

FREEDOM OF INFORMATION ACT COMPLIANCE

I. Purpose

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

II. Scope

This directive applies to all DHS Components.

III. 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 United States Code (U.S.C.) § 552)
- B. 6 Code of Federal Regulation Part 5, Freedom of Information Act Regulations, November 22, 2016

IV. Definitions

- A. **Chief FOIA Officer**: The Secretary of Homeland Security has designated the DHS Chief Privacy Officer to serve concurrently as the Chief FOIA Officer.
- B. **Deputy Chief FOIA Officer**: An individual reporting to the Chief FOIA Officer who serves as the Department of Homeland Security's principal point of contact and agency representative on FOIA-related matters.
- C. **Freedom of Information Act (FOIA)**: The FOIA is a freedom of information law that provides any person access to federal executive branch agency records unless a specific exemption/exclusion permits withholding of the information.
- D. **FOIA Officer**: FOIA Officer refers to a Designated DHS official appointed by the Component head to receive FOIA requests and to provide assistance in administrative matters pertaining to FOIA request processing.
- E. **Responsible Official**: The individual designated by the Component FOIA Officer to be responsible to respond to each FOIA request received or

assigned.

F. **FOIA Public Liaisons**: The supervisory official designated by the Chief FOIA officer to be responsible for the FOIA Requester Service Centers.

G. **FOIA Requester Service Center**: Facility providing the initial point of contact for requesters with questions about the handling of their requests.

H. **Appeal Authority**: The Assistant General Counsel for General Law or designee.

V. Responsibilities

A. Subject to the authority of the Secretary, the **Chief FOIA Officer** has agency-wide responsibilities for the efficient and appropriate compliance with the FOIA:

1. Monitors implementation of the FOIA throughout DHS and keeps the Secretary, DHS General Counsel, and the Attorney General appropriately informed of the agency's performance in implementing the FOIA;
2. Recommends to the Secretary such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of FOIA;
3. Reviews and reports to the Attorney General on the agency's performance in implementing the FOIA;
4. Offers training to agency staff regarding their responsibilities under FOIA;
5. Serves as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy;
6. Designates 1 or more FOIA Public Liaisons;
7. Reviews, at least once, all aspects of the administration of the FOIA by the agency to ensure compliance with the requirements of the FOIA; and
8. Represents the Department on the Chief FOIA Officers Council.

B. The **Deputy Chief FOIA Officer** is responsible for the following tasks relating to their area of responsibility:

1. Acts as the Department of Homeland Security's principal point of contact and agency representative on FOIA-related matters;
2. Coordinates the Department's FOIA implementation and management in collaboration with DHS Components;

3. Provides regulatory and policy guidance, and technical advice and assistance to the Department on FOIA-related matters; and
4. Collects, reviews, consolidates, and submits the data for the Annual FOIA Report and the Chief FOIA Officer Report to the Attorney General on behalf of the Department.

C. **All Under Secretaries and DHS Component Heads** are responsible for the following tasks relating to their area of responsibility unless otherwise addressed through a formal arrangement (e.g., memorandum of agreement) that outlines roles and responsibilities of the respective offices:

1. Establishes a FOIA Requester Service Center responsible for responding efficiently to FOIA requests;
2. Appoints a FOIA Officer and advises the Chief FOIA Officer of the selection and of any subsequent changes in designation of selection;
3. Ensures that Component employees who are responsible in any part for FOIA processing are knowledgeable about the provisions and requirements of the FOIA and ensures that these employees attend FOIA training at least once a year;
4. Ensures that accurate and complete Component data is submitted in a timely manner to the Chief FOIA Officer for the Department of Homeland Security's Annual FOIA Report and Chief FOIA Officer Report to the Attorney General, and for other reporting purposes, as required; and
5. Ensures that Component records that are subject to section (a)(2) of the FOIA, which have been created on or after November 1, 1996, are posted.

D. **The Under Secretary for Management :**

1. Provides technical management support for the Department's FOIA website on the DHS Internet and technical assistance to the Chief FOIA Officer to ensure compliance with the requirements of the FOIA;
2. Establishes and maintains an index of all major information systems and a description of major information and record locator systems in the Department; and
3. Ensures 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.

E. **The Component FOIA Officers:**

1. Serve as the DHS Chief FOIA Officer's main point of contact to implement FOIA requirements;

2. Monitor Component's compliance with FOIA, DHS FOIA regulations, and DHS FOIA policy;
3. Notify the DHS Chief FOIA Officer of FOIA issues or non-compliance and implement corrective, remedial, and preventative actions when necessary;
4. Assist in drafting and reviewing the Annual FOIA Report and Chief FOIA Officer Report to the Attorney General, and any other monthly or ad hoc reports required;
5. Designate a responsible official to respond to each FOIA request received or assigned;
6. Ensure consistency and completeness of a Departmental response when assigned responsibility for coordination; and
7. 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 website.

F. The **Responsible Officials**:

1. Determine:
 - (a) Whether to grant or deny requests for access to records;
 - (b) Whether to grant or deny requests for fee waivers;
 - (c) Category of the Requestor for fee purposes; and
 - (d) Costs to be incurred by the Department to process the request.
2. Notify the requester of determination(s) made pursuant to FOIA; and
3. Ensure that requests are processed in accordance with all applicable disclosure requirements.

G. The **Appeal Authority**, upon receipt of an administrative appeal, either affirms or reverses those initial determinations that:

1. Deny access to a record or portion thereof;
2. Deny a request for a fee waiver;
3. Pertain to the determination of the requestor's category ;
4. Advise of no records located; or
5. Deny a request for expedited processing.

H. The **FOIA Public Liaisons**:

1. Assist in reducing delays, increasing transparency and understanding of the status of requests;
2. Assist in the resolution of disputes that arise from the processing of FOIA requests;
3. Report to the Chief FOIA Officer the number of times the Public Liaison engaged in FOIA dispute resolution; and
4. Report to the Chief FOIA Officer the number of times the Public Liaison engaged in FOIA dispute resolution with the assistance of the Office of Government Information Services.

VI. 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 are disclosed unless they are protected by one or more of the FOIA exemptions or exclusions and are not appropriate for discretionary disclosure. Requests are processed within the time limits defined by the FOIA. Individuals requesting information are 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 the category of the requester for fee purposes; 4) a no-records determination; or 5) a denial of a request for expedited processing.

C. 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 requestor so notified. A requestor 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.

VII. Questions

Any questions or concerns regarding this directive should be addressed to the Deputy Chief FOIA Officer.



Chip Fulghum
Acting Under Secretary for Management

Date: April 17, 2017