History Associates Inc. v. FDIC, 1:24-cv-1857-ACR (D.D.C.)

TABLE OF CONTENTS:
FDIC's July 7, 2025 Document Production
(in accordance with the Court's May 29, 2025 Minute Order and June 5, 2025 Scheduling Order)

Doc. #	BEG BATES	Document
1	HAI_FOIA0000001	2022.10.05 Agenda for FOIA Training Presentation for Division of Risk Management Supervision Staff
2	HAI_FOIA0000003	2022.10.05 FOIA Training Presentation for Division of Risk Management Supervision Staff
3	HAI_FOIA0000025	2022.11.14 FOIA Training Presentation for Division of Resolutions and Receiverships' Managers at the Monthly Management Meeting Presentation
4	HAI_FOIA0000034	2023.02.07 Agenda for FOIA Bi-Annual Training Seminar for FDIC FOIA Coordinators
5	HAI_FOIA0000035	2023.02.07 FOIA Bi-Annual Training Seminar Presentation for FDIC FOIA Coordinators
6	HAI_FOIA0000069	2023.02.07 Training Handout -- Email dated 2021.12.10 Regarding FOIA/PA Group Announces SecureRelease
7	HAI_FOIA0000073	2023.02.07 Training Handout -- SecureRelease Enrollment Guide (attached to 2021.12.10 email above)
8	HAI_FOIA0000076	2023.02.07 Training Handout -- Email dated 2022.04.14 regarding SecureRelease – Clearing Cache in Chrome Browser
9	HAI_FOIA0000077	2023.02.07 Training Handout -- Clear Cache in Chrome OneSheet (attached to 2022.04.14 email above)
10	HAI_FOIA0000078	2023.02.07 Training Handout – 2022.03.15 Attorney General Memo – FOIA Guidelines
11	HAI_FOIA0000082	2023.02.07 Training Handout -- (undated) Pertinent FOIA Case Law
12	HAI_FOIA0000083	2023.02.07 Training Handout -- Email dated 2021.10.06 regarding Creating New Records
13	HAI_FOIA0000084	2023.02.07 Training Handout -- Email dated 2022.07.28 regarding Secondary Reviews of Records

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14	HAI_FOIA0000085	2023.02.07 Training Handout -- Email dated 2022.03.04 regarding OIP Announces New FOIA Training Dates
15	HAI_FOIA0000087	2023.03.15 FOIA Training Presentation - FOIA Highlights presented to Litigation Branch Staff
16	HAI_FOIA0000094	2023.03.30 FOIA Training Presentation – FDIC in the Spotlight: The Effect on the FOIA Program presented during FOIA Coordinator's Office Hours
17	HAI_FOIA0000101	2023.04.13 FOIA Training Presentation - FOIA Overview presented to Division of Complex Institution Supervision and Resolution FOIA Coordinators/Staff
18	HAI_FOIA0000119	2023.06.05 FOIA Training Presentation - FOIA Overview presented to Division of Information Technology Staff
19	HAI_FOIA0000135	2023.09.28 Agenda for FOIA Bi-Annual Training Seminar for FDIC FOIA Coordinators
20	HAI_FOIA0000136	2023.09.28 FOIA Bi-Annual Training Seminar Presentation for FDIC FOIA Coordinators
21	HAI_FOIA0000190	2023.09.28 Training Handout - Privacy Act Exemptions Summary
22	HAI_FOIA0000191	2023.09.28 Training Handout - Email dated 2023.09.20 regarding SecureRelease Onit Helpdesk System Rollout
23	HAI_FOIA0000193	2023.09.28 Training Handout -- Opening a Helpdesk Ticket (Onit)
24	HAI_FOIA0000194	2023.09.28 Training Handout - Email dated 2023.06.20 regarding FOIA Coordinator Guidance on FDIC Document Labeling
25	HAI_FOIA0000196	2024.03.21 Agenda for FOIA Bi-Annual Training Seminar for FDIC FOIA Coordinators
26	HAI_FOIA0000197	2024.03.21 FOIA Bi-Annual Training Seminar Presentation for FDIC FOIA Coordinators
27	HAI_FOIA0000277	2024.03.21 Training Handout - Secure Release Upload, Ingestion & Redaction Cheat Sheet for FOIA Coordinators

History Associates Inc. v. FDIC, 1:24-cv-1857-ACR (D.D.C.)

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28	HAI_FOIA0000282	2024.05.08 FOIA Training - FOIA Refresher Training for the Office of the Ombudsman
29	HAI_FOIA0000296	2024.07.24 FOIA Training Presentation – Refresher Training for the Chicago Region Staff
30	HAI_FOIA0000309	2024.09.26 FOIA Training Presentation – Part of Panel discussing Disclosure of Information to Third Parties for Legal Division, Litigation Branch Conference
31	HAI_FOIA0000357	2024.10.03 Agenda for FOIA Bi-Annual Training Seminar for FDIC
32	HAI_FOIA0000358	2024.10.03 FOIA Bi-Annual Training Seminar for FDIC FOIA Coordinators
33	HAI_FOIA0000391	2024.10.03 Training Handout - Reviewing Records with Structured Analytics in SecureRelease
34	HAI_FOIA0000393	2024.10.03 Training Handout - Record Custodian Search Guidance
35	HAI_FOIA0000394	2024.10.03 Training Handout - Internal FOIA Coordinators Contact List dated 2024.09.19
36	HAI_FOIA0000398	2024.10.03 Training Handout – Department of Justice, Office of Information Policy's Exemption 3 Chart dated September 2024
37	HAI_FOIA0000418	2024.10.03 Training Handout - American Society of Access Professionals email dated 2024.09.16 Announcing 2025 National Training Conference
38	HAI_FOIA0000421	2024.10.17 FOIA Training Presentation - The Interface Between the FOIA & Records Management for Records Coordinators [NOTE: this presentation was also given on July 24, 2024 absent slide 6].
39	HAI_FOIA0000435	2025.03.12 Agenda for FOIA Bi-Annual Training Seminar for FDIC FOIA Coordinators
40	HAI_FOIA0000436	2025.03.12 FOIA Bi-Annual Training Seminar for FDIC FOIA Coordinators
41	HAI_FOIA0000481	2025.03.12 Training Handout -- Foreseeable Harm Standards
42	HAI_FOIA0000484	2025.03.12 Training Handout -- Searches within SecureRelease & Friendly Reminders

History Associates Inc. v. FDIC, 1:24-cv-1857-ACR (D.D.C.)

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Doc. #	BEG BATES	Document
43	HAI_FOIA0000487	2025.03.12 Training Handout -- Email dated 3.6.25 from American Society of Access Professionals regarding free Recent Court Case Update (Virtual) training
44	HAI_FOIA0000489	FOIA Training For New Legal Division Employees (Multiple Dates: 2022.10.19; 2023.08.30; 2024.05.08; 2024.11.14).
45	HAI_FOIA0000496	Security Training Slides
46	HAI_FOIA0000501	ASB FOIA SOP v3 - 06032025.docx
47	HAI_FOIA0000506	Appendix 1 - Acronyms.docx
48	HAI_FOIA0000507	Appendix 2 – FOIA Exemptions.docx
49	HAI_FOIA0000509	Appendix 3 – Redaction Cheat Sheet for Coordinators

Agenda for RMS FOIA Training

October 5, 2022
10:00am – 12:00pm – FOIA Substantive Training
1:00pm – 2:00pm - SecureRelease Training

1. What is a valid FOIA request?

- Must be in writing
- Must be from a "person"
- Must have a reasonable description of records being sought

*FDIC FOIA Regulations 12 C.F.R. § 309.5 states exactly what the FDIC requires in a FOIA/PA request.

- Examples of valid and invalid FOIA requests
- Agency Records
- Reasonably Interpretation vs. Need for Clarification

2. Statutory Time Frame for FOIA Requests

- 20 Business Days
- 10 Days Extension for Unusual Circumstances
- Requester Can Sue after 20 Business Days

3. FOIA Processing Fees

- FOIA Requester Fee Categories
- FDIC Fee Schedule - https://www.fdic.gov/foia/fees.html
- Fee Estimates
    - Preliminary Search
    - Use volume of documents to estimate review time

4. FOIA Exemptions 4, 5, 6 and 8

- Definition
- Foreseeable Harm Standard
- Examples

5. Administrative Appeal

- Preparing for an appeal
    - Sound administrative record

  - Adequate Search
  - Reasonably Segregable
  - Weighing of Foreseeable Harm (documented)
- After appeal is filed
  - Appeal is given to Corp. Lit.
  - Requester can only appeal adverse determinations
  - Review of administrative record and documents (if applicable)
  - Corp. Lit. may coordinate with FOIA Group and/or Division FOIA Coordinators and SMEs
  - Appeal is either affirmed or overturned
  - FOIA requester may ask for judicial review

6. Questions &Answers

7. SecureRelease

- Overview of FOIA System
- Questions?

Freedom of Information Act (FOIA)

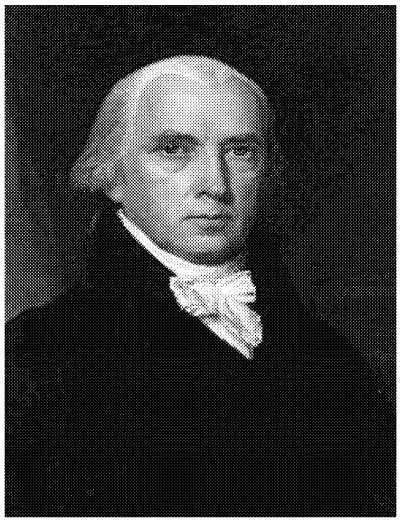
Training Session for RMS

October 5, 2022

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Freedom of Information Act
5 U.S.C. 552

"Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both"
— **James Madison**



HAI_FOIA0000004

Freedom of Information Act
5 U.S.C. 552

The Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exceptions or by one of three special law enforcement record exclusions.

HAI_FOIA0000005

What is a valid FOIA request?

FDIC FOIA

Regulations 12 C.F.R. § 309.5

- Must be in writing
- Must be from a “person”
- Must have a reasonable description of records being sought

HAI_FOIA0000006

Agency Records

The FOIA permits a person to request access to agency records.

- Records that we created or obtained during the course of our operations and activities AND are in our control at the time we receive a FOIA request



HAI_FOIA0000007

Is it a valid FOIA request?

- A phone call from a journalist asking a question
- A written request seeking documents from our public website
- A written request from John Smith for reasonably described FDIC documents
- A written request for reasonably described records from another federal agency
- A written request for reasonably described records from a fugitive

HAI_FOIA0000008

Reasonable Interpretation vs Clarification

- In some instances, we may be able to reasonably interpret broad requests.
- In other instances, we need to clarify/limit the scope with the requester.
- In both instances, we may rely on you!

HAI_FOIA0000009

Time Limits for Responding to a Request

- 20 working days to respond
- In “unusual circumstances” agency may extend time limit by 10 days by giving written notice to requester
- Requesters can ask for expedited processing
- Requester can sue if response deadlines are not met



HAI_FOIA0000010

Fees

FOIA Requester Fee Categories

- Commercial Use Requester
- Educational institutions, non-commercial scientific institutions
- News media
- All others

FDIC Fee Schedule - https://www.fdic.gov/foia/fees.html

Fee Estimates

HAI_FOIA0000011

FOIA Exemptions

Exemption Two
Records related solely to the internal personnel rules and practices of the FDIC.
Exemption Three
Records specifically exempted from disclosure by statute
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
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.

HAI_FOIA0000012

Exemption 4, 5 U.S.C. § 552(b)(4)

Exemption 4 requires the withholding of trade secrets, and confidential or privileged commercial or financial information that was submitted by a person.

HAI_FOIA0000013

Foreseeable harm analysis

Exemption 4

Privileged

HAI_FOIA0000014

Exemption 5, 5 U.S.C. § 552(b)(5)

Exemption 5 permits the withholding of inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency (i.e., information that is privileged to the FDIC).

HAI_FOIA0000015

Foreseeable harm analysis

Privileged

HAI_FOIA0000016

Exemption 6, 5 U.S.C. § 552(b)(6)

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

Examples:

- Personally Identifiable Information (PII) of FDIC employees, contractors, bank customers , bank officials
- Any information that may imply PII

HAI_FOIA0000017

Foreseeable harm analysis

Exemption 6

Privileged

HAI_FOIA0000018

Exemption 8, 5 U.S.C. § 552(b)(8)

Exemption 8 permits the withholding of information contained in, or related to, the examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC in its regulation or supervision of financial institutions.

Examples:

- Report of Examinations (ROE)
- Any information within a document that is from the ROE
- Documents between financial institution and FDIC directly related to supervision/regulation

HAI_FOIA0000019

Foreseeable harm analysis

Exemption 8

Privileged

HAI_FOIA0000020

Preparation for an Appeal/Litigation

- Sound administrative record
  - Adequate Search
  - Reasonably Segregable
  - Weighing of Foreseeable Harm (documented)

HAI_FOIA0000021

Appeals and Litigation

- Right to file an administrative appeal within 90 days
  - Only can appeal adverse determinations
- Corp Lit handles appeals
- De Novo review
- Review of administrative record and documents (if applicable)
- Corp. Lit. may coordinate with FOIA Group and/or Division FOIA Coordinators and SMEs
- Appeal is either affirmed or overturned
- After appeal, the requester can bring a lawsuit in federal district court

HAI_FOIA0000022

FDIC FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
M. Anthony Lowe, FDIC Ombudsman, FOIA Public Liaison

FOIA/PA GROUP

Sarah Cunanan, Supervisory Counsel
Partap Verma, Privacy Counsel
Jeannette Wise, FOIA Counsel
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Lisa Snider, GIS
Michael Toland, GIS

HAI_FOIA0000023

If you want to know more about the FOIA

FDIC FOIA Regulations, 12 CFR § 309.5

FDIC Circular 1023.1, Procedures for Processing FOIA Requests

Office of Information Policy, Department of Justice - Guide to the Freedom of Information Act

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

Go to FLX and search "FOIA" DOJ Video Training Classes

FOIA Training for Professionals

(3 hours)

FOIA Training for All Employees

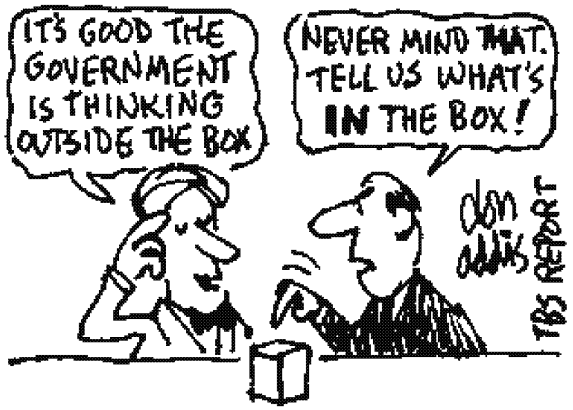
(1 hour)

Freedom of Information Act

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Freedom of Information Act
5 U.S.C. 552

The Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exceptions or by one of three special law enforcement record exclusions.



HAI_FOIA0000026

Who Can Make a FOIA Request and What Can Be Requested?

Who?

Any person, regardless of citizenship

Corporations, state, local, and foreign governments

Requesters generally do not have to explain the reason behind the request

What?

Agency Records--includes any information (paper or electronic) created by or under the control of the agency at the time of the request (we do not answer question/do research)

Includes records held by contractors

Includes Teams chats

Generally, doesn't include text messages on work cell phone—unless there is an indication you were conducting work through text

Doesn't include your Outlook calendar

HAI_FOIA0000027

Is Request Reasonably Described?

Too broad? Doesn't concern records that the FDIC would keep.

Sometimes the FOIA Staff can make this determination

Sometimes we need help from the FOIA Coordinator

HAI_FOIA0000028

Search for Responsive Records

- Agency must conduct a reasonable search
- FOIA/PA Group Identified Divisions/Offices with Equities
- Division/Office Coordinators Determine Locations/SMEs, Run Search, Review Records (time frame/subject matter)
- The fact that the agency did not locate all requested records does not cast doubt on otherwise reasonable search
- Coordinators review for Exemptions

HAI_FOIA0000029

FOIA Exemptions

Exemption Two
Records related solely to the internal personnel rules and practices of the FDIC.
Exemption Three
Records specifically exempted from disclosure by statute
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
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.

HAI_FOIA0000030

Foreseeable harm analysis

Exemption 8

Privileged

HAI_FOIA0000031

FDIC FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
M. Anthony Lowe, FDIC Ombudsman, FOIA Public Liaison

FOIA/PA GROUP

Sarah Cunanan, Supervisory Counsel
Partap Verma, Counsel
Jeannette Wise, Senior Attorney
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Lisa Snider, GIS
Michael Toland, GIS

DRR FOIA COORDINATOR

Debi Hodes

HAI_FOIA0000032

If you want to know more about the FOIA

Go to FDIC Learn

search "FOIA"

DOJ Video Training Classes

FOIA Training for Professionals

(3 hours)

FOIA Training for All Employees

(1 hour)

Bi-Annual FOIA Training Seminar

Agenda - February 7, 2023

9:00 am to 12:00 pm

Time	Topic	Presenter
9:00 – 9:15	**Opening Remarks**	Harrel M. Pettway, General Counsel/Chief FOIA Officer & Sarah Cunanan, Supervisory Counsel, FOIA/Privacy Act Group
9:15 – 9:45	Module 1 – Reviewing & Evaluating FOIA Requests	Alisa Colgrove, GIS
9:45 – 10:00	Module 2 – Conducting a Reasonable Search	Alisa Colgrove, GIS
10:00 – 10:15	Module 3 – SecureRelease Topics	Michael Toland, GIS
10:15 – 10:30	**Break**	
10:30 – 11:10	Module 4 – Applying the Foreseeable Harm Standard	Alisa Colgrove, GIS & Jeannette Wise, FOIA Counsel
11:10 – 11:30	Module 5 – Pertinent FOIA Case Law	Jeannette Wise – FOIA Counsel
11:30 – 12:00	**Questions and Answers**	

Freedom of Information Act (FOIA)

Bi-Annual Training Seminar

February 7, 2023

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Opening Remarks

General Counsel & Chief FOIA Officer – Harrel M. Pettway

Supervisory Counsel, FOIA/Privacy Act Group – Sarah Cunanan

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Module 1

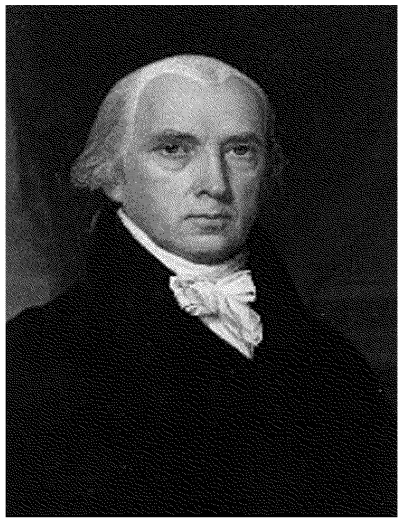
Reviewing & Evaluating FOIA Requests

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Freedom of Information Act
5 U.S.C. 552

"Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both"

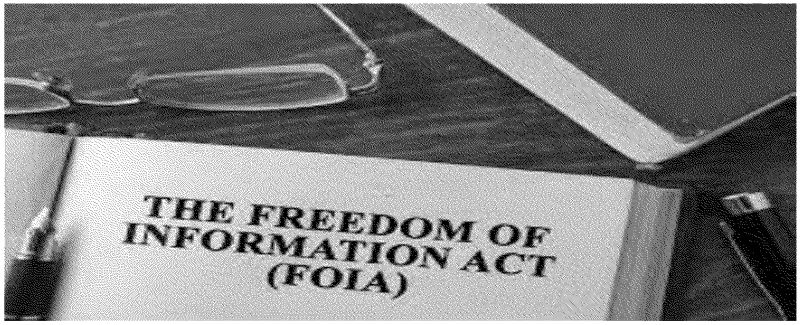
— **James Madison**



HAI_FOIA0000038

Freedom of Information Act
5 U.S.C. 552

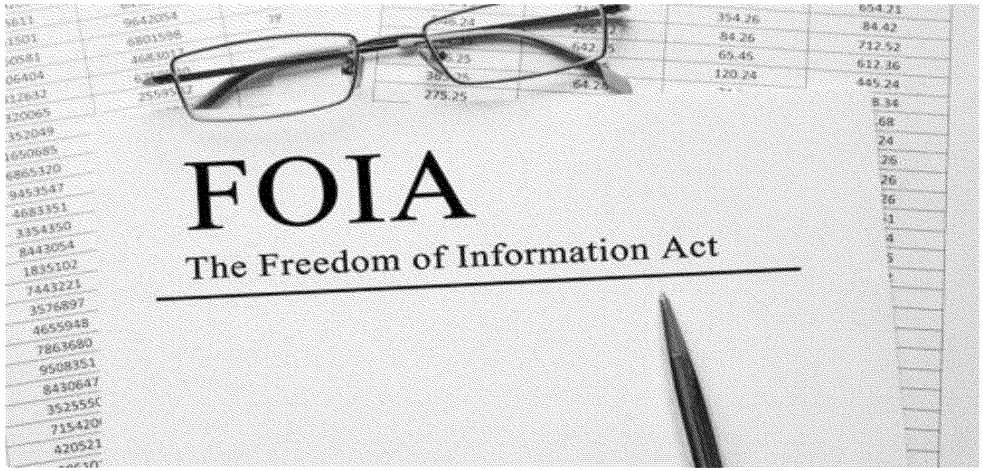
The Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exceptions or by one of three special law enforcement record exclusions.



What is a valid FOIA request?

Must follow the FDIC FOIA Regulations:

12 C.F.R. §309.5



- Must be in writing
- Must be from a “person”
- Must have a reasonable description of records being sought

Time Limits for Responding to a Request

- 20 working days to respond
- In “unusual circumstances” agency may extend time limit by 10 days by giving written notice to requester
- Requester can sue if response deadlines are not met



FOIA Fees

FOIA Requester Fee Categories

- Commercial Use Requester
- Educational institutions, non-commercial scientific institutions
- News media
- All others

FDIC Fee Schedule - https://www.fdic.gov/foia/fees.html

Fee Estimates



Is it a valid/proper FDIC FOIA request?

- A phone call from a journalist asking a question
- A emailed request seeking documents from our public website
- A written request from John Smith for reasonably described FDIC documents
- A written list of questions from a foreign national
- A written request for reasonably described records from another federal agency
- A written request for reasonably described records from a fugitive
- A written request from the State of Virginia for reasonably described records

HAI_FOIA0000043

Module 2

Conducting a Reasonable FOIA Search

FDIC
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Agency Records

The FOIA permits a person to request access to agency records.

- Records that we created or obtained during the course of our operations and activities AND are in our control at the time we receive a FOIA request



HAI_FOIA0000045

Reasonable Interpretation vs Clarification

- In some instances, we may be able to reasonably interpret broad requests.
- In other instances, we need to clarify/limit the scope with the requester.
- In both instances, we may rely on you!

HAI_FOIA0000046

Module 3

SecureRelease™ Topics

- Proactive Disclosures
- Division Folders
- Review Tier – FOIA Coordinator
- SecureRelease™ Support
- SecureRelease™ Login Reminders

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Proactive Disclosures – (a)(2) Records

- New capability to update your proactive disclosures/(a)(2) records posting in SecureRelease.
- No need to wait for emails at the end of Fiscal Year for Annual FOIA Report.

Non-responsive, proprietary and confidential business information regarding Secure Release

HAI_FOIA0000048

Proactive Disclosures (Continued)

- .Under Project Setup Click on A2 Postings
- Find your Division/Office, click on edit to update number of postings and weblinks

Non-responsive, proprietary and confidential business information regarding Secure Release

HAI_FOIA0000049

Division Folders

Remember to upload responsive records into your Division Folder.

Non-responsive, proprietary and confidential business information regarding Secure Release

HAI_FOIA0000050

Review Tier – FOIA Coordinator Box

In the case of more than one Division Review, we have now included two FOIA Coordinators Boxes in the Review Tier.

Non-responsive, proprietary and confidential business information regarding Secure Release

HAI_FOIA0000051

SecureRelease™ Support

- Email: securereleasesupportteam@deloitte.com
  - Cc: Alisa Colgrove & Michael Toland
- Phone Number: 844-919-0718
- You should receive a ticket number for your reported issue(s)
  - If you do not, please contact Alisa and Michael via email

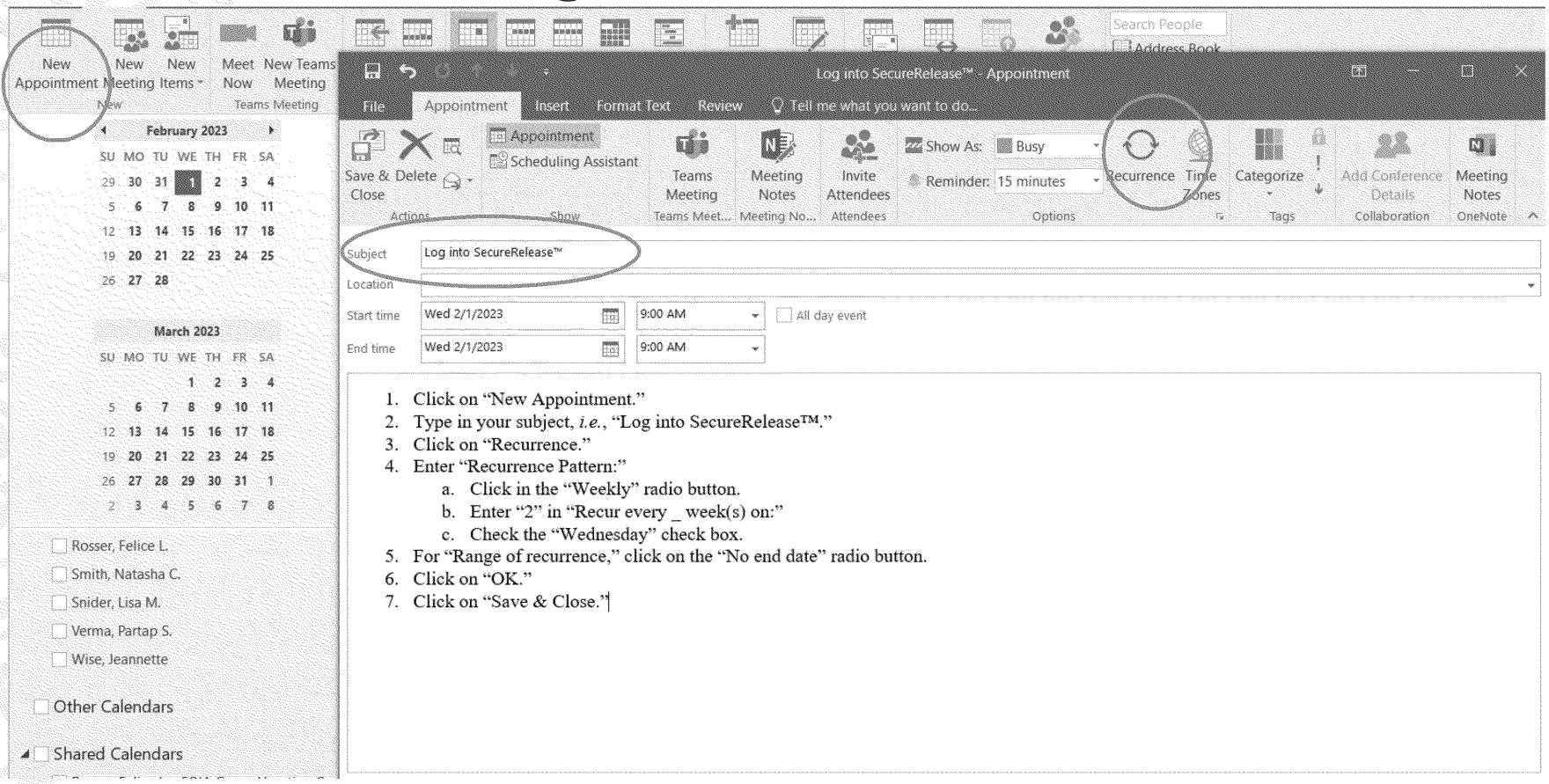
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SecureRelease™ Login Reminders

1. Click on “New Appointment.”
2. Type in your subject, *i.e.*, “Log into SecureRelease™.”
3. Click on “Recurrence.”
4. Enter “Recurrence Pattern:”
   a. Click in the “Weekly” radio button.
   b. Enter “2” in “Recur every _ week(s) on:”
   c. Check the “Wednesday” check box.
5. For “Range of recurrence,” click on the “No end date” radio button.
6. Click on “OK.”
7. Click on “Save & Close.”

HAI_FOIA0000053

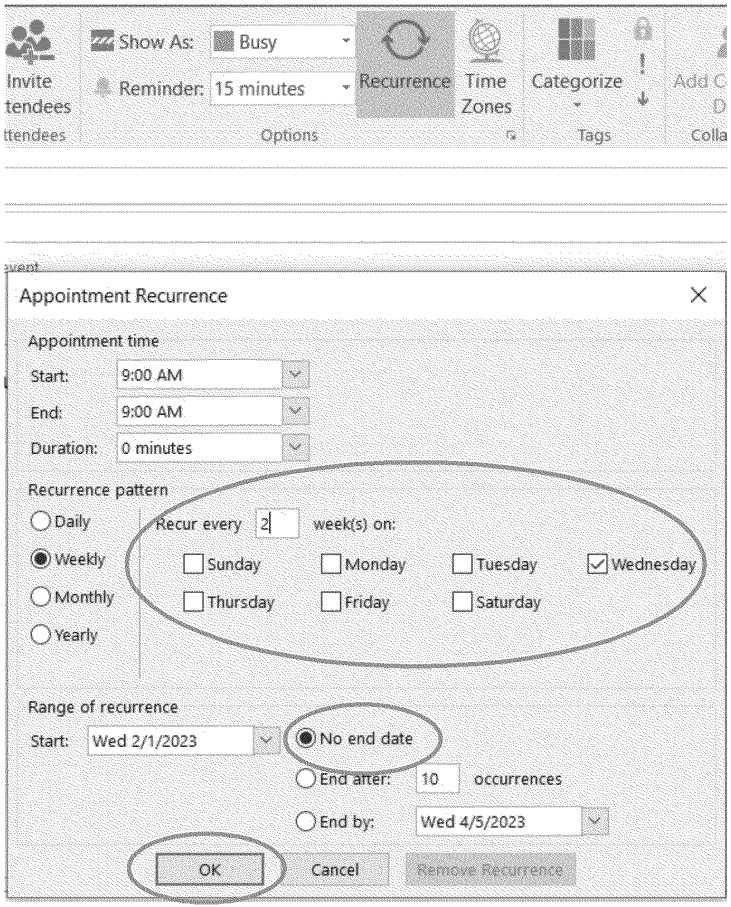
SecureRelease™ Login Reminders



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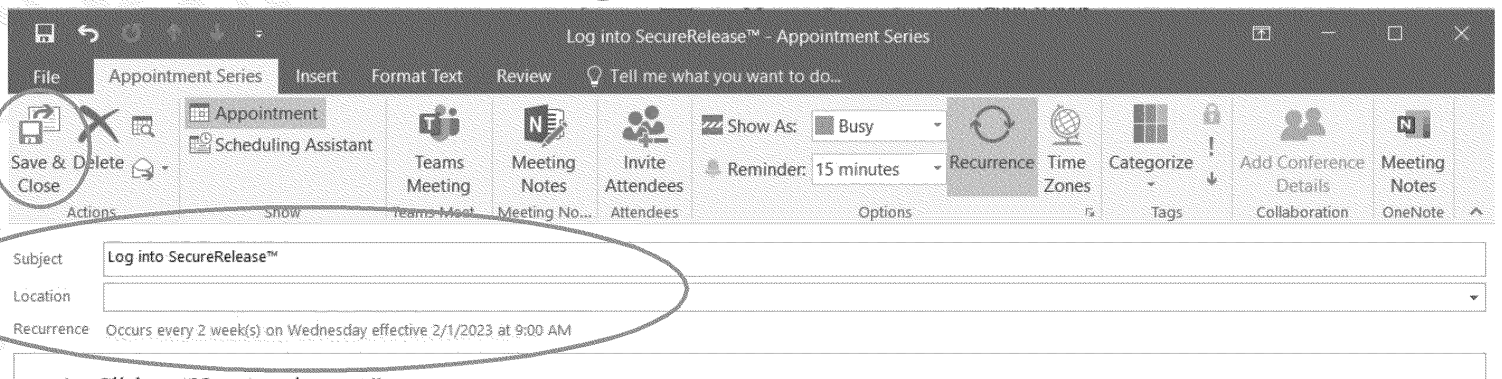
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SecureRelease™ Login Reminders (continued)



HAI_FOIA0000055

SecureRelease™ Login Reminders (continued)



1. Click on "New Appointment."
2. Type in your subject, *i.e.*, "Log into SecureRelease™."
3. Click on "Recurrence."
4. Enter "Recurrence Pattern:"
    a. Click in the "Weekly" radio button.
    b. Enter "2" in "Recur every _ week(s) on:"
    c. Check the "Wednesday" check box.
5. For "Range of recurrence," click on the "No end date" radio button.
6. Click on "OK."
7. Click on "Save & Close."

HAI_FOIA0000056

Module 4

Applying the Foreseeable Harm Standard

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

HAI_FOIA0000057

Attorney General's Memorandum

- Signed March 15, 2022

- 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.

HAI_FOIA0000058

FOIA Exemptions

Exemption Two
Records related solely to the internal personnel rules and practices of the FDIC.
Exemption Three
Records specifically exempted from disclosure by statute
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
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.

HAI_FOIA0000059

Exemption 4: Foreseeable harm analysis

Privileged

HAI_FOIA0000060

Exemption 5: Foreseeable harm analysis

Privileged

HAI_FOIA0000061

Exemption 6: Foreseeable harm analysis

Privileged

HAI_FOIA0000062

Exemption 8: Foreseeable harm analysis

Privileged

HAI_FOIA0000063

Module 5

Pertinent FOIA Case Law

FEDERAL DEPOSIT INSURANCE CORPORATION

If you want to know more about the FOIA

- FDIC FOIA Regulations, 12 CFR § 309.5
- FDIC Circular 1023.1, Procedures for Processing FOIA Requests
- Office of Information Policy, Department of Justice - Guide to the Freedom of Information Act

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

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Additional FOIA Training

Go to FLX and search "FOIA" DOJ Video Training Classes (To be updated soon)

FOIA Training for Professionals (3 hours)

FOIA Training for All Employees (1 hour)

DOJ Office of Information and Policy (OIP) FOIA Training:

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

American Society of Access Professionals (ASAP)

https://www.accesspro.org/

HAI_FOIA0000066

FOIA Training Seminar

Questions & Answers

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
M. Anthony Lowe, FDIC Ombudsman, FOIA Public Liaison

FOIA/PA GROUP

Sarah Cunanan, Supervisory Counsel
Partap Verma, Privacy Counsel
Jeannette Wise, FOIA Counsel
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Lisa Snider, GIS
Michael Toland, GIS

HAI_FOIA0000068

From:	Cunanan, Sarah[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=71FD5766346E4C1E8C406DE242512049-SARAH CUNAN]
Sent:	Fri 12/10/2021 8:52:16 PM (UTC)
To:	Coordinators FOIA[CoordinatorsFOIA@FDIC.gov]
Cc:	Legal FOIA[LegalFOIA@FDIC.gov]; Raun, Peter W.[praun@fdic.gov]; Kepniss, Matthew I.[mkepniss@FDIC.gov]; Redfield, Robin[rredfield@FDIC.gov]; Christensen, Scott H.[scchristensen@fdic.gov]
Subject:	FOIA/PA Group Announces SecureRelease
Attachment:	SecureRelease Enrollment Guide - DRAFT.docx

Good afternoon FOIA Coordinators,

The FOIA/Privacy Act (FOIA/PA) Group is excited to share that a new FOIA/PA case management tool is coming soon! Beginning **Tuesday, December 28th**, the FDIC will begin using a new system, called SecureRelease, to process and manage FOIA/PA requests. SecureRelease will replace FOIAXpress and offers a number of benefits, including:

- Enhanced case management capabilities
- Improved analytics and reporting
- Enhanced automatic redaction capabilities
- …and much more!

The FDIC will begin using SecureRelease on **Tuesday, December 28th**, and the user registration process will begin on **Monday, December 13th**. While the new system will be launched very soon, requests and data within FOIAXpress will be migrated to SecureRelease and will continue to be available in its original form on an as-needed basis. SecureRelease training will be available on the following dates, and we ask that you attend one of the below trainings and feel free to attend more than one:

- **Wednesday, December 15th from 10am-11am** Click here to join the meeting
- **Tuesday, December 21st from 8am-9am** – Click here to join the meeting
- **Thursday, January 6th from 2:30pm-3:30pm** – Click here to join the meeting
- **Tuesday, January 11th from 10:30am-11:30am** – Click here to join the meeting
- **Wednesday, January 19th from 9:00am-10am** -- Click here to join the meeting

The FOIA/PA Group is excited to deliver this enhanced tool before the end of the year and stands ready to assist you through the transition to SecureRelease. A list of frequently asked questions is below and I have attached an enrollment guide, to assist you with the enrollment process. If you have any additional questions, please email Michael Toland or call him at 571-438-7816 or, or any other member of the FOIA/Privacy Act Group (including me). Thank you for your invaluable assistance in making the FDIC FOIA/PA Program such a success!

FREQUENTLY ASKED QUESTIONS

Why is SecureRelease being released so soon?

- We know, it is fast—but we are excited to provide a new and intuitive tool with enhanced functionality to support the FOIA/PA request process! The FOIA/Privacy Act Group has been

working for several months to customize SecureRelease for the FDIC, and we are confident you will find it intuitive to learn and easy to use. And, because the data in FOIAXpress will continue to be available as needed, we are confident the transition will be simple and swift.

What do I need to do right now?

- Right now, we need you to **choose a date for training** and **create your SecureRelease account** as soon as you receive the prompt emails starting on **Monday, December 13th**.

Due to the end of the year and the holidays, I will be on leave a lot over the next few weeks. Is this a problem?

- Do not worry! The end of the year can be a busy time with less people in the office. It does not take long to register for your SecureRelease account, using the attached enrollment guide. If you are unavailable when these emails are sent out, you may complete the process when you return to the office. You will not lose access to FOIAXpress while you are away from the office!
- Also, if you receive any FOIA assignments through SecureRelease before you have been able to receive training, please contact the Government Information Specialist assigned to the request and they can work with you on how to best proceed with the assignment during this transition period.

How do I choose a date for training?

- Group training for SecureRelease will be offered on the following dates in December and in the new year:

  - **Wednesday, December 15th from 10am-11am** Click here to join the meeting
  - **Tuesday, December 21st from 8am-9am** – Click here to join the meeting
  - **Thursday, January 6th from 2:30pm-3:30pm** – Click here to join the meeting
  - **Tuesday, January 11th from 10:30am-11:30am** – Click here to join the meeting
  - **Wednesday, January 19th from 9:00am-10am** -- Click here to join the meeting

We ask that you make every effort to attend one or more of these trainings if possible. However, if none of these training opportunities will work for you, please contact a member of the FOIA/PA Group.

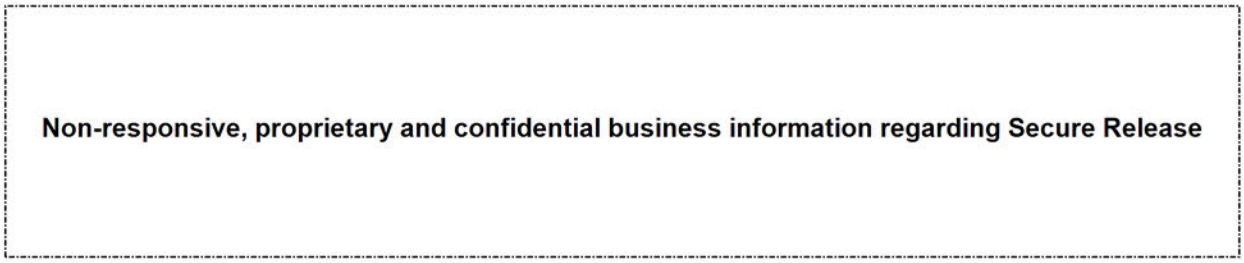
How do I create a SecureRelease account?

- Beginning on **Monday, December 13th**, you will receive emails from two external email addresses that will facilitate the registration process. A detailed registration guide is attached to this email and will walk you through the enrollment process. The first two emails for this registration process will appear as follows in your inbox:



What happens if I do not respond to the email to begin the creation of my account timely and the link included in it expires?

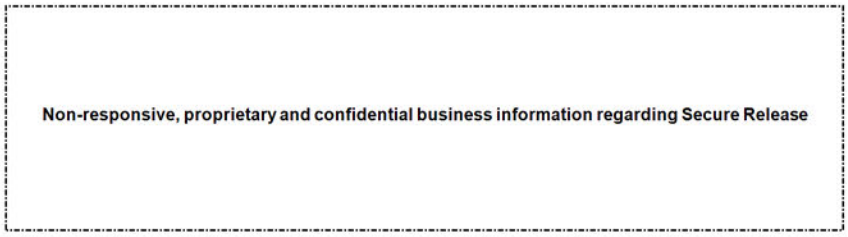
- If you do not click on the link provided in the email to sign the Rules of Behavior (RoB) and the Computer User Agreement (CUA) documents in a timely manner, you will receive the following popup screen:



- All you need to do is reply to the email and request that a new link be sent to you.

What happens if I attempt to log into SecureRelease, but my account has been disabled due to inactivity?

- If you attempt to log into SecureRelease with a disabled account, you will see the following popup screen:



- Contact the Deloitte SecureRelease Help Desk at 844-919-0718, or at SecureReleaseSupportTeam@deloitte.com. Additional information about the Help Desk and its hours of operation is available below.

Who will answer any questions that I may have when I start using SecureRelease?

- Deloitte's Help Desk will be available to the FDIC for technical support, login support, and general troubleshooting within the SecureRelease platform. We will have access to Deloitte's Help Desk by phone, email, and online through intuitive and user-friendly interfaces. Deloitte's Help Desk is staffed by experienced personnel knowledgeable in the platform, and capable of responding to user questions and resolving technical issues. Deloitte's Help Desk is staffed from 8:00 AM through 8:00 PM Eastern Time during the business week to assist with any technical issues or questions and can be reached at 844-919-0718, or at SecureReleaseSupportTeam@deloitte.com. Additionally, Deloitte's team monitors the Help Desk ticketing and messaging system after hours should any issues arise outside of standard hours. Further, we can set up specific after-hours support as needed to support peak activity. In cases where after-hours support will be more heavily used, the Program Manager will coordinate extended Help Desk hours as needed.

What will happen to my existing work in FOIAXpress?

The FOIA/PA requests that you are currently working on can be completed in FOIAXpress (with a few exceptions). Starting **Tuesday, December 28th**, we will begin logging in and assigning new

FOIA/PA requests in SecureRelease. Most FOIA Coordinators will not receive new requests on that date. Historical data from FOIAXpress will be migrated to SecureRelease in late January 2022, so that as many open cases in FOIAXpress can be closed as possible. Original data within FOIAXpress will also continue to be available on an as-needed basis for reporting purposes and other requirements. If you have any concern about your existing work in FOIAXpress, please contact a member of the FOIA/PA Group.

Sarah Cunanan
Supervisory Counsel, Legal Division
3501 Fairfax Drive, VS-D-8124
Arlington, VA 22226-3500
Office: (703) 562-2125
Cell: Non-Responsive, Cell Phone #



SecureRelease Enrollment Guide

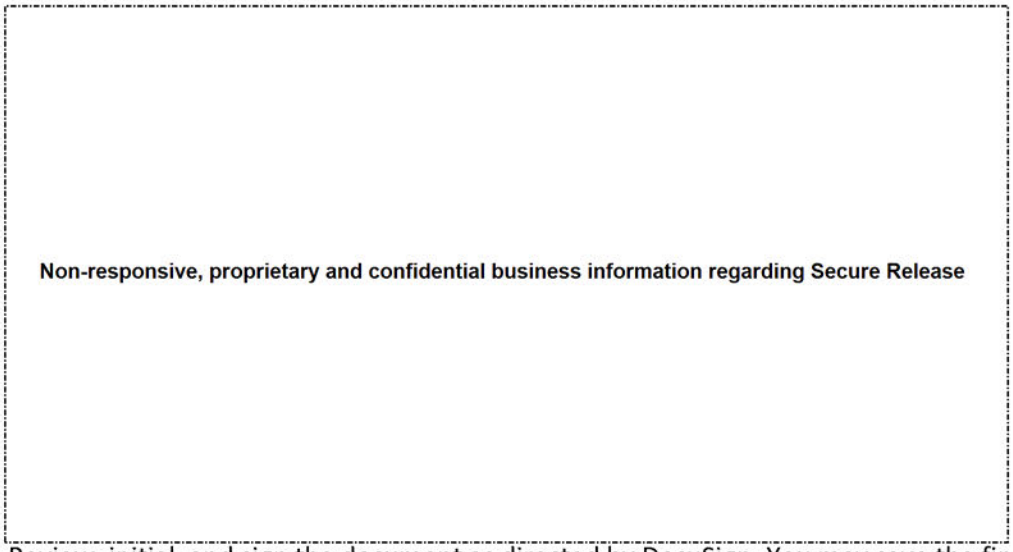
Follow the steps below to successfully create your SecureRelease account.

Task 1: Fill out the CUA and ROB forms with DocuSign.

1. Open the email from "US GPS ISSM via DocuSign."



2. In the email, click REVIEW DOCUMENT.



3. Review, initial, and sign the document as directed by DocuSign. You may save the final signed document if you wish, but it is not required to do so. You will receive a confirmation email once Deloitte has processed your signed document that will provide you another opportunity to download a copy.

*NOTE: You will also receive an email from an account called "US Advisory Secure Release Support Team" instructing you to fill out the document. It is **not** a phishing email, and you will receive more emails from this email address as the enrollment process continues.*

Task 2: Send your PIV certificate information to Deloitte.

1. Open the email from the "US Advisory Secure Release Support Team" confirming the receipt of your enrollment form.

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Non-responsive, proprietary and confidential business information regarding Secure Release

2. Follow the instructions in the attached document to send your PIV certificate information to Deloitte.

Non-responsive, proprietary and confidential business information regarding Secure Release

NOTE: Your PIV certificate is sensitive information. Please remember to set the status of your message to "Confidential" in Outlook prior to sending the information over email.

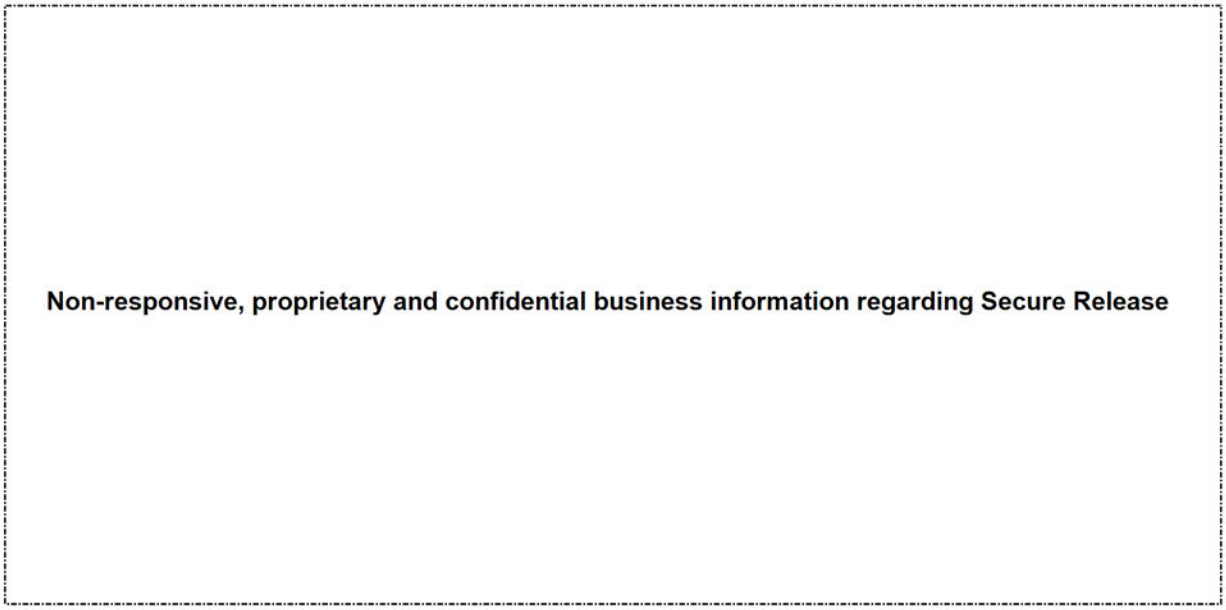
Task 3: Log in to SecureRelease for the First Time.

1. Open the email from the "US Advisory Secure Release Support Team" advising you that your account has been created.

Non-responsive, proprietary and confidential business information regarding Secure Release

2. Follow the link in the email and the attached instructions to log into SecureRelease for the first time.

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3. Once you are logged in and acknowledge the disclaimer, your screen should look similar to the following:



NOTE: If you receive any errors when you log into SecureRelease for the first time, please work with the Support Team via email.

HAI_FOIA0000075

From:	Toland, Michael J.[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C2A93FEFAB8640AEA9B38131360C90D4-MICHAEL J.]
Sent:	Thur 4/14/2022 2:57:04 PM (UTC)
To:	Coordinators FOIA[CoordinatorsFOIA@FDIC.gov]
Cc:	Cunanan, Sarah[scunanan@FDIC.gov]
Subject:	SecureRelease™ - Clearing Cache in Chrome Browse
Attachment:	Clear Cache in Chrome OneSheet.pdf

Hi Everyone,
Sometimes you may experience issues with SecureRelease™, such as the inability to log in to the application or your review tier panes disappearing while reviewing documents. The underlying cause of these types of problems may be related to your browser cache. With this in mind, the first thing to try before escalating an issue would be to clear your cache. The Deloitte team provided a tip sheet for doing this that you might find useful, which I have attached to this email
Regards,
Mike

Michael Toland, Ph.D.
Government Information Specialist, Legal Division
3501 N. Fairfax Drive, VS-D-8010
Arlington, VA 22226-3500
Office: (703) 562-2705
Cell: Non-Responsive, Cell Phone #



This message and any attached documents contain information that may be confidential and/or privileged. If you are not the intended recipient, please do not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

Clear Cache in Chrome

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

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

March 15, 2022

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

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.

Pertinent Case Law

1. U.S. Fish & Wildlife Service v. Sierra Club, Inc. 141 S. Ct. 777 (2021)

OIP Guidance: https://www.justice.gov/oip/supreme-courts-exemption-5-ruling-united-states-fish-wildlife-service-v-sierra-club-inc

2. Greenspan v. Bd. of Governors of the Fed. Rsrv. Sys., No. 21-01968, 2022 WL 17356879 (D.D.C. Dec. 1, 2022) (McFadden, J.)

3. Leopold v. DOJ, No. 19-3192, 2022 WL 4299993 (D.D.C. Sept. 19, 2022) (Contreras, J.) (on appeal)

4. Ctr. for Immigr. Stud. v. USCIS, No. 22-00117, 2022 WL 4289561 (D.D.C. Sept. 16, 2022) (McFadden, J.)

5. Seife v. FDA, No. 20-4072, 2022 WL 3130147 (2d Cir. Aug. 5, 2022) (Chin, J.)

6. Knight First Amend. Inst. at Columbia Univ. v. CDC, No. 20-2761, 2022 WL 4124857 (S.D.N.Y. Sept. 9, 2022) (Torres, J.)

7. Avila v. U.S. Dep't of State, No. 17-2685, 2022 WL 2104483 (D.D.C. June 10, 2022) (Contreras, J.)

From: Cunanan, Sarah[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=71FD5766346E4C1E8C406DE242512049-SARAH CUNAN]

Sent: Wed 10/6/2021 7:05:58 PM (UTC)

To: Coordinators FOIA[CoordinatorsFOIA@FDIC.gov]

Subject: Creating New Records

Hello Coordinators. Hope everyone is well and has fun plans for the long weekend ahead. I wanted to write to all of you concerning the creation of new records in response to a request. As you know, the 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. Please let me know if you have any questions about this or need assistance with providing advice to your SMEs and records custodians.

Thanks, Sarah

Sarah Cunanan
Supervisory Counsel, Legal Division
3501 Fairfax Drive, VS-D-8124
Arlington, VA 22226-3500
Office: (703) 562-2125
Cell: Non-Responsive, Cell Phone #



From: Cunanan, Sarah[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=71FD5766346E4C1E8C406DE242512049-SARAH CUNAN]

Sent: Thur 7/28/2022 7:43:45 PM (UTC)

To: Coordinators FOIA[CoordinatorsFOIA@FDIC.gov]; Non-Responsive, FDIC OIG Employees; **Non-Responsive, FDIC OIG Employees**

Cc: Legal FOIA[LegalFOIA@FDIC.gov]; Kepniss, Matthew I.[mkepniss@FDIC.gov]

Subject: Secondary Reviews of Records

FDIC FOIA Team, when you conduct a review of records after another FDIC Division/Office has already reviewed and made redactions to the records, **please do not unredact information that has been redacted by another Division/Office**. If there is information that you think should not be redacted, 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. Please note that you can make additional redactions in SecureRelease to records that have already been reviewed by another Division/Office. Please feel free to contact me or any member of the FOIA/PA Group with any question you may have.

Sarah Cunanan
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Arlington, VA 22226-3500
Office: (703) 562-2125
Cell: Non-Responsive, Cell Phone #



From: Cunanan, Sarah[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=71FD5766346E4C1E8C406DE242512049-SARAH CUNAN]

Sent: Fri 3/4/2022 3:01:59 PM (UTC)

To: Coordinators FOIA[CoordinatorsFOIA@FDIC.gov]; Non-Responsive, FDIC OIG Employees; **Non-Responsive, FDIC OIG Employees** FOIA[LegalFOIA@FDIC.gov]; Kepniss, Matthew I.[mkepniss@FDIC.gov]; Stock, Kimberly[KStock@FDIC.gov]

Subject: FW: [EXTERNAL MESSAGE] OIP Announces New FOIA Training Dates for Spring and Summer

FOIA Coordinators, if you haven't already, you may wish to follow DOJ's Office of Information Policy on Eventbrite to get information about upcoming training sessions. In particular, I highly recommend the Exemptions 4/5 training on June 14th and the Continuing FOIA Education session on July 12th. The free tickets are not "on sale" yet, but if you follow OIP on Eventbrite you will be notified when they are available.

https://www.eventbrite.com/o/office-of-information-policy-15708860641

Sarah Cunanan
Supervisory Counsel, Legal Division
3501 Fairfax Drive, VS-D-8124
Arlington, VA 22226-3500
Office: (703) 562-2125
Cell: Non-Responsive, Cell Phone #

FDIC

From: U.S. Department of Justice <usdoj@public.govdelivery.com>
Sent: Thursday, March 03, 2022 5:16 PM
To: Cunanan, Sarah <scunanan@FDIC.gov>
Subject: [EXTERNAL MESSAGE] OIP Announces New FOIA Training Dates for Spring and Summer

You are subscribed to OIP FOIA Post for U.S. Department of Justice. This information has recently been updated, and is now available.

OIP Announces New FOIA Training Dates for Spring and Summer

03/03/2022 12:00 AM EST

The Office of Information Policy continues to offer virtual FOIA trainings this spring and summer.

| | |

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FOIA Highlights

Jeannette Wise, Senior Attorney
FOIA/PA Group

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FEDERAL DEPOSIT INSURANCE CORPORATION

Overview of the Typical FOIA Request Work Flow

1. Receipt of Request
2. FOIA GIS Analysis
3. Assignment to Office FOIA Coordinator for Search and Review
4. Identified Custodians (SMEs) conduct search
5. SMEs coordinates with FOIA Coordinator and makes redaction recommendations to FOIA Coordinator
6. FOIA Coordinator reviews those records and ingests all potentially responsive records into SecureRelease
7. Request Returned to GIS/FOIA Group for Final Review
8. Response Provided to Requester

Other FOIA Work Flow Considerations

- Requested Information Must be Sufficiently Described to Perform a Reasonable Search
- Search Should Not be Unduly Burdensome
- Requester Must Agree to Pay Applicable Fees

Legal Division FOIA Coordinators

- Counsels: Sonya Levine and Kaye Allison
- Paralegals: Melody Monroe, Rhonda Herrington, and Stephanie Hearn

Note: Each unit in the Legal Division has a designated POC to work with the Office FOIA Coordinators

Why We Search for Records, Even if We Know they Will be Exempt under the FOIA

Unless Records are Particularly Sensitive, All Potentially Responsive Records Should be Searched for and Provided/Uploaded for Review

- Ensures a Complete Administrative Record in case of Appeal or Litigation
- Ensures Adequate Preservation of the Records required by the FOIA records Retention Period
- FOIA Group Needs to be Able to Review the Records
- Consistency
- Segregability Requirements

FOIA Searches for Receivership Records in FBDS

- Not all FBDS Records are Subject to the FOIA

- The only FBDS records deemed subject to the FOIA are records the FDIC has processed, reviewed, relied upon, or is using in some capacity to perform our work.
- Determined on a case by case basis

- Position is Consistent with the meaning of “Agency Record” under the FOIA

- Notable exception – WAMU Records

Examples of Requests Received Seeking Receivership Related Records

- Executed Purchase and Assumption Agreements
- Requests from Law Firms seeking records regarding the FDIC's role as a receiver. Ex. demand letters, correspondence, FDIC claims against directors or officers of the bank, "15 day letters" or documents related to the FDIC's enforcement capacity
- Note: FOIA is occasionally Used to Supplement Discovery/Doesn't Matter Under the FOIA Why you are Making the Request
  - Particularly important for Coordination between SMEs and Legal FOIA Coordinator if there is an Ongoing Investigation or Litigation

FDIC in the Spotlight:

The Effect on the FOIA Program

March 30, 2023 - FOIA Coordinator's Office Hours

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FEDERAL DEPOSIT INSURANCE CORPORATION

CONTROLLED//FDIC INTERNAL ONLY

Freedom of Information Act (FOIA)

FOR IMMEDIATE RELEASE

July 4, 1966

Office of the White House Press Secretary
(San Antonio, Texas)

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT
UPON SIGNING S. 1160

The measure I sign today, S. 1160, revises Section 3 of the Administrative Procedure Act to provide guidelines for the public availability of the records of Federal departments and agencies.

This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.

Time for Openness & Transparency

- **Do FOIA Exemptions apply?**
- **Is there actually foreseeable harm?**
- **Does public interest outweigh FDIC concerns?**

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Be Mindful of FOIA Timeline

- **20 working Days (10 Day Extension)**
- **Requester can sue the FDIC at 21 days**

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Be Mindful of Administrative Record

- **Document search parameters & reasons for release/withholding determinations**
- **Vital to possible appeals and/or litigation**

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FOIA/PA Group

- **Currently have 43 FOIA requests regarding Silicone Valley Bank & Signature Bank**
- **Most are Media**
- **Involves multiple Divisions and/or Offices (EV searches)**
- **Most complex/voluminous**

FEDERAL DEPOSIT INSURANCE CORPORATION



Questions?

Thanks for your hard work!!

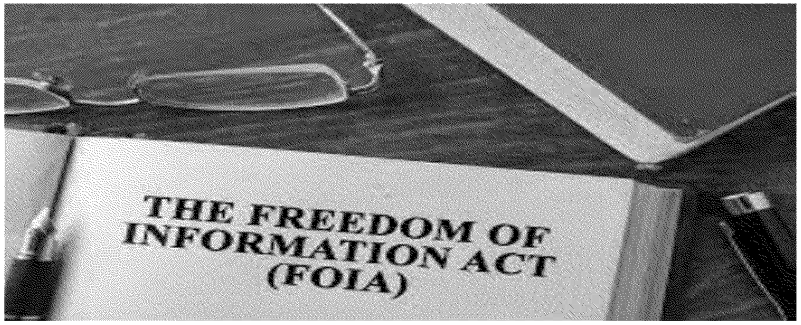
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FEDERAL DEPOSIT INSURANCE CORPORATION

FOIA OVERVIEW

FEDERAL DEPOSIT INSURANCE CORPORATION

Freedom of Information Act
5 U.S.C. 552

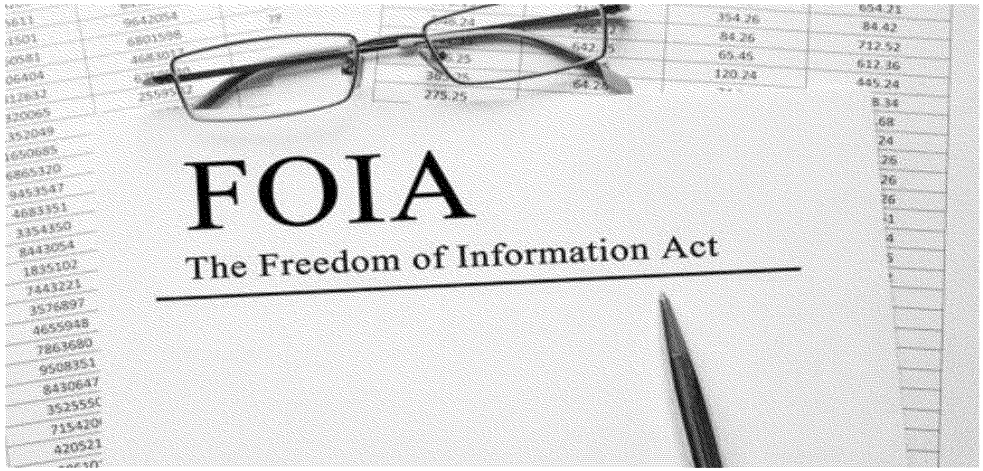
The Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exceptions or by one of three special law enforcement record exclusions.



What is a valid FOIA request?

Must follow the FDIC FOIA Regulations:

12 C.F.R. §309.5



- Must be in writing
- Must be from a “person”
- Must have a reasonable description of records being sought

Time Limits for Responding to a Request

- 20 working days to respond
- In “unusual circumstances” agency may extend time limit by 10 days by giving written notice to requester
- Requester can sue if response deadlines are not met



FOIA Fees

FOIA Requester Fee Categories

- Commercial Use Requester
- Educational institutions, non-commercial scientific institutions
- News media
- All others

FDIC Fee Schedule - https://www.fdic.gov/foia/fees.html

Fee Estimates



Agency Records

The FOIA permits a person to request access to agency records.

- Records that we created or obtained during the course of our operations and activities AND are in our control at the time we receive a FOIA request



FOIA Exemptions

Exemption Two
Records related solely to the internal personnel rules and practices of the FDIC.
Exemption Three
Records specifically exempted from disclosure by statute
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
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.

Attorney General's Memorandum

- Signed March 15, 2022

- 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.

Exemption 4: Foreseeable harm analysis

Privileged

Exemption 5: Foreseeable harm analysis

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Exemption 8: Foreseeable harm analysis

Privileged

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If you want to know more about the FOIA

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- Office of Information Policy, Department of Justice - Guide to the Freedom of Information Act

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

Additional FOIA Training

Go to FLX and search “FOIA” DOJ Video Training Classes (To be updated soon)

FOIA Training for Professionals (3 hours)

FOIA Training for All Employees (1 hour)

DOJ Office of Information and Policy (OIP) FOIA Training:
https://www.justice.gov/oip/training

American Society of Access Professionals (ASAP)
https://www.accesspro.org/

SecureRelease™ Support

- Email: securereleasesupportteam@deloitte.com
  - Cc: Alisa Colgrove & Michael Toland
- Phone Number: 844-919-0718
- You should receive a ticket number for your reported issue(s)
  - If you do not, please contact Alisa and Michael via email

FDIC FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
M. Anthony Lowe, FDIC Ombudsman, FOIA Public Liaison

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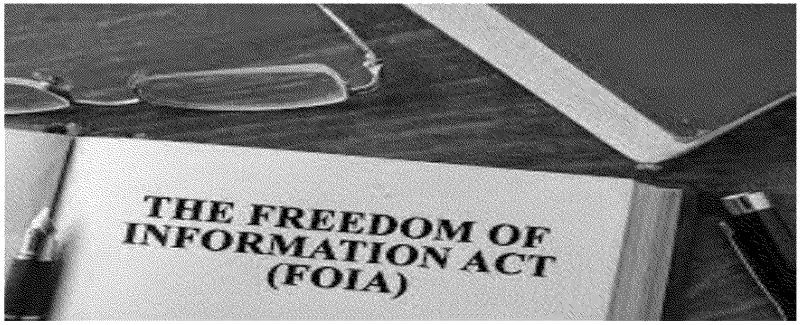
Sarah Cunanan, Supervisory Counsel
Partap Verma, Privacy Counsel
Jeannette Wise, FOIA Counsel
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Lisa Snider, GIS
Michael Toland, GIS

FOIA OVERVIEW

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

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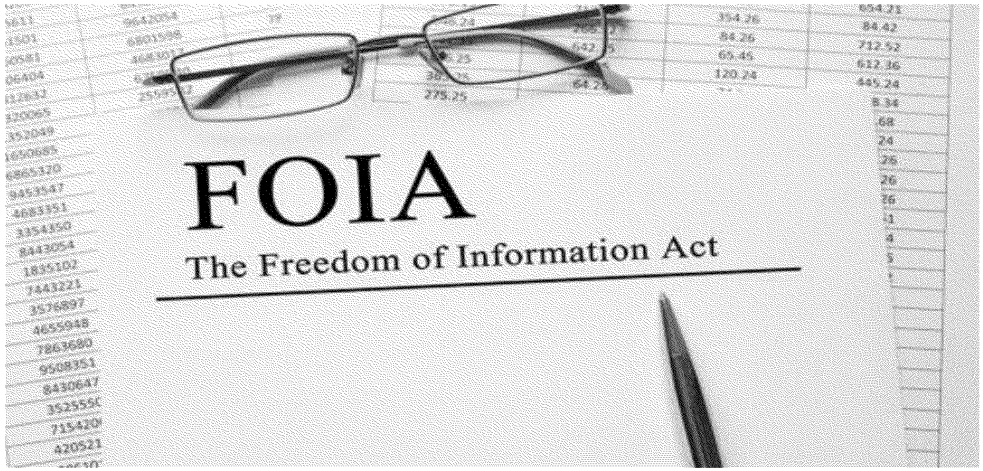
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Exemption 8: Foreseeable harm analysis

Privileged

Other FOIA Notes

- Segregability Requirements

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Natasha Smith, GIS
Lisa Snider, GIS
Michael Toland, GIS

SEPTEMBER 28, 2023

9:00 – 9:25	**Opening Remarks** Scott H. Christensen, Deputy General Counsel & Sarah Cunanan, Supervisory Counsel, FOIA/Privacy Act Group
9:25 – 9:40	**Module 1 – Annual FOIA Reports Update** Alisa Colgrove, Government Information Specialist (GIS)
9:40 – 10:15	**Module 2 – Privacy Act & FOIA Interface** Alisa Colgrove, GIS
10:15 – 10:30	**Break**
10:30 – 11:00	**Module 3 - SecureRelease Topics** Alisa Colgrove, GIS
11:00 – 11:30	**Module 4 – FOIA Appeals & Litigation** Herbert Smith, Counsel, Corporate Litigation
11:30 – 12:10	**Module 5 – Pertinent FOIA Case Law** Jeannette Wise – FOIA Counsel
12:10 – 12:30	**Q&A and Closing Remarks** FOIA/PA Group

Freedom of Information Act (FOIA)

Bi-Annual Training Seminar

September 28, 2023

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Opening Remarks

Deputy General Counsel – Scott H. Christensen

Supervisory Counsel, FOIA/Privacy Act Group – Sarah Cunanan

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FEDERAL DEPOSIT INSURANCE CORPORATION

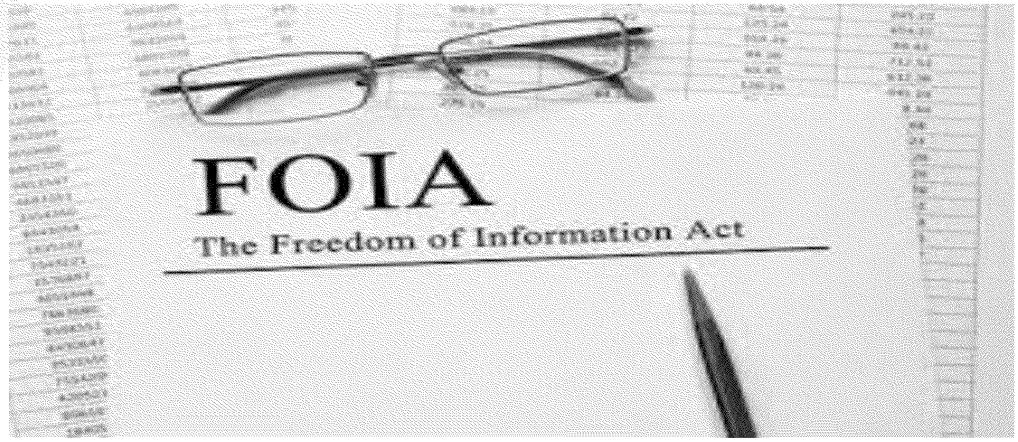
Module 1

Annual FOIA Reports Overview

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Annual Freedom of Information Act Report

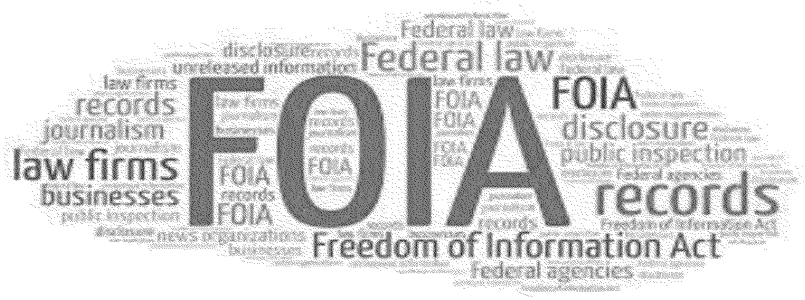
- The FOIA requires each federal agency to submit an Annual Report to the Attorney General each year.
- All agencies submit their Report to the DOJ Office of Information & Policy (OIP).



Annual Freedom of Information Act Report

- These reports contain detailed statistics on:
  - The number of requests received and processed by each agency;
  - The time taken to respond to requests;
  - The outcome of each request; and
  - Many other vital statistics regarding the administration of the FOIA at federal departments and agencies.

Annual Freedom of Information Act Report



- How can you help?
  - Report (a)(2) Records
  - Report Time & Staff

Annual Freedom of Information Act Report



Chief FOIA Officer Report

The Attorney General's FOIA Guidelines require the Chief FOIA Officer for each federal agency to submit a report to the Attorney General (OIP) containing a detailed description of the steps taken by the agency to improve FOIA compliance and transparency.

2023 Chief FOIA Officer Report
Federal Deposit Insurance Corporation
Harrel Pettway, General Counsel and Chief FOIA Officer
March 2022 - March 2023

SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying the Attorney General's FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

Answer: Yes

2. Please provide the name and title of your agency's Chief FOIA Officer.

Answer: Harrel Pettway, General Counsel

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

FOIA Reports

Point of Contact – Natasha Smith

- natsmith@fdic.gov or via Teams

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Module 2

Privacy Act & FOIA Interface

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Purpose of the Privacy Act

Protect the privacy of the individuals about whom the government maintains records by:

1. Limiting the collection, maintenance, use, and disclosure of personally identifiable information.
2. Allowing individuals to request access to, amendment of, and an accounting of disclosures concerning records about themselves.

General Presumption is Protection

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Purpose of the FOIA

- Facilitates government transparency and accountability.
- Provides a means for the public to "know what the government is up to."
- Permits agencies to protect certain records that fall within any of the nine FOIA exemptions.

General Presumption is Disclosure

Records Covered

Privacy Act

Records must be:

1. About an individual,
2. Stored in a system of records, and
3. Accessed by personal identifier.

FOIA

All agency records.



Access under Privacy Act and FOIA

Both the Privacy Act and FOIA provide rights of access to records.

However, there are differences in the extent of access depending on the statute.

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Who has a right of access?

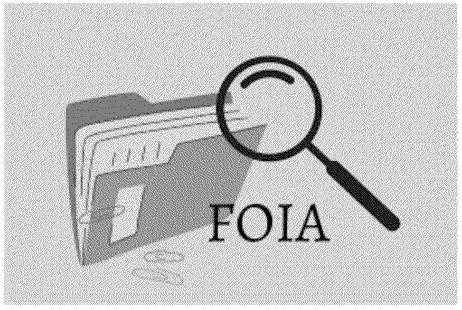
Privacy Act

- U.S. Citizens
- Lawful Permanent Residents



FOIA

- U.S. Citizens
- Non-U.S. Citizens
- Organizations



First Party v. Third Party Requests

1st Party Request

- When an individual asks for records about him/herself.

3rd Party Request

- When someone seeks records about another individual.

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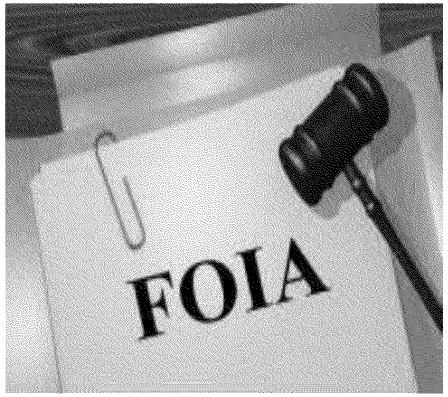
Processing Requests

1st Party Requests

- Process first under the Privacy Act, then under the FOIA for the greatest disclosure.

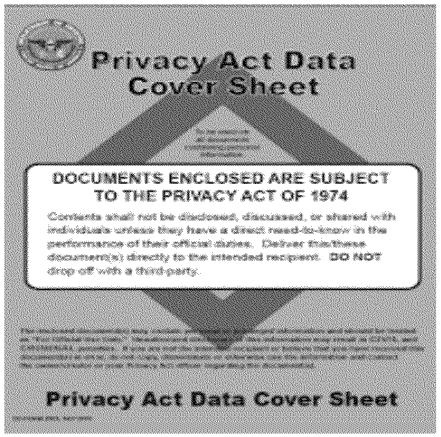
3rd Party Requests

- Process only under FOIA



How to Process First Party Requests

1. Is the record a Privacy Act record?
   - If **no**, continue to FOIA analysis.
   - If **yes**, continue to next question.
2. Does a Privacy Act exemption apply?
   - If **no**, release.
   - If **yes**, continue to FOIA analysis.
3. Does a FOIA exemption apply?
   - If **no**, release.
   - If **yes**, withhold.



Information can only be withheld when <u>both</u> Privacy Act and FOIA exemption

How to Process Third Party Requests

- Process third party requests for Privacy Act records under the FOIA only.
- Release records if FOIA **requires** disclosure:
  - FOIA requires disclosure if no FOIA exemption applies.
- Agency generally needs a FOIA request in hand to release Privacy Act records.

Scenario 1

A U.S. Citizen seeks records about their criminal investigation. These records are part of a Privacy Act system of records that is exempt from the access provision of the Privacy Act. The response letter may contain which of the following:

A. FOIA Exemptions

B. Privacy Act Exemptions

C. FOIA and Privacy Act Exemptions



Scenario 2

A U.S. Citizen seeks records about their neighbor's criminal investigation. The response letter may contain which of the following:

A. FOIA Exemptions
B. Privacy Act Exemptions
C. FOIA and Privacy Act Exemptions



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BREAK



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Module 3

SecureRelease™ Topics

- Proactive Disclosures & FOIA Staff/Percentage of Time
- Tips for Avoiding Ingestion Errors
- Review Decisions
- SecureRelease™ Support
- SecureRelease™ Login Reminders

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FEDERAL DEPOSIT INSURANCE CORPORATION

Proactive Disclosures/(a)(2) Records & FOIA Staff/Percentage of Time

- New capability to update your proactive disclosures/(a)(2) records postings & FOIA Staff/Percentage of Time in SecureRelease.
- No need to wait for emails at the end of Fiscal Year for Annual FOIA Report.

Non-responsive, proprietary and confidential business information regarding Secure Release

Proactive Disclosures (Continued)

- Under Project Setup Click on A2 Postings
- Find your Division/Office, click on edit to update number of postings and web links

Non-responsive, proprietary and confidential business information regarding Secure Release

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Tips for Avoiding Ingestion Errors

- Excel Spreadsheets – Convert to PDF when possible.
- Fillable PDFs – SAVE AS a PDF (it eliminates fillable spaces).
- Password Protected Documents – Contact Record Custodian to take off password and give you the new record.
- Records residing on SharePoint - Contact Record Custodian to give you a new copy of the record.

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Review Decisions

Remember to put the correct Review Decision in the Review Tier/Coding Layout when you complete your review.

Non-responsive, proprietary and confidential business information regarding Secure Release

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Review Decisions (Continued)

- Not Reviewed
- Consultation
- Responsive
- Excluded – Non-Responsive
- Excluded – Other
- Excluded – Referral

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SecureRelease™ Support

- Beginning September 25, 2023, Deloitte has a a new Helpdesk ticketing system run on the Onit platform.
  1. In the Help Desk Contact Information section of Announcement, click https://deloitte.onit.com.
  2. In the Helpdesk Ticketing window, click the Click Here link at the bottom of the Submit Support Ticket box.
  3. Complete the fields in the Helpdesk dialog.
  4. Click Submit.
  - Once submitted, the SecureRelease™ team sends a confirmation email and assigns a Ticket ID to your submission.

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SecureRelease™ Support (Continued)



HAI_FOIA0000165

SecureRelease™ Support (Continued)

- You may still send support requests to:
- Email: securereleasesupportteam@deloitte.com
  - Cc: Alisa Colgrove
- Phone Number: 844-919-0718

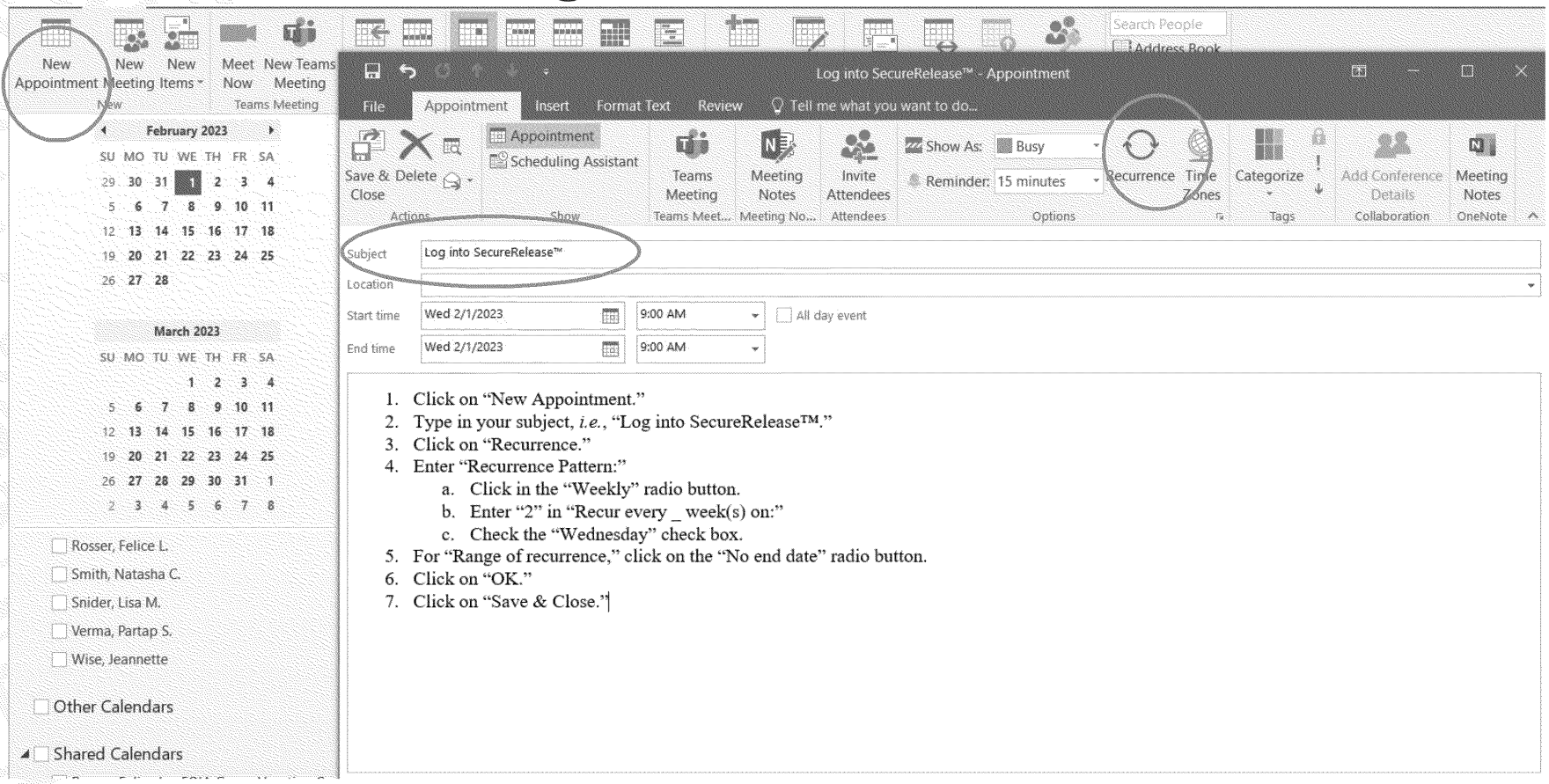
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SecureRelease™ Login Reminders

1. Click on “New Appointment.”
2. Type in your subject, *i.e.*, “Log into SecureRelease™.”
3. Click on “Recurrence.”
4. Enter “Recurrence Pattern:”
   a. Click in the “Weekly” radio button.
   b. Enter “2” in “Recur every _ week(s) on:”
   c. Check the “Wednesday” check box.
5. For “Range of recurrence,” click on the “No end date” radio button.
6. Click on “OK.”
7. Click on “Save & Close.”

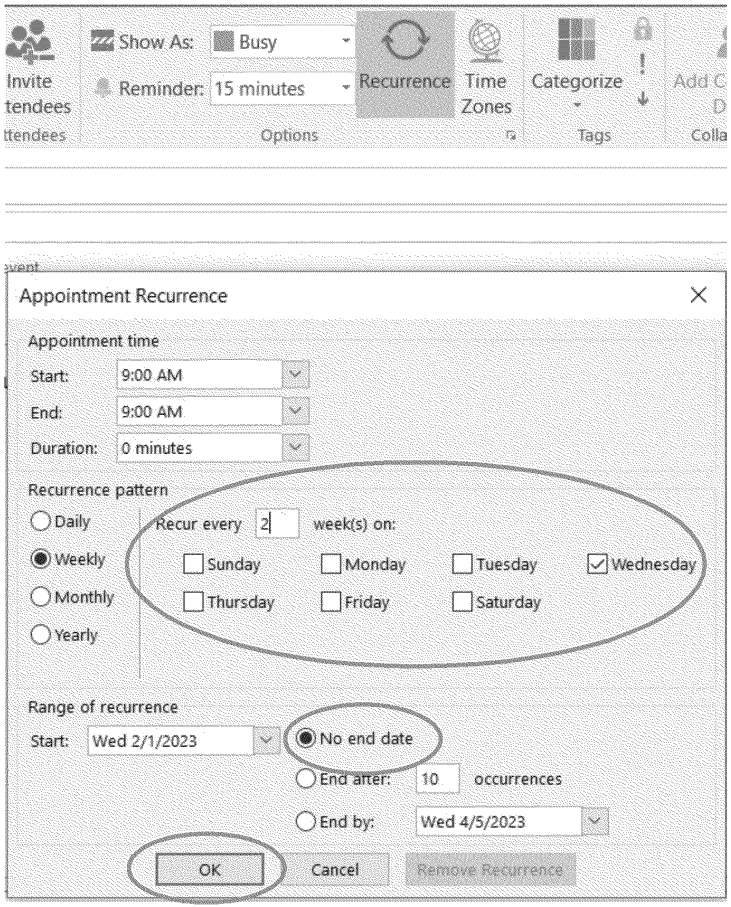
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SecureRelease™ Login Reminders



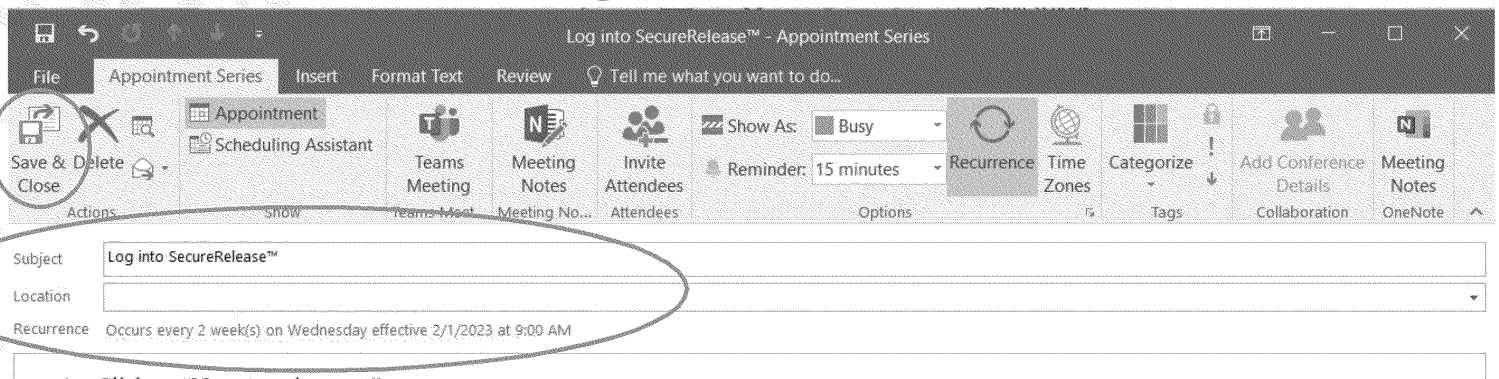
1. Click on "New Appointment."
2. Type in your subject, *i.e.*, "Log into SecureRelease™."
3. Click on "Recurrence."
4. Enter "Recurrence Pattern:"
    a. Click in the "Weekly" radio button.
    b. Enter "2" in "Recur every _ week(s) on:"
    c. Check the "Wednesday" check box.
5. For "Range of recurrence," click on the "No end date" radio button.
6. Click on "OK."
7. Click on "Save & Close."

SecureRelease™ Login Reminders (continued)



HAI_FOIA0000169

SecureRelease™ Login Reminders (continued)



1. Click on "New Appointment."
2. Type in your subject, *i.e.*, "Log into SecureRelease™."
3. Click on "Recurrence."
4. Enter "Recurrence Pattern:"
    a. Click in the "Weekly" radio button.
    b. Enter "2" in "Recur every _ week(s) on:"
    c. Check the "Wednesday" check box.
5. For "Range of recurrence," click on the "No end date" radio button.
6. Click on "OK."
7. Click on "Save & Close."



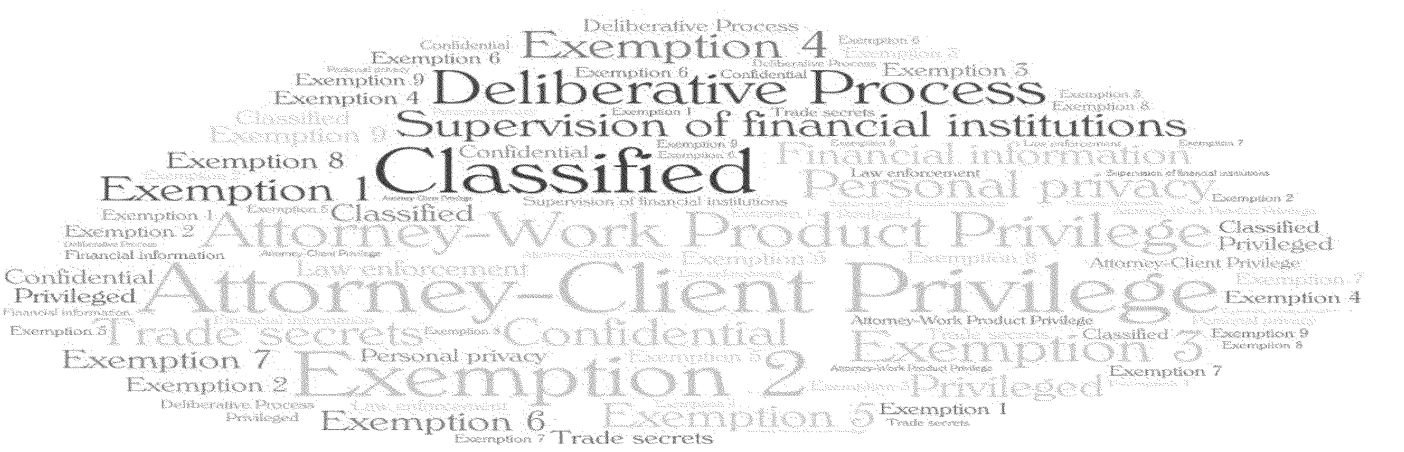
Module 4

FOIA Appeals & Litigation

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Handling FOIA Appeals

FOIA provides requesters with a statutory right to administratively appeal an "adverse determination" an agency makes on a FOIA request. See 5 U.S.C. § 552(a)(6)(A)(i). Adverse determinations, or denials of requests, include agency decisions that the requested records are exempt, in whole or in part, as well as determinations that the requested record does not exist or cannot be located.



Handling FOIA Appeals (cont'd)

The administrative appeal process affords benefits to agencies as well as to requesters. The process offers the FDIC an opportunity to reevaluate its initial response to a request and identify any potential legal errors, and it increases requesters' confidence in the FOIA process by providing a second opportunity for the request to be reviewed.



Handling FOIA Appeals (cont'd)

Each time we receive an appeal the appeal is reviewed "de novo."

- FOIA "is often explained as a means for citizens to know 'what their Government is up to.'" NARA v. Favish, 541 U.S. 157, 171-72 (2004).

- In reviewing the initial decision, we consider any arguments or facts presented by the requester and look for any relevant information that may have been missed or exemptions applied incorrectly.

Handling FOIA Appeals (cont'd)

- Upon review, the action taken by the FOIA Group can be affirmed, reversed, remanded, or a combination of those actions.

- We may also affirm the underlying action, such as the withholding of particular information, but may do so based on a different and/or additional exemptions.

- In other cases, we may determine that additional information is appropriate for release, but the remaining information is correctly protected. In those cases, the appeal would be affirmed in part and there would be a supplemental release.

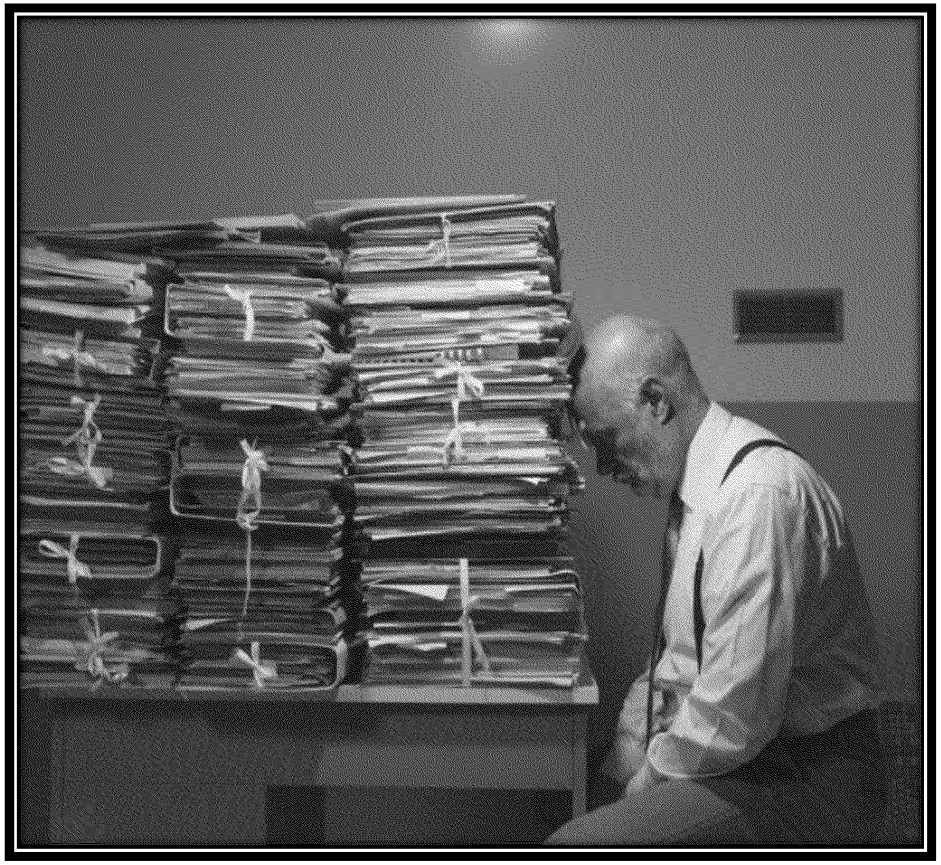
Keep Good Records

- Any judicial challenge made by the requester will be reviewed by a court "*de novo*." We do the same on appeal.
- In reviewing decisions on administrative appeal, we review not just the substance of the decision by the FOIA Group, but also the internal communications which reflect the research that was done and how the records were searched.
- If the case goes to court, we may need a declaration outlining exactly what the FOIA Group did to respond to the FOIA. Records of things like what file systems were available, what file systems were searched and why those file systems were selected to be searched can be critical. Good record keeping by the FOIA coordinators eases the burden of preparing a declaration and defending it before the court.

Can we help avoid appeals? Maybe.

- Communicate with Requestor
  - Clarify the request
  - Narrow the scope
  - Set expectations regarding timeline

- Communicate with FOIA coordinators
  - Evaluate scope of the request
  - Nature of the search
  - Proposed response
  - Probe the results



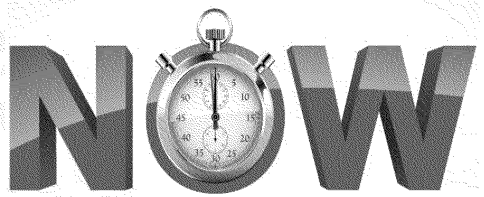
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FOIA Litigation

- FDIC has 30 days to file an answer after the Complaint is served.

- Each judge has his or her own way of handling FOIA litigation. Generally, after an Answer is filed by the agency, the parties are ordered to meet and confer and reach an understanding about a production schedule.

- Given the heavy influx of FOIA requests arising out of the recent bank failures, courts seem to be easing requirements for the parties to provide a production and/or briefing schedule as soon as the Answer is filed.



FOIA Litigation (cont'd)

- A dissatisfied requestor can sue the agency in federal court. In most cases, the requestor must go through the administrative appeals process before filing suit. One exception is where the agency does not provide a final response within the statutory time period.
- The court will take a fresh look – "de novo" review.
- The burden of upholding a denial is on the agency.
- The issues to be considered in court are the same as those considered by the agency: for example, did the request adequately describe the records sought, and did the agency do a reasonable search and correctly apply the FOIA exemptions.



Summary Judgment

- In most cases, FOIA litigation is decided on motions for summary judgment.
- An agency may be granted summary judgment if it shows that it has conducted a search reasonably calculated to uncover all relevant documents.
- To meet its burden and show adequacy, the agency may rely on reasonably detailed dclarations. These declarations are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents.
- An agency's affidavit will need to show how the agency decided what records to search, how it interpreted the FOIA request, the search terms and the type of search performed, and an identification of the documents found and an explanation of the agencies decision.
- A Vaughn index may be required, which shows the bases for documents withheld or redacted, so that the court may inspect the documents, if necessary.

Pending FOIA Litigation

HAI_FOIA0000181

Pending FOIA Litigation

GAO v. FDIC (D.D.C. 1:23-cv-1280)	**PROTECT THE PUBLIC'S TRUST v. FDIC (D.D.C. 1: 23-cv-02171)**
Seeks communications between FDIC executives and certain outside personnel regarding SVB and Signature Bank near the time of failures. ➢ Court has ordered pre-summary judgment briefing. Primary issue – adequacy of search. ➢ Hearing currently scheduled for November 1, 2023 (not uncommon for hearings to be moved or canceled after judge reviews briefs).	3 FOIA requests at issue. All seek communication between FDIC executives and certain outside personnel near time of SVB's failure. ➢ Court ordered the parties to file a joint status report by November 16, 2023, advising the Court of the status of this matter and whether any disputes remain between the parties and, if so, proposing a schedule to govern further proceedings.

Pending FOIA Litigation (cont'd)

LEOPOLD AND BLOOMBERG L.P. v. FDIC (D.D.C. 1:23-cv-1973)	**Judicial Watch, Inc. v. U.S. Dep't of the Treasury, FDIC, FRB (D.D.C. 1:23-cv-01174)**
FOIA Complaint filed by media ➢ Seven FOIA requests seek records of communications related to the failures of Silicon Valley Bank, Signature Bank, and First Republic Bank. ➢ Court ordered the parties to meet, confer, and file, by September 22, 2023, a joint proposed schedule for briefing or disclosure.	Involves identical FOIA requests to three agencies ➢ The requests were for records concerning the systemic risk exception for Silicon Valley Bank and the systemic risk exception for Signature Bank, including minutes, memoranda, and communications between each agency and the banks. ➢ Court requiring periodic status reports. Next status report due by October 6, 2023.

Questions?

Contacts:

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Counsel
Corporate Litigation Unit

Daniel Kurtenbach
Counsel
Corporate Litigation Unit

Jason Benton
Counsel
Corporate Litigation Unit

HAI_FOIA0000184

Module 5

Pertinent FOIA Case Law

FEDERAL DEPOSIT INSURANCE CORPORATION

If you want to know more about the FOIA

- FDIC FOIA Regulations, 12 CFR § 309.5
- FDIC Circular 1023.1, Procedures for Processing FOIA Requests
- Office of Information Policy, Department of Justice - Guide to the Freedom of Information Act

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

Additional FOIA Training

Go to FLX and search “FOIA”. DOJ Video Training Classes (To be updated soon)

FOIA Training for Professionals (3 hours)

FOIA Training for All Employees (1 hour)

DOJ Office of Information and Policy (OIP) FOIA Training:
https://www.justice.gov/oip/training

American Society of Access Professionals (ASAP)
https://www.accesspro.org/

FDIC FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
M. Anthony Lowe, FDIC Ombudsman, FOIA Public Liaison

FOIA/PA GROUP

Sarah Cunanan, Supervisory Counsel
Partap Verma, Privacy Counsel
Jeannette Wise, FOIA Counsel
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Lisa Snider, GIS
Sarah Hayden, Paralegal Specialist

HAI_FOIA0000188

FOIA Training Seminar

Questions & Answers

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

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.

From:	US Advisory Secure Release Support Team[securereleasesupportteam@deloitte.com]
Sent:	Wed 9/20/2023 10:23:17 PM (UTC)
To:	US Advisory Secure Release Support Team[securereleasesupportteam@deloitte.com]
Subject:	[EXTERNAL MESSAGE] SecureRelease Non-responsive, proprietary and confidential business information regarding Secure Releas
Attachment:	SecureRelease Helpdesk Ticket Creation.mp4
Attachment:	Opening a Helpdesk Ticket (Onit)_V1.2.1.pdf

CAUTION External email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi!

The SecureRelease™ Support Team is going to be moving to a new Helpdesk ticketing system run on the Non-responsive, proprietary and confid You will be going live on Monday, September 25th.

Please find attached a short written guide and a quick video walk-through showing you how to use the new Helpdesk ticketing system. It's simple and easy and provides you a number of benefits such as automatic notifications, ticket numbers, and faster service.

We will still operate our email address, but you will receive updates and faster assistance through the new ticketing system. If you encounter any difficulty, please reach out and we will be happy to assist.

Thank you,

US Advisory SecureRelease™ Support Team
Disclosure | Deloitte Risk and Financial Advisory
Deloitte Transactions & Business Analytics LLP
Tel/Direct: +1 844 919 0718
securereleasesupportteam@deloitte.com | www.deloitte.com

Facebook | Twitter | YouTube | LinkedIn | Google + | Glassdoor | Instagram

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v.E.1

Deloitte.

Open a Helpdesk Ticket in SecureRelease™

Non-Responsive, proprietary and confidential business information regarding Secure Release

From: Colgrove, Alisa N.[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6F43FEE5AA6C437D95EDBB5584EDDFFE-ALISA N. CO]

Sent: Tue 6/20/2023 1:37:13 PM (UTC)

To: Coordinators FOIA[CoordinatorsFOIA@FDIC.gov]

Cc: Non-Responsive, FDIC OIG Employees

Non-Responsive, FDIC OIG Employees Johnson, Thomas S.[thojohnson@FDIC.gov]; Cunanan, Sarah[scunanan@FDIC.gov]; Wise, Jeannette[jewise@FDIC.gov]; Verma, Partap S.[pverma@fdic.gov]

Subject: FOIA Coordinator Guidance on FDIC Document Labeling

NONPUBLIC//FDIC INTERNAL ONLY

Good morning FOIA Coordinators:

As you may be aware, on May 12, 2023, the FDIC migrated to Tool Enforced Document Labeling, making document labeling mandatory for certain file types. Some of you may have concerns about how that affects your analysis of records under the FOIA. Please use the following guidance as a general framework as you begin the labeling process.

Purpose of Document Labeling

FDIC Directive 1350.04, Document Labeling, establishes the requirements for categorizing and labeling documents. Labels on documents enhance the FDIC's ability to protect documents appropriately and facilitate authorized sharing of documents internally, with external business partners and the public. Labeling is an added layer of protection for an FDIC document so that the recipient of a document knows who it is safe to further share the document with and whether it contains sensitive information.

Which Types of Documents Are Affected

The Tool Enforced Document Labeling will apply to all Outlook emails and Microsoft products, such as Word documents, PowerPoint slides and Excel spreadsheets produced or modified after this date. The document labeling does not apply to PDFs or system-generated reports and/or emails.

Therefore, when you receive Assignments and other emails from the FOIA/PA Group through SecureRelease, they will not have a document label. This would also be the case if you send Correspondence and Tasks through SecureRelease. You will not be prompted to label the Correspondence or Task and do not have to be alarmed that you are not labeling it. Nevertheless, if you respond to and/or forward that email from SecureRelease via Outlook, you will then be prompted and mandated to label the email as appropriate.

FOIA Review of Labeled Documents

During the processing of FOIA requests in the very near future, you will be uploading, ingesting and reviewing documents with labels. This is a reminder that the document label, in and of itself, does not determine a record's disposition.

- For example, if you are reviewing a PowerPoint slide deck that has the document label **CONTROLLED – FDIC INTERNAL ONLY**, you will still need to conduct a line-by-line review to see if the document should be withheld and/or released in full or in part.

All labeled documents need to receive a proper FOIA review for potential exemptions except, in most instances, for the **PUBLIC** label. This label is restricted to specific individuals in particular Divisions and Offices and will not be seen often. But, if you do see this label on a responsive record, you should generally recommend to the FOIA/PA Group that this record be released in full.

If you would like additional information on Document Labeling, please view the webpage at https://fdicnet.fdic.gov/content/dit/home/services/datamanagement/fdic-document-labeling.html.

Please contact me or anyone in the FOIA/PA Group if you have additional questions or if you are experiencing any issues ingesting documents with labels into SecureRelease.

Thank you.

Alisa N. Colgrove
Government Information Specialist, Legal Division
Federal Deposit Insurance Corporation
3501 N. Fairfax Drive, Room D-8008
Arlington, VA, Zip 22226
Office: 703-562-2274
fdic.gov
FDIC

Bi-Annual FOIA Training Seminar

Agenda – March 21, 2024

9:00 am to 12:30 pm

Time	Topic	Presenter
9:00 – 9:15	**Opening Remarks**	Tom Johnson, Senior Counsel & Sarah Cunanan, Supervisory Counsel, FOIA/Privacy Act Group
9:15 – 9:55	Module 1 – Exemption 4 Refresher	Alisa Colgrove, Government Information Specialist (GIS), Sarah Cunanan, Supervisory Counsel & Christine Grauer, Senior Attorney
9:55 – 10:30	Module 2 – The Privacy Exemptions - 6 & 7(C)	Alisa Colgrove, GIS
10:30 – 10:45	**Break**	
10:45 – 11:15	Module 3 - SecureRelease Topics	Alisa Colgrove, GIS
11:15 – 11:40	Module 4 – Referrals, Consultations & Other Equities	Charles Smith, GIS & Sarah Hayden, Paralegal Specialist
11:40 – 12:10	Module 5 – Pertinent FOIA Case Law	Jeannette Wise – FOIA Counsel
12:10 – 12:30	**Q&A and Closing Remarks**	FOIA/PA Group

Freedom of Information Act (FOIA)

Bi-Annual Training Seminar

March 21, 2024

9:00am – 12:30pm

Opening Remarks

Thomas S. Johnson, Senior Counsel

Sarah Cunanan, Supervisory Counsel, FOIA/Privacy Act Group

Module One

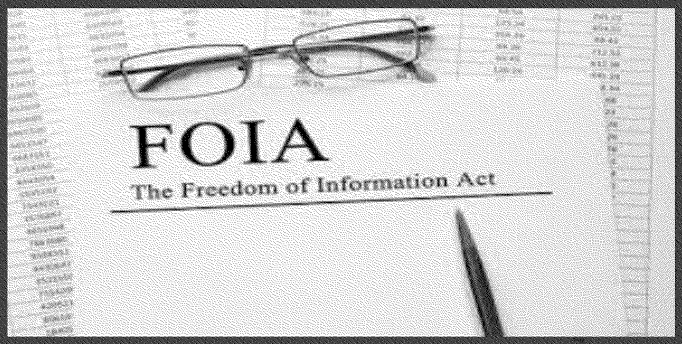
FOIA Exemption 4 Refresher

Text of Exemption 4

Exemption 4 protects:

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

5 U.S.C. § 552(b)(4)



Purpose of Exemption 4

The exemption protects the interests of both the government and the submitter/owner of the information.

- Encourages submitters to provide the government with confidential information, that is accurate and reliable; and
- Provides assurances that the information will be safeguarded, in turn protecting submitters from competitive disadvantage if disclosed.



Exemption 4 Framework

Exemption 4 protects two separate categories of information:

- Trade Secrets; and
- Commercial or Financial Information, Obtained from a Person, that is Privileged or Confidential

HAI_FOIA0000202

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Trade Secrets – Narrow Definition

Defined "solely for the purpose of FOIA Exemption 4, as 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."

HAI_FOIA0000203

Second Category of Exemption 4

Three-part definition:

1. Commercial or financial information
2. Obtained "from a person"
3. Privileged or confidential

All three parts must be met.

HAI_FOIA0000204

Commercial or Financial Information

The terms "commercial" and "financial" should be given their "ordinary meanings." Information satisfies this element if the submitter has a "commercial interest" in the information.

HAI_FOIA0000205

Commercial or Financial Information

Protection is not limited to profit-seeking entities. E.g., charities, other non-profits, and individuals may submit commercial or financial information protectable by Exemption 4.

HAI_FOIA0000206

Obtained from a Person

"Person" is defined broadly and includes:

- "[A]n individual, partnership, corporation, association, or public or private organization other than an agency," and
- Foreign, state, and tribal governments

Submitter-generated information summarized or reformulated by the agency (e.g., through agency inspections, summaries, or audits) does not lose status based on agency use of submitted information

HAI_FOIA0000207

Privileged

"Privileged" encompasses the Attorney-Client Privilege, Attorney Work Product, etc.

HAI_FOIA0000208

Confidential

The Supreme Court examined the definition of confidential under Exemption 4 and overturned the standard that was applied for over 40 years.

Food Marketing Institute v. Argus Leader Media, 139 S. Ct. 2356 (2019)

HAI_FOIA0000209

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OLD Exemption 4

Part 1

Trade Secrets

Part 2

Commercial/Financial

Obtained From A Person

Privileged/**Confidential**

Required Submission

Protected If:

Impairment

Substantial Competitive Harm

Other Government or Private Interests

Voluntary Submission

Protected If:

Customarily not Released by Submitter

HAI_FOIA0000210

NEW Exemption 4

Part 1

Trade Secrets

Part 2

Commercial/Financial

Obtained From A Person

Privileged/Confidential

Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356 (2019)

HAI_FOIA0000211

Food Marketing Institute v. Argus Leader Media
Procedural Background

The requester sought data from USDA reflecting individual retail stores' aggregate annual dollar amount of Supplemental Nutrition Assistance Program (SNAP) benefits that the stores redeem under the Program.

HAI_FOIA0000212

Food Marketing Institute v. Argus Leader Media

Issue Before the Supreme Court

How should the term "confidential" be defined when determining the applicability of Exemption 4?

Is there any textual basis for the definition of "confidential" under *National Parks* in the FOIA?

HAI_FOIA0000213

Food Marketing Institute v. Argus Leader Media
Government Position

- The *National Parks* test is atextual and courts should apply the ordinary meaning of the term confidential.
- Using its dictionary definition, information is confidential if it is communicated in confidence or in secret.

HAI_FOIA0000214

Food Marketing Institute v. Argus Leader Media

Government Position

Two ways information could be confidential:

1. Based on its treatment outside of the government, i.e., where it "would customarily not be released to the public by the person from whom it was obtained."
2. Based on how the agency receives it, i.e., where it was given to the agency in confidence.

HAI_FOIA0000215

Food Marketing Institute v. Argus Leader Media, 139 S. Ct. 2356 (2019)

"At least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4."

Department of Justice Office of Information Policy (OIP) Guidance

In light of legal uncertainty, as a sound practice agencies should consider both conditions in the process of determining "confidentiality" for Exemption 4 purposes.

HAI_FOIA0000217

OIP Guidance

1) Does the submitter customarily keep the information private or closely-held?

- Focus on the submitter of the information, not the industry practice

If no, the information is not "confidential" under Exemption 4 (an express holding of *Argus*).

If yes, answer question 2.

HAI_FOIA0000218

OIP Guidance

2) Did the government provide either an express or implied assurance of confidentiality when the information was shared with the government?

If no, answer question 3.

If yes, the information is confidential under Exemption 4.

OIP Guidance

3) Were there express or implied indications at the time the information was submitted that the government would publicly disclose the information?

If no, the information is "confidential" under Exemption 4 (the government has effectively been silent – so a submitter's practice of keeping the information private will be sufficient to warrant confidential status).

OIP Guidance

If yes, and no other sufficient countervailing factors exist, the submitter could not reasonably expect confidentiality upon submission and so the information is not confidential under Exemption 4.

HAI_FOIA0000221

Submitter Notice: E.O. 12,600 (1987)

- Submitters can often be in a better position than the agency to answer questions relevant to an Exemption 4 inquiry (e.g., whether "information is both customarily and actually treated as private by its owner.")

- Executive Order 12,600 (1987) and agency regulations set out process for agencies to gather information about records directly from submitters, when making determinations under Exemption 4.

HAI_FOIA0000222

Submitter Notice: E.O. 12,600

- Although E.O. 12,600 speaks in the language of "substantial competitive harm" as the relevant legal test and that test has been overruled, the submitter notice process is still entirely appropriate for agencies to continue to use when determining whether information is "confidential" under the test articulated in *Argus*.

HAI_FOIA0000223

OIP Guidance

https://www.justice.gov/oip/exemption-4- after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media

https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential

Module Two

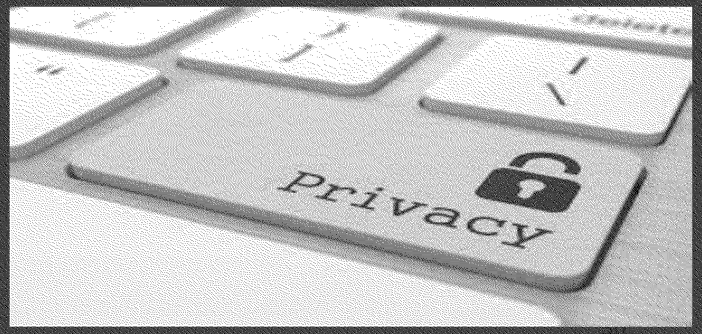
The Privacy Exemptions

Exemptions 6 & 7(C)

Exemptions 6 & 7(C)

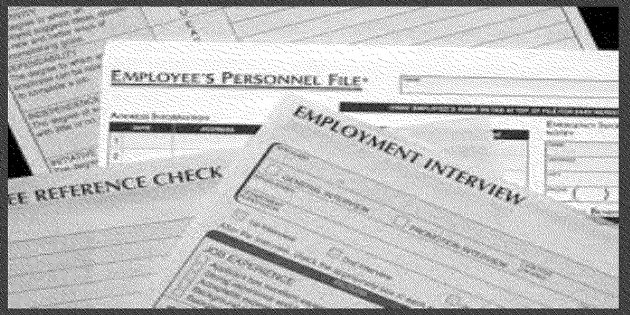
The FOIA provides two exemptions to protect personal privacy: Exemptions 6 and 7(C).

These two exemptions are the most frequently used exemptions.



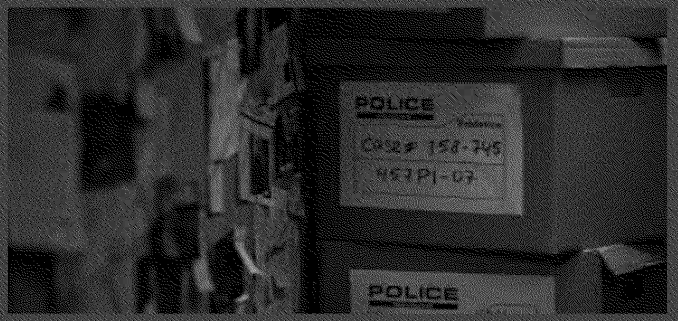
Exemption 6
5 U.S.C. § 552(b)(6)

Applies to "personnel and medical files and similar files" when disclosure of such information "**would constitute a clearly unwarranted** invasion of personal privacy."



Exemption 7(C)
5 U.S.C. § 552(b)(7)(C)

Applies to "records or information compiled for law enforcement purposes," the disclosure of which "**could reasonably be expected to constitute an unwarranted** invasion of personal privacy."



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Compare Exemptions 6 & 7(C)

Privacy Exemption	Type of Record	Likelihood of Privacy Invasion	Type of Privacy Invasion
6	Personnel, medical, "similar"	**would** constitute	**clearly** unwarranted
7(C)	Law Enforcement Purposes	**Could reasonably** constitute	unwarranted

Exemptions 6 & 7(C)

The same analysis is used for both Exemptions 6 and 7(C):

- **Step 1** -- Threshold satisfied?
- **Step 2** -- Privacy interest implicated?
- **Step 3** -- "FOIA public interest" in disclosure?
- **Step 4** -- Balancing interests

Exemption 6 Threshold

"Personnel and medical files and similar files"

Q: What is a "similar file"?

A: Courts have found this prong satisfied where the information pertains to a particular individual.

HAI_FOIA0000231

Exemption 6 Threshold

A "similar file" can generally exist in any format.

Audio recordings, for example, can be similar files.

New York Times Co. v. NASA, 920 F.2d 1002 (D.C. Cir. 1990)

HAI_FOIA0000232

Exemption 7(C) Threshold

"Records or information compiled for law enforcement purposes"

This includes records:

- Created by an agency pursuant to a law enforcement activity
- Collected or recompiled during the course of a law enforcement activity

HAI_FOIA0000233

Exemption 7(C) Threshold

Types of Law Enforcement Covered

The "law" to be enforced within the meaning of the term "law enforcement purposes" includes:

- Civil
- Criminal
- Statutes authorizing administrative (i.e., regulatory) proceedings
- May apply to records compiled to enforce state law and even foreign law

HAI_FOIA0000234

Threshold Hypothetical Number One

Jon Doe, a federal inmate, made a FOIA request for his own records. Would photos of Jon and other inmates meet the Exemption 6 and 7(C) threshold?



Threshold Hypothetical Number Two

While processing responsive records, you come across a list of names and affiliations of individuals who attended training sponsored by your agency. Does this information fall under the Exemption 6 threshold? How do you respond to your colleague who argues that it does not because the information is not particularly "personal" or "sensitive"?

HAI_FOIA0000236

Privacy Interest

Privacy encompasses an "individual's control of information concerning his or her person."



Privacy Interest

Privacy interests have been found in personally identifying information such as:

- Name
- Address
- Phone Number
- Date of Birth
- Criminal History
- Medical History
- Social Security Number

HAI_FOIA0000238

What doesn't get protection? Federal Employees

- Names
- Position titles and occupational series
- Annual salary rates (performance awards and bonuses)
- Grades
- Duty stations
- Position descriptions and job elements
- Performance Standards

Key Exception to 5 C.F.R. § 293.311: Federal employees in law enforcement, DOD, National Security, and other sensitive occupations. See current "OPM Data Release Policy" on the OPM website.

HAI_FOIA0000239

What doesn't get protection?

Corporations have no privacy interests.

- **Key Exception**: Small companies/sole proprietorships generally take on the privacy interests of their members.



What doesn't get protection?

A deceased individual has greatly diminished personal privacy interests in the context of the FOIA.

Survivor Privacy: A deceased individual's survivors may have a privacy interest in preventing disclosure of certain information pertaining to the deceased.

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Privacy Interest Practical Obscurity

The general rule is individuals have no privacy interest in information that has been previously disclosed unless the information has over time become "practically obscure."

HAI_FOIA0000242

Privacy Interest

- The passage of time does not diminish a privacy interest and may, in fact, enhance it.
- Public figures may have a diminished privacy interest, but they do not forfeit all of their privacy rights.

HAI_FOIA0000243

Privacy Interest Hypothetical Number One

John Smith is an agent in the Office of Inspector General.

- How do you assess John's privacy interest in her name and duty station against non-OIG employees of your agency – is it higher or lower?
- How do you assess John's privacy interest against an OIG public affairs official. Is it higher or lower?

HAI_FOIA0000244

Privacy Interest Hypothetical Number Two

Your agency just hired Matthew Smith, who beat out 15 other applicants, as a Senior Bank Examiner. A disgruntled applicant, Edward, filed a FOIA request to find out who was hired and that individual's professional qualifications. Edward also wants to know the names of the other applicants. Assess the privacy interests of Matthew and the other applicants.

HAI_FOIA0000245

FOIA Public Interest

What is a FOIA public interest?

Disclosure of information that "sheds light on an agency's performance of its statutory duties."



FOIA Public Interest

A requester's identity or private need for the information is not given any weight in this determination.

The Supreme Court has held that the burden is on the requester to show how disclosure would shed light on the operations of an agency.

HAI_FOIA0000247

FOIA Public Interest Nexus

The public interest must be served by the disclosure of the requested information.

- What do I learn about the agency's operations by knowing an individual's personal information?

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Examples of a FOIA Public Interest

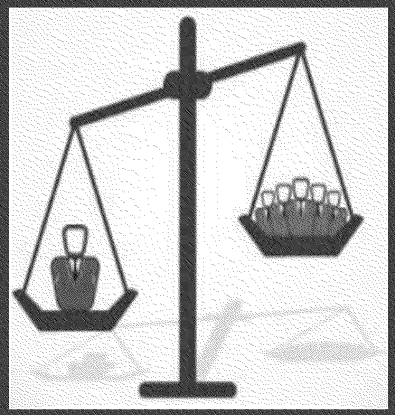
- Certain court docket information: used to show the kinds of crimes the government uses cell phone tracking data to investigate.
- Addresses of claimants awarded disaster assistance: used to facilitate the public's understanding of FEMA's disaster relief operations.
- Identities and professional backgrounds of certain experts: relevant to analyzing the functionality of a DHS office and how it is spending taxpayer dollars.

HAI_FOIA0000249

Balance the Interests

If there is a privacy interest and a FOIA public interest in disclosure:

- Accord each interest a measure of value
- Balance them to determine which is greater



FOIA Public Interest

- In the absence of a cognizable public interest, the privacy interest will prevail in the balance.
- Something, even a modest privacy interest, outweighs nothing every time.

HAI_FOIA0000251

FOIA Public Interest Hypothetical

Joffrey Baratheon files a FOIA request for FBI records related to his conviction and seeks the names of individuals who were interviewed as part of the FBI investigation. Joffrey argues that he already knows these individuals, and that he needs this information to prove his innocence. Is this a valid FOIA public interest?

Additional Resources

The DOJ Guide to the FOIA

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

15-Minute Break



HAI_FOIA0000254

Module Three

SecureRelease™ Topics

- Review Decisions: Consultations & Referrals
- Uploading, Ingestion & Redaction Tools Cheat Sheet

Review Decisions: Consultations & Referrals

Consultation – A responsive record that you located that has another agency's equities (information/data).

Non-responsive, proprietary and confidential business information regarding Secure Release

HAI_FOIA0000256

Review Decisions: Consultations & Referrals

Referral – A responsive record you located that was authored by another agency.

Non-responsive, proprietary and confidential business information regarding Secure Release

HAI_FOIA0000257

Uploading, Ingestion & Redaction Tools Cheat Sheet

HAI_FOIA0000258

SecureRelease™ Support

Send support requests to:

- Email: securereleasesupportteam@deloitte.com
  - Cc: Alisa Colgrove
- Phone Number: 844-919-0718

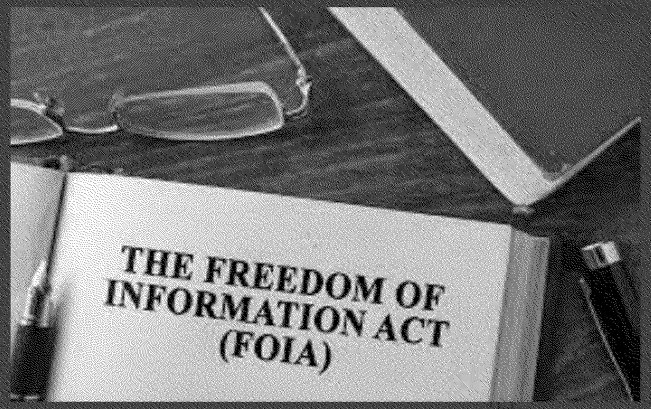
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Module Four

Referrals, Consultations & Other Equities

FOIA Referrals and Consultations

- What are they?
- What is the difference?
- How do I handle them?



Consultation Definition

The procedure whereby the agency responding to a FOIA request first forwards a record to another agency (or a component within the same agency) for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the original agency (or component within the same agency) that forwarded it. That agency or component, in turn, will then respond to the FOIA requester.

Why Should We Do Consultations?

- Can extend response time. 5 U.S.C. § 552 (a)(6)(B)(i)-(iii).
- May be required by law. Certain documents require it. Executive Order 12,600.
- Promotes consistency across agencies.
- Helps avoid inadvertent disclosure of another agency's information.

HAI_FOIA0000263

What About Incoming Consultations?

- The other agencies are under the same time pressure as we are to respond as efficiently as possible.
- It is important—not only for the other agency, but also for the FDIC—to respond as quickly as possible.
- Our handling of these consultations are made publicly available in the Chief FOIA Officer's Annual Report.

HAI_FOIA0000264

Handling of Consultations Publicly Reflects on Us

The Chief FOIA Officer's Annual Report must disclose:

- The number of FOIA consultations we received from other agencies,
- The number of incoming consultations that we actually processed, and
- Our ten oldest consultations.

What is a Referral?

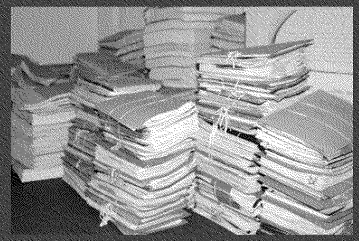


- Long-standing practice is to either **refer** record(s) to the originating agency to process, or to consult with an agency having equities in the record(s) to get their view on the sensitivity of the records' content, prior to making a disclosure determination.

- It's common practice to refer record(s) for direct handling to the agency where the record(s) originated.

HAI_FOIA0000266

What are the Considerations for a Referral?



- Records should be referred to the originating agency unless the agencies jointly agree to handle the records as a consultation.
- Ensure the entity receiving the referral of records is itself subject to the FOIA. No referrals may be made to Congress, the courts, state government, private businesses, or individuals.
- For frequent and routine record(s), agencies should collaborate on standard processing procedures to reduce the number of referrals needed.

What are the Procedures for Making a Referral?



- Identify record(s) appropriate for referral to another agency.
- Review record(s) for any equities your agency may have and include your agency's disclosure recommendations.
- Send record(s), along with your agency's disclosure recommendations, to the originating agency. Include the original FOIA case number, date received, and a copy of original FOIA request.
- Maintain a copy of the record(s) referred.

NONPUBLIC//FDIC INTERNAL ONLY

What are the Procedures for Receiving a Referral?



- Assign your agency's own FOIA tracking number on the referral and notify the FOIA requester of your agency's receipt of the referral. Always include the original request number from the referring agency. Provide the requester with your agency's FOIA contact information.
- Place the referral in the appropriate processing track according to the date the FOIA request was first received by the agency **making** the referral.
- Review the record(s) for any required withholdings and process the referral as a FOIA request.
- Complete processing the referral and send any responsive record(s) to the original requester as soon as practicable.

Source: DOJ/OIP "Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them (https://www.justice.gov/oip/blog/referrals-consultations-and-coordination-procedures-processing-records-when-another-agency).

HAI_FOIA0000269

What Can I Do as the FOIA Coordinator?



When you come across a potential consult or document that needs to be referred, it would be helpful to flag it for the GIS.

Consultation & Referral Citations

- **Consultation Definition**: https://www.fdic.gov/foia/files/foiareport22.pdf.
- **E.O. 12,600**: https://www.archives.gov/federal-register/codification/executive-order/12600.html.
- **Consistency of Response**: https://www.justice.gov/oip/blog/referrals-consultations-and-coordination-procedures-processing-records-when-another-agency.
- **Extend response time in unusual circumstances**: 5 U.S.C. § 552(a)(6)(B)(i)-(iii).

Module Five

Pertinent FOIA Case Law

If You Want to Know More About the FOIA:

- FDIC FOIA Regulations, 12 C.F.R. § 309.5
- FDIC Circular 1023.1, Procedures for Processing FOIA Requests
- Office of Information Policy, Department of Justice - Guide to the Freedom of Information Act

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

Additional FOIA Training

Go to FLX and search "FOIA." DOJ Video Training Classes (to be updated soon):

FOIA Training for Professionals (3 hours)

FOIA Training for All Employees (1 hour)

DOJ Office of Information and Policy (OIP) FOIA Training:

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

American Society of Access Professionals (ASAP) - June 3-5, 2024, Anaheim CA

https://www.accesspro.org/

FDIC FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
Jill Lennox, Acting FDIC Ombudsman, FOIA Public Liaison

FOIA/PA GROUP

Sarah Cunanan, Supervisory Counsel
Partap Verma, Senior Privacy Counsel
Jeannette Wise, FOIA Counsel
Christine Grauer, Senior Attorney
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Charles Smith, GIS
Sarah Hayden, Paralegal Specialist
Ali Khurrum, GIS

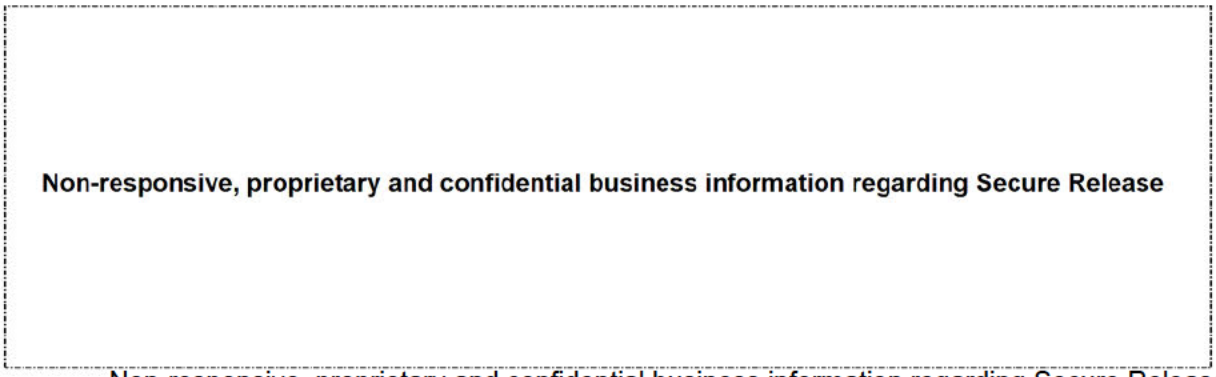
FOIA Training Seminar

Questions & Answers

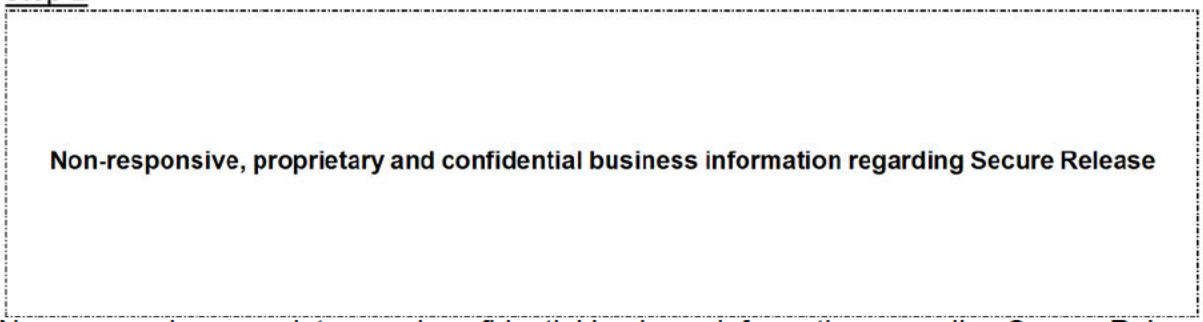
Upload, Ingestion & Redaction Cheat Sheet for FOIA Coordinators

After you locate responsive records, SAVE them electronically.

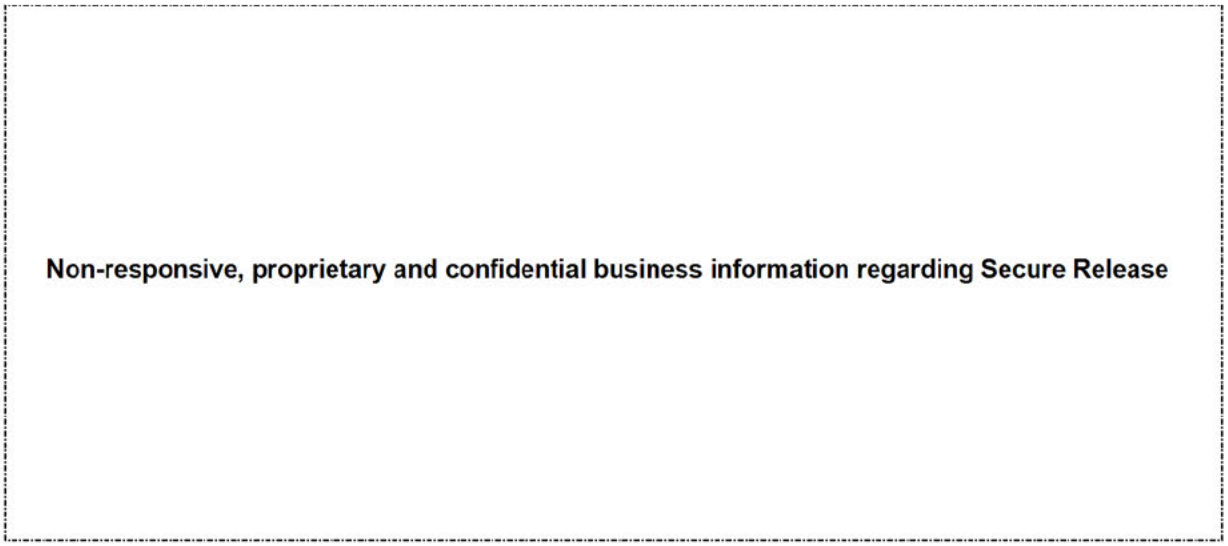
Non-responsive, proprietary and confidential business information regarding Secure Release



Step 1 Non-responsive, proprietary and confidential business information regarding Secure Release

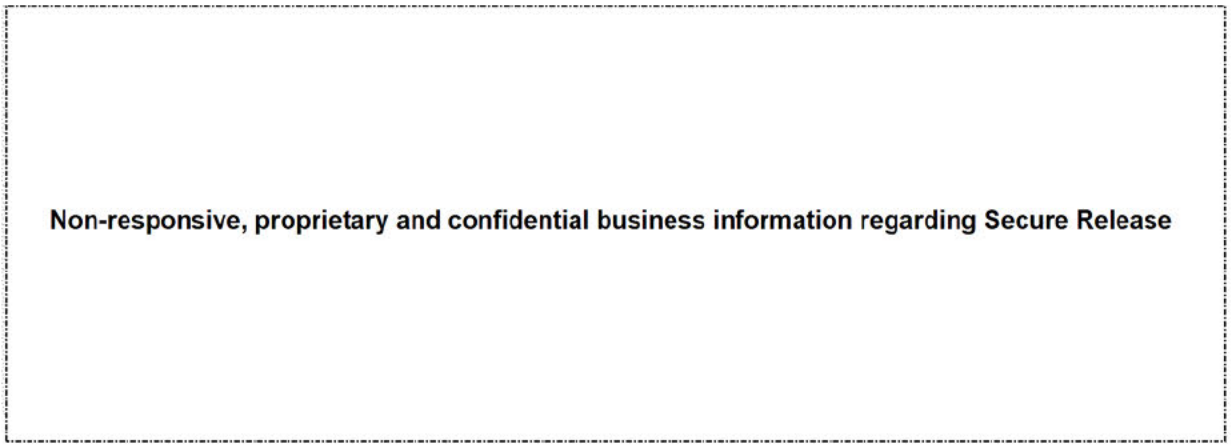


Non-responsive, proprietary and confidential business information regarding Secure Release

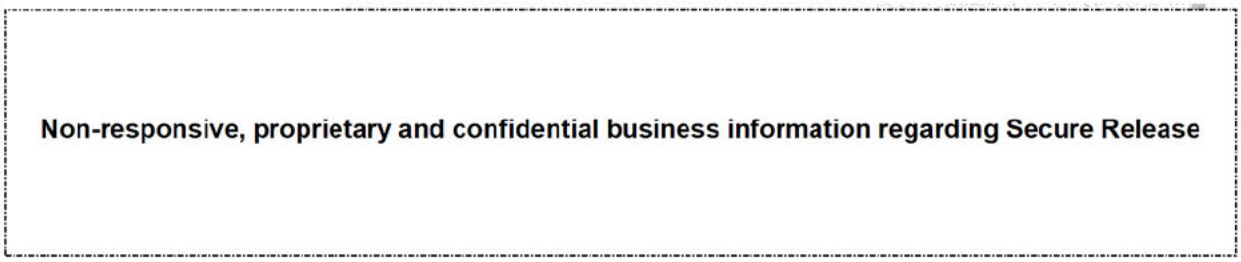


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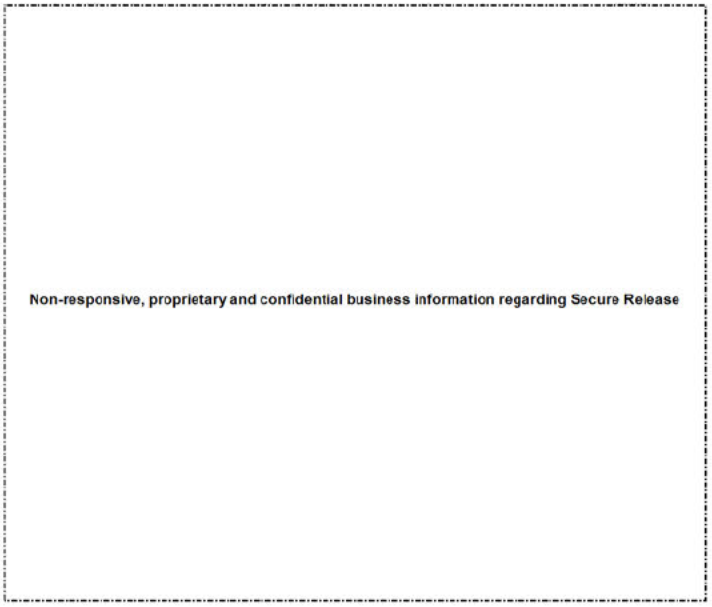
After document(s) are uploaded.
Non-responsive, proprietary and confidential business information regarding Secure Release



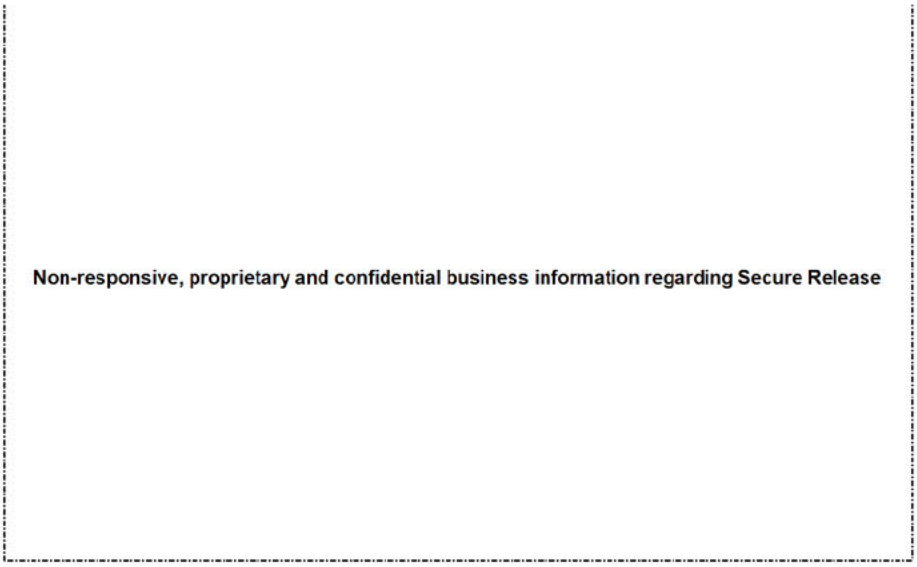
Step 2 – Non-responsive, proprietary and confidential business information regarding Secure Release
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Non-responsive, proprietary and confidential business information regarding Secure Release



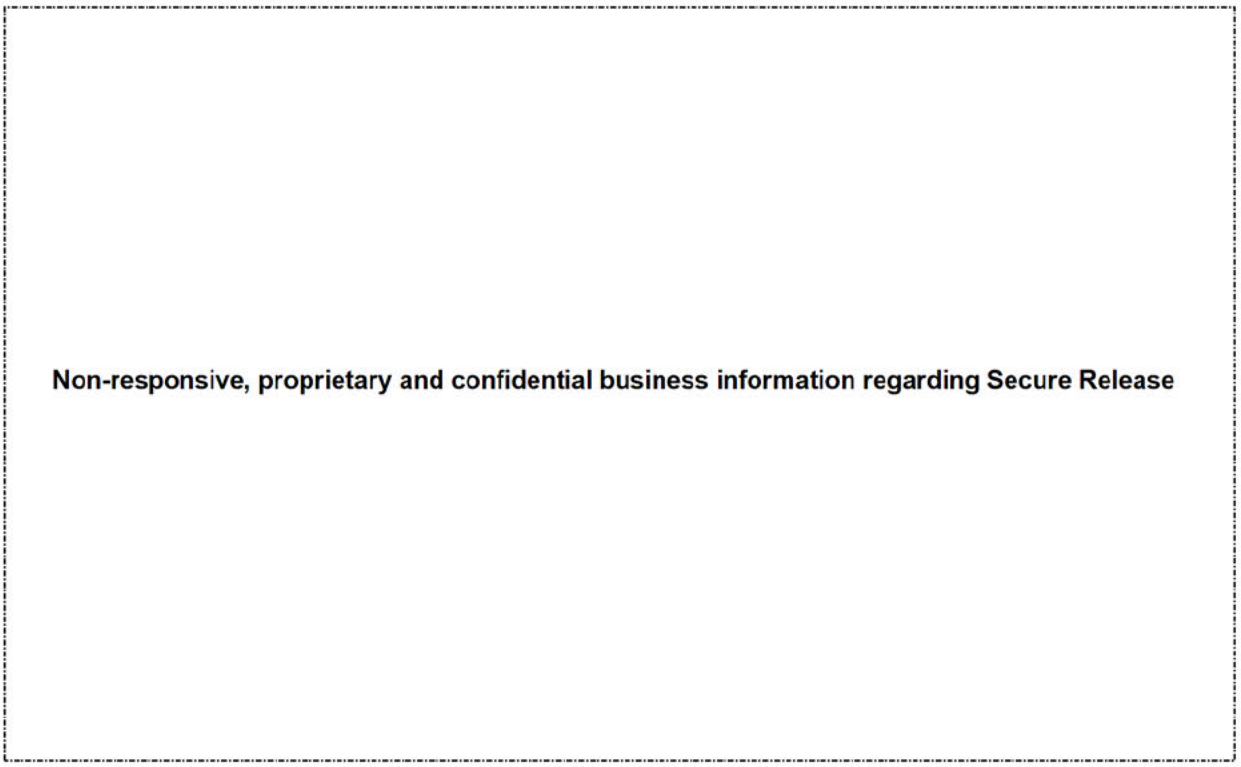
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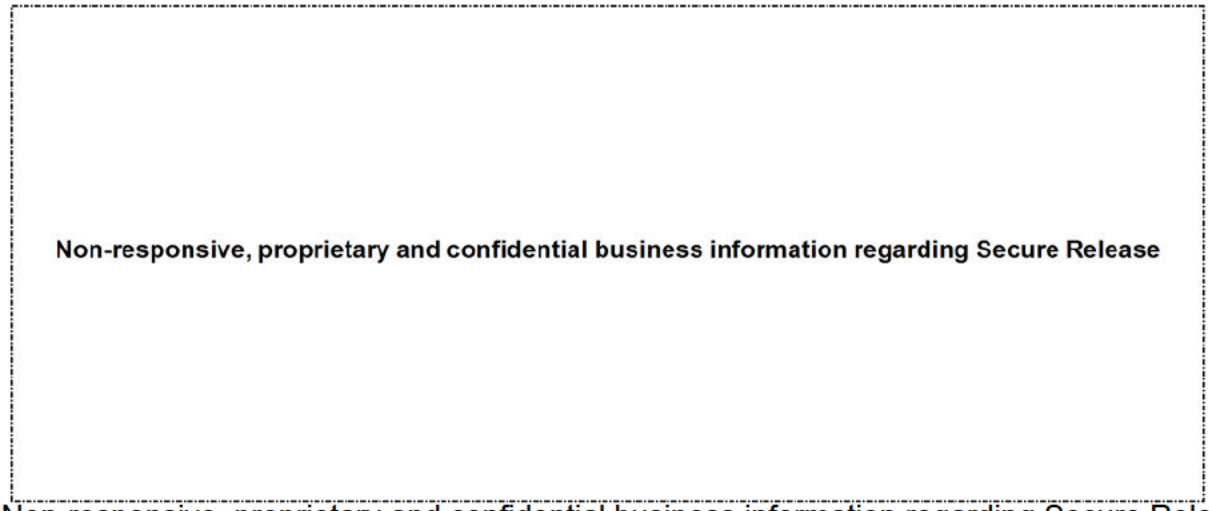
Step 3 – Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

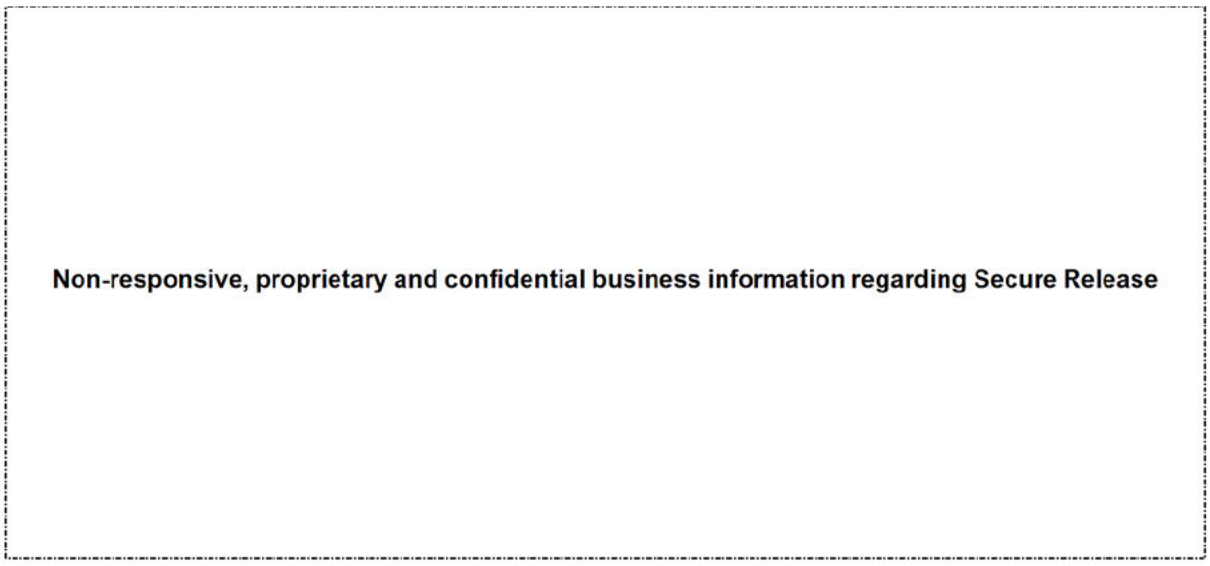
Non-responsive, proprietary and confidential business information regarding Secure Release This will be the most commonly used redaction mode.



Non-responsive, proprietary and confidential business information regarding Secure Release



Non-responsive, proprietary and confidential business information regarding Secure Release



Step 4 – Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release Continue through all the documents in the FOIA case.

Non-responsive, proprietary and confidential business information regarding Secure Release

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

Freedom of Information Act (FOIA)

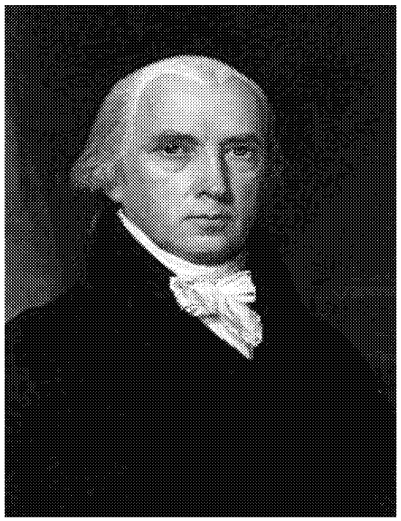
Refresher Training for the Office of the Ombudsman

May 8, 2024

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

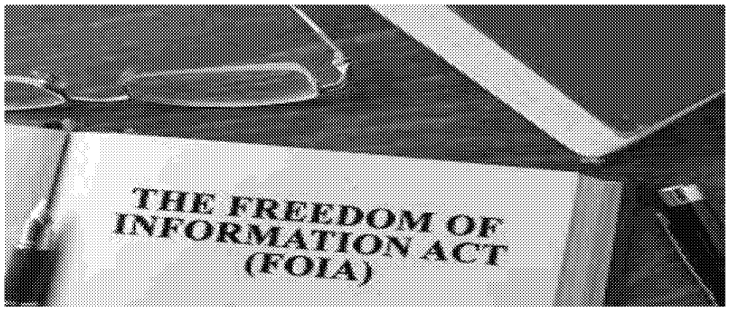
Freedom of Information Act 5 U.S.C. 552

"Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both"
— **James Madison**



Freedom of Information Act 5 U.S.C. 552

The Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exceptions or by one of three special law enforcement record exclusions.

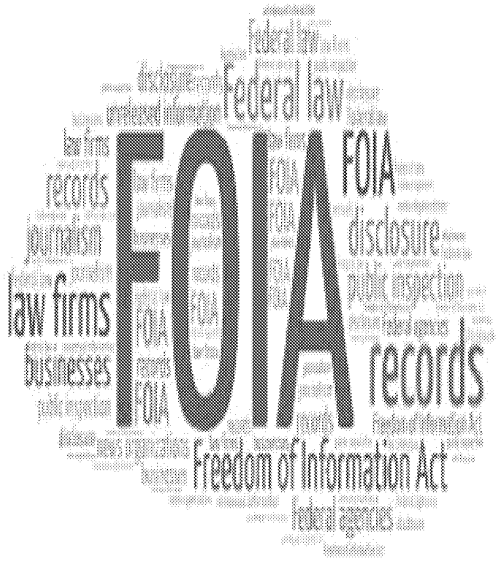


What is a valid FOIA request?

FDIC FOIA

Regulations 12 C.F.R. § 309.5

- Must be in writing
- Must be from a "person"
- Must have a reasonable description of records being sought



Agency Records

The FOIA permits a person to request access to agency records.

- Records that we created or obtained during the course of our operations and activities AND are in our control at the time we receive a FOIA request



Reasonable Interpretation vs Clarification

- In some instances, we may be able to reasonably interpret broad requests.
- In other instances, we need to clarify/limit the scope with the requester.

Time Limits for Responding to a Request

- 20 working days to respond
- In “unusual circumstances” agency may extend time limit by 10 days by giving written notice to requester
- Requesters can ask for expedited processing
- Requester can sue if response deadlines are not met



Fees

FOIA Requester Fee Categories

- Commercial Use Requester
- Educational institutions, non-commercial scientific institutions
- News media
- All others



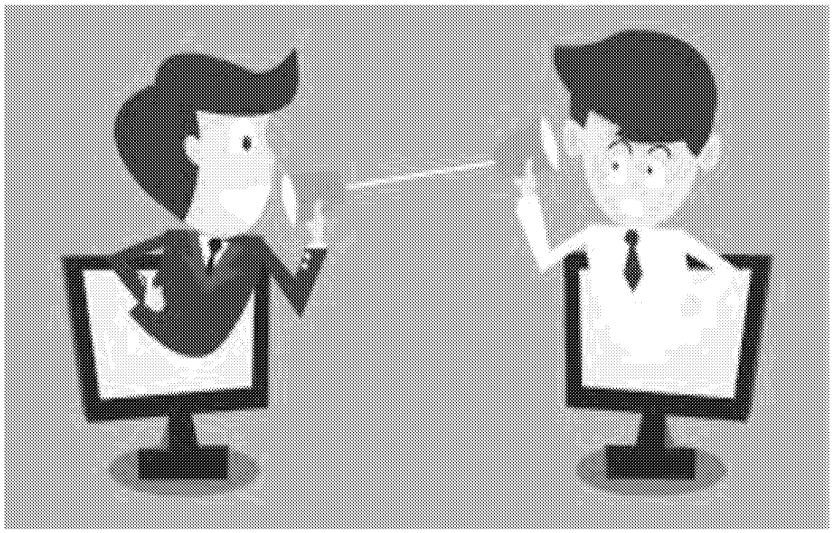
FDIC Fee Schedule - https://www.fdic.gov/foia/fees.html

Fee Estimates

Communication with Requesters

Written:

- Acknowledgement Letter
- Abatement Letters
- Extension Letter
- Status Checks



Phone:

- Status Checks
- Clarification

SecureRelease Portal:

- Visibilty of FOIA throughout lifecycle
- Status Checks

FOIA Exemptions

Exemption Two
Records related solely to the internal personnel rules and practices of the FDIC.
Exemption Three
Records specifically exempted from disclosure by statute
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
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.

Foreseeable Harm Analysis

Attorney General's Memorandum

- Signed March 15, 2022

- 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.

Appeals and Litigation



- Right to file an administrative appeal within 90 days
  - Only can appeal adverse determinations
- Corp Lit handles appeals
- De Novo review
- Review of administrative record and documents (if applicable)
- Corp. Lit. may coordinate with FOIA Group and/or Division FOIA Coordinators and SMEs
- Appeal is either affirmed or overturned
- After appeal, the requester can bring a lawsuit in federal district court

FDIC FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
TBD, FDIC Ombudsman, FOIA Public Liaison

FOIA/PA GROUP

Sarah Cunanan, Supervisory Counsel
Partap Verma, Privacy Counsel
Jeannette Wise, FOIA Counsel
Christine Grauer, FOIA Attorney
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Charles Smith, GIS
Khurrum Ali, GIS
Sarah Hayden, GIS
Clayton Day, GIS
Alicia Marable, Senior Attorney (Detail)
Loredana Kratzer, Paralegal Specialist (Detail)

If you want to know more about the FOIA

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FOIA Training for Professionals

(3 hours)

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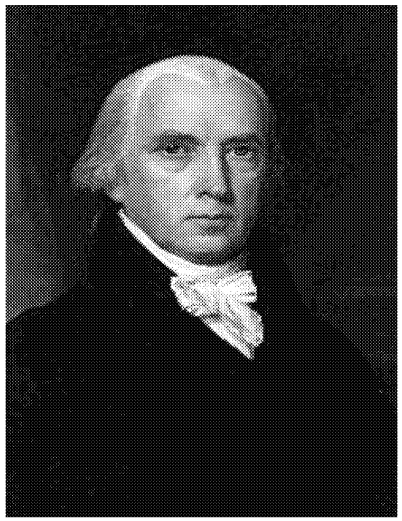
Refresher Training for the Chicago Region Staff

July 24, 2024

FDIC
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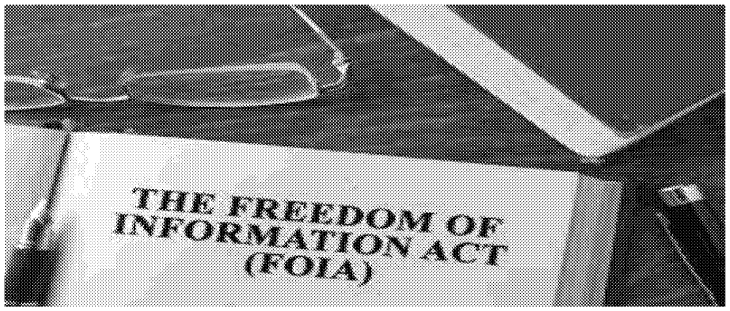
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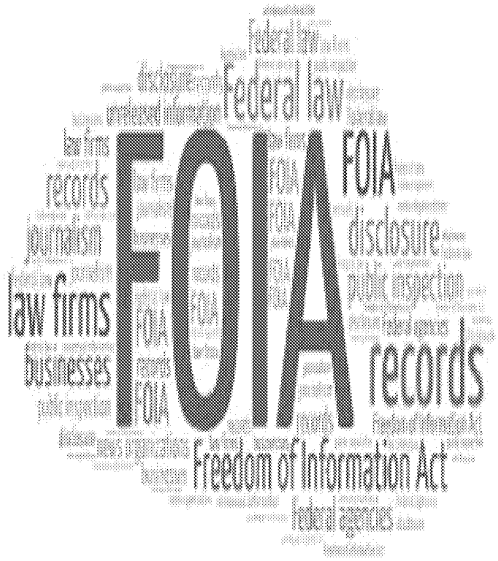


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Exemption Three
Records specifically exempted from disclosure by statute
Exemption Four
Trade secrets and commercial or financial information obtained from a person that is privileged or confidential.
Exemption Five
Interagency or intra-agency memoranda 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
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.

Foreseeable Harm Analysis



Attorney General's Memorandum

- Signed March 15, 2022

- 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.

Appeals and Litigation



- Right to file an administrative appeal within 90 days
  - Only can appeal adverse determinations
- Corp Lit handles appeals
- De Novo review
- Review of administrative record and documents (if applicable)
- Corp. Lit. may coordinate with FOIA Group and/or Division FOIA Coordinators and SMEs
- Appeal is either affirmed or overturned
- After appeal, the requester can bring a lawsuit in federal district court

FDIC FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
TBD, FDIC Ombudsman, FOIA Public Liaison

FOIA/PA GROUP

Sarah Cunanan, Supervisory Counsel
Partap Verma, Privacy Counsel
Jeannette Wise, FOIA Counsel
Christine Grauer, FOIA Attorney
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Charles Smith, GIS
Khurrum Ali, GIS
Sarah Hayden, GIS
Clayton Day, GIS
Alicia Marable, Senior Attorney (Detail)
Loredana Kratzer, Paralegal Specialist (Detail)

If you want to know more about the FOIA

FDIC FOIA Regulations, 12 CFR § 309.5

FDIC Circular 1023.1, Procedures for Processing FOIA Requests

Office of Information Policy, Department of Justice - Guide to the Freedom of Information Act

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

Go to FLX and search "FOIA" DOJ Video Training Classes

FOIA Training for Professionals

(3 hours)

FOIA Training for All Employees

(1 hour)



2024 CONFERENCE
Litigation Branch

FDIC

Planning for the Future

Disclosure of Information to Third Parties and Appropriate Data Protection

Dallas, TX
Thursday, September 26, 2024
11 a.m.

Panel Discussion

- **Moderator | Anne Devens,** Counsel, Commercial Litigation Unit
- **Sarah Faust,** Counsel, Corporate Litigation Unit
- **Bryce Quine,** Counsel, Litigation Section, Dallas Regional Office
- **Steven Smith,** Counsel, Professional Liability and Financial Crimes Section
- **Lina Soni,** Counsel, Corporate Litigation Unit
- **Jeannette Wise,** Counsel, FOIA and Privacy Act Group, Corporate Operations Branch

Non-Responsive, Sensitive

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Non-Responsive, Sensitive

Question 3

The FDIC receives the following FOIA request for records pertaining to Freedom Bank from Olivia Pope.

Pursuant to the Freedom of Information Act, I request the following:

All communications to or from the FDIC that relate to or mention Freedom Bank.

Is this a proper FOIA request?

A. Yes

B. No

Question 3

Is this a proper FOIA request?

A. Yes

B. No

Question 3 Answer

B. No, this is not a proper FOIA request.

Question 3 With Correct Answer

The FDIC receives the following FOIA request for records pertaining to Freedom Bank from Olivia Pope.

Pursuant to the Freedom of Information Act, I request the following:

All communications to or from the FDIC that relate to or mention Freedom Bank.

Is this a proper FOIA request?

A. Yes

B. No, this is not a proper FOIA request.

Question 4

After being notified that her original FOIA request was not proper, Olivia Pope submitted a new request seeking the following:

Pursuant to the Freedom of Information Act, I request the following:

1. *All emails sent to, from, or copied to Martin J. Gruenberg, Travis Hill, or Jonathan McKernan from February 1, 2023 to March 31, 2023 that contain the words "Freedom Bank" or the email domain "@freedombank.com."*
2. *All letters sent or received by the FDIC's Office of Legislative Affairs referencing Freedom Bank from February 1, 2023 to March 31, 2023.*
3. *Any OIG investigative report related to Freedom Bank, including any supporting documentation, from March 1, 2020 to March 31, 2023.*

Is this a proper FOIA request?

A. Yes

B. No

Question 4

Is this a proper FOIA request?

A. Yes

B. No

Question 4 With Correct Answer

After being notified that her original FOIA request was not proper, Olivia Pope submitted a new request seeking the following:

Pursuant to the Freedom of Information Act, I request the following:

1. *All emails sent to, from, or copied to Martin J. Gruenberg, Travis Hill, or Jonathan McKernan from February 1, 2023 to March 31, 2023 that contain the words "Freedom Bank" or the email domain "@freedombank.com."*
2. *All letters sent or received by the FDIC's Office of Legislative Affairs referencing Freedom Bank from February 1, 2023 to March 31, 2023.*
3. *Any OIG investigative report related to Freedom Bank, including any supporting documentation, from March 1, 2020 to March 31, 2023.*

Is this a proper FOIA request?

A. Yes, this is a proper FOIA request.

B. No

FOIA: Key Points

- Per FDIC FOIA regulations requests must be reasonably described (12 C.F.R. § 309.5)
- Requests can be submitted by any person, but there are a few exceptions
- We have 20 business days to respond unless there are "unusual circumstances"
- Information can be withheld if it falls within one of nine FOIA exemptions
- Coordination with other offices takes place as needed (pending litigation matters/Congressional requests/ERIN)
- OIG records processed per MOU
- Confidential Treatment – Requests submitted in the context of ongoing litigation/disclosures

Non-Responsive, Sensitive

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QUESTIONS?

THANK YOU!

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Bi-Annual FOIA Training Seminar

Agenda – October 3, 2024

9:00 am to 12:15 pm

Time	Topic	Presenter
9:00 – 9:10	**Opening Remarks**	Sarah Cunanan, Supervisory Counsel, FOIA/Privacy Act Group
9:10 – 10:00	Module 1 – Office of Government Information Services (OGIS)	Martha Wagner Murphy, Deputy Director, OGIS
10:00 – 10:30	Module 2 - SecureRelease Topics	Alisa Colgrove, Government Information Specialist (GIS)
10:30 – 10:45	**Break**	
10:45 – 11:30	Module 3 – FOIA Best Practices Panel	**Moderator:** Christine Grauer, Sr. Attorney **Panelists:** Khurrum Ali, GIS & Division FOIA Coordinators from DCP, RMS, DRR, CISR, Legal and OIG
11:30 – 12:00	Module 4 – FDIC Ombuds Office	Kirk Daniels, Regional Ombudsman
12:00 – 12:15	**Q&A and Closing Remarks**	FOIA/PA Group

Freedom of Information Act (FOIA)

Bi-Annual Training Seminar

October 3, 2024

9:00am – 12:15pm

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Opening Remarks

Sarah Cunanan,
Supervisory Counsel,
FOIA/Privacy Act Group

FEDERAL DEPOSIT INSURANCE CORPORATION

Module One

Office of Government Information Services

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

NATIONAL ARCHIVES

OGIS OFFICE of GOVERNMENT INFORMATION SERVICES

The Office of Government Information Services (OGIS)

Martha Murphy, OGIS Deputy Director

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OGIS's Mission

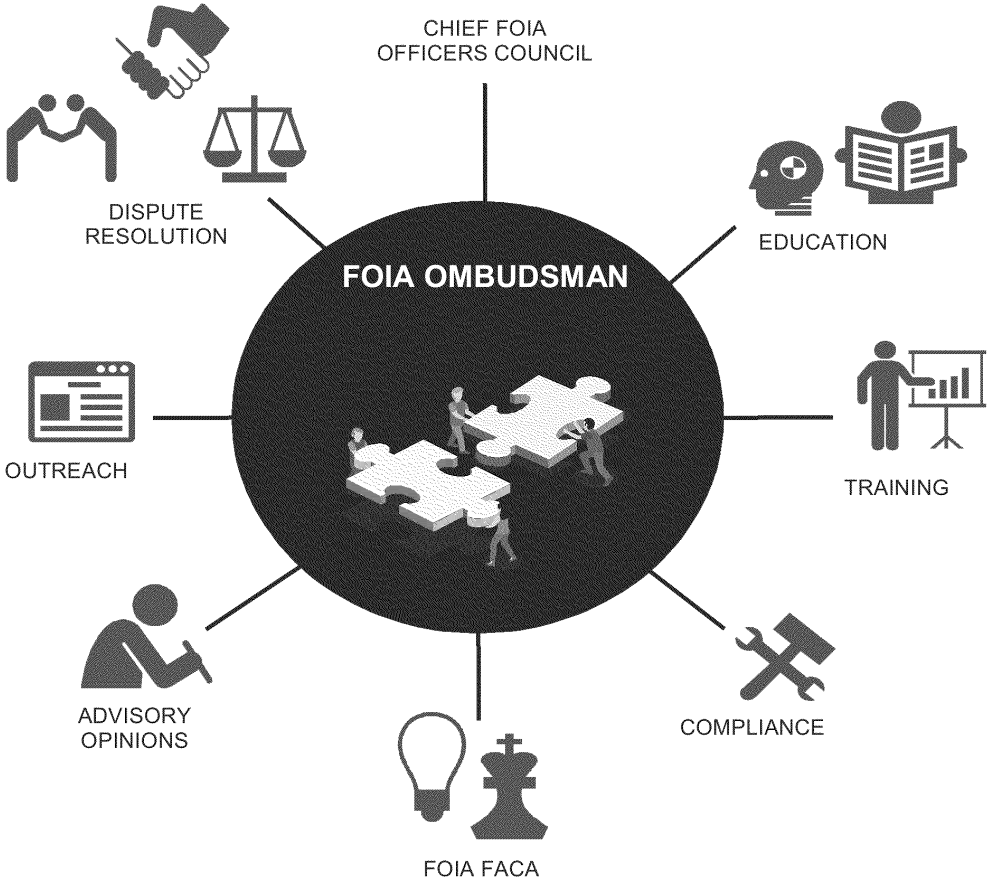
5 U.S.C. §§ 552(h)(1)–(3)

- **Provide mediation services to resolve FOIA disputes**
- **Review agencies' FOIA policies, procedures & compliance**
- **Identify procedures & methods for improving FOIA compliance**

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NONPUBLIC//FDIC INTERNAL ONLY

FOIA OMBUDSMAN YEAR IN REVIEW FY 2023



COMMUNICATING WITH STAKEHOLDERS

45 blog posts

214 Twitter/X posts

SUPPORTING FOIA'S LEADERS

2 Chief FOIA Officers Council Meetings

3 Chief Data Officers Council Meetings

3 Federal Privacy Council Meetings

4 FOIA Advisory Committee Meetings

6 FOIA negotiation trainings led by OGIS

Presented at Council of Government Ethics Laws Conference

Presented at American Society of Access Professionals Conference

ASSISTING CUSTOMERS

5,536 requests received

5,470 cases closed

98.4% of cases initiated or acknowledged within 10 days

98.5% of cases closed within 90 days

IDENTIFYING ISSUES

1 CFO Council Chair Memorandum

1 Assessment on Agency Websites

1 Agency Self-Assessment Report

1 FOIA Recommendation

2 Ombuds Observers

Sunshine Week Activities on Access to Information

Compliance: Not the FOIA Police!

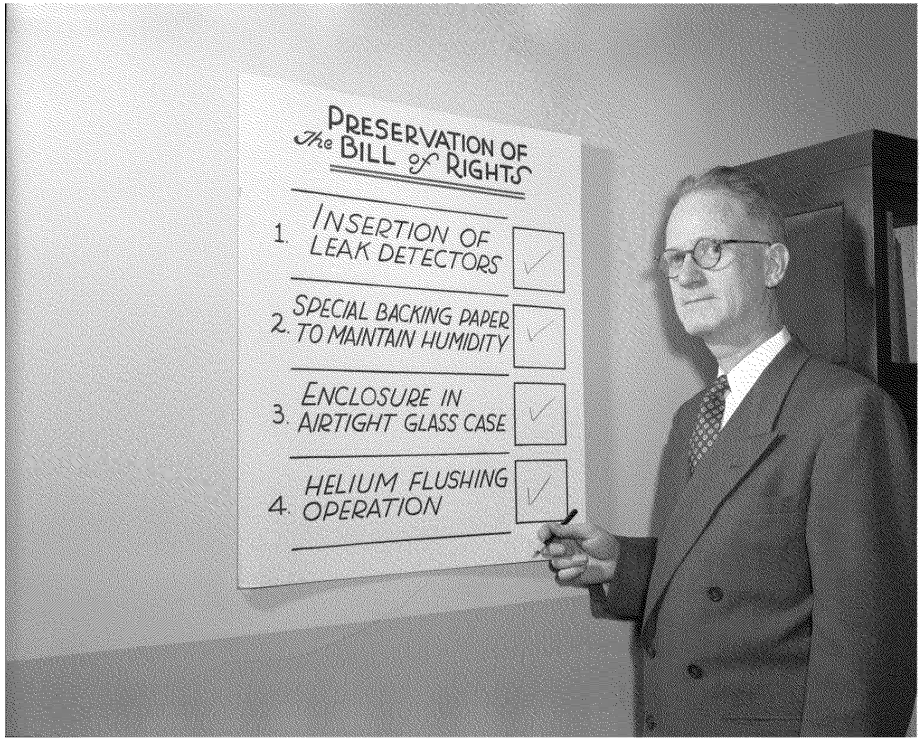


- Website/Contacts on FOIA.gov
- Letters
- Patterns
- Regulations review
- Estimated Dates of Completion!

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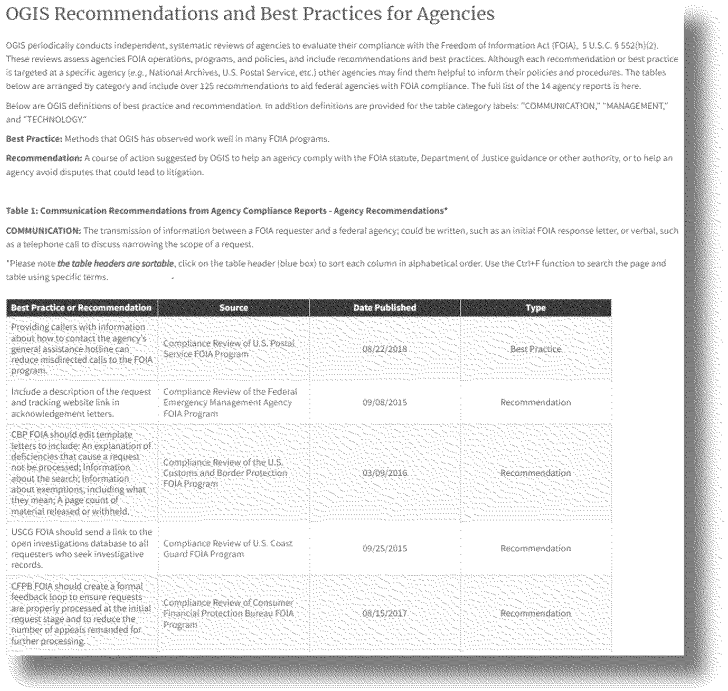
Compliance: Assessments

- 14 assessments of agency FOIA programs
- 11 assessments of FOIA issues cutting across most or all agencies



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OGIS Recommendations & Best Practices



OGIS Recommendations and Best Practices for Agencies

OGIS periodically conducts independent, systematic reviews of agencies to evaluate their compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552(h)(2). These reviews assess agencies FOIA operations, programs, and policies, and include recommendations and best practices. Although each recommendation or best practice is targeted at a specific agency (e.g., National Archives, U.S. Postal Service, etc.) other agencies may find them helpful to inform their policies and procedures. The tables below are arranged by category and include over 125 recommendations to aid federal agencies with FOIA compliance. The full list of the 14 agency reports is here.

Below are OGIS definitions of best practice and recommendation. In addition definitions are provided for the table category labels: "COMMUNICATION," "MANAGEMENT," and "TECHNOLOGY."

Best Practice: Methods that OGIS has observed work well in many FOIA programs.

Recommendation: A course of action suggested by OGIS to help an agency comply with the FOIA statute, Department of Justice guidance or other authority, or to help an agency avoid disputes that could lead to litigation.

Table 1: Communication Recommendations from Agency Compliance Reports - Agency Recommendations*

COMMUNICATION: The transmission of information between a FOIA requester and a federal agency; could be written, such as an initial FOIA response letter, or verbal, such as a telephone call to discuss narrowing the scope of a request.

*Please note ***the table headers are sortable***, click on the table header (blue box) to sort each column in alphabetical order. Use the Ctrl+F function to search the page and table using specific terms.

Best Practice or Recommendation	Source	Date Published	Type
Providing callers with information about how to contact the agency's general assistance hotline can reduce misdirected calls to the FOIA program.	Compliance Review of U.S. Postal Service FOIA Program	08/22/2018	Best Practice
Include a description of the request and tracking website link in acknowledgement letters.	Compliance Review of the Federal Emergency Management Agency FOIA Program	09/08/2015	Recommendation
CBP FOIA should edit template letters to include: An explanation of deficiencies that cause a request not be processed; Information about the search; Information about exemptions, including what they mean; A page count of material released or withheld.	Compliance Review of the U.S. Customs and Border Protection FOIA Program	03/09/2016	Recommendation
USCG FOIA should send a link to the open investigations database to all requesters who seek investigative records.	Compliance Review of U.S. Coast Guard FOIA Program	09/25/2015	Recommendation
CFPB FOIA should create a formal feedback loop to ensure requests are properly processed at the initial request stage and to reduce the number of appeals remanded for further processing.	Compliance Review of Consumer Financial Protection Bureau FOIA Program	08/15/2017	Recommendation

- Nearly 180 from agency & issue assessments
- Three categories:
  - Management
  - Technology
  - Communication

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NATIONAL ARCHIVES | OGIS OFFICE of GOVERNMENT INFORMATION SERVICES

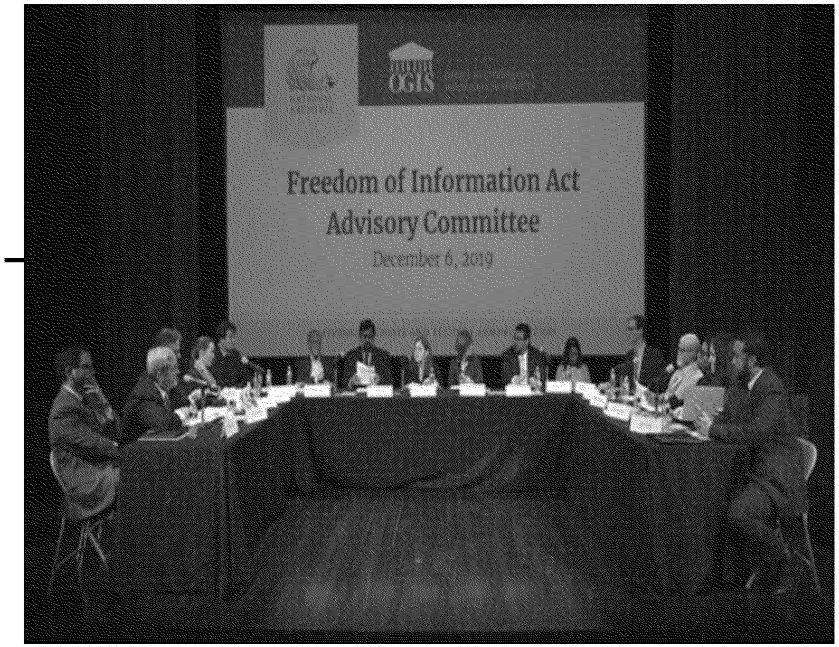
CHIEF FOIA OFFICERS COUNCIL



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FOIA Advisory Committee

- Dovetails with OGIS's mandate to "identify procedures and methods for improving [FOIA] compliance.''
- Equal number of government and non-government members
- 67 recommendations total
- New term starts September 9th



Register on Eventbrite or watch on the NARA YouTube channel!

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FOIA Advisory Committee Dashboard

FOIA Advisory Committee Recommendations Dashboard

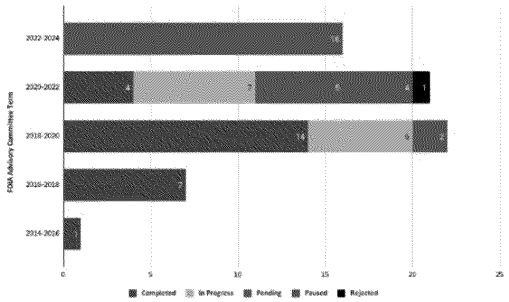
The first five terms of the **FOIA Advisory Committee** made a total of 67 recommendations for improving FOIA administration across the government: one in 2016; seven in 2018; 22 in 2020; one in 2021; 20 in 2022; one in 2023; and 15 in 2024. This dashboard describes each recommendation, actions taken to fulfill each, and links to reports, correspondence and other related material.

The dashboard indicates whether recommendations are completed, in progress, pending, deferred or rejected. Closed recommendations are marked completed.

- **COMPLETED** means that we have fulfilled the recommendation although opportunities may exist for additional work.
- **IN PROGRESS** means work has begun on fulfilling the recommendation.
- **PENDING** means work has not yet started on the recommendation.
- **DEFERRED** means the recommendation is on hold pending the outcome of a feasibility study.
- **REJECTED** means the Acting Archivist of the United States did not accept the recommendation.

NOTE: Recommendations that are Completed or Rejected are listed below the table.

Last Modified on July 11, 2024



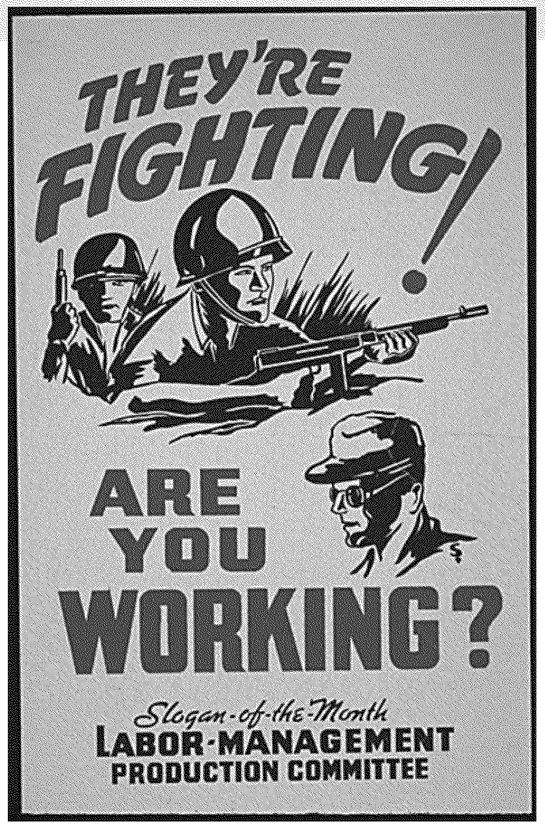
Number of Reports	Number of Recommendations	Number of Completed Recommendations	Number of Recommendations In Progress	Number of Pending Recommendations	Number of Deferred Recommendations	Number of Rejected Recommendations
6	67	26	13	23	4	1

Committee Term	Recommendation No.	Recommendation Description	Recommendation Category	Status	Action Taken
2018-2020	2020-02	The Department of Justice, Office of Information Policy (OIP), will issue guidance related to the inclusion of records management-related materials and FOIA handbooks on agency websites.	ENHANCING ONLINE ACCESS	IN PROGRESS	**OGIS Issue Assessment: Agency FOIA Websites**, published in November 2022, fulfilling Recommendation 2020-01, found that a majority of agencies (81%) did not describe or link to their agency's records schedule and (72%) did not define an "agency record." OGIS shared the assessment with OIP.
2018-2020	2020-03	Agencies will work toward the goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories, and on agency websites.	ENHANCING ONLINE ACCESS	IN PROGRESS	The Office of Information Policy (OIP) developed an interactive tool on **FOIA.gov** to help the public more easily locate records online or find the right agency to submit their FOIA requests when information is not already posted. The FOIA Wizard is the initial phase of a multiphase project. Enhancing user experience on FOIA.gov is a commitment in the **Fifth U.S. Open Government National Action Plan**.
2018-2020	2020-11	The Department of Justice, Office of Information Policy (OIP), will provide guidance to agencies on the use of e-discovery tools to assist agencies in their searches of electronic records in response to FOIA requests.	TECHNOLOGY	IN PROGRESS	Many of the 22 vendors that participated in the February 2022 **NexGen FOIA Tech Showcase** shared their commercial e-discovery tools for searching for records responsive to FOIA requests. The Chief FOIA Officers (CFO) Council **Technology Committee** and the Office of Information Policy (OIP) hosted an Artificial Intelligence 101 Workshop for FOIA in 2020. The Technology Committee's Search/Artificial Intelligence Working Group continues to study the issue. Agencies continue to report on their CFO Reports efforts to implement e-discovery and other tools. OIP, in its **Guidance for Further Improvement Based on 2021 CFO Report Review and Assessment**, continued to encourage agencies to leverage technology for greater efficiency.
2018-2020	2020-17	The Chief FOIA Officers (CFO) Council will work with agency leadership to issue an annual memorandum on the importance of FOIA.	CHIEF FOIA OFFICERS COUNCIL	PENDING	
2018-2020	2020-21	The Archivist of the United States will actively guide ongoing and future federal data strategies to include FOIA and federal recordkeeping policies.	LOOKING TO THE FUTURE	IN PROGRESS	The Chief Records Officer for the U.S Government issued an assessment, **Agency Chief Data Officer Coordination with Records Management Programs**, in March 2022. Although the assessment does not reference FOIA, there is a crucial relationship between records and data management and FOIA.

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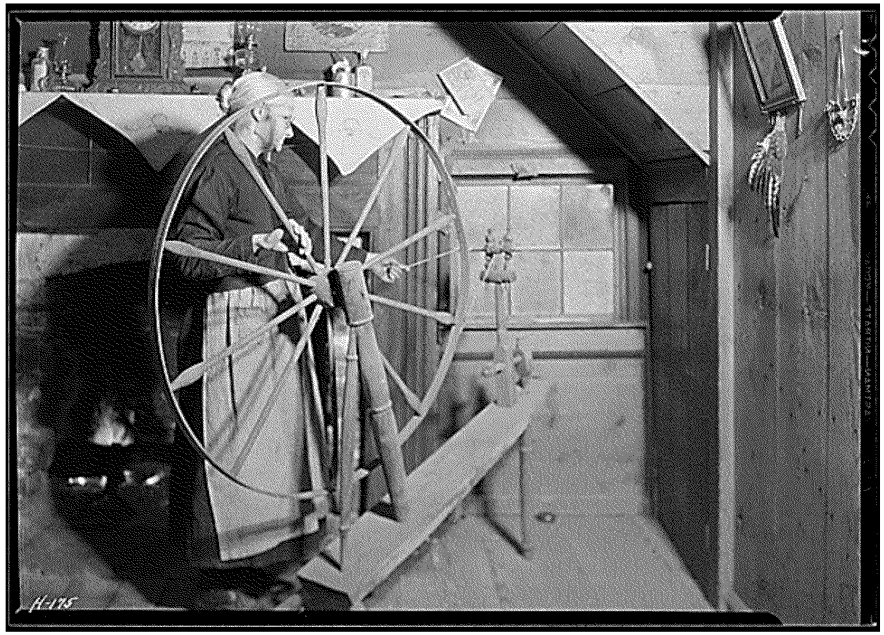
Resolving FOIA Disputes

- Addressing questions and concerns about the FOIA process
- Provides information through "shuttle diplomacy"
- Increase understanding of positions and interests



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OGIS Does Not Ask Agencies To…

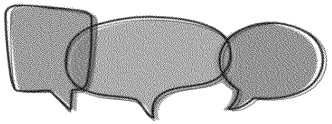


- Prioritize one request before others
- Review the use of exemptions post-appeal
- Provide special treatment to one request or requester

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What Does OGIS's Help Look Like?







I am looking for records about myself…

My request for a fee waiver was denied…

The agency withheld information from my records…

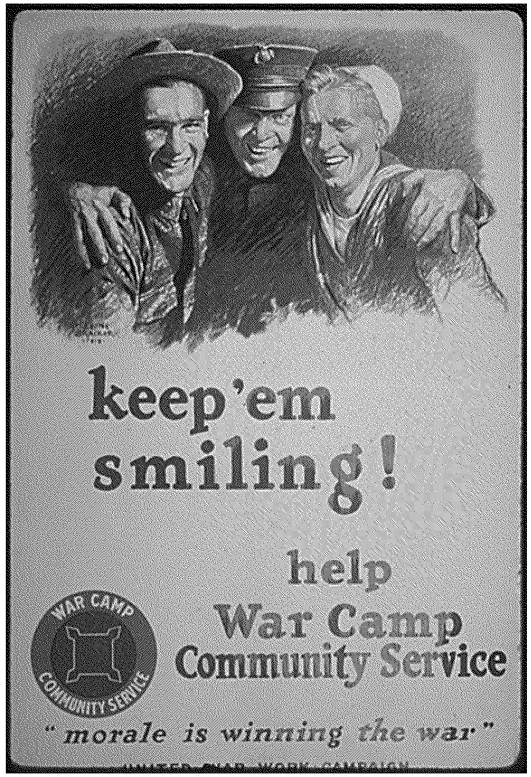
I haven't received a response to my FOIA request…



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Customer Experience and Service

- FOIA Website: Is the information comprehensive and accurate?
- Correspondence: Do letters use plain language? Are they accurate and comprehensive?
- Phone Lines: Are they functional and monitored?
- Email: Are email addresses published and monitored?
- Contact Information: Is it clear? Is FOIA.gov updated?



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Communication is Key

Written Communications:

- Scope of request
- Returning required documentation
- Clear and accurate follow up contacts
- Minimal canned or legal language

Verbal Communications:

- Consider the requester's perspective
- Narrowing and prioritizing request
- Follow up in writing



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What About Agencies?

- **Negotiation Skills Training**
- **Conflict Coaching**
- **Soundboarding**
- **Letter/ Language Review**



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Keep in Touch!

www.archives.gov/ogis

ogis@nara.gov

@FOIA_ombuds

foia.blogs.archives.gov

SCAN ME

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Module Two

SecureRelease™ Topics

- Review Tiers
- New - Record Custodian Correspondence Template
- Structured Analytics

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

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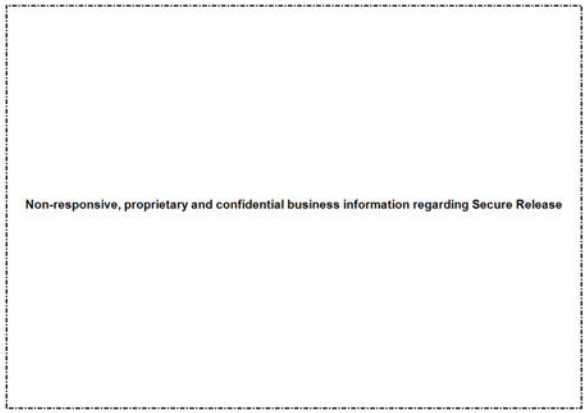
Additional Review Tiers

Non-responsive, proprietary and confidential business information regarding Secure Release

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Correspondence Template for Record Custodians

- Provide additional guidance to record custodians/SMEs
- Do not be surprised by other Divisions being involved!
- Located under “Other Correspondence”



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Structured Analytics

- Utilized in voluminous and complex FOIA cases.
- Review in different view than FOIA case file in Documents.
- Helps to eliminate “near duplicates” of records.
- Only need to review “most inclusive threads” of emails.

Non-responsive, proprietary and confidential business information regarding Secure Release

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SecureRelease™ Support

- Email: securereleasesupportteam@deloitte.com
  - Cc: Alisa Colgrove & Christine Grauer
- Phone Number: 844-919-0718

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15-Minute Break



Module Three

FOIA Best Practices Panel

FEDERAL DEPOSIT INSURANCE CORPORATION

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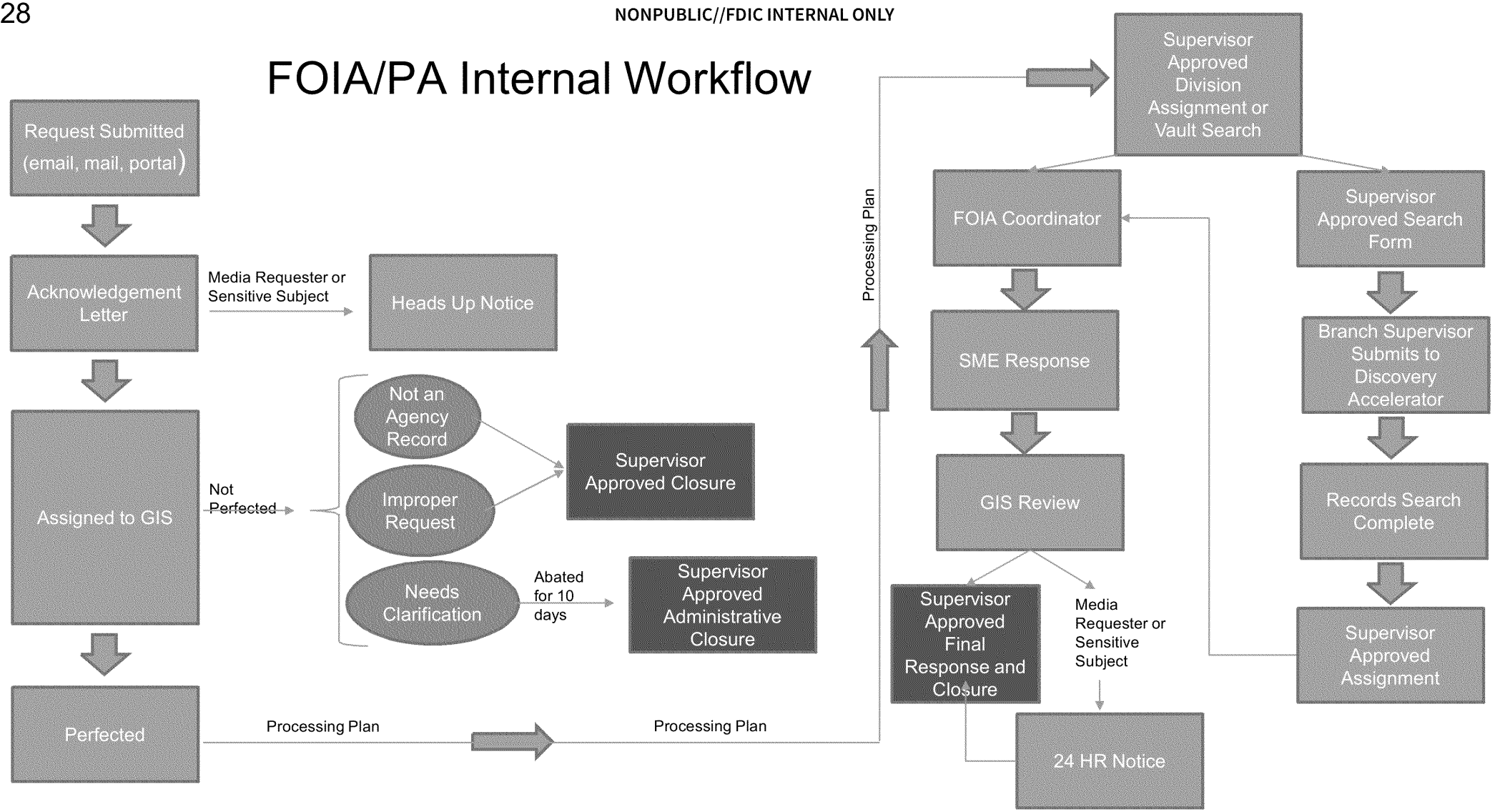
Panelists

Christine Grauer – Moderator, Sr. Attorney, FOIA/PA Group

Khurrum Ali – GIS, FOIA/PA Group
Sheree Haywood – DCP FOIA Coordinator
Khuyen Tran – CISR FOIA Coordinator
Melody Monroe – Legal FOIA Coordinator
Non-responsive, FDIC OIG Employee
Al Murdock – RMS FOIA Coordinator
Debi Hodes – DRR FOIA Coordinator

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FOIA/PA Internal Workflow



Module Four

FDIC Ombuds Office

FEDERAL DEPOSIT INSURANCE CORPORATION

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Want to Know More About the FOIA:

- FDIC FOIA Regulations, 12 C.F.R. § 309.5
- FDIC Circular 1023.1, Procedures for Processing FOIA Requests
- Office of Information Policy, Department of Justice - Guide to the Freedom of Information Act

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

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Additional FOIA Training

To be updated soon in FLX soon:
FOIA Training for Professionals (3 hours)
FOIA Training for All Employees (1 hour)

DOJ Office of Information and Policy (OIP) FOIA Training:
https://www.justice.gov/oip/training

American Society of Access Professionals (ASAP) - June 3-5, 2024, Anaheim CA
https://www.accesspro.org/

FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
FDIC Ombuds, FOIA Public Liaison

FOIA/PA GROUP

Sarah Cunanan, Supervisory Counsel
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Natasha Smith, GIS
Charles Smith, GIS
Sarah Hayden, GIS
Ali Khurrum, GIS
Clayton Day. GIS
Fiona Fallon, Senior Attorney (Detail)
Mark Thompson, Program Specialist (Detail)
Joyce Brandt, Paralegal Specialist (Detail)

FOIA Training Seminar

Questions & Answers

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Reviewing Records with Structured Analytics

In the SecureRelease Dashboard (or really from anywhere within the Work Space):

- Non-responsive, proprietary and confidential business information regarding Secure Release
-

Non-responsive, proprietary and confidential business information regarding Secure Release

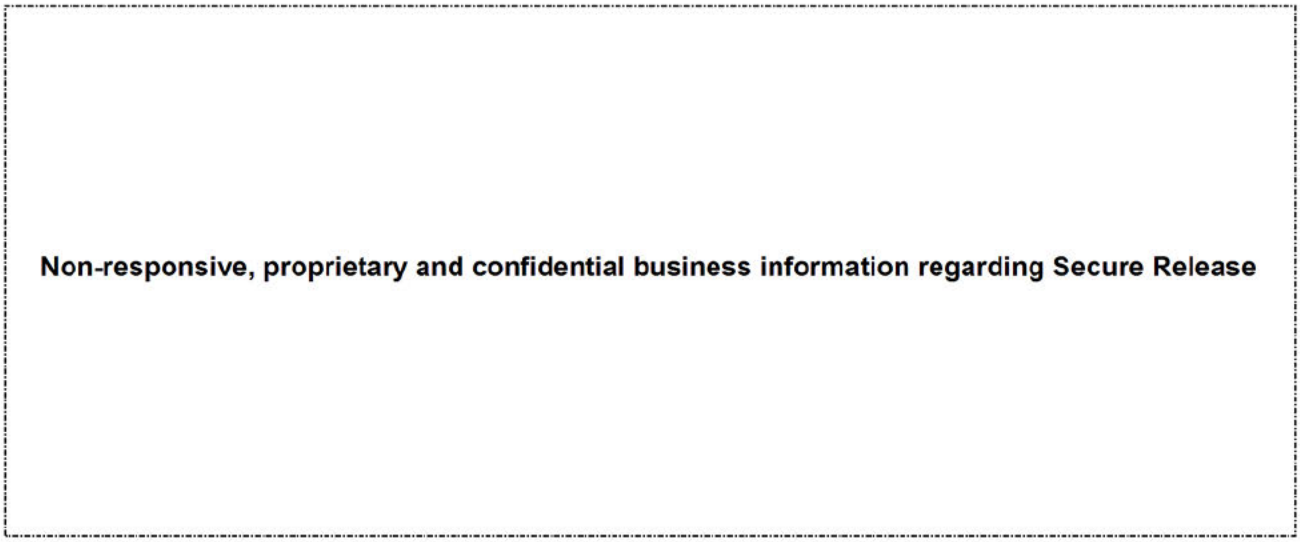
- At times, on this screen Non-responsive, proprietary and confidential business information regarding Secure Release Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

- Non-responsive, proprietary and confidential business information regarding Secure Release

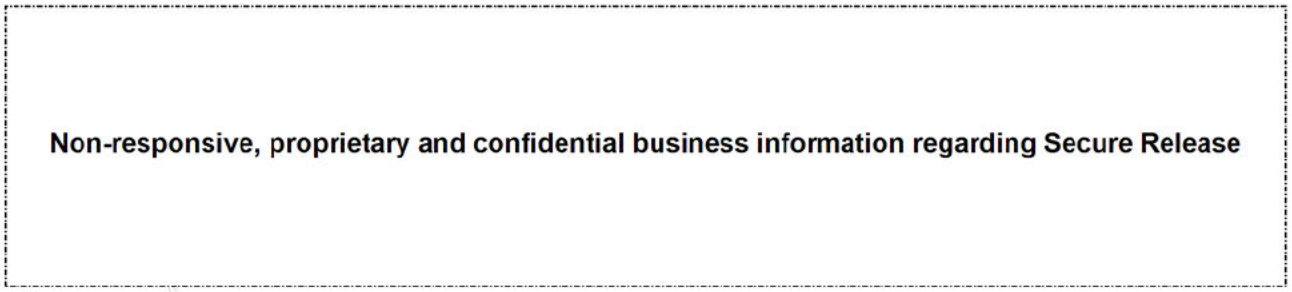
- Since we are only de-duping at this point, do not worry about the line-by-line review unless it is obviously not responsive.

After you complete the de-duping Non-responsive, pro Non-responsive, proprietary and confidential business information regarding Secure Release you scroll down Non-responsive, proprietary and confidential business information regarding Secure Release



- You can start at the top email (with attachments) and conduct your line-by-line review. These will be the Non-responsive, proprietary and confidential business informatio of the emails.
- Since you have de-duped Non-responsive, proprietary and confidential business information regarding Secure Release Non-responsive, proprietary and confidential business information regarding Secure Release

After you complete your review in MIT, you will scroll down to Active Analytics – 202X-FDIC-FOIA-000XX – Not Threaded.



- These are standalone records and you need to review them all. There is a chance that some attachments will already Non-responsive, proprietary and confidential business information regarding Secure Rele Additionally, in some cases, you will not have any records Non-responsive, proprietary and confidential business information regarding Secure Release

After you complete your review of both Non-responsive, proprietary and confid you will be complete. There is no reason you need to go into **202X-FDIC-FOIA-000XX – ALL**.

Record Custodian Search Guidance

Please search for records in your possession that are responsive to this request and email them to me, Division FOIA Coordinator. The due date for this request is [ENTER FOIA DUE DATE HERE], so I would appreciate your response by [ENTER DATE HERE].

What are your responsibilities as a document custodian?

1. Review the request and determine if you understand what documents are being requested and whether you think the request is too broad or overly burdensome.
2. **Contact me, your FOIA Division Coordinator, when**:
   (A) you do not understand the request,
   (B) you have any questions about the request, including how the request should be interpreted,
   (C) you think that the request is too broad or overly burdensome because, although the request is reasonably described, the records requested will be voluminous, or
   (D) you believe that another division might also have responsive documents or more knowledge about the documents or the request. If so, let me know which Division or individual you believe may have responsive documents, but **do NOT forward the request or directly reach out to any other Division, including the Legal Division. Instead, please direct all of your questions to me, your FOIA Division Coordinator**. It is my responsibility as the FOIA Division Coordinator to answer your questions regarding FOIA requests or contact the appropriate individual in the FOIA/PA Group who can answer any question or concern.
3. Once you understand the request, search for responsive documents in your email, OneDrive, and any shared drives within the FDIC's systems of record. In some instances, you may even need to search paper records. If you locate records that belong to another entity or Division in your search, they may still be responsive and should be produced to me, your FOIA Division Coordinator. Even if you think the documents should be withheld from the requestor, you must search and provide the documents to me, your FOIA Division Coordinator. **Do NOT conduct a search of external databases, such as Court dockets, PACER, the Failed Bank Data System (FBDS), or public records databases or create a document, such as a chart or Excel spreadsheet, to respond to a search request.** Please note that a simple download from a database using appropriate search criteria is not creating a document.
4. After you have conducted your search, provide the documents located to your FOIA Division Coordinator together with your recommended redactions or advise your FOIA Division Coordinator that you do not have any responsive records. Please include the total number of hours you searched and the total number of hours you spent reviewing the documents.
5. If voluminous responsive records are located, you may be asked to provide a fee estimate specifying the number of hours you searched, the number of hours you reviewed (or estimate reviewing) the documents, and the estimated number of pages.

All questions and concerns regarding this request should be direct to me, your FOIA Division Coordinator.

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(Updated September 19, 2024)

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Office of Information Policy

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September 2024

Statutes Found to Qualify Under Exemption 3 of the FOIA

Exemption 3 of the Freedom of Information Act incorporates certain nondisclosure provisions contained in federal statutes other than the FOIA. To assist agencies in properly processing FOIA requests and in preparing their Annual FOIA Reports, the Office of Information Policy has compiled a list of statutes currently in effect that courts have found to qualify as Exemption 3 statutes. This chart does not include statutes that have been found not to qualify under Exemption 3, nor does it include any statute which has not yet been considered by a court as a possible Exemption 3 statute. In addition, on occasion, a statutory provision has been found to qualify under Exemption 3 by one court and found not to qualify by another. Those statutes are marked with asterisks. Generally, to determine which cases are listed, if there is a Supreme Court case that determines a statute qualifies as an Exemption 3 statute, that will be the only case listed. If there is no Supreme Court case, but circuit court cases exist, the circuit court cases will be listed. If there is no circuit court case for a particular circuit, multiple district court cases from within that same circuit may be listed. OIP maintains copies of listed unpublished decisions. If you need a copy, please contact OIP's FOIA Counselor of the Day at (202) 514-FOIA (3642).

Statute/Rule	Type of Information Withheld	Case Citation
5 U.S.C. §§ 7114(b)(4), 7132 (Civil Service Reform Act)	Certain labor relations training and guidance materials	Dubin v. Dep't of Treasury, 555 F. Supp. 408, 412 (N.D. Ga. 1981) (5 U.S.C. § 7114(b)(4)), aff'd, 697 F.2d 1093 (11th Cir. 1983) (unpublished table decision); NTEU v. OPM, No. 79-695, slip op. at 3-4 (D.D.C. July 9, 1979) (5 U.S.C. § 7114(b)(4) and 5 U.S.C. § 7132).
5 U.S.C. § 407 (formerly at 5 U.S.C. app. 3 § 7(b)) (Inspector General Act)	Names of employees who provide information or complaints to the Inspector General	Wash. Post Co. v. Special Inspector Gen. for Afg. Reconstr., 486 F. Supp. 3d 141, 166 (D.D.C. 2020).

Statute/Rule	Type of Information Withheld	Case Citation
5 U.S.C. § 13109(a)(2) (formerly at 5 U.S.C. app. 4 § 107(a)(2)) (Ethics in Government Act)	Confidential financial disclosure report pertaining to certain government employees	Meyerhoff v. EPA, 958 F.2d 1498, 1500-02 (9th Cir. 1992); Boyd v. Exec. Off. for U.S. Att'ys, 161 F. Supp. 3d 1, 7 (D.D.C. 2015); Seife v. NIH, 874 F. Supp. 2d 248, 254 (S.D.N.Y. 2012).
7 U.S.C. § 12(a)(1) (Commodity Exchange Act)	"[D]ata and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers," as well as certain other information concerning, or obtained in, the course of the Commission's investigation under the Commodity Exchange Act"	Hunt v. Commodity Futures Trading Comm'n, 484 F. Supp. 47, 49 (D.D.C. 1979).
*7 U.S.C. § 136i-1(b) (Federal Insecticide, Fungicide, and Rodenticide Act)	"[D]ata, including the location from which the data was derived, that would directly or indirectly reveal the identity of individual producers [of certain pesticides]"	Doe v. Veneman, 380 F.3d 807, 817 (5th Cir. 2004).
7 U.S.C. § 1502(c)(1) (Federal Crop Insurance Act)	Certain information furnished by a producer under the Federal Crop Insurance Act	Bush v. U.S. Dep't of Agric., No. 16-4128, 2017 WL 3568672, at *7 (N.D. Iowa Aug. 17, 2017).
7 U.S.C. § 2018(c)	Information obtained pursuant to chapter 51 of title 7 of the United States Code, which concerns the handling of information submitted by applicants to the Supplemental Nutrition Assistance Program	Argus Leader Media v. USDA, 740 F.3d 1172, 1175-76 (8th Cir. 2014).

Statute/Rule	Type of Information Withheld	Case Citation
7 U.S.C. § 2276(a)(2) (Food Security Act of 1985)	"[I]nformation furnished under a provision of law referred to in subsection (d) of this section . . . unless such information has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information"	Strunk v. U.S. Dep't. of Interior, 752 F. Supp. 2d 39, 44-45 (D.D.C. 2010).
7 U.S.C. § 8791(b)(2) (Food, Conservation, and Energy Act of 2008)	"[I]nformation provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department" or "geospatial information . . . maintained by the Secretary about agricultural land or operations"	Cent. Platte Nat. Res. Dist. v. U.S. Dep't of Agric., 643 F.3d 1142, 1147-48 (8th Cir. 2011); Zanoni v. USDA, 605 F. Supp. 2d 230, 237-38 (D.D.C. 2009).
8 U.S.C. § 1202(f) (Immigration and Nationality Act)	Certain records pertaining to the issuance or refusal of visas to enter the United States	Medina-Hincapie v. Dep't of State, 700 F.2d 737, 741-42 (D.C. Cir. 1983); De Laurentiis v. Haig, 686 F.2d 192, 194 (3d Cir. 1982); Assadi v. Dep't of State, No. 12-1111, 2014 WL 4704840, at *6-7 (S.D.N.Y. Sept. 19, 2014); Badalamenti v. U.S. Dep't of State, 899 F. Supp. 542, 547 (D. Kan. 1995).

Statute/Rule	Type of Information Withheld	Case Citation
10 U.S.C. § 130(a)	Certain "technical data with military or space application in the possession of, or under the control of, the Department of Defense"	Newport Aeronautical Sales v. Dep't of the Air Force, 684 F.3d 160, 167-68 (D.C. Cir. 2012); Chenkin v. Dep't of the Army, No. 93-494, 1994 U.S. Dist. LEXIS 20907, at *8 (M.D. Pa. Jan. 14, 1994), aff'd, 61 F.3d 894 (3d Cir. 1995) (unpublished table decision).
10 U.S.C. § 130b	Personally identifiable information pertaining to "any member of the armed forces assigned to an overseas unit, a sensitive unit, or a routinely deployable unit" and "any employee of the Department of Defense or of the Coast Guard whose duty station is with any such unit"	Freedom Watch, Inc. v. NSA, 197 F. Supp. 3d 165, 174 (D.D.C. 2016); Hiken v. DOD, 521 F. Supp. 2d 1047, 1062 (N.D. Cal. 2007); O'Keefe v. DOD, 463 F. Supp. 2d 317, 325 (E.D.N.Y. 2006); Windel v. United States, No. A02-306, 2005 WL 846206, at *2 (D. Alaska Apr. 11, 2005).
10 U.S.C. § 130c	Certain "sensitive information of foreign governments" and certain international organizations	ACLU v. DOD, 389 F. Supp. 2d 547, 553-54 (S.D.N.Y. 2005); Nat'l Inst. of Mil. Just. v. DOD, 404 F. Supp. 2d 325, 335-37 (D.D.C. 2005), aff'd on other grounds, 512 F.3d 677 (D.C. Cir. 2008); Gerstein v. DOD, No. 03-5193, slip op. at 8 (N.D. Ca. Dec. 21, 2004).
10 U.S.C. § 424	Organization or any function of an organization, and certain information pertaining to, employees of the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency	Hamdan v. DOJ, 797 F.3d 759, 776 (9th Cir. 2015); Freedom Watch, Inc. v. NSA, 197 F. Supp. 3d 165, 174 (D.D.C. 2016); Wickwire Gavin, P.C. v. Def. Intel. Agency, 330 F. Supp. 2d 592, 602 (E.D. Va. 2004).

Statute/Rule	Type of Information Withheld	Case Citation
10 U.S.C. § 1102(f) (National Defense Authorization Act for Fiscal Year 1987)	Medical quality assurance records created by or for the Department of Defense as part of a medical quality assurance program	Goodrich v. Dep't of the Air Force, 404 F. Supp. 2d 48, 50-51 (D.D.C. 2005); Dayton Newspapers, Inc. v. Dep't of the Air Force, 107 F. Supp. 2d 912, 917 (S.D. Ohio 1999).
10 U.S.C. § 3309(b) (formerly at 10 U.S.C. § 2305(g))	Certain contractor proposals	Roman v. NSA, Nos. 09-2947, 09-4281, 09-3344, 09-2504, 09-5633, 2012 WL 569747, at *7 (E.D.N.Y. Feb. 22, 2012); Margolin v. NASA, No. 09- -00421, 2011 WL 1303221, at *6 (D. Nev. Mar. 31, 2011).
13 U.S.C. §§ 8(b), 9(a) (Census Act)	Certain census data	Baldrige v. Shapiro, 455 U.S. 345, 354-55 (1982).
13 U.S.C. § 301(g) (Collection and Publication of Foreign Commerce Act)	Certain shippers' export declarations or successor documents	Afr. Fund v. Mosbacher, No. 92-289, 1993 WL 183736, at *5 (S.D.N.Y. May 26, 1993); Young Conservative Found., Inc. v. U.S. Dep't of Com., No. 85-3982, 1987 WL 9244, at *2-3 (D.D.C. Mar. 25, 1987).
15 U.S.C. § 46(f) (Federal Trade Commission Act)	"[A]ny trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential"	Ctr. for Digit. Democracy v. FTC, 189 F. Supp. 3d 151, 158-59 (D.D.C. 2016) (15 U.S.C. § 46(f)).
15 U.S.C. § 57b-2(f) (Federal Trade Commission Act)	Certain investigative materials received by the FTC and "provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process"	A. Michael's Piano, Inc. v. FTC, 18 F.3d 138, 143-44 (2d Cir. 1994); Nat'l Educ. Ass'n v. FTC, No. 79-959-S, 1983 WL 1883, at *1 (D. Mass. Sept. 26, 1983).

Statute/Rule	Type of Information Withheld	Case Citation
15 U.S.C. § 1314(g) (Antitrust Civil Process Act)	"Any documentary material, answers to written interrogatories, or transcripts of oral testimony" provided pursuant to certain civil investigative demands pertaining to antitrust investigations	Motion Picture Ass'n of Am. v. DOJ, No. 80-6612, slip op. at 1 (S.D.N.Y. Oct. 6, 1981).
15 U.S.C. §§ 2055(a)(2), 2055(b)(1), 2055(b)(5) (Consumer Product Safety Act)	Certain information reported to, or otherwise obtained by, the Consumer Product Safety Commission which either contains or relates to a trade secret or is "subject to section 552(b)(4) of Title 5"	Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 122-23 (1980) (15 U.S.C. § 2055(b)(1)); Mulloy v. Consumer Prods. Safety Comm'n, No. 85-3720, 1986 WL 17283, at *1 (6th Cir. July 22, 1986) (per curiam) (unpublished disposition) (15 U.S.C. § 2055(a)(2) and 15 U.S.C. § 2055(b)(5)).
15 U.S.C. § 3710a(c) (Federal Technology Transfer Act)	"[T]rade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of Title 5, which is obtained in the conduct of research or as a result of activities under this chapter," which pertains to cooperative research and development agreements for the purpose of technological and industrial innovation	Pub. Citizen Health Rsch. Grp. v. NIH, 209 F. Supp. 2d 37, 43, 51 (D.D.C. 2002); DeLorme Pub. Co., Inc. v. NOAA, 917 F. Supp. 867, 871-72 (D. Me. 1996), appeal dismissed per stipulation, No. 96-1601 (1st Cir. July 8, 1996).
15 U.S.C. § 6801 (Gramm-Leach-Bliley Act)	Nonpublic personal information of customers of financial institutions	Hodes v. HUD, 532 F. Supp. 2d 108, 117 (D.D.C. 2008).

Statute/Rule	Type of Information Withheld	Case Citation
15 U.S.C. § 7306(d) (National Construction Safety Team Act)	"[A]ny information . . . receive[d] in the course of an investigation under this chapter if the Director finds that the disclosure of that information might jeopardize public safety"	Quick v. U.S. Dep't of Com., 775 F. Supp. 2d 174, 180-81 (D.D.C. 2011).
16 U.S.C. § 470hh (Archaeological Resources Protection Act of 1979)	Information pertaining to the nature and location of certain archaeological resources	Hornbostel v. U.S. Dep't of the Interior, 305 F. Supp. 2d 21, 29-30 (D.D.C. 2003), summary affirmance granted, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004); Starkey v. U.S. Dep't of the Interior, 238 F. Supp. 2d 1188, 1192-94 (S.D. Cal. 2002).
16 U.S.C. § 4304 (Federal Cave Resources Protection Act)	"Information concerning the specific location of any significant cave . . . [that] create[s] a substantial risk of harm, theft, or destruction of such cave"	Black Hills Clean Water All. v. USFS, No. 20-5034, 2022 WL 2340440, at *9 (D.S.D. June 29, 2022).
18 U.S.C. § 208(d)(1)	Providing that "a copy of any determination granting an exemption under subsection (b)(1) or (b)(3) [from application of penalties for acts affecting personal financial interests determined to constitute bribery, graft, or conflicts of interest] shall be made available to the public," but exempting from this disclosure requirement "any information contained in the determination that would be exempt from disclosure under section 552 of title 5"	Seife v. NIH, 874 F. Supp. 2d 248, 256 (S.D.N.Y. 2012).

Statute/Rule	Type of Information Withheld	Case Citation
18 U.S.C. § 701	Likeness of any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof	Jones v. IRS, No. 06-322, 2008 WL 1901208, at *3-4 (W.D. Mich. Apr. 25, 2008).
18 U.S.C. § 798 (Espionage Act)	Certain classified information pertaining to the communication intelligence and cryptographic devices of the United States or any foreign government	Larson v. Dep't of State, 565 F.3d 857, 868-69 (D.C. Cir. 2009); N.Y. Times Co. v. DOJ, No. 14-03776, 2016 WL 5946711, at *6 (S.D.N.Y. Aug. 18, 2016); Adejumobi v. NSA, No. 07-1237, 2007 WL 4247878, at *3 (M.D. Fla. Dec. 3, 2007), aff'd per curiam, 287 F. App'x 770 (11th Cir. 2008); Winter v. NSA, 569 F. Supp. 545, 546-48 (S.D. Cal. 1983).
18 U.S.C. §§ 2510, *et seq.* (Title III of the Omnibus Crime Control and Safe Streets Act)	Wiretap requests and the contents of any wire, oral, or electronic communication obtained through wiretaps	Payne v. DOJ, No. 96-30840, 1997 WL 450139, at *3 (5th Cir. July 11, 1997); Lam Lek Chong v. DEA, 929 F.2d 729, 732-33 (D.C. Cir. 1991).
18 U.S.C. § 3123(d) (Pen Register Act)	Certain court "order[s] authorizing or approving the installation and use of a pen register or a trap and trace device"; information pertaining to "the existence of the pen register or trap and trace device or the existence of the investigation"	Labow v. DOJ, 831 F.3d 523, 527-28 (D.C. Cir. 2016); ACLU v. DOJ, 2014 WL 4954121, at *11 (N.D. Cal. Sept. 30, 2014); Manna v. DOJ, 815 F. Supp. 798, 812 (D.N.J. 1993), aff'd on other grounds, 51 F.3d 1158 (3d Cir. 1995).
18 U.S.C. § 3509(d) (Federal Victims' Protection and Rights Act)	Certain records containing identifying information pertaining to children involved in criminal proceedings	Corley v. DOJ, 998 F.3d 981, 982-85 (D.C. Cir. 2021).

Statute/Rule	Type of Information Withheld	Case Citation
18 U.S.C. § 3521(b)(1)(g) (Witness Security Reform Act of 1984)	"[T]he identity or location of the person relocated or protected, or any other matter concerning the person or the program after weighing [various factors]," subject to certain exceptions	Bonadonna v. DOJ, 791 F. Supp. 2d 269, 270 (D. Mass. 2010), aff'd, No. 10-1595, 2011 WL 4770189 (1st Cir. Jan. 7, 2011).
18 U.S.C. § 4208(c) (Parole Commission and Reorganization Act)	Certain records pertaining to parole determination proceedings	DOJ v. Julian, 486 U.S. 1, 9 (1988).
18 U.S.C. § 5038(a)	Records of juvenile delinquency proceedings	Lavado v. DEA, No. 90-5262, 1991 WL 119586, at *1 (D.C. Cir. June 28, 1991).
19 U.S.C. § 1677f (Tariff Act)	Certain "information submitted to the administering authority or the [United States International Trade] Commission which is designated as proprietary by the person submitting the information"	Mudge Rose Guthrie Alexander & Ferdon v. U.S. Int'l Trade Comm'n, 846 F.2d 1527, 1530-31 (D.C. Cir. 1988).
19 U.S.C. § 2155(g) (Trade Act)	Certain information in connection with trade negotiations that is "submitted in confidence"	Intell. Prop. Watch v. U.S. Trade Representative, 205 F. Supp. 3d 334, 345-46 (S.D.N.Y. 2016).

Statute/Rule	Type of Information Withheld	Case Citation
19 U.S.C. §§ 2605(h), 2605(i) (Convention on Cultural Property Implementation Act)	Certain records pertaining to Cultural Property Advisory Committee proceedings where "it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the Government's negotiating objectives or [certain] bargaining positions"; certain "information (including trade secrets and commercial or financial information which is privileged or confidential) submitted in confidence by the private sector to officers or employees of the United States or to the [Cultural Property Advisory] Committee"	Ancient Coin Collectors Guild v. U.S. Dep't of State, 641 F.3d 504, 511 (D.C. Cir. 2011).
20 U.S.C. § 1099c-1 (Higher Education Act)	Certain program review reports and institutional responses until the Department of Education issues a final program review determination.	Bagwell v. U.S. Dep't of Educ., 183 F. Supp. 3d 109, 126-27 (D.D.C. 2016).
21 U.S.C. § 331(j) (Food, Drug, and Cosmetic Act)	Certain information "concerning any method or process which as a trade secret is entitled to protection"	Anderson v. HHS, 907 F.2d 936, 950-51 (10th Cir. 1990).
21 U.S.C. § 387f(c) (Tobacco, Regulations, Federal Retirement Reform Act)	Certain information reported to or obtained by the Secretary which is exempt from discourse under Exemption 4 of the FOIA	Rozema v. HHS, 167 F. Supp. 3d 324, 341 (N.D.N.Y 2016).

Statute/Rule	Type of Information Withheld	Case Citation
22 U.S.C. §§ 1461, 1461-1a (Smith-Mundt Act)	Certain program information prepared by the United States Information Agency	Essential Info., Inc. v. USIA, 134 F.3d 1165, 1168 (D.C. Cir. 1998).
22 U.S.C. § 2778(e) (Arms Export Control Act)	Certain information pertaining to export license applications	Council for a Livable World v. U.S. Dep't of State, 1998 U.S. Dist. LEXIS 23642, at *11 (D.D.C. Jan. 21, 1998), amended (D.D.C. Nov. 23, 1998).
22 U.S.C. § 3104(c) (International Investment Survey Act)	Records and reports provided pursuant to subsection (b)(2) of the section of the statute which pertains to certain "surveys and studies" regarding international investment and trade	Young Conservative Found., Inc. v. U.S. Dep't of Com., No. 85-3982, 1987 WL 9244, at *4 (D.D.C. Mar. 25, 1987).
25 U.S.C. § 1675(g) (Indian Health Care Improvement Act)	Medical quality assurance records	N.Y. Times Co. v. HHS, 15 F.4th 216, 219 & n.7 (2d Cir. 2021) (per curiam).
26 U.S.C. §§ 6103, 6105 (Internal Revenue Code)	Certain tax return information, to include Taxpayer Identification Numbers of third parties, and certain tax convention information	Nosal v. IRS, 523 F. Supp. 3d 72, 79 (D.D.C. 2021); Church of Scientology v. IRS, 484 U.S. 9, 15 (1987) (26 U.S.C. § 6103); Elec. Priv. Info. Ctr. v. IRS, 910 F.3d 1232, 1237 (D.C. Cir. 2018); Leonard v. U.S. Dep'of Treasury, 590 F. App'x. 141, 143-44 (3d Cir. 2014) (per curiam); Pac. Fisheries, Inc. v. IRS, 395 F. App'x. 438, 440 (9th Cir. 2010) (unpublished disposition) (26 U.S.C. §§ 6103, 6105).
28 U.S.C. § 652(d) (Alternative Dispute Resolution Act of 1998)	"[C]onfidential dispute resolution communications"	Yelder v. DOD, 577 F. Supp. 2d 342, 346-47 (D.D.C. 2008).

Statute/Rule	Type of Information Withheld	Case Citation
31 U.S.C. § 5319 (Bank Secrecy Act)	Reports pertaining to monetary instruments transactions filed under subchapter II of chapter 53 of title 31 and records of those reports	Yunes v. DOJ, 263 F. Supp. 3d 82, 87 (D.D.C. 2017)); Council on Am.-Islamic Rels., Cal. v. FBI, 749 F. Supp. 2d 1104, 1117 (S.D. Cal. 2010); Berger v. IRS, 487 F. Supp. 2d 482, 496-97 (D.N.J. 2007), affd on other grounds, 288 F. App'x 829 (3d Cir. 2008).
34 U.S.C § 12592 (formerly at 42 U.S.C. § 14132)	Certain "stored DNA samples and DNA analyses"	Moore v. Nat'l DNA Index Sys., 662 F. Supp. 2d 136, 140 (D.D.C. 2009).
35 U.S.C. § 122 (Patent Act)	Applications for patents; certain information pertaining to applications for patents	Irons & Sears v. Dann, 606 F.2d 1215, 1219-21 (D.C. Cir. 1979).
38 U.S.C. § 5701	"All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of [VA]"	Ashton v. VA, No. 99-6018, 1999 WL 753331, at *1 (2d Cir. Sept. 3, 1999) (unpublished disposition).
38 U.S.C. § 5705	Records created by VA as part of its medical quality-assurance program; certain other information pertaining to VA's medical quality-assurance program	Schulte & Sun-Sentinel Co. v. VA, No. 86-6251, slip op. at 3-4, 12 (S.D. Fla. Feb. 2, 1996).
38 U.S.C. § 7332	Records of patients being treated for certain conditions	Palmer v. Derwinski, No. 91-197, slip op. at 3-4 (E.D. Ky. June 10, 1992).

Statute/Rule	Type of Information Withheld	Case Citation
39 U.S.C. § 410(c)(2) (Postal Reorganization Act)	Commercial information which would not be disclosed under good business practice	Wickwire Gavin, P.C. v. USPS, 356 F.3d 588, 589, 597 (4th Cir. 2004); Am. Postal Workers Union, AFL-CIO v. USPS, 742 F. Supp. 2d 76, 81-83 (D.D.C. 2010); Reid v. USPS, No. 05-294, 2006 WL 1876682, at *5-9 (S.D. Ill. July 5, 2006); Robinett v. USPS, No. 02-1094, 2002 WL 1728582, at *5 (E.D. La. July 24, 2002).
39 U.S.C. § 3016(d) (Deceptive Mail Prevention and Enforcement Act)	Documentary material provided pursuant to any subpoena issued under Deceptive Mail Prevention Enforcement Act	Gov't Accountability Project v. FDA, 206 F. Supp. 3d 420, 433 (D.D.C. 2016) (dictum).
41 U.S.C. § 2102 (amending 41 U.S.C. § 423(a)(1)) (Procurement Integrity Act)	Contractor bid or proposal information; source selection information	Legal & Safety Emp. Rsch., Inc. v. U.S. Dep't of the Army, No. Civ. S001748, 2001 WL 34098652, at *3-4 (E.D. Cal. May 4, 2001) (dictum).
41 U.S.C. § 4702 (formerly at 41 U.S.C. § 253b(m)(1))	Contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts	Sinkfield v. HUD, No. 10-885, 2012 U.S. Dist. LEXIS 35233, at *13-15 (S.D. Ohio Mar. 15, 2012); Margolin v. NASA, No. 09- 00421, 2011 WL 1303221, at *6 (D. Nev. Mar. 31, 2011); Hornbostel v. U.S. Dep't of the Interior, 305 F. Supp. 2d 21, 30 (D.D.C. 2003), summary affirmance granted, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004).
42 U.S.C. § 262a(h)(1) (Public Health Security and Bioterrorism Preparedness and Response Act)	Certain categories of information relating to biological agents and toxins	Civ. Beat L. Ctr. for the Pub. Int. v. CDC, 929 F.3d 1079, 1084-85 (9th Cir. 2019).

Statute/Rule	Type of Information Withheld	Case Citation
42 U.S.C. § 300aa-12(d)(4)(A) (National Childhood Vaccine Injury Act of 1986)	"Except as provided in subparagraph (B), information submitted to a special master or the court in a proceeding on a petition [for compensation under the National Vaccine Injury Compensation Program] . . . without the express written consent of the person who submitted the information"	Long v. DOJ, 778 F. Supp. 2d 222, 234 (N.D.N.Y. 2011).
42 U.S.C. § 405(r) (Social Security Act)	Death certificates and records pertaining to deaths provided to the Commissioner of Social Security under this subsection	Int'l Diatomite Producers Ass'n v. SSA, No. 92-1634, 1993 WL 137286, at *3 (N.D. Cal. Apr. 28, 1993), appeal dismissed per stipulation, No. 93-16204 (9th Cir. Oct. 27, 1993).
42 U.S.C. §§ 2000e-5(b), 2000e-8(e) (Civil Rights Act of 1964)	Information pertaining to charges of unlawful employment practices; information obtained by the EEOC in investigating charges of unlawful employment practices	Frito-Lay v. EEOC, 964 F. Supp. 236, 240-43 (W.D. Ky. 1997)); Am. Centennial Ins. Co. v. EEOC, 722 F. Supp. 180, 184 (D.N.J. 1989).
42 U.S.C. §§ 2162, 2167, 2168(a)(1) (Atomic Energy Act)	"Restricted Data" pertaining to atomic weapons and special nuclear material and certain safeguards information for nuclear material	Meeropol v. Meese, 790 F.2d 942 (D.C. Cir. 1986).
42 U.S.C. §§ 2286d(b), 2286d(h)(3) (Defense Nuclear Facilities Safety Board Act)	Defense Nuclear Facilities Safety Board recommendations	Nat. Res. Def. Council, Inc. v. Def. Nuclear Facilities Safety Bd., 969 F.2d 1248, 1249, 1251 (D.C. Cir. 1992).

Statute/Rule	Type of Information Withheld	Case Citation
42 U.S.C. § 3610(d) (Fair Housing Act)	Records pertaining to conciliation of disputes regarding allegations of unfair housing practices; information derived from housing discrimination investigations and any final investigative reports pertaining to such investigations	West v. Jackson, 448 F. Supp. 2d 207, 212-13 (D.D.C. 2006), summary affirmance granted & motion to remand denied, No. 06-5281, 2007 WL 1723362 (D.C. Cir. Mar. 6, 2007).
45 U.S.C. § 362(d) (Railroad Unemployment Insurance Act)	Information obtained by the Railroad Retirement Board that reveals, in any manner, an employee's identity	Ass'n of Retired R.R. Workers v. U.S. R.R. Ret. Bd., 830 F.2d 331, 334 (D.C. Cir. 1987)); Nat'l Ass'n of Retired & Veteran Ry. Emp.'s v. R.R. Ret. Bd., 1991 U.S. Dist, LEXIS 21923, at *7 (N.D. Ohio Feb. 20, 1991).
47 U.S.C. § 605 (Communications Act of 1934)	Certain information pertaining to interstate or foreign communication by wire or radio	Reston v. FCC, 492 F. Supp. 697, 699-700 (D.D.C. 1980).
49 U.S.C. § 114(r) (formerly at 49 U.S.C. § 114(s)) (Federal Aviation Act)	Information obtained or developed in carrying out security under the authority of the Aviation and Transportation Security Act or under chapter 449 of this title	Longas-Palacio v. USCIS, No. 21-2661, 2023 WL 2277128 (S.D. Tex. Feb. 28, 2023); Magassa v. TSA, No. 19-01953, 2022 WL 971207, at *5 (D.D.C Mar. 31, 2022); Skurow v. DHS, 892 F. Supp. 2d 319, 329-30 (D.D.C. 2012); Gordon v. FBI, 390 F. Supp. 2d 897, 900 (N.D. Cal. 2004).

Statute/Rule	Type of Information Withheld	Case Citation
49 U.S.C. § 1114(c) (Transportation Safety Act of 1974)	Certain "cockpit voice or video recorder recording[s] or transcript[s] of communications by and between flight crew members and ground stations pertaining to [] incident[s] investigated by the [National Transportation Safety] Board"	McGilvra v. NTSB, 840 F. Supp. 100, 102 (D. Colo. 1993).
50 U.S.C. § 1702(a)(1)	Authorizes the President to "regulate . . . prevent or prohibit . . . importation or exportation of . . . any property in which any foreign country or a national thereof has any interest . . . by any person, or with respect to any property, subject to the jurisdiction of the United States"	Wis. Project on Nuclear Arms Control v. U.S. Dep't of Com., 317 F.3d 275, 284 (D.C. Cir. 2003).
50 U.S.C. § 3024(i)(1) (formerly at 50 U.S.C. § 403-1(i)(1)) (National Security Act of 1947)	Intelligence sources and methods	CIA v. Sims, 471 U.S. 159, 167 (1985).
50 U.S.C. § 3141(a) (formerly at 50 U.S.C. § 431) (Central Intelligence Agency Information Act of 1984)	"[O]perational files of the Central Intelligence Agency"	CIA v. Sims, 471 U.S. 159, 167, 174 n.19 (1985) (dictum); Wolf v. CIA, 569 F. Supp. 2d 1, 8 (D.D.C. 2008).
50 U.S.C. § 3143 (formerly at 50 U.S.C. § 432a)	Operational files of the National Reconnaissance Office	Aftergood v. Nat'l Reconnaissance Off., 441 F. Supp. 2d 37, 46 (D.D.C. 2006).

Statute/Rule	Type of Information Withheld	Case Citation
50 U.S.C. § 3507 (formerly at 50 U.S.C. § 403g) (Central Intelligence Agency Act of 1949)	Intelligence sources and methods; certain information pertaining to Agency functions or employees, specifically: "the organization or functions of the Agency, or of the names, official titles, salaries, or numbers of personnel employed by the Agency"	Assassination Archives & Rsch. Ctr. v. CIA, No. 18-5280, 2019 WL 691517 (D.C. Cir. Feb. 15, 2019) (per curiam); ACLU v. DOJ, 681 F.3d 61, 72-75 (2d Cir. 2012); Berman v. CIA, 501 F.3d 1136, 1137-38, 1140 (9th Cir. 2007); Makky v. Chertoff, 489 F. Supp. 2d 421, 442 (D.N.J. 2007), aff'd on other grounds, 541 F. 3d 205 (3d Cir. 2008).
50 U.S.C. § 3605 (formerly at 50 U.S.C. § 402 note) (National Security Agency Act of 1959)	Information pertaining to the functions or organization of NSA; certain information pertaining to NSA employees	ACLU v. DOJ, 681 F.3d 61, 72-75 (2d Cir. 2012); Elec. Priv. Info. Ctr. v. NSA, 678 F.3d 926, 931 (D.C. Cir. 2012); Houghton v. NSA, 378 F. App'x 235, 238-39 (3d Cir. 2010) (per curiam); Lahr v. NTSB, 569 F.3d 964, 985 (9th Cir. 2009).
50 U.S.C. § 4565(c)(1) (Defense Production Act)	Information or documentary material filed with the Committee on Foreign Investment in the United States	Minor v. U.S. Dep't of the Treasury, No. 20-02836, slip op. at 5 (D.S.C. Aug. 5, 2021) (unpublished disposition).
50 U.S.C. § 4820(h)(1) (formerly at 50 U.S.C. § 4614(c)(1)) (Export Control Reform Act)	Information pertaining to license applications under the Export Administration Act	Wis. Project on Nuclear Arms Control v. U.S. Dep't of Com., 317 F.3d 275, 284 (D.C. Cir. 2003); Times Publ'g Co. v. U.S. Dep't of Com., 236 F.3d 1286, 1289-90 (11th Cir. 2001); Lessner v. U.S. Dep't of Com., 827 F.2d 1333, 1336-37 (9th Cir. 1987).
52 U.S.C. § 30109(a)(12)(A) (formerly at 2 U.S.C. § 437(a)(12)(A)) (Federal Election Campaign Act)	Any notification or investigation made under this section of the Federal Election Campaign Act pertaining to federal campaign funds	Gov't Accountability Project v. FDA, 206 F. Supp. 3d 420, 433 (D.D.C. 2016).

Statute/Rule	Type of Information Withheld	Case Citation
54 U.S.C. § 100707 (formerly at 16 U.S.C. § 5937) (National Parks Omnibus Management Act)	Information pertaining to: "endangered, threatened, rare, or commercially valuable" National Park System resources; "mineral or paleontological objects within units of the National Park System"; or "objects of cultural patrimony within units of the National Park System"	Hornbostel v. U.S. Dep't of the Interior, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004); Sw. Ctr. for Biological Diversity v. USDA, 314 F.3d 1060, 1062 (9th Cir. 2002); Pease v. U.S. Dep't of Interior, No. 99-113, slip op. at 2, 4 (D. Vt. Sept. 17, 1999).
Pub. L. No. 108-447, 118 Stat. 2809, 2859-60 (Consolidated Appropriations Act, 2005) Pub. L. No. 110-161, 121 Stat. 1844, 1903-04 (Consolidated Appropriations Act, 2008) Pub. L. No. 112-55, 125 Stat. 552, 609-10 (Consolidated Appropriations Act, 2012)	Certain firearms database information	City of Chi. v. U.S. Dep't of the Treasury, 423 F.3d 777, 781-82 (7th Cir. 2005); P.W. Arms, Inc. v. United States, No. 15-1990-JCC, 2017 WL 319250, at *4 (W.D. Wash. Jan. 23, 2017); Williams v. ATF, No. PWG-15-1969, 2017 WL 3978580, at *5-6 (D. Md. Sept. 8, 2017); Abdeljabbar v. ATF, 74 F. Supp. 3d 158, 173 (D.D.C. 2014).
Pub. L. No. 111-83, 123 Stat. 2142 (Protected National Security Documents Act, 2009)	Certain photographs related to the treatment of individuals engaged, captured, or detained after September 11, 2001	ACLU v. DOD, 901 F.3d 125, 133 (2d Cir. 2018).

Statute/Rule	Type of Information Withheld	Case Citation
Fed. R. Crim. P. 6(e), enacted by Act of July 30, 1977, Pub. L. No. 95-78, § 2, 91 Stat. 319	Certain records that would reveal some secret aspect pertaining to grand jury proceedings	Sussman v. USMS, 494 F.3d 1106, 1113 (D.C. Cir. 2007); Sorin v. DOJ, No. 18-99, 2018 WL 6431027 (2d Cir. Dec. 6, 2018) (per curium); Widi v. McNeil, No. 12-00188, 2016 WL 4394724, at *23 (D. Me. Aug 16, 2016); Durham v. U.S. Att'y Gen., No. 06-843, 2008 WL 620744, at *2 (E.D. Tex. Mar. 3, 2008); Cozen O'Connor v. U.S. Dep't of Treasury, 570 F. Supp. 2d 749, 776 (E.D. Pa. 2008).
Treaty Between the Government of the United States of America and the Republic of Korea on Mutual Assistance in Criminal Matters, S. Kor.-U.S., Nov. 23, 1993, S. TREATY DOC. NO. 104-1 (1995)	Evidence obtained by way of a treaty with a confidentiality clause	Dongkuk Int'l, Inc. v. U.S. Dep't of Just., 204 F. Supp. 3d 18, 28 (D.D.C. 2016).
Treaty Between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, Switz.-U.S., May 25, 1973, 27 U.S.T. 2019	Evidence obtained by way of a treaty with a confidentiality clause	Grynberg v. DOJ, No. 18-370, 2019 WL 138426 (2d Cir. Jan. 9, 2019).
Instrument Between the Kingdom of Denmark and the United States of America, as contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance Between the United States of America and the European Union, June 25, 2003, Den.-U.S., June 23, 2005, S. TREATY DOC. NO. 109-13 (2006)	Evidence obtained by way of a treaty with a confidentiality clause	Biear v. DOJ, No. 14-1488, 2023 WL 4867431, at *6-7 (M.D. Pa. July 31, 2023).

Statute/Rule	Type of Information Withheld	Case Citation
Treaty Between the Government of the United States of America and the Government of Australia on Mutual Assistance in Criminal Matters, Austl.-U.S., Apr. 30, 1997, S. TREATY DOC. NO. 105-27 (1997)	Evidence obtained by way of a treaty with a confidentiality clause	Biear v. DOJ, No. 14-1488, 2023 WL 4867431, at *6-7 (M.D. Pa. July 31, 2023).

From: American Society of Access Professionals
To: Colgrove, Alisa N.
Subject: [EXTERNAL MESSAGE] Announcing 2025 NTC
Date: Monday, September 16, 2024 9:53:34 AM

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ASAP Logo

Visit our website

Hold the Dates
ASAP NTC
May 6-8, 2025
Las Vegas

OIP Training and Resources

Dear ASAP Members and Colleagues:

ASAP President Ryan Mulvey announced that ASAP is in contract negotiations with Planet Hollywood in Las Vegas to host the 2025 National Training Conference (NTC). The dates would be May 6-8 for the educational sessions. The 2025 federal per diem for Las Vegas is $126 per night plus applicable taxes. Registration (tuition/quote) fees are not set yet, but for budgetary needs, you can plug in $1,500 for early bird member fees for the three-day training.

Based on the 2024 NTC evaluations, ASAP conducted a site search in Las Vegas, Denver and Seattle. Even to our own surprise, Planet Hollywood came in with the best proposal for dates, meeting space options, costs, and location. As mentioned, we are still working out some contract details, but we hope you will hold the dates of May 6-8, 2025. We will send out and post updates as they become available.

Don't forget to check out the virtual training offered by the Department of Justice's Office of Information Policy - https://www.justice.gov/oip/blog/oip-announces-new-foia-trainings-dates-fiscal-year-2025.

Also, check out the best practices from OIP's event on backlog reduction: https://www.justice.gov/oip/blog/oip-posts-foia-best-practices-discussed-recent-workshop and its compilation of Exemption 3 resources at https://www.justice.gov/oip/blog/key-foia-resources-2024-updates-exemption-3-statute-resources

Thanks, and we look forward to providing updates very soon.

Sincerely,

Claire Shanley, Executive Director

ASAP Training: ASAP On-demand Webinars at https://www.accesspro.org/training-education-programs/webinars/

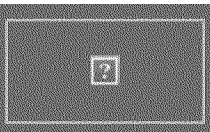
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Freedom of Information Act (FOIA)

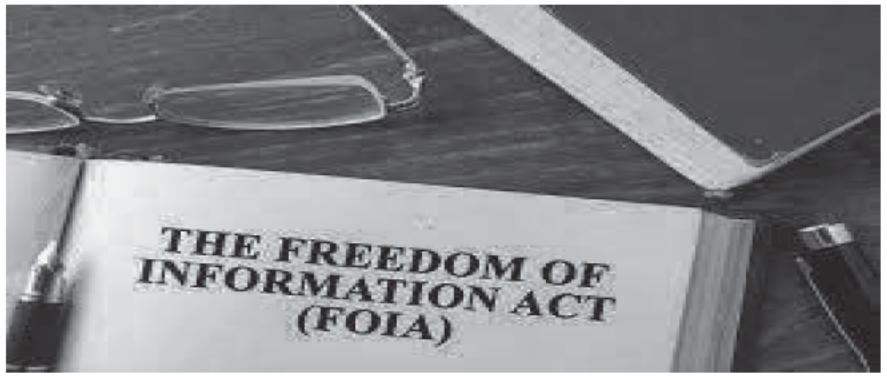
The Interface Between the FOIA & Records Management

October 17, 2024

HAI_FOIA0000421

Freedom of Information Act 5 U.S.C. 552

The Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exceptions or by one of three special law enforcement record exclusions.



The FDIC FOIA Program

- FDIC FOIA Regulations, 12 C.F.R. § 309.5

- FDIC Circular 1023.1, Procedures for Processing FOIA Requests

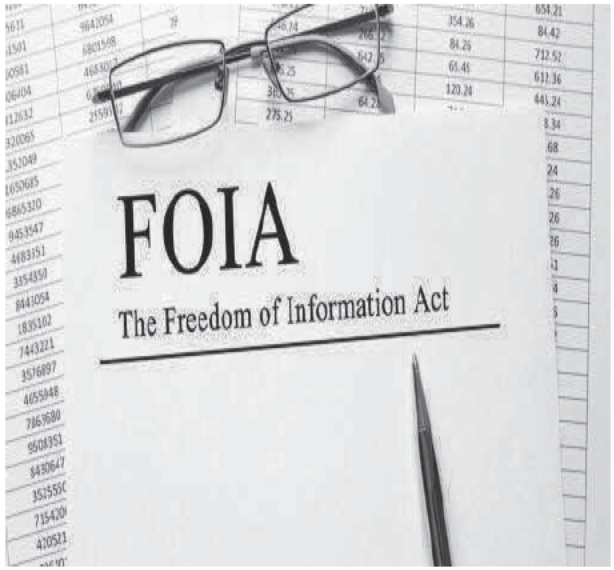


What is a perfected FOIA request?

- Must be in writing
- Must be from a “person”
- Must have a reasonable description of records being sought



FOIA Administration



Time Limits:

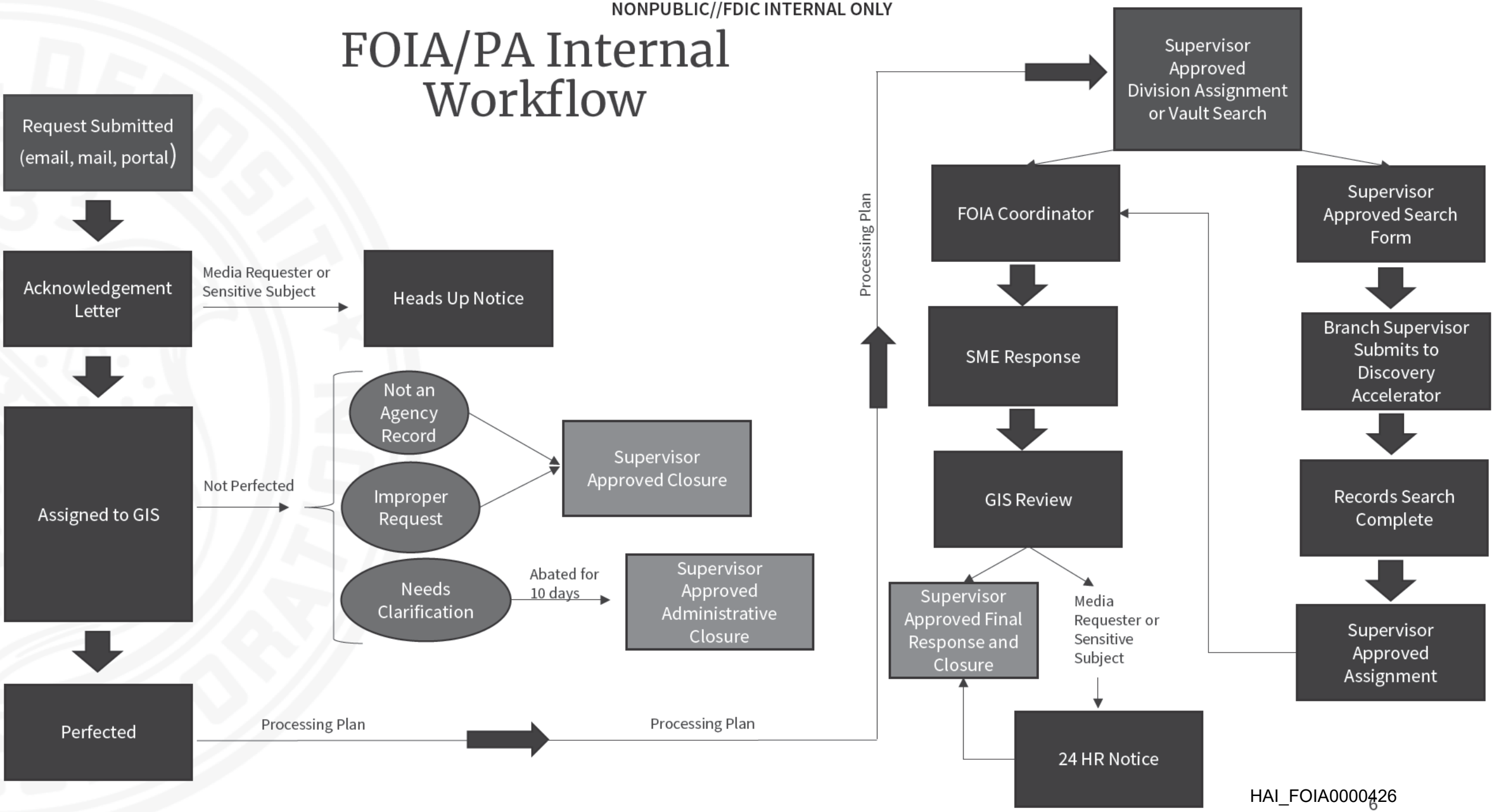
- 20 working days to respond unless "unusual circumstances"
- Requesters can ask for expedited processing
- Requester can sue if response deadlines are not met

FOIA Requester Fee Categories:

- Commercial Use Requester
- Educational institutions, non-commercial scientific institutions
- News media
- All others

FDIC Fee Schedule - https://www.fdic.gov/foia/fees.html

FOIA/PA Internal Workflow



Generally Applicable FOIA Exemptions

Exemption Two
Records related solely to the internal personnel rules and practices of the FDIC.
Exemption Three
Records specifically exempted from disclosure by statute
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
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.

Foreseeable Harm Analysis

Attorney General's Memorandum

- Signed March 15, 2022

- 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.

Agency Records – FOIA vs. Records Management

The FOIA permits a person to request access to agency records.

- Records that we created or obtained during the course of our operations and activities AND are in our control at the time we receive a FOIA request



What is a Record?

The National Archives and Records Administration (NARA) broadly defines a **Record** as:

All recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.



44 U.S.C. § 3301

Agency Records vs Personal Records

Non-exhaustive Examples of Agency Records:

- FDIC Legal Internal or Public Memoranda
- RMS supervisory files
- DRR Receivership files
- FDIC contracts



Agency Records vs Personal Records

Personal Records:

- Notes from staff meeting*
- Outlook Calendar
- Brainstorming Notes*

* No agency action was taken.

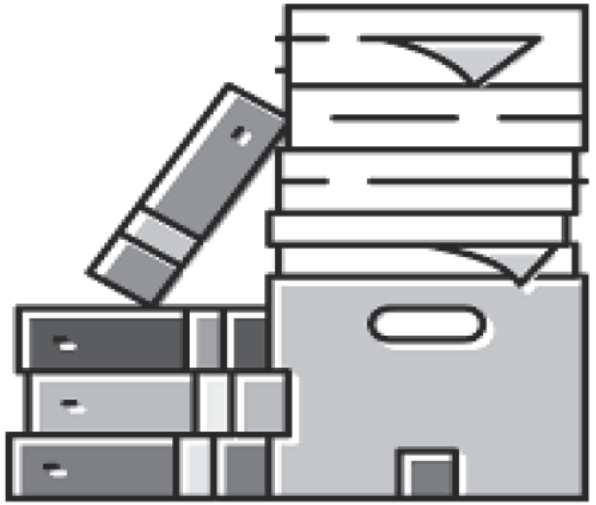


Records in First-Party Requests

Process first under the Privacy Act, then under the FOIA for the greatest disclosure.

Records must be:

1. About an **individual**,
2. Stored in a **system of records**, and
3. Accessed by **personal identifier**.



FDIC FOIA Contacts

FOIA OFFICIALS

Harrel Pettway, General Counsel/Chief FOIA Officer
TBD, FDIC Ombudsman, FOIA Public Liaison

FOIA/PA GROUP

Sarah Cunanan, Supervisory Counsel
Partap Verma, Privacy Counsel
Jeannette Wise, FOIA Counsel
Christine Grauer, Senior Attorney
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Charles Smith, GIS
Khurrum Ali, GIS
Sarah Hayden, GIS
Clayton Day, GIS

Bi-Annual FOIA Training Seminar

Agenda – March 12, 2025

9:00 am to 12:15 pm

Time	Topic	Presenter
9:00 – 9:15	**Opening Remarks**	Thomas S. Johnson, Jr., Senior Counsel, Opinions & Research Unit
9:15 – 9:55	Module 1 – FOIA Exemption 8 – Bank Supervision & Oversight	Alisa Colgrove, Government Information Specialist (GIS)
9:55 – 10:30	Module 2 – FOIA Reasonable Search	Sarah Hayden, GIS & Loredana Kratzer, GIS
10:30 – 10:45	**Break**	
10:45 – 11:00	Module 3 – Secure Release Topics	Charles Smith, GIS
11:00 – 11:30	Module 4 – FOIA Fees & Fee Estimates	Alisa Colgrove, GIS
11:30 – 12:00	Jeopardy – Special FOIA Edition	Game Show Host: Christine Grauer, Senior Attorney
12:00 – 12:15	**Q&A and Closing Remarks**	FOIA/PA Group

Freedom of Information Act (FOIA)

Bi-Annual Training Seminar

March 12, 2025

9:00am – 12:15pm

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Opening Remarks

Thomas S. Johnson Jr,
Senior Counsel, Opinions
& Research Unit

FDIC
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Module One

FOIA Exemption 8 – Bank Supervision & Oversight

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FOIA Exemption 8

Protects matters that are:

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

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FOIA Exemption 8

Two Purposes:

1. Ensure the security of financial institutions which could be undermined by unwarranted run on banks caused by the disclosure of candid evaluations of financial institutions.

2. Safeguard the relationship between the banks and their supervising agencies.

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FOIA Exemption 8

Courts have found protection to extend to:

- Submissions by State regulatory agencies
- Banks no longer in operation
- Follow-up information – federal oversight arising from a bank's examination
- Reports examining bank's compliance with consumer laws and regulations

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FOIA Exemption 8

The term "financial institutions" is not limited to "depository" institutions:

- Institutions that provide credit services
- FINRA
- Debt collectors
- Investor advisor companies
- Security brokers & dealers
- Self-regulatory institutions

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FOIA Exemption 8

Recent Case Law

- Jason Leopold, ET AL *v.* DOJ, No. 19-3192, 2022 WL 4299993 (D.D.C. Sept. 19, 2022) (Contreras, J.)

- Jason Leopold & Buzzfeed, Inc *v.* DOJ, No. 22-5300, 2024 WL 875794 (D.C. Cir. Mar. 1, 2024) (Rodgers, J.)

Module Two

Reasonable Search Under FOIA

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Is the FOIA Request Perfected?

- Must follow the FDIC FOIA Regulations:

- 12 C.F.R. §309.5

- Must be in writing
- Must be from a "person"
- Must have a reasonable description of records being sought

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Reasonable Interpretation vs Clarification

- In some instances, we may be able to reasonably interpret broad requests.
- In other instances, we need to clarify/limit the scope with the requester.
- In both instances, we may rely on you!

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Agency Records

The FOIA permits a person to request access to agency records.

- Records that we created or obtained during the course of our operations and activities AND are in our control at the time we receive a FOIA request

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Examples of Agency Records

Agency Records:

- FDIC Legal Internal or Public Memoranda
- RMS supervisory files
- DRR Receivership files
- FDIC contracts

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Definition of Search

The FOIA defines the term "search" as "to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request"

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Reasonable Search

The test for adequacy of a search is a "reasonableness" standard

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Search Locations

Search locations can vary based on the request but may include:

- Outlook Email
- OneDrive
- Shared Drives
- FDIC Databases
- Paper Records – Less Common

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15-Minute Break



Module Three

SecureRelease™ Topics

- Searches within SecureRelease™
- Friendly Reminders

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SecureRelease™ Support

- Email: securereleasesupportteam@deloitte.com
  - Cc: Alisa Colgrove, Sarah Haydon & Christine Grauer
- Phone Number: 844-919-0718

Module Four

FOIA Fees & Fee Estimates

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Three Categories of Requesters

- Commercial Use

"Preferred Status":

- Educational Institutions
- Noncommercial Scientific Institutions
- Representatives of the News Media

- All others

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Commercial-Use Requester

- A request made by, or on behalf of someone "who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester."

- Placement in this category is based on the *use* to which the requester will put the information and not their identity.

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Representative of the News Media

"[A]ny person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience."

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Representative of the News Media

Key Elements for Determination - Look at requester's **overall activities.**

1. Gathering information of potential interest to segment of the public.
2. Using editorial skills to turn raw material into distinct work.
3. Disseminating that work to an audience

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Representative of the News Media

As to *gathering information*, the D.C. Circuit has ruled this fee category is focused:

- "on the nature of the *requester*, not its request."
- A case-by-case approach is not always necessary.

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Representative of the News Media

As to *distribution of the work*, posting on a website can qualify as distribution.

- Size of audience does not matter.
- Not necessary to have track record if there are firm plans.
- Fact-based determination based on past record, current operations, and future plans.

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Two Other "Preferred" Fee Statuses

1. Noncommercial scientific institution: Institution operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry.

2. Educational institutions: Schools, including vocational schools, which operate a program of "scholarly research."

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All Other Requesters

Anyone who does not fit in the other fee categories

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Three Types of Fees

- Search
- Review
- Duplication

Fees | FDIC.gov - www.fdic.gov/foia/fees

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Fee Assessment Considerations

Statutory Fee Restrictions

Agencies must provide the first 100 pages to "preferred status" and "all other" requesters and the first two hours of search time without cost to "all other" requesters. Commercial Use requesters do not receive either.

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Fee Assessment Considerations

Agency Threshold

Fees are not assessed when the total falls below an agency's cost to process a check.

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Agreement to Pay Fees

- Estimated fees should not be used to discourage requesters from exercising their access rights under the FOIA.

- Fee estimates should be explained and options offered.

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Fee Assessment Considerations

Advance Payment

- Fee estimate exceeds $250; or
- Requester has previously failed to timely pay a properly assessed fee.

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Aggregation

If an agency reasonably believes that a requester is attempting to divide a request into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate those requests and charge accordingly.

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Fee Estimate

May be necessary -

- Commercial Requesters – Agreement to pay is not high enough to process request.
- All Other Requesters – Two hours of search is not enough to locate records.

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Fee Estimate

- Conduct preliminary search to locate estimated volume of records.
- With the assistance of the preliminary search and estimated volume of records, estimate the time to process (final search and review.)
- Send the FOIA/PA Group the estimated number of records/pages and the estimated time of search and review.
- You may consider the FOIA request on hold, until the FOIA/PA Group contacts you to say if the requester agreed to the fees.

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Limitations on Assessing Fees

The FOIA statute contains limitations on how and when agencies can charge certain fees.

General Rule: If the agency fails to comply with any time limit, it may not charge search fees to commercial use or all other requesters, or for requesters with preferred fee status, may not charge duplication fees.

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Exception to the Fee Limitation

Agencies can still charge fees if:

- Timely written notice of unusual circumstances is provided to the requester;
- "more than 5,000 pages are necessary to respond to the request," and
- The agency discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

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Fee Waivers Under the FOIA

"Documents shall be furnished without any charge [or at a reduced rate] … if disclosure of the information is in the public interest because *it is likely to contribute significantly to public understanding of the operations or activities of the government* and *is not primarily in the commercial interest of the requester.*"

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FOIA Fees and Fee Waivers

Sources of Authority/Guidance

- FOIA Statute
- Case Law
- OMB Fee Guidelines
- Agency Regulations – 12 CFR Part 309.5
- DOJ Guide to the FOIA



Jeopardy

Special FOIA Edition

FDIC
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Want to Know More About the FOIA:

- FDIC FOIA Regulations, 12 C.F.R. § 309.5
- FDIC Circular 1023.1, Procedures for Processing FOIA Requests
- Office of Information Policy, Department of Justice - Guide to the Freedom of Information Act

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

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Additional FOIA Training

To be updated soon in FLX soon:
FOIA Training for Professionals (3 hours)
FOIA Training for All Employees (1 hour)

DOJ Office of Information and Policy (OIP) FOIA Training:
https://www.justice.gov/oip/training

American Society of Access Professionals (ASAP)
https://www.accesspro.org/

FOIA Contacts

FOIA OFFICIALS

Matthew P. Reed, Acting General Counsel/Chief FOIA Officer
FDIC Ombuds, FOIA Public Liaison

FOIA/PA GROUP

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Sarah Cunanan, FOIA Counsel
Partap Verma, Privacy Counsel
Jeannette Wise, FOIA Counsel
Christine Grauer, Senior Attorney
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS & Training Coordinator
Natasha Smith, GIS
Charles Smith, GIS
Sarah Hayden, GIS
Ali Khurrum, GIS
Loredana Kratzer, GIS
Theodore White-Meridian, Counsel (Detail)



FOIA Training Seminar

Questions & Answers

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Privileged

Privileged

Privileged

Searches within SecureRelease &Friendly Reminders

Non-responsive, proprietary and confidential business information regarding Secure Release

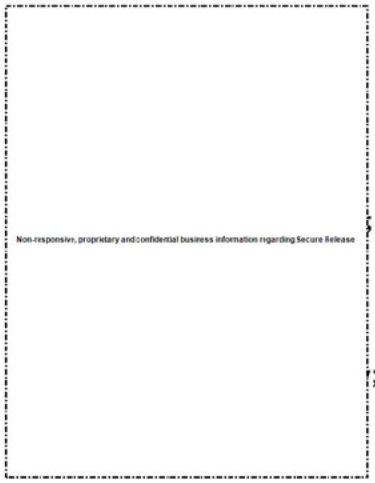
Select Non-responsive, proprietary and confidential business information regarding Secure Release

Options in drop-down menu include: Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

Search fields in SR are:



Non-responsive, proprietary and confidential business information regarding Secure Release

To initiate search

Non-responsive, proprietary and confidential business information regarding Secure Release

Example: Type "minutes" in the Request Description field.

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

When you have completed your search(es),

Non-responsive, proprietary and confidential business information regarding Secure Release

Friendly Reminders:

- When reviewing documents that have been previously reviewed, please do not alter or remove previous redactions. Keep those redactions but add your redactions, if any. If you disagree with another Division's redaction, please contact the FOIA/PA Group and we will coordinate a resolution between the two Divisions. SR now has additional FOIA Coordinator boxes to check off.

- Don't forget that there is the **SecureRelease™ Training Center** in the Workspaces in SecureRelease with helpful videos and documents.

- If you have issues with SR (logging in, redacting, etc.), be sure to clear your browser's cache first before submitting a request to the Support Desk.

- If you must submit a request to the Support Desk, be sure to copy the Government Information Specialist assigned to the request, Alisa Colgrove, Sarah Hayden and Christine Grauer.

From: American Society of Access Professionals
To: Colgrove, Alisa N.
Subject: [EXTERNAL MESSAGE] FREE Court Case Update (Virtual)-Mar 18
Date: Thursday, March 6, 2025 11:40:19 AM

CAUTION: External email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

ASAP Logo

Visit our website

Celebrating Sunshine Week

FREE VIRTUAL Training
Court Case Update
March 18 at 2:00 pm EDT

ASAP Celebrates Sunshine Week by sponsoring FREE virtual training for all!

Hold the Date: March 18, 2:00 pm – 3:15 pm, EDT

One of the most popular sessions at our National Training Conference and our FOIA/Privacy Act Workshop is the Recent Court Case Update.

Join us on Microsoft TEAMS Town Hall as ASAP President Ryan Mulvey and Director-At-Large Michael Heise take us through how the courts have ruled in recent FOIA case law and offer perspectives on the impact on you.

A link to join the Town Hall will be emailed and posted at www.accesspro.org on March 17. Get prepared now by making sure that TEAMS is installed/downloaded on your device. Attendee cameras and mics will not be turned on during the event. Please note that you CANNOT join TEAMS Town Hall using Firefox or Safari at this time.

Ryan Mulvey is Policy Counsel at Americans for Prosperity Foundation, a 501(c)(3) organization. In that role, he works on various legal policy issues, especially government transparency at the federal and state levels. Ryan has extensive experience with FOIA litigation and *amicus* work at the district court, appellate, and Supreme Court levels; as a policy expert, he frequently advises congressional and state legislative staff about transparency reforms; and he researches cutting-edge open-government topics. In his personal time, Ryan helps run FOIAadvisor.com—a free, online resource on all things related to the federal FOIA. Ryan is also a current member of the FOIA Advisory Committee, and he has served as President of the American Society of Access Professionals since 2021.

Michael Heise is Assistant Legal Counsel of the Equal Employment Opportunity Commission's FOIA Division and serves as the EEOC's FOIA Public Liaison. He processes complicated requests with voluminous records. He monitors the agency-wide FOIA processing and reports the findings to the Chief FOIA Office. Additionally, Michael provides guidance to specific field offices as well as guidance to colleagues on a wide variety of legal issues concerning FOIA. Michael is a former member of the FOIA Advisory Committee and has served as a director-at-large on the ASAP board

since 2022.

Both presenters appear in their personal capacity.

And don't forget to take advantage of the FREE training and resources offered by the U.S. Department of Justice, Office of Information Policy https://www.justice.gov/oip

National Training Conference - May 5-8, 2025, Planet Hollywood - Las Vegas, Nevada

You are receiving this email notification because you have a relationship with ASAP. To unsubscribe, please log into www.accesspro.org (usually the user id is first initial, followed by last name, all one word, all lower case (example: John Doe is jdoe) and edit your Communications Preferences. You may also send an email to asap@accesspro.org with the subject line "Unsubscribe."

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Freedom of Information Act

FDIC
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Freedom of Information Act
5 U.S.C. 552

The Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exceptions or by one of three special law enforcement record exclusions.

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Who Can Make a FOIA Request and What Can Be Requested?

Who?

Any person, regardless of citizenship

Corporations, state, local, and foreign governments

Requesters generally do not have to explain the reason behind the request

What?

Agency Records--includes any information (paper or electronic) created by or under the control of the agency at the time of the request

Includes records held by contractors

Includes Teams chats and text messages on work cell phone

FOIA Exemptions

Exemption Two
Records related solely to the internal personnel rules and practices of the FDIC.
Exemption Three
Records specifically exempted from disclosure by statute
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
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.

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Foreseeable harm analysis

Exemption 8

Privileged

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FDIC FOIA Contacts

FOIA OFFICIALS

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M. Anthony Lowe, FDIC Ombudsman, FOIA Public Liaison

FOIA/PA GROUP

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Partap Verma, Counsel
Jeannette Wise, Senior Attorney
Felice Rosser, FOIA Technician
Alisa Colgrove, GIS
Natasha Smith, GIS
Lisa Snider, GIS
Michael Toland, GIS

LEGAL DIVISION FOIA COORDINATORS

Sonya Levine, Counsel
Kaye Allison, Counsel
Melody Monroe, Paralegal Specialist
Stephanie Hearne, Paralegal Specialist

HAI_FOIA0000494

If you want to know more about the FOIA

Go to FDIC Learn

search "FOIA"

DOJ Video Training Classes

FOIA Training for Professionals

(3 hours)

FOIA Training for All Employees

(1 hour)

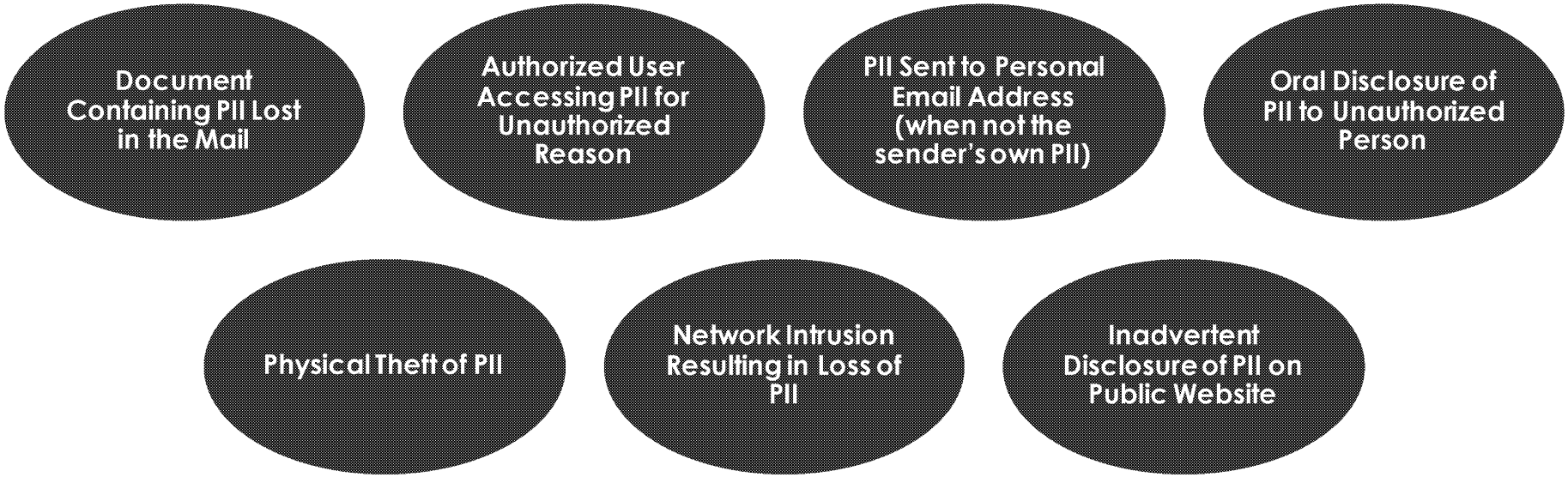
Breach Definition

- Involves the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user access or potentially access PII or (2) an authorized user accesses PII for another than authorized purpose

- 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.

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Breach Examples



HAI_FOIA0000497

Reporting Incidents

- All users of FDIC information systems or possessors of FDIC information, in any form or format (including paper), must immediately report suspected information security incidents to SRT/CSIRT
  - FDIC Directive 1360.12 – Reporting Information Security Incidents

- Please Do Not Hesitate to Report
- Timely Reporting Helps CIOO Minimize Impact of Incidents and Meet Regulatory Requirements

- **FDIC SRT/CSIRT**
  - **SRT/CSIRT Hotline: 703-516-5760 or Toll Free: 1-877-791-3377**
  - **Email: fdic-csirt@fdic.gov**

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Definitions

Computer Security Incident (NIST 800-61 r2) - an occurrence that:

- Actually or imminently jeopardizes, without lawful authority, the confidentiality, integrity, or availability of information or an information system
- Constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies

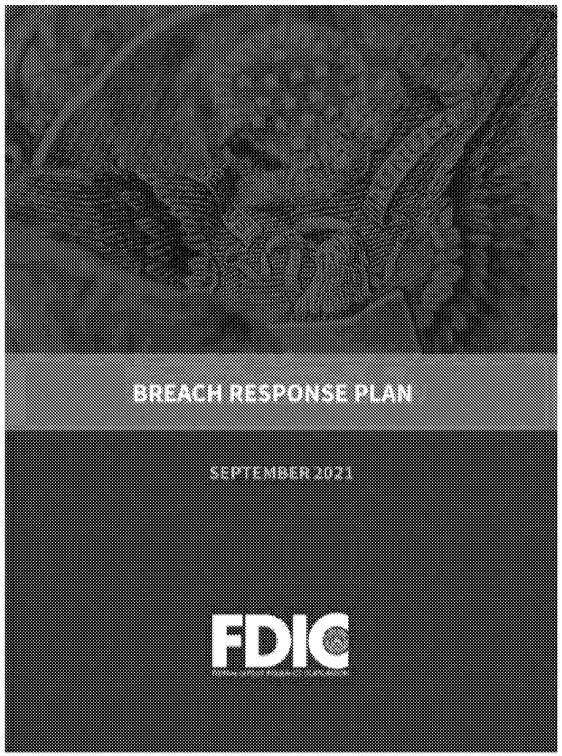
Data Exposure Incident – a Computer Security Incident that:

- Involves the loss of control, compromise, unauthorized disclosure, or unauthorized acquisition of business sensitive information (SI) or privacy information (PII); this term was formerly known as a "DLP Incident"

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Breach Response Plan

https://www.fdic.gov/policies/privacy/documents/fdic-breach-response-plan.pdf





Division of Administration (DOA)

Acquisition Services Branch (ASB)

Acquisition Management & Systems (AMS)

ASB Freedom of Information Act (FOIA) Standard Operating Procedure (SOP) V3.0

June 3, 2025

This document contains confidential information for FDIC Official Use Only. It shall not be duplicated, used, or

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
3.0	Organization Name Changes	6/3/2025	Lisa Mordhorst

Table of Contents

A. Purpose **4**

B. Authorities, Policies and Reference Guides **4**

C. Designated Responsibilites **4**

D. FOIA Submittal Procedures **5**

E. ASB FOIA Coordinator Process **5**

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 OIA 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 Request
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, Acquisition Management &Systems (AMS) Section, responds to ASB-related FOIA requests received from the FOIA-PA Group with assistance from ASB COs as necessary. ASB, AMS, 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, AMS 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, AMS, 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, AMS Section, verifies with the designated CO that the material is complete. If documents cannot be located in the official contract file, ASB, AMS, 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

AMS – Acquisition Management and Systems

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

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 statue:
  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.

Appendix 3: Upload, Ingestion & Redaction Cheat Sheet for FOIA Coordinators

After you locate responsive records, SAVE them electronically.

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

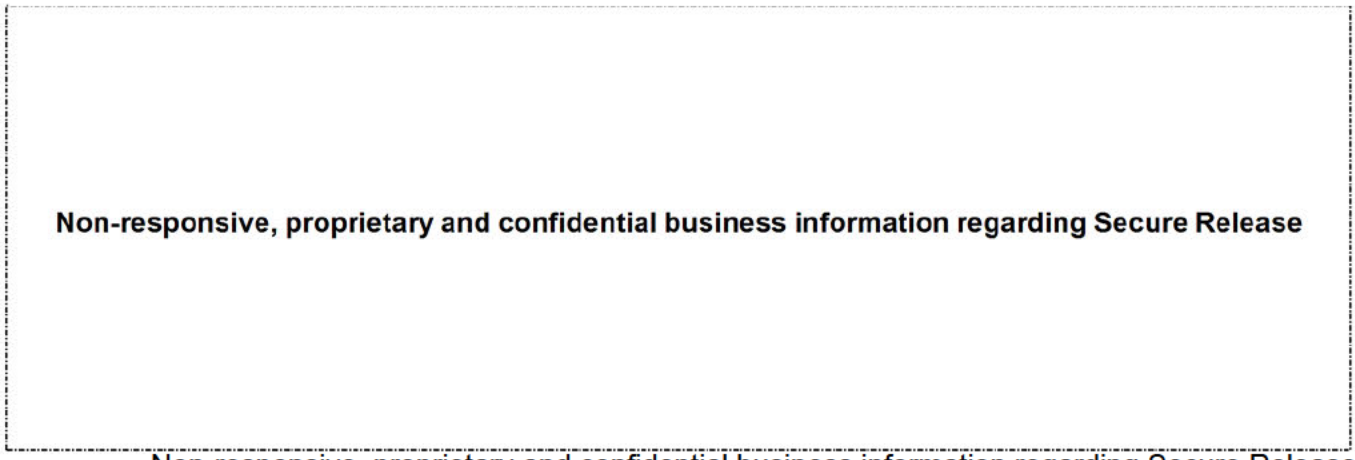
Step 1 Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

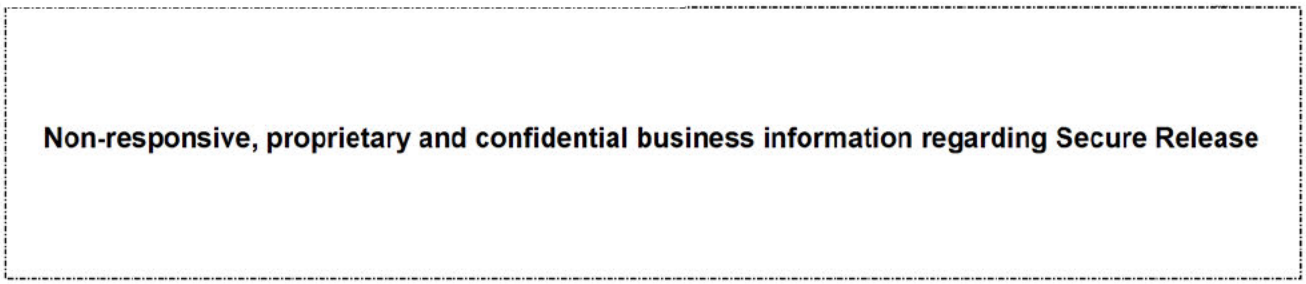
Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

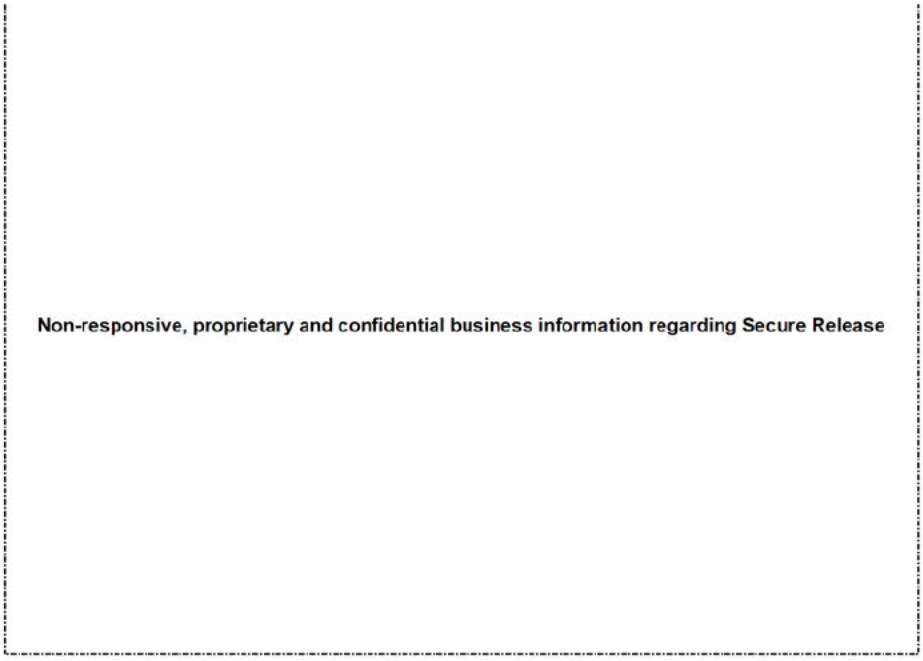


Non-responsive, proprietary and confidential business information regarding Secure Release

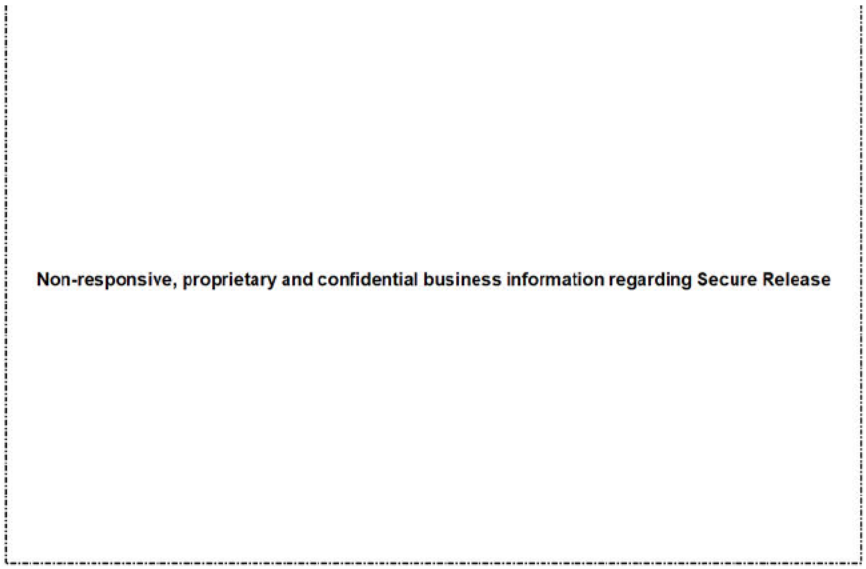
Step 2 –
Non-responsive, proprietary and confidential business information regarding Secure Release



Non-responsive, proprietary and confidential business information regarding Secure Release



Non-responsive, proprietary and confidential business information regarding Secure Release

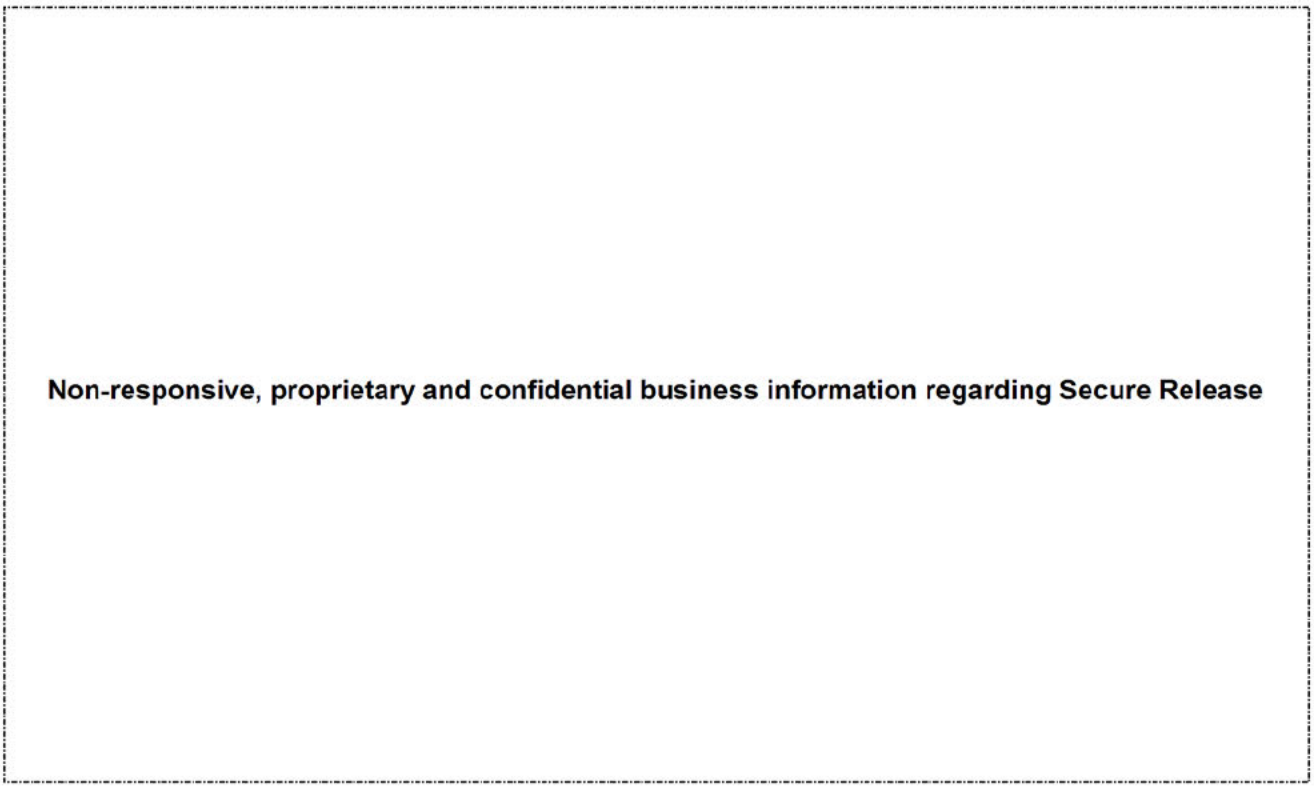


Non-responsive, proprietary and confidential business information regarding Secure Release

Step 3 –

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release This will be the most commonly used redaction mode.



Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

Click on applicable Exemptions.

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

Step 4 –

Non-responsive, proprietary and confidential business information regarding Secure Release

Non-responsive, proprietary and confidential business information regarding Secure Release

Continue through all the documents in the FOIA case.

Non-responsive, proprietary and confidential business information regarding Secure Release

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

***History Associates, Inc. v. FDIC*, 1:24-cv-1857-ACR (D.D.C.)**

July 7, 2025 Production in Accordance with Court's May 29, 2025 Minute Order and June 5, 2025 Scheduling Order

Privilege Log

Log No.	BEG BATES	Date	Doc. Type	Subject/ Title	Author	Basis	Description
1	HAI_FOIA0000014	October 5, 2022	PPT	Freedom of Information Act (FOIA) Training Session for RMS	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to RMS client regarding foreseeable harm standard (Exemption 4).
2	HAI_FOIA0000016	October 5, 2022	PPT	Freedom of Information Act (FOIA) Training Session for RMS	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to RMS client regarding foreseeable harm standard (Exemption 5).
3	HAI_FOIA0000018	October 5, 2022	PPT	Freedom of Information Act (FOIA) Training Session for RMS	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to RMS client regarding foreseeable harm standard (Exemption 6).

4	HAI_FOIA0000020	October 5, 2022	PPT	Freedom of Information Act (FOIA) Training Session for RMS	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to RMS client regarding foreseeable harm standard (Exemption 8).
5	HAI_FOIA0000031	November 14, 2022	PPT	Freedom of Information Act training for DRR's Managers at the Monthly Management Meeting Presentation	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to DRR client regarding foreseeable harm standard (Exemption 8).
6	HAI_FOIA0000060	February 7, 2023	PPT	Freedom of Information Act (FOIA) Bi-Annual Training Seminar	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to non-OIG/non-legal FOIA Coordinator client regarding foreseeable harm standard (Exemption 4).
7	HAI_FOIA0000061	February 7, 2023	PPT	Freedom of Information Act (FOIA) Bi-Annual Training Seminar	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to non-OIG/non-legal FOIA Coordinator client

							regarding foreseeable harm standard (Exemption 5).
8	HAI_FOIA0000062	February 7, 2023	PPT	Freedom of Information Act (FOIA) Bi-Annual Training Seminar	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to non-OIG/non-legal FOIA Coordinator client regarding foreseeable harm standard (Exemption 6).
9	HAI_FOIA0000063	February 7, 2023	PPT	Freedom of Information Act (FOIA) Bi-Annual Training Seminar	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to non-OIG/non-legal FOIA Coordinator client regarding foreseeable harm standard (Exemption 8).
10	HAI_FOIA0000109	April 13, 2023	PPT	FOIA Overview for CISR	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to CISR client regarding foreseeable harm standard (Exemption 4).
11	HAI_FOIA0000110	April 13, 2023	PPT	FOIA Overview for CISR	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal

							advice to CISR client regarding foreseeable harm standard (Exemption 5).
12	HAI_FOIA0000111	April 13, 2023	PPT	FOIA Overview for CISR	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to CISR client regarding foreseeable harm standard (Exemption 6).
13	HAI_FOIA0000112	April 13, 2023	PPT	FOIA Overview for CISR	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to CISR client regarding foreseeable harm standard (Exemption 8).
14	HAI_FOIA0000126	June 5, 2023	PPT	FOIA Overview Division of Information Technology Staff	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to DIT client regarding foreseeable harm standard (Exemption 4).
15	HAI_FOIA0000127	June 5, 2023	PPT	FOIA Overview Division of Information Technology Staff	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to DIT client regarding foreseeable harm standard

							(Exemption 5).
16	HAI_FOIA0000128	June 5, 2023	PPT	FOIA Overview Division of Information Technology Staff	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to DIT client regarding foreseeable harm standard (Exemption 6).
17	HAI_FOIA0000129	June 5, 2023	PPT	FOIA Overview Division of Information Technology Staff	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to DIT client regarding foreseeable harm standard (Exemption 7).
18	HAI_FOIA0000130	June 5, 2023	PPT	FOIA Overview Division of Information Technology Staff	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to DIT client regarding foreseeable harm standard (Exemption 8).
19	HAI_FOIA0000481	March 12, 2025 (handout to the bi-annual seminar on this date)	Word Doc/ Handout	Foreseeable Harm Standards	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal advice to client regarding foreseeable harm standards.
20	HAI_FOIA0000493	October 19, 2022; August 30, 2023;	PPT	Freedom of Information Act	Sarah Cunanan	Attorney -Client Privilege	Confidential communication; counsel giving legal

		May 8, 2024; November 14, 2024		presented at OneLegal			advice to client regarding foreseeable harm standard (Exemption 8).