unusual circumstances², which extends the response period by **ten business days**. The Government Information Specialist (GIS) from the FOIA/ PA group assigns the FOIA requests to the appropriate division/office to search for responsive agency records.

The Risk and Internal Controls (RIC) team manages FOIA request for CISR Division by reviewing, analyzing, and processing the FOIA request in SecureRelease and/or Relativity³. All FDIC FOIA/ PA requests must be processed using SecureRelease. Processing a FOIA request typically requires conducting a reasonable search⁴ for responsive records, reviewing records for foreseeable harm and sensitive information that may warrant an exemption and/or redaction for consideration, and making recommendation to the FOIA/PA group. If any questions occur throughout the process, The RIC team should contact the legal team and/or the GIS assigned to the FOIA request.

When CISR receives a FOIA request and determines that CISR does not have equity in the request, then the RIC team should notify GIS assigned to the FOIA request as soon as possible. A FOIA request can be a referral or consultant from another federal agency (i.e. OCC, Federal Reserve Board, etc.), therefore, it does not require reasonable search because records are already uploaded in SecureRelease. RIC team will review the uploaded records and recommend redactions/exemptions, where necessary.

Regularly, CISR and other divisions are assigned to the same FOIA request. RIC team will work with the CISR branches to gather applicable responsive records and recommend appropriate redactions and exemptions, where necessary. RIC team will engage with the CISR Assistant Director throughout the FOIA process. CISR Assistant Director will keep CISR management abreast of FOIA requests and updates, as needed. CISR Assistant Director will review and approve all responsive records, recommended redactions and exemptions before RIC team notifies the FOIA/PA group of CISR completed assignment. The FOIA/PA group is responsible for reviewing all responsive records and recommended redactions and exemptions. FOIA/PA group should notify CISR or RIC team of any changes to the FOIA records once they review and before they release the documents to the requester. **No records** should be added, unredacted, or redacted in SecureRelease without the consent and approval of the RIC team or CISR management.

² Unusual circumstances include 1) search/collect records from several offices and facilities; 2) voluminous records have to be searched, collected, and examined; and 3) Agency has to consult with another agency or offices.

³ SecureRelease is an enterprise application that allows for the electronic storage, retrieval, redaction, and printing of documents for delivery to FOIA requesters. All users must receive application-specific training before gaining access to the system.

⁴ Search defines by FOIA as to review manually or by automated means agency records for the purpose of locating those records which are responsive to a request (ie: paper, email, electronic files).

FOIA exemptions and redactions

The FOIA provides that when processing requests, agencies should withhold information only if they reasonably foresee that disclosure would harm an interest protected by an exemption, or if disclosure is prohibited by law. Agencies should also consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible and they should take reasonable steps to segregate and release nonexempt information.

Exemption 1 protects national security information that is properly classified under the procedural and substantive requirements of an Executive Order on Classified National Security Information. Proper classification markings include Confidential, Secret, and Top Secret.

Exemption 2 protects records that are “related solely to the internal personnel rules and practices of an agency.” This exemption protects certain human-resources rules and practices concerning hiring and management of agency employees. Records covered by Exemption 2 are good candidates for *discretionary release*.

Exemption 3 protects information that has been “specifically exempted from disclosure by statute.” To qualify as withholding statutes, the statutes must contain either an absolute prohibition against disclosure, or if there is some agency discretion, the statute must refer to particular matters or provide criteria for withholding. Statutes enacted after October 2009 must specifically reference Exemption 3.

Exemption 4 protects two categories of information, which include trade secrets and certain commercial or financial information provided to the government by an outside source, such as a contractor or a company regulated by the government.

1. Trade Secrets

- For the purposes of Exemption 4, courts have narrowly defined a "trade secret" to be a "secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." (ie: formula for Coca-Cola).

2. Privileged or Confidential Commercial or Financial Information that is Obtained from a Person

- Three elements must be satisfied:
 - 1) Commercial or Financial Information - The terms "commercial or financial information" are very broadly defined to include any type of financial information and any type of information that pertains to commerce or that is of commercial interest.

- 2) Obtained from a Person - A "person" is defined as an individual, partnership, corporation, association, or public or private organization other than an agency. (Information generated from the federal government is generally not considered obtained by a person).
- 3) Privileged or Confidential
 - Information is "privileged" if one of the traditional civil discovery privileges applies, such as the attorney work-product or attorney-client privileges.
 - The tests for determining whether information is "confidential" vary depending on how the information was provided to the government.
 - Voluntary Submissions – the information is considered confidential if the submitter of the information would not customarily release the information to the public.
 - Required Submissions – the information is considered confidential if disclosure would:
 - impair the government's ability to obtain access to reliable or quality information,
 - likely cause substantial competitive harm to the submitter of the information, or
 - adversely affect compliance or effectiveness of government programs.

Executive Order 12600

- When reviewing information that if disclosed could arguably cause the submitter of that information competitive harm, you must advise the submitter of the FOIA request and provide a reasonable amount of time for the submitter to present any objections to disclosure
- You should also inform the FOIA requester that you are giving the submitter an opportunity to comment before you make any determinations on the disclosability of the information
- After evaluating the submitter's comments, if you find that the submitter did not carry its burden of establishing a likelihood of substantial competitive injury, you will need to prepare a letter notifying the submitter of your intention to disclose the material. Your letter must clearly explain your reasons for rejecting the submitter's objections
- Your notice to the submitter must also include a specific date on which disclosure will occur. Prior to that date, if the submitter remains unsatisfied, it may seek judicial relief by filing a reverse FOIA lawsuit.

Exemption 5 protects inter- or intra-agency records that are normally privileged in the civil discovery context.

What does it mean for a record to be "inter- or intra-agency"? In most instances, this means that the records were created by a federal government agency and exchanged within or between agencies. Generally, when agencies receive the help of an "outside consultant" who provides neutral, expert advice to a federal agency, communications with that consultant are considered to be "intra-agency" records.

If a record satisfies the "inter- or intra-agency" threshold, it may be protected under Exemption 5 if it is also covered by a civil discovery privilege.

- Deliberative Process Privilege- protect the government's decision-making processes by encouraging open, frank discussions on matters of policy between subordinates and superiors.

In order for the deliberative process privilege to apply, the records must be both predecisional and deliberative. Agency records are generally predecisional if they are created during the decision-making process leading up to a final decision. Such records are deliberative if they contain opinions, recommendations, or discussions reflecting a federal agency's decision-making process. Notably, the final decision itself is generally released. Factual material generally cannot be withheld under the deliberative process privilege.

(Discretionary release. Determine if foreseeable harm if release)

- Attorney Work-Product Privilege- protects information prepared in reasonable anticipation of litigation by an attorney or by someone working under the direction of an attorney. For this privilege to apply, litigation must have already commenced or must be reasonably anticipated. For this privilege, factual material can be protected.
- Attorney-Client Privilege- protects confidential communications between an attorney and his or her client for the purposes of seeking legal advice. For instance, if a federal agency seeks confidential legal advice from its Office of General Counsel, those communications may be protectable under the attorney-client privilege. For this privilege, factual material can be protected if it is part of the confidential communication.

Exemption 6 protects from disclosure information identifiable to an individual where disclosure would constitute a clearly unwarranted invasion of personal privacy. In order to withhold information, the privacy interest must outweigh the FOIA public interest in what the government is up to.

Exemption 7 protects six different types of law enforcement information:

- 7(A): Information that could reasonably be expected to interfere with a pending law enforcement matter
- 7(B): Information that would deprive a person of a right to a fair trial or an impartial adjudication
- 7(C): Information that could reasonably be expected to constitute an unwarranted invasion of personal privacy
- 7(D): Information that concerns confidential sources
- 7(E): Information that would reveal investigative techniques or procedures generally unknown to the public, or law enforcement guidelines that could risk circumvention of the law
- 7(F): Information that would endanger the life or physical safety of an individual

Exemption 8 protects matters related to examination, operating, or condition reports prepared by or for the use of regulators or supervisors of financial institutions. Exemption 8 provides broad protection of records concerning the examination of financial institutions by regulators, in keeping with the two main purposes of Exemption 8:

- To preserve the security of financial institutions
- To protect the relationship between financial institutions and the government agencies that regulate them

Notably, the term "financial institutions" has been broadly defined to include not just traditional banks, but also investment advisors, securities dealers, and self-regulatory organizations such as the National Association of Securities Dealers.

Exemption 9 protects geological information and data – including maps – concerning wells.

FORESEEABLE HARM STANDARDS

Information that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure.

b5

b5

b5



Privacy Act Exemptions Summary

One special

Section 552a(d)(5) exempts from disclosure:

“Any information compiled in reasonable anticipation of a civil action or proceeding.”

Self-executing exemption.

Two general

(j)(1): CIA systems of records.

(j)(2): Systems of records maintained by a principal function criminal law enforcement agency and the records were compiled for criminal law enforcement purposes.

Seven specific

(k)(1): Classified information

(k)(2): Generally applies to investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).

(k)(3): U.S. Secret Service information.

(k)(4): Required by statute to be maintained and used solely as statistical records.

(k)(5): Source-identifying investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information.

k)(6): Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service.

(k)(7): Evaluation material used to determine potential for promotion in the armed services, but only to the extent it would reveal the identity of a confidential source who was granted an express promise of confidentiality.

APPENDIX ____

FOIA Checklist

Additional References

Training and Resources

External Training

Office of Information Policy offers free FOIA training and events

<https://www.justice.gov/oip/training#s1>

Internal Training

Federal Learning Experience (FLX) Training:

- FOIA Training for All Employees
- FOIA Training for Professionals
- FOIA/ PA Group offer 2 seminars annually

Resources:

The Office of Information Policy (OIP) at the Department of Justice is responsible for issuing government-wide guidance on the FOIA as part of its responsibilities to encourage all agencies to fully comply with both the letter and the spirit of the FOIA.

OIP website: <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>

Additional information regarding the FOIA process at the FDIC is available online at the [FDIC Freedom of Information Act Service Center](#)

Frequently Asked Questions

Q. Should I respond to the FOIA requester directly?

A. No, all communications to the requester must come from the FOIA/PA Group.

Q. Who is the FDIC FOIA Public Liaison and what is their responsibility?

A. At the FDIC, the Ombudsman Office is appointed as the FOIA Public Liaison.

“FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a [FOIA] requester . . . can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of requests’ current status, and assisting in the resolution of disputes.” 5 U.S.C § 552(l) (2012)

Q. Should I create a new record in response to a FOIA request?

A. No, FOIA does not require federal agencies to perform research, to create records, or to answer questions. Only records that exist and are under the FDIC’s control at the time we begin our search (i.e. the “search cut-off date”), are potentially responsive to a request. Any records that we create after the search cut-off date would not be responsive. With that in mind, if you think that there is the potential for the subject matter experts (SMEs) and records custodians that you are working with to create new records (oftentimes with the good intention of trying to be helpful), please counsel them against this practice.

Q. Does the FOIA requestor have Appeal Rights?

A. Yes, a person whose initial FOIA request for records is denied, either in whole or in part, or whose request for a waiver of fees has been denied, has the right to appeal the denial to the FDIC’s General Counsel (or designee) within 90 calendar days after receipt of notification of the denial.

Q. How do I create a SecureRelease account?

A. Email Alisa Colgrove to request SecureRelease training and access.

Q. Who should I contact if I am having problems with SecureRelease?

A. First, please clear cache in Chrome Browser then restart your browser to see if problem is resolved. (Direction: Click **more** on the top right corner (three dots), click **more tools**, click **clear browsing data**, select **all time** and make sure **cached images and files is selected**, click **clear data**, then restart browser).

If problem still persist, please submit a Support Ticket in SecureRelease or Contact the SecureRelease Support via Email: securereleasesupportteam@deloitte.com, Cc: Alisa Colgrove

& Michael Toland or Phone Number: 844-919-0718. If you do not receive a ticket number for tracking, please contact Alisa or Michael.

Q. How do I avoid my account on SecureRelease from being disabled?

A. Log into SecureRelease once every 30 days to avoid account from being disabled due to inactivity.

Q. Who should I contact if I have questions about the FOIA request I received?

A. Please contact the Government Information Specialist (GIS) assigned to the FOIA request. The name of the GIS assigned should be in the initial FOIA email.

Q. If the FOIA request should include or be referred to another office/division, what should I do?

A. Contact the GIS assigned to the FOIA request and notify them the reason why other offices/divisions may have equity in the request.

Q. If there is information that should *not* be redacted by another Division/Office during my review, what should I do?

A. Do not unredact information that has been redacted by another Division/Office. Please notify the FOIA/PA Group member assigned to the request. The FOIA/PA Group will consult with the other Division/Office about the information and determine whether it should not be redacted.

Q. If there is information that should be redacted by another Division/Office during my review, what should I do?

A. Do not redact information for another Division/Office. Please contact that Division/Office and notify FOIA/PA Group member assigned to the request. The FOIA/PA Group will consult with the other Division/Office about the information and determine whether it should be redacted.

Q. What if the records in SecureRelease does not pertain to the request?

A. If the records in SecureRelease is out of scope, we do not need to disclose the information. Please consider exempting the record on SecureRelease as “Non-Responsive.”

Q. What if there are multiple duplicate records in SecureRelease for one request.

A. This can happen when there is an e-discovery search of records or when multiple offices upload records for the same request. Please review the records carefully to ensure that it is duplicate record and exempt the record in SecureRelease as “Duplicate.”

Glossary

Personal Identifiable Information (PII)- Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.

Consultation- The FOIA request is in consultation with another federal agency. FDIC must review the record(s) uploaded in SecureRelease and if needed, add foreseeable harm exemptions/redactions then return records to the original federal agency to process and reply to the FOIA requestor directly.

Referral- The FOIA request is a referral from another federal agency. FDIC must review the record(s) uploaded in SecureRelease and if needed, add foreseeable harm exemptions/redactions then FDIC must process and reply directly back to the FOIA requestor.

Glomar Response- FOIA response where the agency neither confirms nor denies (NCND) the existence of responsive records.

Appendix A

Document Labeling

The **FDIC DOCUMENT LABELING** allows FDIC employees and contractors to accurately identify and label FDIC documents and emails to facilitate appropriate information protection and sharing. An FDIC document can appear in an electronic format in an email, policies, memos, reports, presentations, spreadsheet.

Although the FDIC has implemented Document Labeling to protect documents and facilitate authorized sharing of documents internally, with external business partners, and the public, the statutory mandates of the FOIA remain unchanged. The label on a document does not determine its disposition under the FOIA (e.g., you cannot withhold a document merely because it is labeled as “Controlled//FDIC Internal Only”). Such a label could potentially be used to show that a document is customarily kept confidential or to support the rationale underlying a particular FOIA exemption; however, FOIA coordinators must ensure that all labeled documents receive a proper, independent FOIA review regardless of the label when making release and/or withholding determinations. The only possible exception would be the PUBLIC label, which likely forecloses asserting a FOIA exemption.



Appendix B

Upload and Redaction for FOIA coordinator in SecureRelease

Locate responsive records, SAVE them electronically. Ensure the

Request Status is Search, Load and Link Records.

b4

Step 1 – Upload responsive document(s) by first clicking **Blue** button on right side of screen.

b4

Then click on **Choose Files** and add files/records, choose your Division/Office in **Select Custodian** dropdown, and choose your Division/Office in **Folder** dropdown. You can upload individual documents, a ZIP file or a Portfolio.

b4

After document(s) are uploaded, they will appear under **Uploaded Documents Pending Ingestion.**

b4

Step 2 – Ingest the uploaded document(s) by first clicking Blue - Ready for Ingestion button on right side of screen.

b4

During the ingestion process, the Ingestion Workflow will appear. Once ingestion is complete, you will see a green bar that says Proceed to Review.

b4

After document(s) are ingested, they have a REL number. The document(s) are ready to be reviewed and redacted (if applicable).

b4

Step 3 – Review and Redact Document(s) by first clicking on REL number of first document. View in **Image**. Click on dropdown of Blue box below – the **Redaction Type** should be Exemption. The Orange box is the **Redaction Mode**. Even if you do not touch this dropdown it defaults to the Basic redact. This will be the most commonly used redaction mode.

b4

To redact, put curser of mouse where you want it. Left click, spread box, and unclick.

Place curser inside box, right click, and choose, **Select Exemptions** dropdown. (You also have chance to **Delete** or **Show Markup History**.)

b4

Click on applicable Exemptions.

In the case that the **Select Exemptions** is not there or is grayed out, try toggling between Native and Image.

Under the **Redaction Mode dropdown**, you may also choose **Redact Pages**. It is the fourth one down. It will give you the capability of redacting the current page, specific pages or the whole document. After you choose Redaction Type, Exemption Options and Page Range, Click on Mass Redact.

b4

Step 4 – After review and redaction (if applicable) is complete, you need to sign off as the FOIA Coordinator in the **Coding Layout** on the right side of the screen. Ensure **Review Decision** is accurate. If you redacted and/or think it can be released, it should be **Responsive**. If it is a duplicate, the **Review Decision** should be **Excluded – Other**. (Reminder than Exclude does not mean Exempt). Click on box next to **FOIA Coordinator QC – 1(or 2)**. Continue through all the documents in the FOIA case.

b4

Step 5 – Once your review is complete, please send an email or Correspondence to the proper Government Information Specialist.

Appendix C

Export document from SecureRelease

Export documents from SecureRelease and save it the RIC Team Share drive to so we can collaborate within CISR and with other Divisions.

Step 1: Click on FDIC- FOIA Production

b4

Step 2: Click on the Documents on the left bar

b4

Step 3: Click the drop down box and select “ Documents | Request (FDIC)”

b4

Step 4: Filter your FOIA request in the highlighted box below:

b4

Step 5: Select the documents you want by checking the box

b4

Step 6: Go to the bottom of the page and click on the arrow for “Tally/Sum/Average” drop down list. Select PDF

b4

Step 7: Select “PDF” from the drop down list the following highlighted options and click download when a pop-up screen appears.

b4

Step 8: File save your zip file

b4

FOIA POC:

FOIA Legal Team:

Sarah Cunanan (For general questions, I usually start with the assigned analyst. If additional information or clarity is needed, I contact Sarah).

Alisa N. Colgrove (For training and SecureRelease questions)

DRR (Resolution-related requests):

Deborah (Debi) Hodes

RMS (Supervisory-related requests):

Stacy Eley

DOA (Contract-related requests):

Miles Stroman

OCISO:

Christopher Rogers

ICCO/DIT:

Helen Springirth

DOA/COSS: Nicholle Depaz Harris, acting AD

Governance & Policies > Policy Manuals >

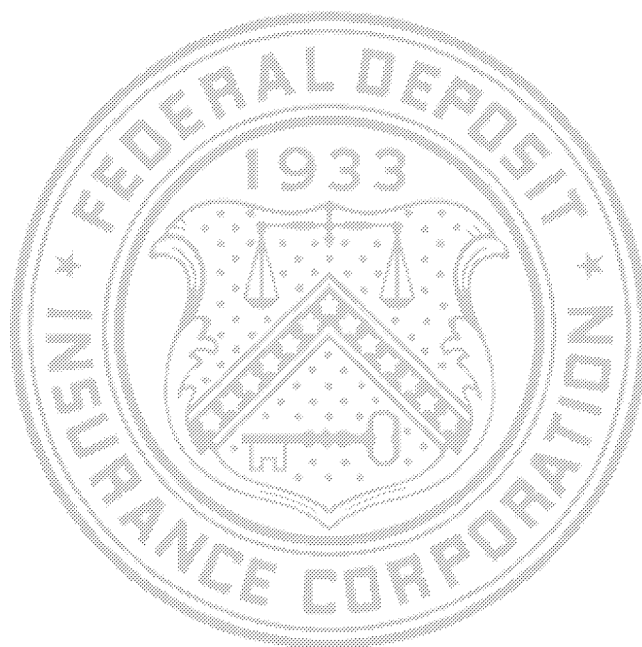
Freedom of Information Act/Privacy Manual

The DRR FOIA/PA Manual documents the policies, procedures, practices, and responsibilities for the Division of Resolutions and Receiverships' (DRR) Freedom of Information Act (FOIA) and Privacy Act (PA) program. This manual should be used by all personnel assigned to FOIA request and PA request functions.

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DRR Freedom of Information Act and Privacy Act (FOIA/PA) Manual



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Document Change Log

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Figure 1 – Process Flow

Abbreviations and Acronyms

DRR	Division of Resolutions and Receiverships
FDIC	Federal Deposit Insurance Corporation
FACTS	FDIC Automated Corporate Tracking System
FOIA	Freedom of Information Act
FOIAXpress	Software that is used by FDIC for FOIA processing
GPR	Government Public Relations
PA	Privacy Act
P&A	Purchase and Assumption Agreement
RSAM	Risk Sharing Asset Management

Chapter 1 Introduction and Overview

ABOUT THIS MANUAL

The DRR FOIA/PA Manual documents the policies, procedures, practices, and responsibilities for the Division of Resolutions and Receiverships' (DRR) Freedom of Information Act (FOIA) and Privacy Act (PA) program.

This manual should be used by all personnel assigned to FOIA request and PA request functions.

HOW TO USE THIS MANUAL

The DRR FOIA/PA Manual includes chapters for each of the major FOIA and PA functional activities for which DRR is responsible.

OVERVIEW

The responsibility for FDIC's FOIA and PA request process resides in the Legal Division's FOIA/PA Group. The operative FDIC Circulars are 1023.1 for FOIA and FDIC Circular 1031.1 for the Privacy Act.

The responsibility to respond to FOIA and PA requests referred by the Legal Division to DRR resides within the DRR Government/Public Relations (GPR) Group.

ROLES AND RESPONSIBILITIES

GPR's role is to:

- Receive FOIA and PA assignments from the Legal Division FOIA/PA Group.
- Track the assignments in FOIAXpress and the FDIC Automated Corporate Tracking System (FACTS).
- Provide DRR fee estimates to the Legal Division FOIA/PA Group.
- Coordinate DRR FOIA and PA searches, obtain the responsive records, and provide them to the Legal Division FOIA/PA Group.
- Advise the Legal Division FOIA/PA Group on the status of pending requests and any delays being encountered within DRR.

- Make recommendations to the Legal Division FOIA/PA Group on the release or withholding of records in response to FOIA and PA requests, or responding to requesters directly as a matter of customer service.

GOALS AND GUIDING PRINCIPLES

The GPR Group strives to:

- Respond promptly to FOIA and PA assignments.
- Provide prompt and reasonable FOIA fee estimates.
- Perform professional, reasonable records searches.
- Provide disclosure recommendations that conform with law, regulation, and FDIC policy while maintaining the highest degree of customer service to requesters and the public.
- Provide timely and accurate reporting to management.

Chapter 2 Receipt, Input, and Analysis of New Requests

OVERVIEW

This chapter describes GPR's receipt, input, and analysis of new FOIA and PA requests.

BACKGROUND

FDIC's system of record for FOIA and PA requests is FOIAXpress. This system belongs to the Legal Division. All new FOIA and PA requests are first established by the Legal FOIA/PA Group in FOIAXpress. FOIAXpress provides request tracking, reporting, assignment and workflow, and collaborative document review.

PROCESS

The Legal FOIA/PA Group assigns a request to DRR (and possibly other Divisions and Offices as well). Note that any requests received by DRR directly from a requester should immediately be forwarded to the Legal FOIA/PA Group at efoia@fdic.gov. Requests are generally processed in the order in which they were received by the Legal FOIA/PA Group, except for requests that have been granted expedited processing by the Legal FOIA/PA Group.

FOIAXpress generates an assignment email to the DRR Queue. The DRR Queue consists of:

- GPR Manager.
- GPR Sr. Information Specialist (FOIA Coordinator) and back ups.
- GPR Information Assistant.

The GPR Information Assistant establishes a FACTS 3001xxxxxx record. Although FACTS is not the official FOIA case record, this allows FOIA/PA case statistics to feed into DRR portals and reports.

The FOIA Coordinator should make a recommendation to the Legal FOIA/PA Group as to whether the request should be granted or denied within 15 business days following receipt of the request from the Legal FOIA/PA Group. The 15 business day time period is not applicable if: (i) the requested records are located in facilities, such as field offices, separate from the FDIC Washington office; or (ii) the requested records are voluminous or are not in proximity to one another; or (iii) there is a need to consult with another agency or among FDIC components having a substantial interest in the determination. If any of these circumstances are present and an extension of time is necessary for making a decision, the FOIA Coordinator shall, prior to the expiration of the 15 business day time period, notify the Legal FOIA/PA Group of the need for,

and approximate length of, an extension of time to respond. The Legal FOIA/PA Group then advises the requester of the need for an extension of time.

The FOIA Coordinator analyzes the request:

- Does the request reasonably describe records to be searched?
 - If not, the FOIA Coordinator works with the Legal FOIA/PA Group to perfect the request.
- Would the responsive records be FDIC records?
 - FDIC as Receiver has chosen to voluntarily comply with the FOIA. FOIA only applies to FDIC or FDIC-Receiver records. For example, loan files, promissory notes, etc. for a loan that immediately conveyed to an acquiring institution pursuant to a Purchase and Assumption Agreement are not FDIC records. The fact that FDIC might have the right to request records from an acquiring institution does not make the records FDIC records. FDIC is not required to, and does not exercise the retrieval right, to make the records FDIC records.
 - If the responsive records are not FDIC records, the FOIA Coordinator recommends a “not agency records” response.
- Would the records be under the control of DRR, or does another Division or Office control the records?
 - If they are not DRR records, the FOIA Coordinator recommends to the Legal FOIA/PA Group that they re-assign or co-assign the request to another Division or Office.
- Does the request involve a series of questions, require research (as opposed to records search) or creation of new records?
 - FOIA is not a forum to submit questions, request research, or require new records to be created. FOIA does require information to be retrieved from databases, although extensive programming and custom reports are not required. If the FOIA Coordinator has any doubt about these issues in connection with a request, the FOIA Coordinator will consult with the Legal FOIA/PA Group. The FOIA Coordinator, when appropriate, can recommend answering requester questions, interpret the request to be for the records that answer the questions, or provide a “customer service” type response.
- Would DRR recommend full withholding of the responsive records, or will partial or full release be recommended?
 - If no part of the record would be releasable, or even acknowledging the fact that we have located a record would in and of itself constitute a release of Privacy Act information or exempt information, the FOIA Coordinator can ask Legal if DRR

can respond without searching for or locating the records. If records are partially releasable, the DRR redaction recommendations are made in FOIAXpress.

- What is the likely location of the responsive records?
 - The FOIA Coordinator, if no fee estimate is required, can commence records search.
- What is the estimated search and review time?
 - The FOIA Coordinator will email the estimate to Legal.

Chapter 3 Search and Retrieval of Records

OVERVIEW

The FOIA Coordinator has access to several record repositories which will contain the responsive records for the majority of FOIA/PA requests assigned to DRR:

- SharePoint Closed Bank
- 4C
- SharePoint RSAM
- SharePoint Capital Markets

After any necessary borrower authorizations have been obtained, the FOIA Coordinator can search for and locate the responsive records.

FOIA FEES

All search (and review) time should be tracked for reporting to Legal at DRR's completion of processing, even if the requester is not required to pay fees on all or some of the time. The calculation of FOIA fees, and FOIA invoicing, is done by the Legal FOIA/PA Group.

SEARCH FOR RESPONSIVE DOCUMENTS

If the FOIA Coordinator cannot locate the responsive documents in a records repository, the FOIA Coordinator will contact the responsible program area and request that they perform a search and provide the responsive documents to the FOIA Coordinator. If there is any question about the releasability or non-releasability of the documents, the program area should be invited to provide their position and their justification for it. The FOIA Coordinator, if necessary, will reassure the program area that merely providing the documents will not result in their release.

Requests for correspondence (typically emails) can result in large volumes of records being within the scope of the request. If a large email volume is anticipated, the FOIA Coordinator should report this fact to Legal. Legal can order email vault searches when appropriate.

LOADING DOCUMENTS INTO FOIAXPRESS

FOIAXpress is designed to store each document in a folder. A new document folder should be created in the FOIAXpress DRR file cabinet. DRR's folder naming convention is designed for easy subsequent retrieval of documents. Folders should be named as follows:

- Name of failed institution.
- Name of document. It is not necessary to use the actual title of the document; a description that would allow anyone who is familiar with DRR's business processes to recognize it is best.
- Date of document if necessary to distinguish from other documents of the same name.

Example: Washington Mutual Ltd Pwr of Atty 04_06_09

Chapter 4 Review of Records

OVERVIEW

This chapter describes GPR's role in reviewing records to provide disclosure recommendations to Legal. Although the Legal FOIA/PA Group is responsible for the application of FOIA and PA exemptions, the FOIA Coordinator is authorized to recommend the release or withholding of records in response to requests.

REVIEW PROCESS

The FOIA Coordinator will create a Review Layer in FOIAXpress. The Review Layer name must include the name and title of the reviewer and the date of the review.

If there are any questions concerning the disclosability of all or any part of the record, the FOIA Coordinator will consult with the Legal FOIA/PA Group, and, if necessary, the DRR program area responsible for the document.

When reviewing failed bank records, the most common FOIA exemptions that will be used by DRR are:

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

Examples: failed bank loan or deposit specific information belonging to an entity or to an individual.

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

Examples: An individual's signature or failed bank loan or deposit specific information pertaining to an individual, as opposed to an entity.

Exemption (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.

Example: Discussion of a bank's exam reports contained in the minutes of a failed bank's board meeting.

When the FOIA Coordinator has completed DRR's review, the FOIA Coordinator will add the document to the FOIAXpress Review Log for that request. The FOIA Coordinator will then send an email to the Legal FOIA/PA Group Specialist handling the case, containing the following:

- Notification that DRR has completed review and that the document(s), together with the DRR Review Layer(s), are in the Review Log.
- The search hours and the review hours that DRR expended on the request. (Note that the DRR hours will almost always be in the Professional Hours category).
- Any explanation or clarification of the response for Legal, if necessary.
- Any narrative that DRR feels should be included in Legal's response to the requester.

The GPR Information Assistant will be copied on the email so that the GPR Information Assistant can close the record in FACTS.

Chapter 5 Closing the Request

PROCESS

When DRR sends the email to Legal as discussed at the end of Chapter 4, DRR considers its action to be complete. DRR does not close requests in FOIAXpress, nor does DRR enter fee and billing information into FOIAXpress. Those functions are performed by the Legal FOIA/PA Group. The request remains open in FOIAXpress, pending any other involved Division's response and Legal's completion of processing. The GPR Information Assistant closes the FACTS case. This allows DRR to track its response times and compliance with FOIA timetables, regardless of the time taken by Legal and other Divisions.

At the end of each month, the GPR Information Assistant performs a FACTS-FOIAXpress reconciliation, using an Excel™ spreadsheet such as the one attached below.



FACTS to
FOIAXpress recon 03

The differences are usually caused by the timing difference between the date that DRR closes a request and the date that the Legal FOIA/PA Group closes the request. If necessary, the GPR Information Assistant pursues any unresolved differences with the FOIA Coordinator and the Legal FOIA/PA Group.

CHAPTER 6 Preemptive Disclosures

OVERVIEW

Certain DRR records will be disclosed on www.fdic.gov, whether or not a FOIA request has been received. The most common and frequent of such disclosures are failed bank Purchase and Assumption Agreements (P&As) and the Bid Summaries related to the P&As.

P&A PROCESS

On the first workday following a bank failure, the GPR Information Assistant will log on to the SharePoint Closed Bank site and download the signed P&A. The GPR Information Assistant will load the P&A into the FOIAXpress DRR file cabinet and create a proposed disclosure Review Layer in FOIAXpress. Most of the P&A is publicly releasable. The typical redactions are loan-specific and deposit-specific information, signatures, and email addresses and non-public phone numbers of acquirer personnel.

After finishing the Review Layer, the GPR Information Assistant will generate a PDF file from FOIAXpress for review by the FOIA Coordinator.

The FOIA Coordinator will review the PDF file, and either the GPR Information Assistant or the FOIA Coordinator will make any necessary changes to the initial Review Layer, and create a final, publicly releasable PDF file.

The FOIA Coordinator will email the PDF file of the P&A to DRR Internet Publications for posting on the failed bank's web page in Development for the FOIA Coordinator's review. The failed bank web pages are located at <https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/>. Upon satisfactory review by the FOIA Coordinator, the FOIA Coordinator will request DRR Internet Publications to move the page to Production.

The status of the P&A postings will be tracked on the GPR P&A tracking spreadsheet. The P&A tracking spreadsheet resides on GPR's shared drive.

BID SUMMARY PROCESS

The FDIC's bid disclosure policy, adopted November 12, 2009, is summarized at <https://www.fdic.gov/about/freedom/biddocs.html>. Because actual bids are not released, a Bid Summary must be created by DRR.

The Bid Summaries related to the P&As are prepared by Washington FAMB and forwarded to GPR. The GPR Information Assistant downloads the Bid Approval Memo (for background) from 4C and prepares FAMB's draft Bid Summary for review by the FOIA Coordinator. The GPR Information Assistant's preparation of the draft Bid Summary includes:

- Formatting in accordance with web standards
- Incorporating the GPR checklist into the Bid Summary tracking spreadsheet
- Reviewing in accordance with the checklist

The GPR Information Assistant then forwards the draft Bid Summary to the FOIA Coordinator for review by the FOIA Coordinator.

The FOIA Coordinator reviews the Bid Summary for:

- Checklist items
- Compliance with the Bid Disclosure Policy
- Fair presentation of the bids that were received and the structure of the P&A transaction

The FOIA Coordinator works with the FAMB analyst, as necessary, to resolve any issues.

After all of the issues are resolved and the checklist completed, the FOIA Coordinator will email the Excel™ file Bid Summary to DRR Internet Publications for conversion to HTML and posting on the failed bank's web page in Development for the FOIA Coordinator's review. Upon satisfactory review by the FOIA Coordinator, the FOIA Coordinator will request DRR Internet Publications to move the page to Production.

The status of the Bid Summary postings will be tracked on the GPR Bid Summary tracking spreadsheet. The Bid Summary tracking spreadsheet resides on GPR's shared drive.

The DRR Process Flowchart is shown below in Figure 1.

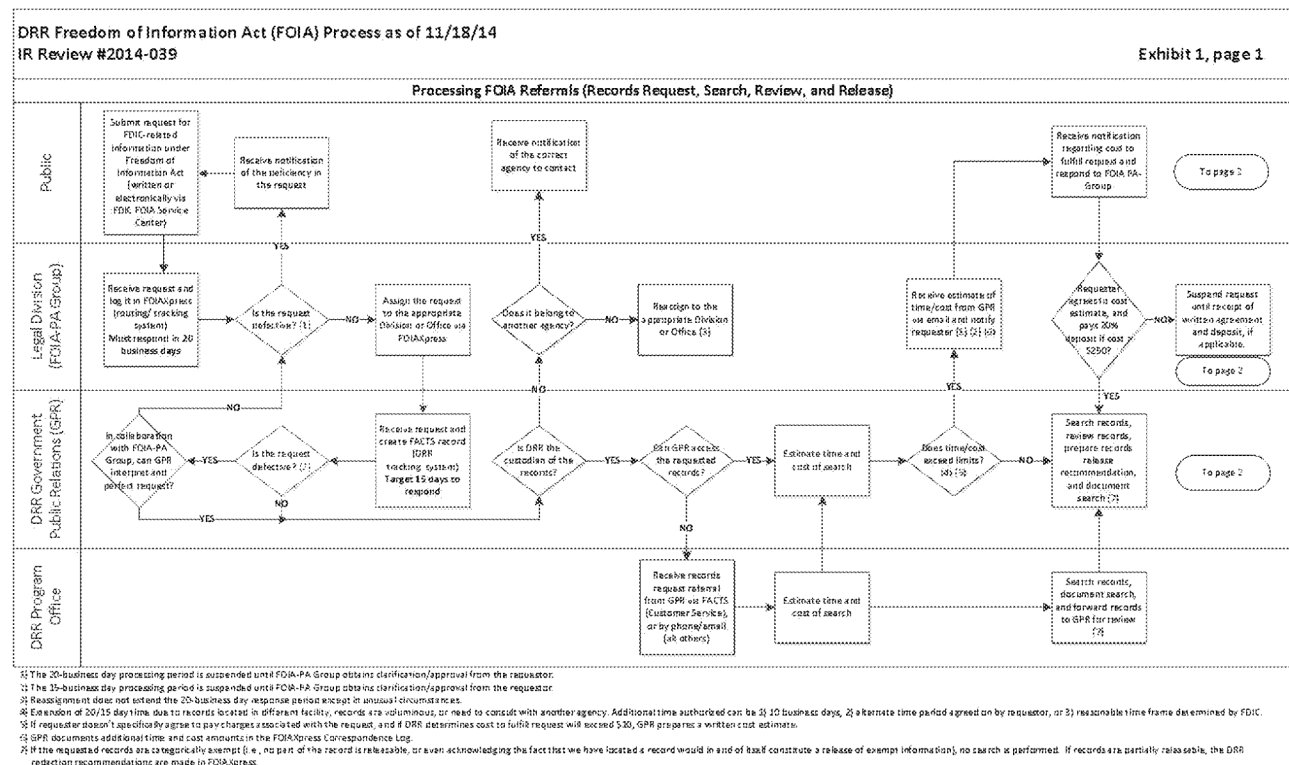
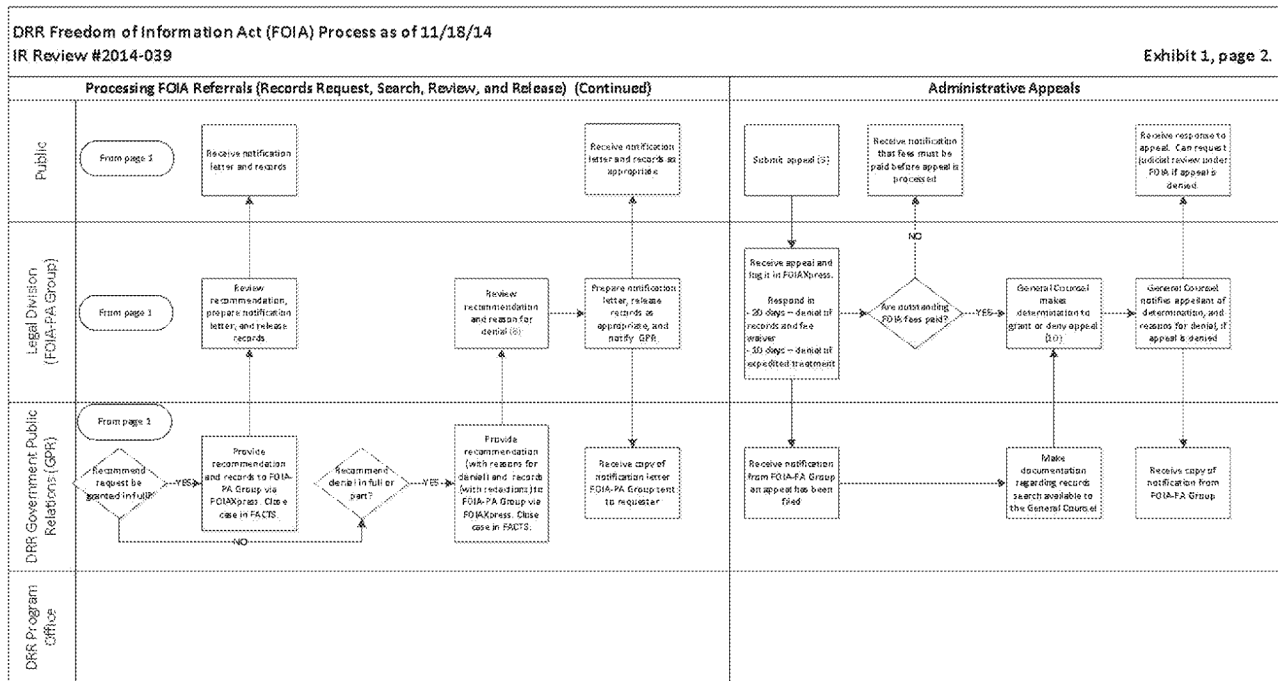


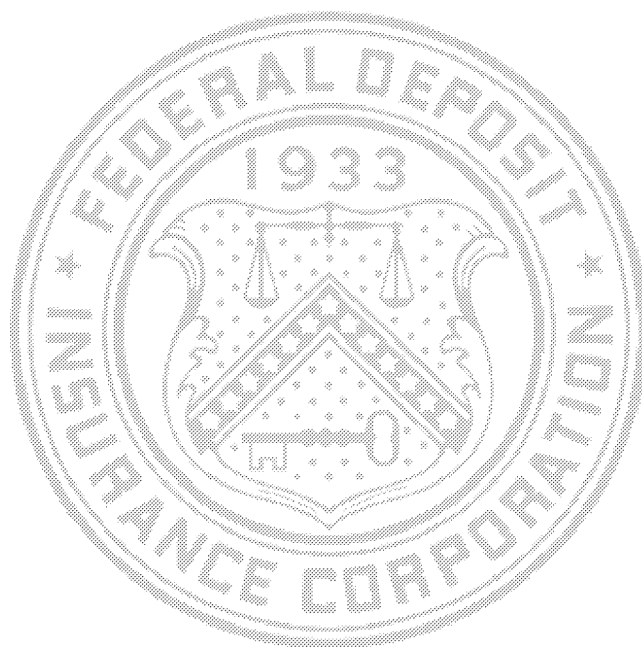
Figure 1

Process Flowchart



3) Only General Counsel has authority to deny, either in full or part, requests for records.
4) Requestors are permitted to file an appeal for 1) denial of expedited treatment, 2) denial of a waiver of fees, 3) denial of a request for records, 4) implied denial of a request for records due to DDC failure to respond timely, 5) to challenge the adequacy of FOIA search.
5) General Counsel may refer an appeal to the Board of Directors for decision.

DRR Freedom of Information Act and Privacy Act (FOIA/PA) Manual



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None.

Abbreviations and Acronyms

DRR	Division of Resolutions and Receiverships
FDIC	Federal Deposit Insurance Corporation
FOIA	Freedom of Information Act
PA	Privacy Act
P&A	Purchase and Assumption Agreement
RSAM	Risk Sharing Asset Management
SecureRelease	Software that is used by FDIC for FOIA processing
SPFM	Strategic Planning and Financial Management

Chapter 1 Introduction and Overview

ABOUT THIS MANUAL

The Division of Resolutions and Receiverships (DRR) Freedom of Information Act (FOIA) and Privacy Act (PA) Manual documents the policies, procedures, practices, and responsibilities for the DRR FOIA and PA program.

This manual should be used by all personnel who search, evaluate, respond to, coordinate or process FOIA and PA requests.

HOW TO USE THIS MANUAL

The DRR FOIA and PA Manual includes chapters for each of the major FOIA and PA functional activities for which DRR is responsible.

OVERVIEW

The responsibility for FDIC's FOIA and PA request process resides in the Legal Division's FOIA & PA Group. The operative FDIC Circulars are FDIC Directive 1023.01 Freedom of Information Act Requests and FDIC Directive 1360.20, Privacy Program.

The responsibility to respond to FOIA and PA requests referred by the Legal Division to DRR resides within the DRR Planning and Resource Management (PRM) Strategic Planning and Financial Management (SPFM) Team.

ROLES AND RESPONSIBILITIES

SPFM's role is to:

- Receive FOIA and PA assignments from the Legal Division FOIA & Privacy Act Group.
- Track the assignments in SecureRelease.
- Provide DRR hours spent on record search and review for use in determining fee estimates to the Legal Division FOIA & PA Group.
- Coordinate DRR FOIA and PA searches, obtain the responsive records, and provide them to the Legal Division FOIA & PA Group.
- Advise the Legal Division FOIA & PA Group on the status of pending requests and any delays encountered within DRR.

- Recommend redactions or withholding of records to the Legal Division FOIA & PA Group.
- Recommend FOIA legal exemptions.

Branch FOIA & PA Liaisons role is to:

- Assign request to subject matter experts in the branch to search for and gather responsive records for submission to SPFM.
- Review responsive records for accuracy and completeness.
- Inform SPFM of any suggestions for redaction or withholdings of responsive records according to Foreseeable Harm Standards.

GOALS AND GUIDING PRINCIPLES

The SPFM Group strives to:

- Respond promptly to FOIA and PA assignments.
- Report accurate time spent by DRR on search and review of records.
- Identify subject matter expert area in DRR to perform records searches.
- Provide disclosure recommendations that conform with law, regulation, and FDIC policy while maintaining the highest degree of customer service to Legal's FOIA & PA Group.
- Provide timely and accurate reporting to management as needed.

Chapter 2 Receipt, Input, and Analysis of New Requests

OVERVIEW

This chapter describes SPFM's receipt, input, and analysis of new FOIA and PA requests.

BACKGROUND

FDIC's system of record for FOIA and PA requests is SecureRelease. This system is managed by the Legal Division. All new FOIA and PA requests are received by the Legal FOIA & PA Group and recorded in SecureRelease. SecureRelease provides request tracking, reporting, assignment and workflow, and collaborative document review.

PROCESS

The Legal FOIA & PA Group assigns a request to DRR. Any requests for records received by DRR directly from a requester should immediately be forwarded to the Legal FOIA & PA Group at efoia@fdic.gov with a cc to SPFM.

SPFM receives an assignment email from the Legal FOIA Group. The SPFM Team is comprised of the SPFM Manager, SPFM FOIA Coordinator, and other support staff.

The FOIA Coordinator or designee reviews the request:

- Does the request reasonably describe records to be searched?
 - If not, the FOIA Coordinator or designee seeks clarification from the Legal FOIA & PA Group.
- Are the responsive records DRR and FDIC records?
 - FDIC as Receiver has chosen to voluntarily comply with the FOIA to produce FDIC Corporate or FDIC Receiver records. For example, loan files, promissory notes, etc. for a loan that immediately conveyed to an acquiring institution pursuant to a Purchase and Assumption Agreement (P&A) are not FDIC records. The FDIC might have the right to request such records from an acquiring institution; however, that does not make those records FDIC records. FDIC is not required to, and does not exercise the retrieval right, to make the records FDIC records.
 - If the responsive records are not FDIC records, the FOIA Coordinator or designee recommends a "not agency records" response.

- Would the responsive records be under the control of DRR, or does another Division or Office control the records?
 - If the responsive records are not DRR records, the FOIA Coordinator recommends that the Legal FOIA & PA Group re-assign or co-assign the request to another Division or Office.
- Does the request involve a series of questions, require research (as opposed to records search) or creation of new records?
 - FOIA is not a forum to submit questions, request research, or require new records to be created. Generally, the FOIA does require information to be retrieved from databases, although extensive programming and custom reports are not required. If the FOIA Coordination Team has any doubt about these issues in connection with a request, the FOIA Coordinator or designee will consult with the Legal FOIA & PA Group and may set a meeting to include the DRR subject matter experts for the request topic.
- Would DRR recommend full withholding of the responsive records, or will partial or full release be recommended?
 - If no part of the record would be releasable or acknowledging that records were located would constitute a release of Privacy Act information or exempt information, the FOIA Coordination Team will inform the Legal FOIA & PA Group. If records are partially releasable, the DRR redaction recommendations are made in SecureRelease.
- What is the estimated search and review time?
 - The FOIA Coordinator or designee will email the estimate to Legal included with the DRR response.

Chapter 3 Search and Retrieval of Records

SEARCH FOR RESPONSIVE DOCUMENTS

The FOIA Coordinator or designee will contact the respective DRR Branch FOIA & PA Liaison and request that they perform a search and provide the responsive documents to the FOIA Coordination Team. The program area should be invited to provide suggestions about the releasability or non-releasability of the documents. The FOIA Coordination Team, if necessary, will reassure the program area that merely providing the documents will not result in their release. Legal has the final review and decision on what to release.

Requests for correspondence (typically emails) can result in large volumes of records being within the scope of the request. If a large email volume is anticipated, the FOIA Coordination Team must immediately notify Legal prior to launching into the search, for approval to proceed as Legal may be able to order email vault searches when appropriate.

Chapter 4 Review of Records

OVERVIEW

This chapter describes SPFM's role in reviewing records to provide disclosure recommendations to Legal. Although the Legal FOIA & PA Group is responsible for the application of FOIA and PA exemptions, the FOIA Coordination Team is expected to recommend the release or withholding of records by applying redactions and providing exemptions.

REVIEW PROCESS

If there are any questions concerning whether to disclose all or any part of the record, the FOIA Coordinator will consult with the Legal FOIA & PA Group, and, if necessary, include the DRR program area responsible for the document.

When reviewing failed bank records, the FOIA exemptions frequently used by DRR are:

Exemption 4. Confidential or privileged commercial or financial information obtained from a person that if disclosed, is likely to (1) discourage submitters from making submissions and/or from submitting reliable information to the FDIC; **and/or** (2) interfere with the effectiveness of FDIC programs or other operations or activities. For example, failed bank loan or deposit specific information belonging to an entity or to an individual.

Exemption 6. (1) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and (2) the privacy interest is not outweighed by the public interest favoring disclosure. For example, an individual's signature or failed bank loan or deposit specific information pertaining to an individual, as opposed to an entity.

Exemption 8. Records 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. that could (1) undermine the security of financial institutions by causing unwarranted runs on banks and/or (2) disrupt the relationship between the banks and their supervising agencies, making it less likely for such banks to cooperate with federal examiners. For example, discussion of a bank's exam reports contained in the minutes of a failed bank's board meeting.

When the FOIA Coordinator or designee has completed DRR's review of responsive records, the FOIA Coordinator will add the records to SecureRelease. The FOIA Coordinator will then send an email to the Legal FOIA & PA Group Specialist handling the case, containing the following:

- Notification that DRR has completed review and uploaded the records, redacted the records and applied exemptions.
- The search hours and the review hours that DRR expended on the request.
- Any explanation or clarification of the response for Legal, if necessary.
- Any narrative that DRR feels should be included in Legal's response to the requester.

Chapter 5 Closing the Request

PROCESS

When DRR sends the email to Legal as discussed at the end of Chapter 4, DRR considers its action to be complete. DRR does not close requests in SecureRelease, nor does DRR enter fee and billing information into SecureRelease. Those functions are performed by the Legal FOIA & PA Group. The request remains open in SecureRelease, pending any other involved Division's response and Legal's completion of processing.

CHAPTER 6 Preemptive Disclosures

OVERVIEW

Certain DRR records will automatically be available to the public on www.fdic.gov. The most frequent of such disclosures are failed bank Purchase and Assumption Agreements (P&As), Bid Summaries related to P&As, Joint Venture Transactions, the Resolution Handbook, and Unclaimed Funds. If available online, a link to the site can be provided to Legal in DRR's reply email.

P&A PROCESS

On the first workday following a bank failure, a SPFM representative logs on to the SharePoint Closed Bank site and downloads the signed P&A. The P&A is uploaded to SecureRelease. Most of the P&A is publicly releasable. The typical redactions are loan and deposit-specific information, signatures, and email addresses and non-public phone numbers of acquirer personnel.

The FOIA Coordinator or designee will review the P&A upload and send it to DRR Internet Publications for posting on the failed bank's web page in Development for the FOIA Coordinator's review. The failed bank web pages are located at <https://www.fdic.gov/bank/individual/failed/banklist.html>. Upon satisfactory review by the FOIA Coordinator, the FOIA Coordinator will request DRR Internet Publications to move the page to Production.

The status of the P&A postings will be tracked on the SPFM P&A tracking spreadsheet. The P&A tracking spreadsheet resides on SPFM's shared drive.

BID SUMMARY PROCESS

The FDIC's bid disclosure policy, adopted November 12, 2009, is summarized at [Failed Financial Institution Bid Disclosure Policy | FDIC.gov](#). Because actual bids are not released, a Bid Summary must be created by DRR.

The Bid Summaries related to the P&As are prepared by Washington FAMB and forwarded to SPFM. The SPFM Information Assistant downloads the Bid Approval Memo (for background) from 4C and prepares FAMB's draft Bid Summary for review by the FOIA Coordinator. The SPFM Information Assistant's preparation of the draft Bid Summary includes:

- Formatting in accordance with web standards
- Incorporating the SPFM checklist into the Bid Summary tracking spreadsheet
- Reviewing in accordance with the checklist

The SPFM Information Assistant then forwards the draft Bid Summary to the FOIA Coordinator for review by the FOIA Coordinator.

The FOIA Coordinator reviews the Bid Summary for:

- Checklist items
- Compliance with the Bid Disclosure Policy
- Fair presentation of the bids that were received and the structure of the P&A transaction

The FOIA Coordinator works with the FAMB analyst, as necessary, to resolve any issues.

After all issues are resolved and the checklist completed, the FOIA Coordinator will email the Excel™ file Bid Summary to DRR Internet Publications for conversion to HTML and posting on the failed bank's web page in Development for the FOIA Coordinator's review. Upon satisfactory review, the FOIA Coordinator will request DRR Internet Publications to move the page to Production.

The status of the Bid Summary postings will be tracked on the SPFM Bid Summary tracking spreadsheet. The Bid Summary tracking spreadsheet resides on SPFM's shared drive.



DRR DIRECTIVE

1023.1

Shawn Khani
Acting Director

Division of Resolutions and Receiverships

See signature(s) on Action Log

Freedom of Information Act

Purpose

The purpose of this directive is to issue the Division of Resolutions and Receiverships (DRR) Freedom of Information Act (FOIA) Manual. This manual describes the policies and procedures under which DRR processes FOIA and Privacy Act (PA) requests.

Scope

The procedures contained in this manual apply to all staff involved in searching, evaluating, responding to, coordinating and processing FOIA or PA requests.

Form(s)

Accompanying this directive is a copy of the DRR FOIA Manual.

Revisions

This directive supersedes Directive 1023.1 dated October 30, 2015.

Effective Date

This directive is effective immediately.

Action Log

Submission Type (New, Pedestrian Change, Revision)	Date	Approval
New	10/30/2015	Bret D. Edwards, Director
Revision		Shawn Khani, Acting Director, TRAC Case #

Summary of Changes (if applicable)

Changes are made to this directive to:

- Update the format to conform to the FDIC Directive Style Guide, FDIC Directive 1212.01, and DRR Directive 1212.1.
- Add Background, Policy, Glossary and Acronyms.
- Incorporate pedestrian grammar and word usage changes.
- Clarify definitions for pedestrian and substantive changes to the Glossary.

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Background

The FOIA provides any person the right, enforceable in court, to obtain access to federal government records, unless those records (or portions of them) are protected from public disclosure under certain exemptions specified in the Act. FOIA promotes transparency and accountability in government. The DRR Strategic Planning and Financial Management (SPFM) Team facilitates the search and provision of responsive agency records

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Policy

The DRR FOIA Manual documents the policies, procedures, practices, and responsibilities for DRR's adherence to FDIC Directive 1023.01 Freedom of Information Act Requests. This manual should be used by all DRR employees to ensure consistency in coordinating, searching, reviewing and providing agency records.

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Responsibilities

DRR is responsible for searching all records that might reasonably contain the requested information. SPFM is responsible for coordinating the division's response to FOIA and PA requests in compliance with FDIC and DRR guidance. Supervisors are responsible for ensuring that staff have a working knowledge of the provisions of this directive, and for ensuring that manuals, procedures, job aids, processes and training material are reviewed and revised as necessary to ensure compliance with this DRR FOIA Directive and Manual.

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Glossary

Term	Definition
Responsive or Agency Records	Any information (paper or electronic) created by or under the control of the agency at the time of the request, including records held by contractors and audiotape, software, and other electronic records.

Acronyms and Initialisms

Acronym or Initialism	Expansion
FOIA	Freedom of Information Act
PA	Privacy Act

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Governance & Policies > Job Aids >

Handling Congressional, Media, and FOIA Inquiries

If a DRR employee receives a call, email or letter from someone from a congressional office, the media, or from someone making a FOIA request, it is important to refer these inquiries to the appropriate contacts within the FDIC. In the event one of these inquiries is received, please follow the below guidelines.

Congressional Inquiries

Freedom of Information Act (FOIA) Requests

Media Inquiries

Other Sensitive Contacts

Any FOIA request (which must be in writing) must immediately be brought to the attention of the FDIC's Legal Division. Do this by sending an electronic version of the letter to efoia@fdic.gov. You may also refer the inquirer to the FOIA Web site: <https://www.foia.gov/#agency-search>.

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Planning and Resource Management

Strategic Operations

Resolution Strategy Branch

CONTACT US

Shamaine Morgan

ShMorgan@FDIC.gov

(703) 254-0901

Deborah Hodes

DHodes@FDIC.gov

(571) 858-8241

Janice Hearn

JHearn@FDIC.gov

(972) 761-8635