

# FREEDOM OF INFORMATION ACT COMPLIANCE

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## 1. Purpose

This directive establishes the Department of Homeland Security (DHS) policy for the Freedom of Information Act (FOIA), as amended.

## 2. Scope

This directive applies to all DHS organizational elements.

## 3. Authorities

This directive is governed by numerous Executive Orders, Public Laws, and national policy, such as:

- A. The Freedom of Information Act, as amended (5 U.S.C. 552).
- B. Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Department of Justice Fee Waiver Policy Guidance, dated April 2, 1987.
- C. E.O. 12600, "Predisclosure Notification Procedures for Confidential Commercial Information", dated June 23, 1987.
- D. E.O. 12958, "National Security Information."
- E. Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines; 52 Federal Register 10012, dated March 27, 1987.

- F. President's Memorandum For Heads of Departments and Agencies, dated October 4, 1993, subject: The Freedom of Information Act.
- G. Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act.
- H. Attorney General's Memorandum for Heads of All Federal Departments and Agencies Regarding the FOIA, October 12, 2001
- I. Guidance on Homeland Security Information, March 19, 2002

## 4. Definitions

- A. **Category:** The classification assigned to a requester for fee purposes determined by the projected use of the records. The categories are: (a) commercial; (b) educational; (c) non-commercial scientific institutions; (d) representative of the news media; and (e) all other requesters.
- B. **Department:** The Department of Homeland Security (DHS).
- C. **FOIA Officer:** FOIA Officer refers to an employee selected by an Under Secretary or a Designated DHS official to receive FOIA requests assigned to their area by the Departmental Disclosure Officer and to provide assistance in administrative matters pertaining to FOIA request processing. For other offices, FOIA Officer refers to the head of each disclosure office.
- D. **Responsible Official:** The head of the organizational unit having immediate custody of the records requested or a designated official. The responsible official makes initial determinations to grant or deny requests for access to records and requests for fee waivers. The responsible official will also determine a requester's category for fee purposes.
- E. **Designated DHS Official:** Senior DHS officials as designated by the Secretary, Deputy Secretary or Under Secretaries.
- F. **Departmental Disclosure Officer (DDO):** An individual reporting to the Under Secretary for Management who serves as the Department of the Homeland Security's principal point of contact and agency representative on FOIA-related matters.
- G. **Appeal Authority:** The Assistant General Counsel for General Law or his or her designee.

## 5. Responsibilities

A. **All Under Secretaries and Designated DHS Officials:** shall be responsible for the following tasks relating to their area of responsibility:

1. establish internal procedures to ensure the effectiveness of the Department's FOIA program. For organizational elements transferring into DHS where such internal procedures may already exist, they may continue to be used until amended or replaced by the DHS DDO. Any new procedures shall be consistent with this directive and: (a) the FOIA, as amended; (b) Executive Order (E.O.) 12600; (c) E.O. 12958; and, (d) applicable Department of Justice, Office of Management and Budget, and National Archives and Records Administration guidelines.
2. ensure that employees who are responsible in any part for FOIA processing are knowledgeable about the provisions and requirements of the FOIA and ensure that these employees attend FOIA training at least once a year;
3. ensure that accurate and complete data is submitted in a timely manner to the Departmental Disclosure Officer for the Department of Homeland Security's Annual FOIA Report to the Attorney General, and for other reporting purposes, as required;
4. ensure that records that are subject to section (a)(2) of the FOIA which have been created on or after November 1, 1996, are posted;
5. submit proposed organizational element disclosure regulations or proposed changes to regulations to the Departmental Disclosure Officer for review;
6. select a FOIA Officer and advise the Departmental Disclosure Officer of the selection and of any subsequent changes in designation of selection;
7. ensure that directorate FOIA Officers and web masters collaborate with directorate records management officers prior to disposing of records posted on the FOIA web sites and to schedule electronic records on the sites; and
8. ensure that reasonable efforts are made to maintain records in forms or formats that are reproducible for purposes of the FOIA.

B. The **Under Secretary for Management** shall:

1. provide technical management support for the Department's FOIA web site on the DHS Internet and technical assistance to the Departmental Disclosure Officer to ensure compliance with the requirements of the FOIA;

2. provide technical assistance to directorates in placing records in the electronic reading room which includes establishing specific procedures for maintaining and posting directorate records;
3. establish and maintain an index of all major information systems and a description of major information and record locator systems in the Department;
4. ensure that DHS-wide, cost-effective, state-of-the-art technical solutions for electronic redaction are implemented to achieve economies of scale and integrate with the information technology infrastructure;
5. provide information technology guidance to DHS FOIA Officers, web masters, and records management officers regarding information posted on the DHS FOIA web sites; and
6. provide oversight, guidance and support to the Departmental Disclosure Officer.

C. The **Departmental Disclosure Officer (DDO)** shall:

1. act as the Department of the Homeland Security's principal point of contact and agency representative on FOIA-related matters;
2. coordinate the Department's FOIA implementation and management in collaboration with DHS organizational elements;
3. provide regulatory and policy guidance, and technical advice and assistance to the Department on FOIA-related matters;
4. review proposed changes to DHS disclosure regulations;
5. collect, review, consolidate, and submit the data for the Annual FOIA Report to the Attorney General on behalf of the Department;
6. post Departmental Office (DO) records that are subject to section (a)(2) of the FOIA which have been created on or after November 1, 1996;
7. grant or deny requests for expedited processing of requests for DO records;
8. supervise the implementation of the FOIA within the DO;
9. notify a requester when information needed to process a request for DO records is lacking;
10. assign FOIA requests to the appropriate FOIA Officer for action;
11. assign FOIA appeals to the appropriate appeal authority within DO;
12. follow up with the assigned office to ensure completion of a request or

appeal, when necessary;

13. when a request seeks records in the custody of two or more functions within DO for which separate FOIA Officers have been designated, assign to one of the FOIA Officers the responsibility of coordinating one response;

14. assist the general public in making FOIA requests to the Department; and

15. conduct FOIA training on a regular basis and oversee the FOIA training conducted at DHS offices.

**D. Responsible Officials** shall:

1. determine:
  - (a) whether to grant or deny requests for access to records;
  - (b) whether to grant or deny requests for fee waivers; and,
  - (c) a requester's category for fee purposes;
2. notify the requester of determination(s) made pursuant to paragraph 5.D.1;
3. determine costs incurred by the Department to process the request and whether or not fees will be charged to the requester;
4. ensure that requests are processed in accordance with all applicable disclosure requirements;
5. compile and provide data for the Annual FOIA Report; and,
6. retrieve records retired to the Federal Records Center if they are needed in processing a request.

**E. Appeal Authority** shall, upon receipt of an administrative appeal, either affirm or reverse those initial determinations that:

1. deny access to a record or portion thereof;
2. deny a request for a fee waiver;
3. pertain to a requester's category;
4. advise of no records located; or
5. deny a request for expedited processing.

**F. FOIA Officers shall:**

1. designate a responsible official to respond to each FOIA request received or assigned pursuant to paragraph 5.C.10;
2. ensure consistency and completeness of a Departmental response when assigned responsibility for coordination pursuant to paragraph 5.C.13;
3. determine, with appropriate program officials, which records in response to FOIA requests have become or are likely to become the subject of repeated requests for the same records and ensure that these records are placed in the electronic reading room of the Department's web site; and,
4. coordinate with the Department web masters and records management officers regarding the disposing of records in the electronic reading room of the Department's web site.

## **6. Policy & Procedures**

**A. Policy:** It is the policy of DHS to implement the FOIA uniformly and consistently and to provide maximum allowable disclosure of agency records upon request by any individual.

**B. Procedures:** Upon receipt of a request satisfying the requirements of the FOIA, records shall be disclosed unless they are protected by one or more of the FOIA exemptions or exclusions and are not appropriate for discretionary disclosure. Requests shall be processed within the time limits defined by the FOIA. Individuals requesting information will be informed of the right and procedure to seek administrative appeal and to seek judicial review of:

1. any partial or total denial of access to records;
2. a fee waiver denial;
3. a determination of requester's category for fee purposes;
4. a no-records determination; or,
5. a denial of a request for expedited processing.

The FOIA requires that, except in "unusual circumstances" as specified in the Act, agency initial decisions on whether to grant or deny access to records must be made within 20 working days of receiving the request and the requester so notified. A requester may administratively appeal an agency's adverse initial determination and may seek judicial review if not satisfied with the agency's final decision. If a court determines that agency personnel have acted arbitrarily or capriciously in withholding records, disciplinary action against the employee primarily responsible may be warranted.

**C. Questions or Concerns Regarding the Process:** Any questions or concerns regarding this directive should be addressed to the DDO.