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***Administration and Operations
Freedom of Information Act***

NMFS FREEDOM OF INFORMATION ACT HANDBOOK

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Freedom of Information Act (FOIA) Handbook



National Marine Fisheries Service

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TABLE OF CONTENTS

CHAPTER I. Background and Introduction	2	
CHAPTER II. Office Responsibilities	3	
a. NMFS FOIA Office	3	
b. Headquarters Program, Regional Office, or Science Center (Lead Office)	3	
c. NMFS General Counsel and Regional General Counsel (NOAA GC)	3	
CHAPTER III. Summary of NMFS FOIA Process	5	
CHAPTER IV. FOIA Workflow and Procedures	9	
a. Request Requirements	9	
b. Receiving Requests	9	
c. Processing Requests	10	
d. Time Limits	12	
e. Scope of Request	14	
f. Fees and Waivers	14	
g. Search Responsive Documents	18	
h. Review Responsive Documents	18	
i. Final Determination	20	
j. Request Closeout	22	
k. Appeal	22	
CHAPTER V. Glossary	23	
CHAPTER VI. References	32	
Appendices		
Appendix A	Freedom of Information Act (5 U.S.C. 552) as Amended	33
Appendix B	DOC Regulations (15 C.F.R., Part 4: Subpart A, Appendix A-C)	45
Appendix C	DOC Administrative Order (DAO) 205-14	69
Appendix D	DOC Administrative Order (DAO) 205-14 Amendment 2	78
Appendix E	DOC Administrative Order (DAO) 205-14 Amendment 2	81
Appendix F	NOAA Administrative Order (NAO) 205-14	83
Appendix G	Memo by Attorney General, The Freedom of Information Act	89
Appendix H	Memo by Assistant General Counsel for Administration, Government-wide Freedom of Information Act (FOIA) Policy	91
Appendix I	NOAA Files Disposition: Chapter 200-15 through 17	93
Appendix J	NMFS FOIA Contacts	97
Appendix K	NMFS FOIA Memoranda	102
Appendix L	NMFS FOIA Forms and Worksheets	106
Appendix M	NMFS Sample FOIA Letters	113

CHAPTER I. Background and Introduction

NOAA's National Marine Fisheries Service (NMFS) strives to make its documents of public interest readily available through websites and public reading rooms. The Freedom of Information Act (FOIA or Act), Title 5, United States Code (U.S.C.), Section 552, is another channel through which the public may access Government documents. The Act provides that the public has a right, enforceable in court, to obtain Federal agency documents, except those protected from disclosure.

FOIA was enacted in 1966 and has been amended several times. The latest amendment, the Electronic Freedom of Information Act Amendments of 1996, requires agencies to make a determination within 20 working days of receipt of the request (5 U.S.C. 552 (a)(6)(A)(i)). The amendment also mandates that the FOIA process become as automated and efficient as possible. If the NMFS response is not timely, a requester may appeal to the U.S. Department of Commerce (DOC) Office of General Counsel (15 C.F.R. 4.10) or seek judicial review (5 U.S.C. 552 (a)(6)(C)). Therefore, requests must be processed in an efficient and timely manner.

NMFS' responsibility in responding to FOIA requests is to disclose its documents to the maximum extent permitted under the law while safeguarding the Agency's ability to effectively achieve its mission.

This Handbook outlines procedures for processing FOIA requests within NMFS. It is designed to establish consistency in handling and responding to requests with a minimum burden on staff. FOIA processing cannot be executed without a working knowledge of the regulations and orders. The Handbook contains all pertinent rules as well as contacts and websites for use in connection with the procedural guidance.

CHAPTER II. Office Responsibilities

a. NMFS FOIA Office

- (1) Develops national policies, guidance, and procedures to conduct the NMFS FOIA program.
- (2) Designates a NMFS FOIA Officer for oversight and management of the NMFS FOIA program.
- (3) Provides training opportunities to NMFS managers and program personnel who respond to FOIA requests.
- (4) Assigns and tracks FOIA requests assigned to NMFS.
- (5) Documents and analyzes the operation of the FOIA program within NMFS.
- (6) Provides advice to Headquarters Programs, Regional Offices, and Science Centers on FOIA regulations and requirements.
- (7) Coordinates the submission of required information needed for the FOIA Annual Report to NOAA from the Headquarters Programs, Regional Offices, and Science Centers.
- (8) Maintains and updates the NMFS FOIA Handbook.
- (9) Establishes and updates the NMFS Intranet FOIA homepage.
- (10) Calculates the overall costs of the NMFS FOIA program.

b. Headquarters Program, Regional Office, or Science Center Coordinators (Lead Office)

- (1) Designates a FOIA Coordinator to manage and process assigned FOIA requests under established FOIA policies, procedures, and timelines.
- (2) Provides training on the FOIA process to managers and program personnel who respond to FOIA requests.
- (3) Establishes procedures, reporting requirements, and format for monitoring the office's administration of FOIA.
- (4) Logs and tracks all FOIA requests received.
- (5) Processes all FOIA requests according to the FOIA statute, Department of Commerce regulations, and Department of Commerce and NOAA internal administrative orders.
- (6) Submits required information to NMFS FOIA Officer for the preparation of the FOIA Annual Report to NOAA.

c. NMFS General Counsel and Regional General Counsel (NOAA GC)

- (1) Advises the Lead Office and NMFS FOIA Office on the review of documents that may be pertinent to pending or foreseeable litigation, thus providing consistency between citing FOIA

exemptions and documents privileged in litigation when both FOIA and the litigation privilege cover the same or overlapping documents.

(2) Provides legal advice and makes recommendations on regulatory, statutory, or case law issues concerning the FOIA in coordination with the Department of Commerce Office of the General Counsel.

(3) Provides legal review and clearance on all denial, no responsive record responses, and full releases for requests involving litigation or potential litigation.

(4) Provides legal review and advice on appeals and lawsuits.

(5) Conducts legal review of NMFS FOIA policies, procedures, and guidance.

CHAPTER III. Summary of NMFS FOIA Process

THE PROCESS	POINT OFFICE	ACTION	REFERENCE
Receive Request			
Receive FOIA request.	NMFS Regional Office, Science Center, or Headquarters Program	Date of Receipt - Forward to NMFS FOIA Office.	Chapter IV. b(1)
Receive FOIA request.	NMFS FOIA Office	Date of Receipt - Prepare CD-244 Form and establish FOIA file. Date of Receipt - Provide copy of request to NOAA FOIA. Date of Receipt - Log and track request. Within 2 days - Route request and CD-244 Form to appropriate Lead Office for processing.	Chapter IV. b(2) Chapter IV. b(3)
Time Limits			
Respond within 20 working days after receipt of request.	Lead Office	Immediately after receipt of a request by NOAA FOIA Office - Respond to the requester regarding scope, fee issues, and/or responsive documents.	
Determine that NMFS for any reason cannot meet the 20-working-day time limit.	Lead Office	Immediately – As a practical matter always FIRST seek to negotiate with the requester for a voluntary time extension to complete the request. Provide the requester with written notification concerning the extension, using customary correspondence signatory authority.	Chapter IV. d(4) Appendix M
Determine that “unusual circumstances” apply and NMFS cannot meet the 20-working-day time limit	Lead Office	Immediately - Send requester an extension letter for 10 additional working days for AA signature.	Chapter IV. d(5) Appendix M
Determine that “unusual circumstances” apply and NMFS needs more than 10 additional working days.	Lead Office	Immediately - Provide requester an opportunity to modify the request in order to meet the 20-working-day time limit or negotiate an alternative time frame for AA signature.	Chapter IV. d(5) Appendix M
Fee Waivers			
Address fee waiver request.	Lead Office	ASAP or no later than 20 working days after receipt of a request - Evaluate factors to the fee waiver criteria submitted by the requester. Determine if the requester meets the criteria to be granted a fee waiver.	Chapter IV. f(5) Appendix M

THE PROCESS	POINT OFFICE	ACTION	REFERENCE
Provide approval of fee waiver request.	Lead Office	ASAP or no later than 20 working days after receipt of a request - Notify the requester in writing of the fee waiver approval.	Chapter IV. f(5) Appendix M
Provide denial of fee waiver request and cost estimate.	Lead Office	ASAP or no later than 10 working days after receipt of a request - Obtain NOAA GC clearance on all fee waiver denials. Notify requester in writing of fee waiver denial, citing rationale for denial. Include cost estimate for processing request in denial letter for AA signature.	Chapter IV. i(4) Appendix M
Expedited Processing			
Receive request for expedited processing.	Lead Office	Within 10 calendar days of the receipt of a request - Review request for expedited treatment. Evaluate the rationale provided by the requester. Determine if the requester meets the criteria to be granted expedited processing.	Chapter IV. d(3)(A)
Provide approval of expedited processing request.	Lead Office	Within 10 calendar days of the receipt of a request - Notify requester in writing of the expedited processing approval. Process the request out of turn and as expeditiously as possible.	Chapter IV. d(3)(A) Appendix M
Provide denial of expedited processing request.	Lead Office	Within 10 calendar days of the receipt of a request - Obtain NOAA GC concurrence of all expedited processing denials. Notify requester in writing of the denial of expedited processing for AA signature.	Chapter IV. i(4) Appendix M
Scope			
Determine scope of the request.	Lead Office	ASAP and no later than 20 working days after the receipt of a request - Make sure request is clear and the request is reasonably described. Notify requester if scope is not clear.	Chapter IV. e
Fees			
Determine that requester has agreed to pay all fees and no advance payment is required.	Lead Office	Conduct search for responsive documents.	Chapter IV. f
Provide estimate of fees if requester has not agreed to pay fees.	Lead Office	ASAP and no later than 20 working days after the receipt of a request - Provide requester with estimated fees.	Chapter IV. f(1) Appendix M
Determine that fees will be less than \$20.	Lead Office	Conduct search for responsive documents.	Chapter IV. f(2)
Determine that request falls within advance payment requirements.	Lead Office	ASAP and no later than 20 working days after the receipt of a request - Inform requester of the estimated fee in writing and request advance payment.	Chapter IV. f(3) Appendix M
Search			
Determine that NMFS has responsive documents.	Lead Office	Compile copies of all responsive documents.	Chapter IV. g

THE PROCESS	POINT OFFICE	ACTION	REFERENCE
Determine that NMFS does not have responsive documents.	Lead Office	Document that no documents were found or exist.	Chapter IV. g
Review			
Review responsive documents.	Lead Office	Examine responsive documents identified during search to determine if they are releasable.	Chapter IV. h
Referral & Consultation			
<i>Other Federal agency</i>			
Documents are from another agency.	Lead Office	Refer documents to responsible agency for direct response to the requester. Notify requester in writing of the referral.	Chapter IV. h(3)(B) Appendix M
Documents are co-authored with another agency.	Lead Office	Refer documents to the other responsible agency for a FOIA review. Notify requester in writing of the referral. NMFS will prepare the final response determination.	Chapter IV. h(3)(C)
<i>Commercial</i>			
Documents are from a commercial source.	Lead Office	Provide submitter of commercial documents an opportunity to object to disclosure of any part of their submitted business information. Notify submitter in writing of the request for the submitted business information and provide copies of the documents requested for review. Within 7 working days of the return receipt of NMFS notification: Receive submitter's views.	Chapter IV. h(3)(A) Appendix M
Provide consideration of the submitter's objections to disclosure	Lead Office	Obtain NOAA GC concurrence. Notify submitter that the agency will withhold the documents or portions of documents.	Chapter IV. h(3)(A)
Provide consideration of the submitter's objections to disclosure.	Lead Office	Obtain NOAA GC concurrence. Notify submitter in writing of intent to disclose information over submitter's objection providing detailed reasons why the information will be released for AA signature.	Chapter IV. h(3)(A)
<i>Tribal</i>			
Documents are from a tribal entity and relates to the administration of the Endangered Species Act.	Lead Office	When feasible notify the tribe concerning release of records.	Chapter IV. h(3)(D)
Final Determination			
Documents require full disclosure.	Lead Office	Provide requester with " full release " letter and responsive documents. Clear full releases with NOAA GC for requests involving litigation or potential litigation.	Chapter IV. i(1) Appendix M
Portions or entire documents should be withheld.	Lead Office	Prepare " partial denial " or " full denial " letter, clear with NOAA GC, and submit to NMFS FOIA Office for AA signature.	Chapter IV. i(2) Appendix M

THE PROCESS	POINT OFFICE	ACTION	REFERENCE
No documents were responsive.	Lead Office	Prepare “ no documents determination ” letter, clear with NOAA GC, and submit to NMFS FOIA Office for AA signature.	Chapter IV. i(3) Appendix M
Submits documents to NOAA GC for clearance.	NOAA General Counsel	Provide final review and approve or disapprove potential withholdings of documents.	Chapter IV. i(2)
THE PROCESS	POINT OFFICE	ACTION	REFERENCE
Submits denial letter to NMFS FOIA Office.	Lead Office	Submit draft denial letter to NMFS FOIA Office for AA signature.	Chapter IV. i(2)
Final denial letter to the requester.	NMFS FOIA Office	Provide final letter to requester.	Chapter IV. i(2)

CHAPTER IV. FOIA Workflow and Procedures

a. Request Requirements.

- (1) Requests must be in writing and may be received via regular mail, facsimile, and E-mail. (15 C.F.R. 4.4(a)) (See Appendix B)
- (2) Requests must be described in enough detail for the proper component to conduct a search. (15 C.F.R. 4.4(c))
- (3) Requests received by telephone are not deemed to be FOIA requests. (DAO 205-14 Sec. 5.02a) Staff receiving a telephone request or inquiry on the FOIA process and procedures should refer the caller to the NOAA FOIA Office, NMFS FOIA Office, and/or NOAA FOIA website at www.rdc.noaa.gov/~foia.
- (4) Requesters should be advised of documents in the public domain and available without a FOIA request (e.g., documents that are on a NMFS website).
- (5) The following should not be handled as requests under FOIA:
 - A. Documents available for sale by NOAA (e.g., NTIS publications). (5 U.S.C. 552 (a)(2))
 - B. Requests for documents or information customarily made available to the public through the Federal Register or as part of NMFS regular information dissemination activities in a NMFS reading room or public inspection facility. (5 U.S.C. 552 (a)(1), (5 U.S.C. 552 (a)(2), and (15 C.F.R. 4.4(a)) When a request for documents of this type is received, the material should be promptly furnished or the requester notified as to how it may be obtained. (DAO 205-14)
 - C. Requests for documents or information normally provided by NMFS under laws other than the Act (e.g., user charge statutes, per DAO 203-05). Requests of this type should be promptly referred to the appropriate office charged with compliance with the particular law and the requester should be promptly notified as to how the request is being handled. (DAO 205-14)
 - D. Requests for answers to specific questions rather than inquiries for specific documents.
 - E. Requests for documents made by other Federal agencies.
 - F. Requests for books, reports, and other library materials.

b. Receiving Requests.

Requests are not properly received until they are received by the NOAA FOIA Facility. Often, requests are sent directly to the NMFS FOIA Office or a component of NMFS. The following procedures outline the process NMFS and its components must follow to ensure FOIA requests are received by the NOAA FOIA Facility in a timely manner.

(1) Requests sent to a NMFS Regional Office, Science Center, or Headquarters Program Office:

- A. Office logs the request using its line office correspondence procedures and transmits request to NMFS FOIA Office by the most expedient means.
- B. See Chapter IV. c below for remaining processing steps.

(2) Requests sent to NMFS FOIA Office:

- A. Office logs request using its line office correspondence procedures.
- B. Office initiates the CD-244 Form and transmits the request letter and CD-244 Form to the NOAA FOIA Facility. (See Appendix. L)
- C. See Chapter IV. c below for remaining processing steps.

(3) Requests sent to NOAA FOIA Facility:

- A. NOAA FOIA Facility initiates the CD-244 Form and transmits the request letter and CD-244 Form to NMFS FOIA Office by the most expedient means. (See Appendix L)
- B. See Chapter IV. c below for remaining processing steps.

c. Processing Requests.

(1) Requests involving only one office:

- A. NMFS FOIA Office routes request to appropriate Lead Office for processing.
- B. Lead Office makes determination on whether requests should be granted expedited treatment. (See IV. d)
- C. Lead Office determines initial scope of request. (See IV. e)
- D. Lead Office determines fee requester category and any initial fee waiver determinations. (See IV. f)
- E. Lead Office follows appropriate time limits to respond to requester. (See IV. d)
- F. Lead Office completes the NMFS Fee Worksheet. (See Appendix L)
- G. Lead Office conducts search for responsive documents. (See IV. g)
- H. Lead Office identifies documents for release, referral, withholding, and NOAA GC review. (See IV. h)
- I. Lead Office drafts interim and final determination response, then sends full release determination and documents to requester or routes denial response to NMFS FOIA Office for signature by the AA. (See IV. h)
- J. Lead Office completes request and conducts closeout procedures. (See IV. j)
- K. NMFS FOIA Office conducts closeout procedures with NOAA FOIA Facility. (See IV. j)

L. Lead Office acts as initial focal point if request is appealed. (See IV. k)

M. Lead Office maintains the official FOIA request file, administrative history of the request, Clearance Form, and a copy of the documents. (See IV. j) (Appendix L)

(2) Requests involving coordination among multiple NMFS offices:

A. NMFS FOIA Office routes request to Regional Offices, Science Centers, and Headquarters Offices that may have responsive documents.

B. NMFS FOIA Office consults with offices involved to determine Lead Office and logistics and assignments for processing the request.

C. Lead Office makes expedited treatment determination. (See IV. d)

D. Lead Office receives input from all assigned offices regarding fees, scope of request, timeline, consistency of responsive documents, release procedures, advance payment, and estimated fees.

E. Assigned offices search for and collect responsive documents. (See IV. g)

F. Assigned offices identify documents for release, referral, submitter notification, or withholding, and those needing NOAA GC review. (See IV. h)

G. Assigned offices submit documents requiring legal review to their respective Regional and NMFS Headquarters NOAA General Counsels prior to submission to the Lead Office.

H. Assigned offices submit to the Lead Office **one** original unredacted copy and either 1. two reviewed, fully releasable copies or 2. two reviewed copies that contain redactions.

I. Lead Office collates responsive documents to ensure releases, withholdings, and redactions are consistent among offices.

J. Lead Office drafts interim and final determination response, then sends full release determination and documents to requester or routes denial response to AA for signature. (See IV. h)

K. NMFS FOIA Office conducts closeout procedures with NOAA FOIA Facility. (See IV. j)

L. Lead Office acts as focal point if request is appealed. (See IV. k)

M. Lead Office maintains the official FOIA request file, administrative history of the request, Clearance Form, and a copy of the documents. (See IV. j) (Appen. L)

N. The NMFS Office of Law Enforcement will maintain its own records in the event the request is a multi-regional request.

(3) Internal Tracking

NMFS will use the following forms and worksheets:

A. NMFS FOIA Office provides CD-244 Form to Lead Office for completion. (See Appendix L)

B. NMFS FOIA Office tracks the following information on all assigned requests with input from Lead Office:

- 1) Request tracking number
- 2) Requester information
- 3) Requester fee category and charges and waivers
- 4) Description of documents requested
- 5) Date request received and date of determination response
- 6) Assigned Lead Office
- 7) Areas and offices searched
- 8) Release and withhold determination
- 9) Total costs to process request to include noncollectible costs
- 10) Date request was completed and closed out
- 11) Identified requests under appeal and the appeal outcome

C. Lead FOIA Office completes and maintains the NMFS Fee Worksheet and Clearance Form. (See Appendix L)

d. Time Limits. (15 C.F.R 4.6(b))

A written response must be sent to the requester within 20 working days. NMFS must ensure it complies with the following process to maintain statutory timeliness in all responses:

- (1) Lead Office sends a final response to a requester within 20 working days of receipt of request by the NOAA FOIA Facility (excluding Saturdays, Sundays, and legal public holidays). (15 C.F.R. 4.6(b))
- (2) Lead Office ensures access to releasable documents is granted as soon as possible after scope and fees are determined.
- (3) Lead Office responds to request in the order in which it is received unless the request has been granted expedited processing. (15 C.F.R. 4.6 (a))

A. Expedited Processing: (15 C.F.R. 4.6 (e))

The following process applies to requests asking for priority processing over other requests if the request involves a “compelling need.” Compelling need is identified for the following instances: 1. When the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; 2. For the loss of substantial due process rights; 3. For a matter of widespread and exceptional media interest involving questions about the Government’s integrity, which affect public confidence; and 4. There is an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

1) The requester must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. (15 C.F.R. 4.6 (e)(3))

2) Lead Office notifies the requester in writing within 10 calendar days of NOAA FOIA Facility's receipt of request as to whether expedited processing has been granted or denied. (15 C.F.R. 4.6 (e)(4))

a. Granted requests will be given priority by the Lead Office to process as soon as practicable, subject to the fees of processing the request. (15 C.F.R. 4.6 (e)(4)) (See Appendix M)

b. Denied requests will follow the adverse determination procedures outlined in Chapter IV. i(4) (15 C.F.R. 4.7 (b))

(4) Lead office should first seek a voluntary time extension from the requester when NMFS will not be able to meet the 20-working-day time frame.

A. Voluntary Time Extension

*The following process applies when the Lead Office needs additional time to respond to a request for any reason. The Lead Offices should attempt to **FIRST** negotiate with the requester to obtain a voluntary time extension.*

1) Lead Office will notify the requester of the need for a time extension. Any agreements for a time extensions must be documented in writing with the requester and include a date when NMFS will complete the processing of the request.

(5) Lead Office extends the time limit when requests meet the "unusual circumstances." (15 C.F.R. 4.6 (c))

A. Extended Processing: (15 C.F.R. 4.6(e))

The following process applies when the Lead Office needs additional time to respond to a request because of "unusual circumstances," defined as: the need to search for documents from separate field facilities or other offices separate from the Lead Office processing the request; the need to search voluminous amounts of documents; or the need to consult with another component or Federal agency having a substantial interest in the determination of the request.

1) Lead Office notifies requester in writing of a need to extend the time limits due to "unusual circumstances" as soon as possible, detailing the unusual circumstances and providing a date when NMFS will complete the processing of the request. (15 C.F.R. 4.6 (c)(2))

2) Lead Office notifies requester in writing of an opportunity either to modify the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or modified request when the extension is for more than 10 working days. (15 C.F.R. 4.6 (c)(2))

e. Scope of Request.

The documents requested must be described in enough detail to enable NMFS personnel to locate them with a reasonable amount of effort. The following procedures outline the steps for determining the scope of a request.

- (1) Lead Office determines if request is reasonably described upon initial review and after consulting with all assigned offices.
- (2) Lead Office follows the following steps when request is unclear:
 - A. Lead Office advises requester in initial letter that the request is unreasonable or unclear and that the request cannot be processed until the requester is more specific or detailed in their description of documents sought in writing. (14 C.F.R. 4.4 (c)) (See Appendix M)
 - B. Lead Office advises requester in writing that the request is unreasonable or unclear if at any time this is determined during the searching process.
- (3) Lead Office determines fees and waivers in Chapter IV. f when request is reasonable and clear.

f. Fees and Waivers.

NMFS will charge for processing requests under FOIA, except when fees are limited or when a waiver or reduction of fees is granted. The following process outlines the procedures for assessing fees and fee waivers.

(1) Initial steps in determining fees:

- A. Lead Office assigns the requester a fee category. The four requester categories and chargeable fees are as follows. (15 C.F.R. 4.11(c)(1))

Requester Category	Chargeable Service
Commercial use	Search, review, and duplication
Educational and noncommercial scientific institutions	Duplication (excluding the cost of the first 100 pages)
Representatives of news media	Duplication (excluding the cost of the first 100 pages)
All other	Search and duplication (excluding the cost of the first 2 hours of search and first 100 pages)

- B. Lead Office calculates estimated charges for direct costs of search, review, and duplication (not including overhead expenses such as the costs of space, heating, or lighting of the facility in which the service is performed) to process request using NMFS Fee Worksheet. (See V. j-k) (See Appendix L)

- C. Lead Office assesses requester fees using the following rate for the chargeable services. (15 C.F.R. 4.11(c)(2))

Category	Rate
Manual search.....	Actual salary rate of employee involved, plus 16% of salary rate
Computerized search.....	Actual direct cost, including operator time
Duplication of documents:	Duplication rate:
Paper copy reproduction.....	1) \$.16 per page
Other reproduction (e.g., computer tape or printout)...	2) Actual direct cost, including operator time
Review of documents (includes redaction)	Actual salary rate of employee involved, plus 16% of salary rate

(2) Fees for processing the request are less than \$20: Lead Office will not charge the requester if the total cost of processing the request is \$20 or less. (15 C.F.R. 4.11(d)(4))

(3) Fees for processing the request are more than \$20 and the requester has not stated an agreement to pay fees OR the estimated fees will exceed the amount agreed to by the requester: (15 C.F.R. 4.11(e))

A. Lead office will notify the requester in writing of the estimated costs to process the request and obtain the requester’s agreement to pay all fees associated with processing the request. (See FOIA Fee Notification Agreement – Appendix M). (See Appendix M)

B. Lead Office allows 30 calendar days to receive the signed written agreement from the requester to pay all estimated costs and closes request if the agreement is not received.

C. The requester may reduce the scope of the request to reduce costs.

D. Lead Office will not consider the request received or process the request further until the requesters signed written agreement to pay all estimated costs is received.

(4) Requiring advance payment: (15 C.F.R. 4.11(i))

When requests will cost more than \$250 or when a requester has previously failed to pay for FOIA documents, NMFS must request advance payment before conducting any work. The definition of advance payment is provided in Chapter V. b. Advance payments are based on estimated fees and not the actual fee; the requester must pay the difference when the estimated charges are less than the actual costs to process the request; if costs are overestimated, the requester should be refunded the difference. The following procedures apply to advance payments.

A. Lead Office sends a notice to requester with the following advance payment information if the costs to process the FOIA request total more than \$250. (See Appendix M)

- 1) The requester must pay fees up front before any processing will commence.
- 2) The requester may reduce the scope of the request, thereby reducing costs.
- 3) Within 30 calendar days, the requester should make the estimated payment, made payable to “Treasury of the United States,” and send it to: NOAA Freedom of Information Officer, 1315 East-West Highway, Public Reference Room 10730, OFAX2, SSMC-3, Silver Spring, Maryland 20910.

B. Lead Office sends a notice to requester with the following advance payment information if the requester has failed to pay for previous FOIA requests. (See Appendix M)

- 1) The requester must pay the full amount plus interest for any costs associated with a previous FOIA request **AND** pay any estimated fees for the current request.
- 2) The requester must pay fees before a request is considered received by the Agency or before the pending request is processed further.

C. Lead Office allows 30 calendar days to receive notice from NOAA FOIA Facility that payment by requester has been received and closes request if payment is not received. (See IV. j)

D. Lead Office ensures all applicable fees have been collected by the Treasury Department before conducting the search, review, and duplication process. (15 C.F.R. 4.11(a))

(5) Request processing is complete:

A. Lead Office will provide written notification to the requester of any applicable fees associated with processing the request. (See Appendix M) The requester must have been previously notified of estimated costs as indicated in Chapter IV.f(3).

B. Lead Office will not provide any records until all applicable fees have been paid. (15 C.F.R. 4.11(i)(4))

C. Lead Office will close request if payment is not received.

D. Lead Office will notify NMFS FOIA Office of non-payment so requester can be placed on delinquency list.

(6) Overpayment and underpayment of estimated fees:

E. Lead Office follows the following steps when the estimated fee payment is greater than the actual fees:

- 1) Lead Office notifies the requester in writing that the fee estimate was more than the actual charges. (See Appendix M)
- 2) Lead Office encloses a Vendor Profile Information Form. (See Appendix L)
- 3) Requester provides a copy of the correspondence letter and the completed Vendor Profile Information Form to: NOAA Freedom of Information Officer, 1315 East-West Highway (SSMC3), Room 10730, Silver Spring, Maryland 20910.

F. Lead Office follows the following steps when the actual fees are more than the estimated fee payment.

- 1) Lead Office notifies the requester in writing that the fee estimate was less than the actual charges and requests payment of the amount still due.
- 2) Lead Office follows the procedures provided in Chapter IV.f(5).

(7) Aggregating multiple requests: (15 C.F.R. 4.11(h))

The definition of aggregating requests is provided in Chapter V. d.

A. Lead Office will evaluate whether multiple requests should be aggregated for the purpose of determining fees.

- 1) The Lead Office will evaluate 1. The closeness in time of the receipt of the requests and if the requests are for related matters and 2. Multiple requests for related matters made by the same requester or from a closely related group of requesters within 30 calendar days.

B. Lead Office sends fee notice to requester(s) describing the aggregation of multiple requests and informing them of the aggregated costs, thereby allowing them to modify or reduce their requests to reduce costs.

C. Lead Office allows 30 calendar days to receive payment by requester(s) and closes request(s) if payment is not received. (See IV. j)

(8) Requester requests a fee waiver or reduction: (15 C.F.R. 4.11(k))

A requester may ask for a reduction or waiver of all associated fees. Qualified fee waiver requests must meet the definition of a fee waiver requirement provided in Chapter V. g.

A. Lead Office reviews initial fee determination to ensure compliance.

B. Lead Office notifies requester in writing whether the request for fee waiver has been fully or partially granted or denied. The adverse determination procedures outlined in Chapter IV. i(4) will be followed for all denied fee waiver requests. (See Appendix M)

g. Search Responsive Documents.

The definition of search is provided in Chapter V. k.

- (1) Lead Office clarifies the scope of the request and the extent of the search within the components of the office to maintain consistency and ensure searches are done in the most efficient and cost-effective manner possible.
- (2) Lead Office compiles copies of all responsive documents or makes determination that that there are no documents responsive to the request.

h. Review Responsive Documents.

The definition of review is provided in Chapter V. j.

- (1) Lead Office examines documents identified during search to determine if they are responsive.
- (2) Lead Office will examine responsive documents to determine if they are releasable.
- (3) Lead Office identifies any documents originated by a Federal agency and commercial source for consultation and referral and follows the procedures below.

A. Responsive documents originating from a business, financial, or commercial entity: (15 C.F.R. 4.9)

Whenever responsive documents are found that were submitted to NMFS from a person or entity outside the Federal Government, from which NMFS obtains business information either as a requirement or voluntarily, NMFS must follow the process below to ensure NMFS does not cause a submitter competitive harm under FOIA exemption (b)(4) or impair the government's ability to obtain reliable information in the future. See Chapter V. f(2)D.

- 1) Lead Office notifies submitter in writing of a FOIA request when information is submitted as a requirement and the information is potentially commercially sensitive, giving the submitter an opportunity to object to disclosure of any specified portion of their submitted information under exemption (b)(4). (15 C.F.R. 4.9(d)) (See Appendix M)
- 2) Lead Office will also notify those who submitted information voluntarily in order to ascertain if this information is customarily treated as confidential.
- 3) Lead Office does not notify submitter of FOIA request when the information falls into one of the following categories:
 - a. Information is determined not releasable to public. **AS A NOTE** – Generally, it is not possible to determine whether commercial information is confidential under Exemption 4 of the FOIA without input from the submitter. Accordingly, submitter notification should be done as a matter of sound administrative practice

whenever there is a FOIA request for commercial information that is not public information. (15 C.F.R. 4.9(h)(1))

b. Information has been lawfully published or officially made available to the public. (15 C.F.R. 4.9(h)(2))

c. Disclosure of the information is required by statute or by a regulation issued. (15 C.F.R. 4.9(h)(3))

d. Information was sent on behalf of another Federal agency.

4) Lead Office encloses documents identified as possibly having commercially sensitive information with letter and sends letter by certified mail, return receipt requested, or similar means. (15C.F.R. 4.9(d))

5) Lead Office allows 7 working days from the date of return receipt or delivery of letter for the submitter to object to disclosure.

6) Lead Office considers the information releasable if submitter fails to respond to the notice within the time specified. (15 C.F.R. 4.9(f))

7) Lead Office considers a submitter's objection and specific grounds under FOIA for nondisclosure in deciding whether to disclose business information.

8) Lead Office reviews submitter's objection with NOAA GC for legal advice.

9) Lead Office writes letter to submitter when it is decided to disclose business information over a submitter's objection and sends letter by certified mail, return receipt requested, or similar means. The letter includes:

a. Statement of reason(s) the submitter's objections to disclosure were not sustained. (15 C.F.R. 4.9(g)(1))

b. Description of the business information to be disclosed. (15 C.F.R. 4.9(g)(2))

c. Statement that the office intends to disclose the information 7 working days from the date the submitter receives the notice. (See Appendix M) (15 C.F.R. 4.9(g)(3))

9) Lead Office makes a determination to withhold business information. NMFS will notify the submitter of our agreement with their assertions of competitive harm. Lead Office will provide the requester with a full or partial denial determination following the procedures outlined in Chapter IV.i(2).

B. Responsive documents originating from other Federal agencies:

Whenever responsive documents originate from another Federal agency and when that agency has the primary interest in the document, NMFS must refer the document to that agency for direct response following the process below.

- 1) Lead Office identifies all documents originating from another Federal agency.
- 2) Lead Office prepares and sends letter to the Federal agency that has the primary interest and encloses the responsive documents and the FOIA request letter. (See Appendix M)
- 3) Lead Office sends letter informing requester of the referral and the name of the agency to which the documents were referred. (15 C.F.R. 4.5(c)) (See Appendix M)

C. Responsive documents co-authored with other Federal agencies: Lead Office consults with Federal agencies when documents are co-authored. The final determination is made by the Lead Office and not the consulting Federal agency. (15 C.F.R. 4.5(b)(4))

D. Responsive documents originating from tribal entities:

NMFS strives to protect sensitive tribal information from disclosure. Whenever responsive documents in its possession originate from a tribal entity, NMFS will follow the process below to ensure it upholds the unique Federal-tribal trust responsibilities:

- 1) Lead Office, in accordance with Secretarial Order #3206, identifies all documents originating from a tribal entity that relates to the administration of the Endangered Species Act.
- 2) Lead Office, when feasible, notifies the tribe regarding disclosure of tribal records relating to the administration of the Endangered Species Act.

i. Final Determination.

The following process describes NMFS' final outcome on the request:

(1) Full documents disclosure determination: Lead Office provides full release letter and responsive documents to requester. Clear full releases with NOAA GC for requests involving litigation or potential litigation. (See Appendix M)

(2) Full or partial documents denial determination:

A. Lead Office follows the steps below when portions of a document are determined exempted while other portions can be released:

- 1) Make two copies of the original document; the original document is never altered, either in paper or electronic form.
- 2) Using a black pen or an electronic redaction tool on the copies only, redacts portions of the document that are exempt from disclosure.
- 3) Writes the exemption number(s) next to the redacted portion.

4) Photocopies the redacted copy for the document and for the requester, ensuring the requester cannot identify the portions redacted.

5) Files the unaltered copy and the redacted copy together with the FOIA document.

B. Lead Office prepares partial or full denial letter including appeal language, clears it with NOAA GC, and submits it to NMFS FOIA Office for AA signature. (See Appendix M)

C. NMFS FOIA Office sends signed original denial letter to requester and provides a copy to Lead Office for closeout.

(3) No documents determination:

The following process is followed when a determination is concluded that requested documents do not exist or cannot be located.

A. Lead Office determines no responsive documents exist after conducting reasonable search. (See V. j(3))

B. Lead Office prepares “no documents determination” letter including appeal language, clears it with NOAA GC, and submits it to NMFS FOIA Office for AA signature. (See Appendix M)

C. NMFS FOIA Office sends signed letter to requester and sends a copy to Lead Office for closeout.

(4) All other adverse determination responses:

The process below is followed whenever it is determined the requester will receive an adverse initial determination regarding any other matter, to include; a determination that a document is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a document subject to FOIA; a determination against the requester on any disputed fee matter, including a denial of a request for a reduction or waiver of fees; or a denial of a request for expedited processing.

A. Lead Office determines to deny any portion of the fee, processing, or format of a request.

B. Lead Office prepares an “adverse determination” letter including appeal language, clears it with NOAA GC, and submits it to NMFS FOIA Office for AA signature. (See Appendix M)

C. NMFS FOIA Office sends signed adverse determination letter to requester and sends a copy to Lead Office for closeout.

j. Request Closeout.

The following steps are followed to closeout a request:

- (1) Lead Office maintains a copy of the final letter, copies of all documents responsive to the request, and any supporting documents documenting course of action in the file.
- (2) Lead Office completes the CD-244 Form and submits it to NMFS FOIA Office.
- (3) NMFS FOIA Office submits CD-244 Form and final determination letter to NOAA FOIA Facility.
- (4) NMFS FOIA Office completes internal tracking of request. (See IV. b)
- (5) Lead Office retains FOIA file until destruction is authorized. (See 15 C.F.R. 4.3(d))

k. Appeal.

Whenever a request for documents is initially denied in whole or in part, or has not been determined in a timely manner, or whenever a requester receives an adverse initial determination regarding any matter, the requester may file a written appeal. Appeals must be received by the Department of Commerce Assistant General Counsel for Administration within 30 calendar days of the date of the written denial or, if there has been no determination, may be submitted anytime after the due date, including the last extension of the determination. The following process is to be followed when a request is appealed.

- (1) Lead Office receives notification of appeal by DOC Assistant General Counsel for Administration.
- (2) Lead Office notifies NMFS FOIA Office and NOAA GC of the appeal and consults with them on the requester's grounds for appeal.
- (3) Lead Office submits supporting evidence to uphold initial determination and notifies DOC Assistant General Counsel for Administration of any change in the initial determination decision.
- (4) Lead Office notifies NMFS FOIA Office and any offices assigned of appeal outcome.
- (5) NMFS FOIA Office notifies NOAA FOIA Facility of appeal and its final outcome.

CHAPTER V. Glossary

a. **Adequate Searches.** (FOIA Guide and Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2004, page 75) Searches conducted in a manner reasonably calculated to locate responsive records maintained by agency personnel familiar with the subject matter and with the likely location of responsive documents. As decided by the courts, the test of reasonableness varies from case to case and depends on 1) how the agency conducted a search in relation to the scope of the request, 2) the description of the records, and 3) the standards an agency uses to determine where responsive records were likely to be found—an adequate search should be conducted with these three factors in mind. A search should be conducted in all places where responsive documents would likely be found. Responsive records searches will be conducted, for example, in agency paper files, electronic files, emails, audiotapes, videotapes, photographs, archived files, transmittal slips, desk files, or any other format. Electronic searches should be conducted in a manner that would not significantly interfere with the operation of the agency's automated information system.

b. **Advance Payments.** (15 C.F.R. 4.11(i)(2)) A payment before processing a request is mandatory if:

- (1) The estimated cost to process a FOIA request is more than \$250.
- (2) The requester has previously failed to pay a properly charged FOIA fee to any Department of Commerce component or any Federal agency in a timely manner.
- (3) The requester owes money for a previous FOIA request (no new request may be processed until all fees owed and all fees estimated for the new FOIA request are paid).

c. **Agency Records.** (FOIA Guide and Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2004, page 37) The U.S. Supreme Court defines an agency record as a record that is 1) either created or obtained by an agency, and 2) under agency control at the time of the FOIA request. For a record to be under agency control, considerations should include the record creator's intent to retain or relinquish control over the record; the ability of the agency to use and dispose of the record; the extent to which agency personnel have read and relied upon the record; and the degree to which the record was integrated in the agency's files.

- (1) A product of data compilation (such as all books, papers, maps, photographs, and machine-readable materials, including those in electronic form or format) or other documentary materials (such as letters, memos, or notes) regardless of physical form or characteristics, made or received by NMFS under Federal law or in connection with the transaction of public business, and in NMFS' possession and control at the time the FOIA request is received by the office handling the request. Objects or articles—such as structures, furniture, vehicles, and equipment—are not agency documents.
- (2) The medium may be paper, film, disk, or another physical type or form. The method of recording may be manual, mechanical, photographic, electronic, or any combination of

these or other technologies. Anything not tangible or documentary, such as an individual's memory or oral communication, is not a record.

(3) Working files or papers, routing slips, and transmittal materials are considered records. Working files are used in preparing reports or studies and preliminary drafts of policy documents circulated for comment. Routing slips and transmittal materials show the agency's flow of work and concurrence procedures.

(4) Possession of a record is not itself sufficient to classify the record as an agency record; there must be some nexus with the agency beyond mere physical location. Library and museum material made or acquired and preserved solely for reference or exhibition purposes are not agency records. Catalogs, trade journals, and other publications received from other Government agencies, commercial firms, or private institutions and that require no action and are not part of a case on which action is taken are also not agency records. However, if a record is in the possession of NMFS and is used for agency business, the record is an agency record whether or not it was created by NMFS. Duplicate or extra copies of records preserved only for convenience of references are not considered records. Nor are tickler, follow-up, or suspense copies of correspondence, provided they are extra copies of the originals. Multiple copies of a single record are not all records unless they are arranged according to a different filing system or serve a separate purpose.

(5) Requests for agency records that are available to the public through an established public distribution system, the Federal Register, the National Technical Information Service (NTIS), or the Internet need not be processed as FOIA requests.

(6) NMFS has no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(7) Personal papers are not agency records. Personal records of an individual that are not subject to agency creation or retention requirements, that have been created or maintained primarily for the convenience of the agency employee, and that are not distributed to other agency employees for their official use are not agency records. Examples of personal papers include:

A. Materials accumulated by an individual before joining Government service that are not later used to conduct Government business. Examples: previous work files, political materials, and reference files.

B. Material brought into or accumulated in the office that are not used to conduct agency business and that relate solely to an individual's family matters, outside business pursuits, professional activities, or private political associations. Examples: family and personal correspondence, volunteer and community service records, and literature from professional organizations.

C. Work-related materials, such as diaries, journals, notes, personal calendars, and appointment schedules that are not prepared, received, or used in the process of transacting agency business. Although these materials contain work-related information, they are personal papers if they are claimed as such and serve only the individual's own purposes (e.g., reminders and personal observations about

work-related topics). To determine whether work-related records are agency records for the purposes of FOIA, please consider the following questions:

- 1) Creation. Was the record created or received by an agency employee, on agency time, with agency materials, and at agency expense? If so, it may or may not be an agency record, depending on other considerations.
 - 2) Content. Does the record contain only substantive information about agency business, or does it contain only information about employee's personal matters? If the record contains any information about agency business, then its potential record status depends on additional considerations.
 - 3) Purpose. Was the record created to facilitate agency business? If so, then it may be an agency record depending on its distribution and use by other agency employees. Was it created solely for the employee's personal convenience? If so, it is unlikely to be an agency record.
 - 4) Distribution. Was the record distributed to other employees for an official purpose? If so, it may be an agency record.
 - 5) Use. Did this employee or others actually use the record to conduct agency business? Materials brought into the agency for reference use do not become agency records merely because they relate to official matters or influence the employee's work. However, if the employee relies on such materials to conduct agency business or if other employees use them for agency purposes, then the materials are more likely to be agency records.
 - 6) Maintenance. Was the record placed in agency files, or was it kept in the employee's possession? If placed in agency files, it is likely to be an agency record. If not, then its possible record status depends on other considerations.
 - 7) Control. Has the agency attempted to exercise "institutional control" over the record through applicable maintenance or disposition directives? Did it do so by requiring the record to be created in the first place? If so the record is most likely an agency record.
 - 8) Segregation. Can substantive agency information in the record be segregated from any personal information? If so, the official portion should be extracted and placed in agency files.
- (8) Non-record material should not be intermingled with agency records.

d. **Aggregating Requests.** (15 C.F.R. 4.11 (h)) A requester or group of requesters acting together in an attempt to divide a request into a series of requests for the purpose of avoiding fees. The factors to consider in deciding whether to aggregate are the closeness in time between

the component's receipt of requests and the relatedness of the matters about which the requests are made. For example:

- (1) NMFS may generally presume that multiple requests that involve related matters made by the same requester or a closely related group of requesters within a 30-calendar-day period have been made in order to avoid fees.
- (2) If requests are separated by more than 30 calendar days, NMFS will need a solid basis for determining that aggregation is warranted.
- (3) Multiple requests involving unrelated matters shall not be aggregated. (15 C.F.R. 4.11(h))

e. **Duplication.** (15 C.F.R. 4.11(b)(3)) The making of a copy of a document, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic documents (e.g., magnetic tape or disk), among others.

- (1) Lead FOIA Coordinator will honor a requester's specified preference of form or format of disclosure if the component can reproduce the document in the requested form or format with reasonable effort.
- (2) Photocopy charge is \$.16/per single page.
- (3) Any other reproduction is charged at actual cost, including operator's time.

f. **Exemptions.** (5 U.S.C. 552(b))

(1) FOIA permits documents or information, or segregable portions thereof, to be withheld from disclosure under any one of nine exemptions. The exemptions may only be invoked if applicable.

(2) The nine FOIA exemptions are:

A. (b)(1): Protects records that are specifically authorized as classified according to the substantive and procedural requirements of an Executive Order. Protects from disclosure all national security information concerning the national defense or foreign policy that has been properly classified.

B. (b)(2): Records that are related solely to the internal personnel rules and practices of an agency and includes information that are 1. internal matters of a trivial nature and 2. substantial internal matters that when released might enable a requester to circumvent regulations, policy, or statute.

C. (b)(3): Protects information specifically exempted by other statutes that either (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

D. (b)(4): Protects from disclosure 1) trade secrets and 2) information which is a) commercial or financial, b) obtained from a person and c) privileged or confidential. Exemption 4 protects information that is voluntarily submitted: and

such if information is considered confidential if the submitter does not customarily disclose such information to the public, thereby encouraging submitters to voluntarily provide the government with useful commercial or financial information and protecting the government's ability to obtain reliable information. In addition, Exemption 4 protects information that is provided to the government as a requirement and the disclosure of such required information would 1) impair the government's ability to obtain necessary information in the future or 2) cause substantial harm to the competitive position of the person from whom the information was obtained.

E. (b)(5): Protects privileged interagency or intra-agency memoranda or letters that would not be available by law to a party in litigation with the agency. This includes deliberative process, attorney-client and attorney-work product privileges.

F. (b)(6): Protects from disclosure information about individuals in personal and medical files and similar files which if released would constitute a clearly unwarranted invasion of personal privacy, so long as that invasion is not outweighed by a public interest in disclosure.

G. (b)(7): Protects records or information compiled for law enforcement purposes, but only to the extent that if released (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 state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (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; and (F) could reasonably be expected to endanger the life or physical safety of any individual.

H. (b)(8): Examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

I. (b)(9): Geographical and geophysical information concerning wells.

g. **Fee Waiver Requirement.** (15 C.F.R. 4.11(k)) Requester must demonstrate that disclosure of the requested 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 disclosure of the information is not primarily in the commercial interest of the requester. The fee waiver request must be in writing. If only some of the records to be released satisfy the requirements for a fee

waiver, a waiver will be granted for those records. A requester must meet all six factors below to qualify for a fee waiver:

- (1) Subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government. If yes, proceed to 2. If no, then no fee waiver.
- (2) Informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of Government operations or activities. Records already found in the public domain cannot significantly contribute to public understanding if NMFS releases it. Therefore, already-released public records cannot fit a fee waiver. (15 C.F.R. 4.11(k)(2)(ii)) If yes, proceed to 3. If no, then no fee waiver.
- (3) Contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding of Government operations and activities. (15 C.F.R. 4.11(k)(2)(iii)) If yes, proceed to 4. If no, then no fee waiver.
- (4) Significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities. If yes, proceed to 5. If no, then no fee waiver.
- (5) Existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. If no, proceed to 6. If yes, then no fee waiver.
- (6) Primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester. If no, grant a fee waiver. If yes, then no fee waiver.

h. Requester. (5 U.S.C. 551(2)) A FOIA request may be made by any individual, including a member of the public (U.S. or foreign citizen or entity), an organization, corporation, association, business, or foreign or domestic government. Requests may be made from officials of state or local governments. Requests from members of Congress not seeking records on behalf of a congressional committee or subcommittee, and requests from either House sitting as a whole or made on behalf of constituents, are valid FOIA requests. Request for department records made by a Federal agency, Federal court requests, Congressional committee or subcommittee requests, and General Accounting Office requests are not FOIA requests.

- (1) Requester must ask for records, not information. (FOIA Guide and Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2004, page 57)
- (2) Requester has the right to choose the format. Agency must provide records in any form requested, if document is “readily reproducible” in that form. (FOIA Guide and Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2004, page 91)

(3) Requesters do not need to state a reason for their requests. However, it is appropriate to ask requesters to explain why they are seeking such information when they have requested a waiver of fees or are disputing the initially determined fee category (FOIA Guide and Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2004, page 46).

(4) Requester must reasonably describe the records being requested. A description of the records sought is considered sufficient if it enables a professional employee who is familiar with the subject matter to locate the records in a reasonable period of time. If possible, the requester shall furnish as much descriptive information regarding the date and place the records were made, the file descriptions, subject matter, persons involved, and other pertinent details that will help identify the records. (FOIA Guide and Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2004, page 50)

i. **Requester Fee Category.** (15 C.F.R. 4.11(b))

(1) Commercial Use: Search, review, duplication fees all apply.

A. Request made by or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. In order to determine whether a request is for commercial use, it is necessary to ascertain the use to which the requested records will be put. If there is reasonable cause to doubt the use to which the records will be put, or if there is any ambiguity about the use, additional clarification should be sought from the requester. (15 C.F.R. 4.11(b)(1))

B. Law firms often make commercial use requests on behalf of their clients. However, the client of the representative law firm determines the type of requester.

(2) Educational institution/noncommercial scientific institution: Duplication fees only after first 100 pages.

A. An educational institution includes preschool, public, or private elementary or secondary schools, institution of undergraduate or graduate higher education, and institutions of professional or vocational education that operate programs of scholarly research. The requester must show that the request is authorized by and is made under the auspices of a qualifying institution, and that the records are sought to further scholarly research rather than for a commercial use. (15 C.F.R. 4.11(b)(4))

B. A noncommercial scientific institution is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. The requester must show that the request is authorized by and is made under the auspices of a qualifying institution and the

records are sought to further scientific research rather than for a commercial use. (15 C.F.R. 4.11(b)(5))

C. A request by an individual who attends an educational institution (i.e., student of the institution) does not fit under this type of request unless the requester represents the educational institution.

(3) Representatives of news media/freelancers: Duplication fees only after first 100 pages.

A. A person who is engaged in actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

B. For freelance journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof. Past publication document of a requester is also necessary to make determination.

C. A requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news dissemination function of the requester shall not be considered to be for commercial use. (15 C.F.R. 4.11(b)(6))

(4) Other Requesters: Search fees only after the first 2 hours and duplication fees only after the first 100 pages. Includes all other requesters that do not fit the above requester categories.

j. **Review.** (15 C.F.R. 4.11(b)(7)) The examination of a document located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any document for disclosure (redacting and marking any applicable exemptions). Review costs are recoverable even if a document ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(1) Review fees shall be charged to requesters who make a commercial use request.

(2) Review fees shall be charged only for the initial document review.

(3) No charge shall be imposed for review at the administrative appeal level for an exemption already applied.

(4) Review fees shall be the direct costs of conducting the review by the involved NMFS staff.

k. **Search.** (15 C.F.R. 4.11(b)(8)) The process of looking for and retrieving records or information responsive to a request. A search for responsive records includes page-by-page or line-by-line identification of information within records, reasonable efforts to locate and retrieve information from records maintained in electronic form or format, and searches of archived records, and any other place where records could reasonably be expected to be located.

(1) Search fees shall be charged for all requests other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media. Requesters under the “other requester” fee category are entitled to the cost equivalent of 2 hours of manual search time without charge.

(2) NMFS FOIA Officer and FOIA Coordinators will charge for time spent searching, even if no responsive records are located or if any located records are exempt from disclosure.

(3) Search fees shall be the direct cost of conducting the search by the involved employees. (15 C.F.R. 4.11(c)(3)(i))

(4) For computer searches of records, requesters will be charged the direct costs of conducting the search.

CHAPTER VI. References

- a. 5 U.S.C. Section 552, Freedom of Information Act, as amended
- b. 44 U.S.C. Section 3301, Definitions of Records
- c. NOAA Records Disposition Handbook Function Number 200, Planning, Programming, Budget, and Management Functional Files
- d. 15 C.F.R. Part 4a – Disclosure of Government Information
- e. Freedom of Information Case List, September 1998
- f. FR Vol. 66, No. 245/DOC 15 C.F.R., Part 4: Subpart 4a Public Information, Freedom of Information and Privacy Final Rule
- g. DOC Administrative Order (DAO) 205-12
- h. DOC Administrative Order (DAO) 205-12 Amendment 2
- i. DOC Administrative Order (DAO) 205-12 Amendment 3
- j. NOAA Administrative Order (NAO) 205-14
- k. Memo by Attorney General, The Freedom of Information Act
- l. Memo by Assistant General Counsel for Administration, Government-wide Freedom of Information Act (FOIA) Policy
- m. NWR FOIA General Guidance Procedures and Responsibilities
- n. U.S. Department of Justice Office of Information and Privacy, *FOIA Update*
- o. Secretarial Order #3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act
- p. Freedom of Information Act Guide and Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2004

Appendix A

**The Freedom of Information Act (5 U.S.C. 552)
As Amended**

THE FREEDOM OF INFORMATION ACT

5 U.S.C. § 552

As Amended

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D); unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of an index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

- (i) it has been indexed and either made available or published as provided by this paragraph; or
- (ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that--

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) 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.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section--

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo, provided that the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within 30 days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause is shown.

(D) Repealed by Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat. 3335, 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests--

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requesters acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records--

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure--

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means--

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

(5) 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;

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

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (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 information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (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;

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

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

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions that are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include--

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term--

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) "record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

- (1) an index of all major information systems of the agency;
- (2) a description of major information and record locator systems maintained by the agency; and
- (3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

Appendix B

Department of Commerce Regulations (15 C.F.R., Part 4: Subpart A, Appendix A-C)
[Revised as of January 1, 2002]

CODE OF FEDERAL REGULATION
TITLE 15--COMMERCE AND FOREIGN TRADE
PART 4--DISCLOSURE OF GOVERNMENT INFORMATION--Table of Contents

Subpart A--Freedom of Information Act

Sec.

- 4.1 General.
- 4.2 Public reference facilities.
- 4.3 Records under the FOIA.
- 4.4 Requirements for making requests.
- 4.5 Responsibility for responding to requests.
- 4.6 Time limits and expedited processing.
- 4.7 Responses to requests.
- 4.8 Classified information.
- 4.9 Business Information.
- 4.10 Appeals from initial determinations or untimely delays.
- 4.11 Fees.

Subpart B--Privacy Act (Omitted)

Appendix A to Part 4--Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act.

Appendix B to Part 4--Officials Authorized to Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act.

Appendix C to Part 4--Systems of Records Noticed by Other Federal Agencies and Applicable to Records of the Department, and Applicability of this Part Thereto.

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

[[Page 30]]

Source: 66 FR 65632, Dec. 20, 2001, unless otherwise noted.

Sec. 4.1 General.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the Department of Commerce (Department) and its components follow to make publicly available the materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C.

552(a)(3). Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part.

(b) As used in this subpart, component means any office, division, bureau or other unit of the Department listed in Appendix A to this part (except that a regional office of a larger office or other unit does not constitute a separate component).

Sec. 4.2 Public reference facilities.

(a) The Department maintains public reference facilities (listed in Appendix A to this part) that contain the records the FOIA requires to be made regularly available for public inspection and copying; furnishes information; receives and processes requests for records under the FOIA; and otherwise assists the public concerning Department operations under the FOIA.

(b) Each component of the Department shall determine which of its records are required to be made available for public inspection and copying, and make those records available either in its own public reference facility or in the Department's Central Reference and Records Inspection Facility. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), the Department has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute copies of the index and supplements thereto.

(c) Each component shall make public inspection facility records created on or after November 1, 1996 available electronically through the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>). Information available at the site shall include:

(1) Each component's index of its public inspection facility records, which indicates which records are available electronically; and

(2) The general index referred to in paragraph (d)(3) of this section.

(d) The Department shall maintain and make available for public inspection and copying:

(1) A current index providing identifying information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1997, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;

(2) Copies of records that have been released and that the component that maintains them determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records;

(3) A general index of the records described in paragraph (d)(2) of this section;

(4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(5) Those statements of policy and interpretations that have been adopted by a component and are not published in the Federal Register; and

(6) Administrative staff manuals and instructions to staff that affect a member of the public.

Sec. 4.3 Records under the FOIA.

(a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and include electronic records and information, audiotapes, videotapes, and photographs.

[[Page 31]]

(b) Under the FOIA, the Department has no obligation to create, compile, or obtain from outside the Department a record to satisfy a request. In complying with a request for electronic data, whether the Department creates or compiles records (as by undertaking significant programming work) or merely extracts them from an existing database may be unclear. The Department shall in any case undertake reasonable efforts to search for the information in electronic format.

(c) Department officials may, upon request, create and provide new records pursuant to user fee statutes, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. Such creation and provision of records is outside the scope of the FOIA.

(d) Components shall preserve all correspondence pertaining to the requests they receive under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

Sec. 4.4 Requirements for making requests.

(a) A request for records of the Department which are not customarily made available to the public as part of the Department's regular informational services must be in writing (and may be sent by mail, facsimile, or E-mail), and shall be processed under the FOIA, regardless whether the FOIA is mentioned in the request. Requests should be mailed to the Department component identified in Appendix A to this part that maintains those records, or may be sent by facsimile or E-mail to the numbers or addresses, respectively, listed at the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>).¹ If the proper component cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. For the quickest handling, the request (and envelope, if the request is mailed) should be marked "Freedom of Information Act Request."

¹ The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the Department of Commerce, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records should be sent directly to the USPTO.

(b) For requests for records about oneself, Sec. 4.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by the individual permitting disclosure of his or her records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

(c) The records requested must be described in enough detail to enable Department personnel to locate them with a reasonable amount of effort. If possible, a request should include specific information

about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions of the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records. If a component determines that a request does not reasonably describe records, it shall inform the requester what additional information is needed or how the request is otherwise insufficient, to enable the requester to modify the request to meet the requirements of this section.

[[Page 32]]

Sec. 4.5 Responsibility for responding to requests.

(a) In general. Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the component that first receives the request and has responsive records, or the component to which the Departmental Freedom of Information Officer assigns lead responsibility for responding to the request. Records responsive to a request shall include only those records within the Department's possession and control as of the date the proper component receives the request.

(b) Consultations and referrals. If a component receives a request for a record in its possession in which another Federal agency subject to the FOIA has the primary interest, the component shall refer the record to that agency for direct response to the requester. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it. A component shall consult with another Federal agency before responding to a requester if the component receives a request for a record in which another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to the FOIA has the primary interest or a significant interest (see Sec. 4.8 for additional information about referrals of classified information).

(c) Notice of referral. Whenever a component refers a document to another Federal agency for direct response to the requester, it ordinarily shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.

(d) Timing of responses to consultations and referrals. All consultations and referrals shall be handled in chronological order, based on when the FOIA request was received by the first Federal agency.

(e) Agreements regarding consultations and referrals. Components may make agreements with other Federal agencies to eliminate the need for consultations or referrals for particular types of records.

Sec. 4.6 Time limits and expedited processing.

(a) In general. Components ordinarily shall respond to requests according to their order of receipt.

(b) Initial response and appeal. Subject to paragraph (c)(1) of this section, an initial response shall be made within 20 working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper component identified in accordance with Sec. 4.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.

(c) Unusual circumstances. (1) In unusual circumstances as specified in paragraph (c)(2) of this section, an official listed in Appendix B to this part may extend the time limits in paragraph (b) of this

section by notifying the requester in writing as soon as practicable of the unusual circumstances and of the date by which processing of the request is expected to be completed. If the extension is for more than ten working days, the component shall provide the requester an opportunity either to modify the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or a modified request.

(2) As used in this section, unusual circumstances means, but only to the extent reasonably necessary to properly process the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another component or Federal agency having a substantial interest in the determination of the request.

(3) If a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a

[[Page 33]]

single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, the component may aggregate them. Multiple requests involving unrelated matters will not be aggregated.

(d) Multitrack processing. (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (e) of this section.

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. A component doing so shall contact the requester by telephone, E-mail, or letter, whichever is most efficient in each case.

(e) Expedited processing. (1) Requests and appeals shall be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) The loss of substantial due process rights;

(iii) A matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence; or

(iv) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should be sent to the component listed in Appendix A to this part that maintains the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (e)(1)(iv) of this section, if not a full-time member of the news media, must establish that he or she is a person

whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category described in paragraph (e)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. Solely for purposes of calculating the foregoing time limit, any request for expedited processing shall always be considered received on the actual date of receipt by the proper component. If a request for expedited processing is granted, the request shall be given priority and processed as soon as practicable, subject to Sec. 4.11(i). If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

Sec. 4.7 Responses to requests.

(a) Grants of requests. If a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee to be charged under Sec. 4.11 and disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(b) Adverse determinations of requests. If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. An adverse determination is a denial of a request in any

[[Page 34]]

respect, namely: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA (except that a determination under Sec. 4.11(j) that records are to be made available under a fee statute other than the FOIA is not an adverse determination); a determination against the requester on any disputed fee matter, including a denial of a request for a reduction or waiver of fees; or a denial of a request for expedited processing. Each denial letter shall be signed by an official listed in Appendix B to this part, and shall include:

- (1) The name and title or position of the denying official;
- (2) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);
- (3) An estimate of the volume of records or information withheld, in number of pages or some other reasonable form of estimation. This estimate need not be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and
- (4) A statement that the denial may be appealed, and a list of the requirements for filing an appeal under Sec. 4.10(b).

Sec. 4.8 Classified Information.

In processing a request for information classified under Executive Order 12958 or any other executive order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the component or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA exemption (b)(1) (5 U.S.C. 552(b)(1)), but should be reviewed to assess whether any other FOIA exemptions should be invoked. Appeals involving classified information shall be processed in accordance with Sec. 4.10(c).

Sec. 4.9 Business Information.

(a) In general. Business information obtained by the Department from a submitter will be disclosed under the FOIA only under this section.

(b) Definitions. For the purposes of this section:

(1) Business information means commercial or financial information, obtained by the Department from a submitter, which may be protected from disclosure under FOIA exemption (b)(4) (5 U.S.C. 552(b)(4)).

(2) Submitter means any person or entity outside the Federal Government from which the Department obtains business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) Designation of business information. A submitter of business information should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers protected from disclosure under FOIA exemption (b)(4). These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(d) Notice to submitters. A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity under paragraph (f) of this section to object to disclosure of any specified portion of that information. Such written notice shall be sent via certified mail, return receipt requested, or similar means. The notice shall either describe the business information requested or include copies of the requested records containing the

[[Page 35]]

information. If notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(e) When notice is required. Notice shall be given to the submitter whenever:

(1) The submitter has designated the information in good faith as protected from disclosure under FOIA exemption (b)(4); or

(2) The component has reason to believe that the information may be protected from disclosure under FOIA exemption (b)(4).

(f) Opportunity to object to disclosure. A component shall allow a submitter seven working days (i.e., excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the written notice

described in paragraph (d) of this section to provide the component with a statement of any objection to disclosure. The statement must identify any portions of the information the submitter requests to be withheld under FOIA exemption (b)(4), and describe how each qualifies for protection under the exemption: that is, why the information is a trade secret, or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(g) Notice of intent to disclose. A component shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose business information. If a component decides to disclose business information over a submitter's objection, the component shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

- (1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;
- (2) A description of the business information to be disclosed; and
- (3) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(h) Exceptions to notice requirements. The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

- (1) The component determines that the information should not be disclosed;
- (2) The information has been lawfully published or has been officially made available to the public;
- (3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or
- (4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the component shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.

(i) Notice to submitter of FOIA lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.

(j) Corresponding notice to requester. Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester.

Sec. 4.10 Appeals from initial determinations or untimely delays.

(a) If a request for records is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse initial determination regarding any other matter under this subpart (as described in Sec. 4.7(b)), the requester may file a written appeal, which must be received by the Office of General Counsel within thirty calendar days of the date of the written denial or, if there has been no determination, may be submitted anytime after the due date, including the last extension under Sec. 4.6(c), of the determination.

[[Page 36]]

(b) Appeals shall be decided by the Assistant General Counsel for Administration (AGC-Admin), except that appeals from requests initially denied by the AGC-Admin shall be decided by the General Counsel. Appeals should be addressed to the AGC-Admin, or the General Counsel if the records were

initially denied by the AGC-Admin. The address of both is: U.S. Department of Commerce, Office of General Counsel, Room 5875, 14th Street and Constitution Avenue NW, Washington, DC 20230. Both the letter and the appeal envelope should be clearly marked "Freedom of Information Appeal". The appeal must include a copy of the original request, the initial denial, if any, and a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

(c) Upon receipt of an appeal involving records initially denied on the basis of FOIA exemption (b)(1), the records shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part if continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the AGC-Admin, or the General Counsel, as appropriate, of his or her decision.

(d) If an appeal is granted, the person who filed the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees determined in accordance with Sec. 4.11.

(e) If no determination on an appeal has been sent to the requester within the twenty working day period specified in Sec. 4.6(b) or the last extension thereof, the requester is deemed to have exhausted all administrative remedies with respect to the request, giving rise to a right of judicial review under 5 U.S.C. 552(a)(6)(C). If the requester initiates a court action against the Department based on the provision in this paragraph, the administrative appeal process may continue.

(f) The determination on an appeal shall be in writing and, when it denies records in whole or in part, the letter to the requester shall include:

- (1) A brief explanation of the basis for the denial, including a list of the applicable FOIA exemptions and a description of how they apply;
- (2) A statement that the decision is final for the Department;
- (3) Notification that judicial review of the denial is available in the district court of the United States in the district in which the requester resides, or has his or her principal place of business, or in which the agency records are located, or in the District of Columbia; and
- (4) The name and title or position of the official responsible for denying the appeal.

Sec. 4.11 Fees.

(a) In general. Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except when fees are limited under paragraph (d) of this section or when a waiver or reduction of fees is granted under paragraph (k) of this section. A component shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) Definitions. For purposes of this section:

(1) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. If it appears that the requester will put the records to a commercial use, or if a component has reasonable cause to doubt a requester's asserted non-commercial use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) Direct costs means those expenses a component incurs in providing a particular service. Such expenses would include, for example, the labor costs of

[[Page 37]]

the employee performing the service (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space, heating, or lighting of the facility in which the service is performed.

(3) Duplication means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. A component shall honor a requester's specified preference of form or format of disclosure if the component can reproduce the record in the requested form or format with reasonable effort.

(4) Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution, and that the records are sought to further scholarly research rather than for a commercial use.

(5) Noncommercial scientific institution means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research rather than for a commercial use.

(6) Representative of the news media, or news media requester means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if they can qualify as disseminators of "news") that make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) Review means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure, for example, redacting it and marking any applicable exemptions. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also

includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) Fees. In responding to FOIA requests, components shall charge the fees summarized in chart form in paragraphs (c)(1) and (c)(2) of this section and explained in paragraphs (c)(3) through (c)(5) of this section, unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) The four categories and chargeable fees are:

[[Page 38]]

Requester Category	Chargeable Service
E. Commercial Use	E. Search, Review, and Duplication
F. Educational & Non-commercial Scientific Inst.	F. Duplication (excluding the cost of the first 100 pgs)
G. Representatives of News Media	G. Duplication (excluding the cost of the first 100 pgs)
H. All Other.....	H. Search and Duplication (excluding the cost of the first 2 hours of search and 100 pgs)

(2) Uniform fee schedule.

Category	Rate
G. Manual Search	G. Actual salary rate of employee involved, plus 16% of salary rate
H. Computerized search	H. Actual direct cost, including operator time
I. Duplication of records:	I. Duplication rate:
1) Paper copy reproduction	1) \$.16 per page
2) Other reproduction (e.g. Computer tape or printout)	2) Actual direct cost, including operator time
J. Review of records (includes redaction)	J. Actual salary rate of employee involved, plus 16% of salary rate

(3) Search. (i) Search fees shall be charged for all requests--other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media--subject to the limitations of paragraph (d) of this section. Components shall charge for time spent searching even if they do not locate any responsive records or if they withhold any records located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge.

(4) Duplication. Duplication fees shall be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be \$.16 cents per page. For copies produced by computer, such as tapes or printouts, components shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, components shall charge the direct costs of that duplication.

(5) Review. Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review, in which a component determines whether an exemption applies to a particular record at the initial request level. No charge shall be imposed for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(d) Limitations on charging fees.

(1) No search fee shall be charged for requests from educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components shall provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) If a total fee calculated under paragraph (c) of this section is \$20.00 or less for any request, no fee shall be

[[Page 39]]

charged. If such total fee is more than \$20.00, the full amount of such fee shall be charged.

(5) The provisions of paragraphs (d) (3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$20.00.

(e) Notice of anticipated fees over \$20.00. If a component determines or estimates that the total fee to be charged under this section will be more than \$20.00, the component shall notify the requester of the actual or estimated fee, unless the requester has stated in writing a willingness to pay a fee as high as that anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. If the component has notified a requester that the actual or estimated fee is more than \$20.00, the component shall not consider the request received for purposes of calculating the time limit in Sec. 4.6(b) to respond to a request, or process it further, until the requester agrees to pay the anticipated total fee. Any agreement to pay should be memorialized in writing. A notice under this paragraph shall offer the requester an opportunity to contact Departmental personnel to discuss modifying the request to meet the requester's needs at a lower cost.

(f) Charges for other services. Apart from the other provisions of this section, if a component decides, as a matter of administrative discretion, to comply with a request for special services, the component shall charge the direct cost of providing them. Such services could include certifying that records are true copies or sending records by other than ordinary mail.

(g) Charging interest. Components shall charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until the component receives payment. Components shall take all steps authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, to effect payment, including offset, disclosure to consumer reporting agencies, and use of collection agencies.

(h) Aggregating requests. If a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Among the factors a component shall consider in deciding whether to aggregate are the closeness in time between the component's receipt of the requests, and the relatedness of the matters about which the requests are made. A component may generally presume that multiple requests that involve related matters made by the same requester or a closely related group of requesters within a 30 calendar day period have been made in order to avoid fees. If requests are separated by a longer period, a component shall aggregate them only if a solid basis exists for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) Advance payments. (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment: a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a payment before copies are sent to a requester) is not an advance payment.

(2) If a component determines or estimates that a total fee to be charged under this section will be more than \$250.00, the component shall not consider the request received for purposes of calculating the time limit in Sec. 4.6(b) to respond to a request, or process it further, until it receives payment from the requester of the entire anticipated fee.

(3) If a requester has previously failed to pay a properly charged FOIA fee to any component or other Federal agency within 30 calendar days of the date of billing, a component shall require the requester to pay the full amount

[[Page 40]]

due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester. For purposes of calculating the time limit in Sec. 4.6(b) to respond to a request, the component shall not consider the request received until it receives full payment of all applicable fees and interest in this paragraph.

(4) Upon the completion of processing of a request, if a specific fee is determined to be payable and appropriate notice has been given to the requester, a component shall make records available to the requester only upon receipt of full payment of the fee.

(j) Other statutes specifically providing for fees. The fee schedule of this section does not apply to fees charged under any statute (except for the FOIA) that specifically requires an agency to set and collect

fees for particular types of records. If records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components shall inform requesters how to obtain records from those sources. Provision of such records is not handled under the FOIA.

(k) Requirements for waiver or reduction of fees. (1) Records responsive to a request will be furnished without charge, or at a charge reduced below that established under paragraph (c) of this section, if the requester asks for such a waiver in writing and the responsible component determines, after consideration of information provided by the requester, that the requester has demonstrated that:

(i) Disclosure of the requested 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

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, components shall consider the following factors:

(i) The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government. The subject of the requested records must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: whether the disclosure is "likely to contribute" to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration. Merely providing information to media sources is insufficient to satisfy this consideration.

(iv) The significance of the contribution to public understanding: whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities. The public's understanding of the subject in question prior to the disclosure must be significantly enhanced by the disclosure.

(3) To determine whether the second fee waiver requirement (i.e., that disclosure is not primarily in the commercial interest of the requester) is met, components shall consider the following factors:

(i) The existence and magnitude of a commercial interest: whether the requester has a commercial interest that would be furthered by the requested disclosure. Components shall consider

[[Page 41]]

any commercial interest of the requester (with reference to the definition of "commercial use request" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified if the public interest standard (paragraph (k)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) If only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request.

Subpart B--Privacy Act (Omitted)

Appendix A to Part 4--Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act

Each address listed below is the respective component's mailing address for receipt and processing of requests for records under the Freedom of Information Act and Privacy Act, for requests for correction or amendment under the Privacy Act and, unless otherwise noted, its public inspection facility for records available to the public under the Freedom of Information Act. Requests should be addressed to the component the requester knows or has reason to believe has possession of, control over, or primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility. The telephone number for each component is included after its address. Public inspection facilities are open to the public Monday through Friday (excluding Saturdays, Sundays, and legal public holidays) between 9 a.m. and 4 p.m. local time of the facility at issue. Certain public inspection facility records of components are also available electronically through the Department's "FOIA Home Page" link found at the Department's World Wide Web site

(<http://www.doc.gov>)), as described in Sec. 4.2(b). The Departmental Freedom of Information Officer is authorized to revise this appendix to reflect changes in the information contained in it. Any such revisions shall be posted at the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>).

(1) Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, U.S. Department of Commerce, Room 6022, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-4115. This facility serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below that do not have separate public inspection facilities.

(2) Bureau of the Census, Policy Office, U.S. Department of Commerce, Federal Building 3, Room 2430, Suitland, Maryland 20233; (301) 457-2520. This agency maintains a separate public inspection facility in Room 2455, Federal Building 3, Suitland, Maryland 20233.

(3) Bureau of Economic Analysis/Economics and Statistics Administration, Office of the Under Secretary for Economic Affairs, Department of Commerce, Room 4836, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-3308. This component does not maintain a separate public inspection facility.

(4) Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-0500. This component does not maintain a separate public inspection facility.

(5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 7005, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-4687. Regional EDA offices (none of the following regional EDA offices maintains a separate public inspection facility):

(i) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Curtis Center, Suite 140 South, Independence Square West, Philadelphia, Pennsylvania 19106; (215) 597-7896.

(ii) Atlanta Regional Office, EDA, U.S. Department of Commerce, 401 West Peachtree Street, NW, Suite 1820, Atlanta, GA 30308; (404) 730-3006.

(iii) Denver Regional Office, EDA, U.S. Department of Commerce, Room 670, 1244 Speer Boulevard, Denver, Colorado 80204; (303) 844-4716.

(iv) Chicago Regional Office, EDA, U.S. Department of Commerce, 111 North Canal

[[Page 56]]

Street, Suite 855, Chicago, IL 60606; (312) 353-8580.

(v) Seattle Regional Office, EDA, U.S. Department of Commerce, Jackson Federal Building, Room 1856, 915 Second Avenue, Seattle WA 98174; (206) 220-7701.

(vi) Austin Regional Office, EDA, U.S. Department of Commerce, 327 Congress Avenue, Suite 200, Austin, Texas 78701; (512) 381-8169.

(6) International Trade Administration, Office of Organization and Management Support, U.S. Department of Commerce, Room 4001, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-3032.

(7) Minority Business Development Agency, Data Resources Division, U.S. Department of Commerce, Room 5084, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-2025. This agency does not maintain a separate public inspection facility.

(8) National Institute of Standards and Technology, Management and Organization Division, Administration Building, Room A525, 100 Bureau Drive, Gaithersburg, Maryland 20899; (301) 975-4054. This agency maintains a separate public inspection facility in Room E-106, Administration Building, Gaithersburg, Maryland.

(9) National Oceanic and Atmospheric Administration, Public Reference Facility (OFAx2) 1315 East West Highway (SSMC3), Room 10730, Silver Spring, Maryland 20910; (301) 713-3540.

(10) National Technical Information Service, Office of Administration, 5285 Port Royal Road, Springfield, Virginia 22161; (703) 605-6449. This agency does not maintain a separate public inspection facility.

(11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 4713, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-1816.

This component does not maintain a separate public inspection facility.

(12) Office of Inspector General, Counsel to the Inspector General, U.S. Department of Commerce, Room 7892, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-5992. This component does not maintain a separate public inspection facility.

(13) Technology Administration, Office of the Under Secretary, U.S. Department of Commerce, Room 4835, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-1984. This component does not maintain a separate public inspection facility.

Appendix B to Part 4-- Officials Authorized to Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act

The officials of the Department listed below and their superiors have authority, with respect to the records for which each is responsible, to deny requests for records under the FOIA, \1\ and requests for records and requests for correction or amendment under the PA. In addition, the Departmental Freedom of Information Officer and the Freedom of Information Officer for the Office of the Secretary have the foregoing FOIA and PA denial authority for all records of the Department, and the Departmental Freedom of Information officer is authorized to assign that authority, on a case-by-case basis only, to any of the officials listed below, if the records responsive to a request include records for which more than one official listed below is responsible. The Departmental Freedom of Information Officer is authorized to revise this appendix to reflect changes in designation of denial officials. Any such revisions shall be posted at the Department's ``FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>).

\1\ The foregoing officials have sole authority under Sec. 4.7(b) to deny requests for records in any respect, including, for example, denying requests for reduction or waiver of fees.

Office of the Secretary

Office of the Secretary: Executive Secretary; Freedom of Information Officer

Office of Business Liaison: Director

Office of Public Affairs: Director; Deputy Director; Press Secretary; Deputy Press Secretary

Assistant Secretary for Legislative and Intergovernmental Affairs; Deputy Assistant Secretary for

Legislative and Intergovernmental Affairs

Office of the Inspector General: Counsel to the Inspector General; Deputy Counsel to the Inspector General

Office of the General Counsel: Deputy General Counsel; Assistant General Counsel for Administration

Office of Executive Support: Director

[[Page 57]]

Assistant Secretary for Administration

Office of Civil Rights: Director

Office of Budget: Director

Office of Management and Organization: Director

Office of Chief Information Officer: Director

Office of Executive Budgeting and Assistance Management: Director

Office of Executive Assistance Management: Director; Grants Officer

Departmental Freedom of Information Officer. Office of Financial Management: Director Office of Human Resources Management: Director; Deputy Director.

Office of Administrative Services: Director

Office of Security: Director, Deputy Director

Office of Acquisition Management: Director

Office of Acquisition Services: Director

Office of Small and Disadvantaged Business Utilization: Director

Bureau of Export Administration

Under Secretary

Deputy Under Secretary

Director, Office of Administration

Director, Office of Planning, Evaluation and Management

Assistant Secretary for Export Administration

Deputy Assistant Secretary for Export Administration

Director, Office of Strategic Industries and Economic Security

Director, Office of Nonproliferation Controls and Treaty Compliance

Director, Office of Strategic Trade and Foreign Policy Controls

Director, Office of Exporter Services

Assistant Secretary for Export Enforcement

Deputy Assistant Secretary for Export Enforcement

Director, Office of Export Enforcement

Director, Office of Enforcement Analysis

Director, Office of Antiboycott Compliance

Economics and Statistics Administration

Office of Administration: Director

Bureau of Economic Analysis: Director

Bureau of the Census: Chief, Policy Office

Economic Development Administration

Freedom of Information Officer

International Trade Administration

Under Secretary for International Trade

Deputy Under Secretary for International Trade

Counselor to the Department

Director, Trade Promotion Coordinating Committee Secretariat

Director, Office of Public Affairs

Director, Office of Legislative and Intergovernmental Affairs

Administration

Chief Financial Officer and Director of Administration

Director, Office of Organization and Management Support

Director, Office of Human Resources Management

Director, Office of Information Resources Management

ITA Freedom of Information Officer

Import Administration

Assistant Secretary for Import Administration

Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement I

Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement II

Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement III

Director for Policy and Analysis

Director, Office of Policy

Director, Office of Accounting

Director, Central Records Unit

Director, Foreign Trade Zones Staff

Director, Statutory Import Programs Staff

Director, Office of Antidumping Countervailing Duty Enforcement I

Director, Office of Antidumping Countervailing Duty Enforcement II

Director, Office of Antidumping Countervailing Duty Enforcement III

Director, Office of Antidumping Countervailing Duty Enforcement IV

Director, Office of Antidumping Countervailing Duty Enforcement V

Director, Office of Antidumping Countervailing Duty Enforcement VI

Director, Office of Antidumping Countervailing Duty Enforcement VII

Director, Office of Antidumping Countervailing Duty Enforcement VIII

Director, Office of Antidumping Countervailing Duty Enforcement IX

Market Access and Compliance

Assistant Secretary for Market Access and Compliance
Deputy Assistant Secretary for Agreements Compliance
Deputy Assistant Secretary for the Middle East and North Africa
Deputy Assistant Secretary for Europe
Deputy Assistant Secretary for the Western Hemisphere
Deputy Assistant Secretary for Asia and the Pacific
Deputy Assistant Secretary for Africa
Director, Office of Policy Coordination
Director, Office of Multilateral Affairs
Director, Trade Compliance Center
Director, Office of the Middle East and North Africa
Director, Office of European Union and Regional Affairs

[[Page 58]]

Director, Office of Eastern Europe, Russia and Independent States
Director, Office of Latin America and the Caribbean
Director, Office of NAFTA and Inter-American Affairs
Director, Office of China Economic Area
Director, Office of the Pacific Basin
Director, Office of South Asia and Oceania
Director, Office of Japan
Director, Office of Africa

Trade Development

Assistant Secretary for Trade Development
Deputy Assistant Secretary for Transportation and Technology Industries
Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries
Deputy Assistant Secretary for Service Industries and Finance
Deputy Assistant Secretary for Basic Industries
Deputy Assistant Secretary for Information Technology Industries
Deputy Assistant Secretary for Environmental Technologies Industries
Deputy Assistant Secretary for Tourism Industries
Director, Office of Export Promotion Coordination
Director, Trade Information Center
Director, Office of Trade and Economic Analysis
Director, Advocacy Center
Director, Office of Planning, Coordination and Resource Management
Director, Office of Aerospace
Director, Office of Automotive Affairs
Director, Office of Microelectronics, Medical Equipment and Instrumentation
Director, Office of Textiles and Apparel
Director, Office of Consumer Goods
Director, Office of Environmental Technologies
Director, Office of Export Trading Company Affairs

Director, Office of Finance
Director, Office of Service Industries
Director, Office of Metals, Materials and Chemicals
Director, Office of Energy, Infrastructure and Machinery
Director, Office of Electronic Commerce
Director, Office of Information Technologies
Director, Office of Telecommunications Technologies

U.S. and Foreign Commercial Service

Assistant Secretary and Director General
Deputy Director General
Deputy Assistant Secretary for International Operations
Deputy Assistant Secretary for Export Promotion Services
Deputy Assistant Secretary for Domestic Operations
Director, Office of Information Systems
Director, Office of Planning
Director, Office of Foreign Service Human Resources
Director for Europe
Director for Western Hemisphere
Director for East Asia and the Pacific
Director, Multilateral Development Bank Operations
Director, Office of Public/Private Initiatives
Director, Office of Export Information and Marketing Services
Director, Office of Operations

Minority Business Development Administration

Freedom of Information Officer

National Oceanic and Atmospheric Administration

Under Secretary
Assistant Secretary
Director, Office of Public and Constituent Affairs
Director, Office of Marine and Aviation Operations
General Counsel
Assistant Administrator for Ocean Services and Coastal Zone Management
Assistant Administrator for Fisheries
Assistant Administrator for Weather Services
Assistant Administrator for Satellite and Information Services
Assistant Administrator for Oceanic and Atmospheric Research
Office of Finance and Administration: Chief Financial Officer/Chief Administrative Officer
Director, Acquisition and Grants Office
Director, Systems Acquisition Office
Director, Human Resources Management Office

Director, Office of Finance
 Director, Budget Office
 Director, Facilities Office
 Director, Information Systems Management Office
 Director, Eastern Administrative Support Center
 Director, Central Administrative Support Center
 Director, Mountain Administrative Support Center
 Director, Western Administrative Support Center
 Freedom of Information Officer

National Telecommunications and Information Administration

Deputy Assistant Secretary
 Chief Counsel
 Deputy Chief Counsel
 Technology Administration

Under Secretary for Technology

[[Page 59]]

Deputy Under Secretary for Technology
 Assistant Secretary for Technology Policy
 Chief Counsel
 Deputy Chief Counsel
 Senior Counsel for Internet Technology
 National Institute of Standards and Technology: Director for Administration and Chief Financial Officer; Chief, Management and Organization Division; NIST Counsel.
 National Technical Information Service: Director; Deputy Director; Chief Financial Officer/Associate Director for Finance and Administration.

Appendix C to Part 4--Systems of Records Noticed by Other Federal Agencies and Applicable to Records of the Department and Applicability of this Part Thereto

Category of records	Other Federal Agency
Federal Personnel Records.....	Office of Personnel Management.\1\
Federal Employee Compensation Act Program Program.....	Department of Labor.\2\
Equal Employment Opportunity Appeal Complaints.....	Equal Employment Opportunity Commission.\3\
Formal Complaints/Appeals of Adverse Personnel Actions.....	Merit Systems Protection Board.\4\

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- \1\ The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.
- \2\ The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that Department attach at the point of any denial for access or for correction or amendment.
- \3\ The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.
- \4\ The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

Appendix C

Department of Commerce Administrative Order (DAO 205-14)
DAO 205-14

PROCESSING REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

Effective Date: June 30, 1975

SECTION 1. PURPOSE.

This order prescribes detailed instructions for the internal handling and processing of Freedom of Information Act requests received pursuant to DAO 205-12 and 15 CFR Part 4. (For convenience, the latter are attached hereto as they appeared in the Federal Register.)

SECTION 2. AUTHORITY.

This order is issued pursuant to the provisions of subparagraph 5.03e., of DAO 205-12.

SECTION 3. SCOPE AND APPLICABILITY.

This order applies to all officers, employees, and organizational components (including operating units and staff offices) of the Department, and to the processing of FOIA requests received anywhere in the Department.

SECTION 4. REFERENCES.

For use in connection with these instructions, the following materials are attached hereto. Processing cannot be effected without a good working knowledge of the Rules.

Attachment. 1 - The Act, as amended.

Attachment. 2 - The Rules, i.e., Part 4, Title 15, of the Code of Federal Regulations, with

o an appended copy of DAO 205-12;

o an appended listing of the Department's FOIA facilities; and

o an appended listing of Commerce officials authorized to make initial denials of requests for records.

Attachment. 3 - An exhibit copy of Form CD 244, "FOIA Request and Action Record."

SECTION 5. "FOIA REQUEST" DEFINED.

.01 Included. For the purposes of this order, an FOIA request is:

a. Any request by a member of the public (including media representatives) or non-Federal institution to inspect or copy any of the types of materials or indexes explained in paragraph 5.02, of DAO 205-12. These are frequently referred to as "(a) (2) requests" or sometimes as "(a) (5) requests" --- terms which derive from the respective sections of the Act.

b. Any written request for copies of records under the Act which is received from a member of the public (including media representatives) or non-Federal institution. These are referred to as "(a) (3) requests." Section 4.5 of the Rules applies, and paragraph 5.03 of DAO 205-12 pertains.

.02 Excluded.

a. Information requests received by telephone are not deemed to be FOIA requests but, as appropriate, the requester should be courteously referred to an appropriate FOIA facility for assistance.

b. Requests for records or information customarily made available to the public through the Federal Register or as part of the Department's regular information dissemination activities are not considered to be FOIA requests. When a request for records of this type is received, the material should be promptly furnished or the requester informed where it can be obtained (4.6(a) (1)).

c. Requests for records or information that are normally provided by the Department under laws other than the Act (e.g., user charge statutes, per DAO 203-5) are not considered to be FOIA requests. Requests of this type should be promptly referred to the appropriate office charged with compliance with the particular law, and the requester should be promptly notified how the request is being handled (4.6(a) (1)).

SECTION 6. PRIORITY FACTORS.

Every FOIA request shall be processed and handled on a priority basis at all times. Written requests should be transmitted from point to point within the Department by "hand carry" or by automatic facsimile equipment, whenever practical.

.01 Initial Receipt and Action Factor.

a. According to subject matter and type ("(a) (2)" or "(a) (3)," for example) every FOIA request received in any office, mail room, or other activity of the Department shall be immediately referred or delivered to the receiving activity's FOIA facility for processing, i.e., control and action assignment, or transfer. If the appropriate facility cannot be readily determined, the person receiving the request shall contact the nearest FOIA facility or operating unit legal office for guidance.

b. If an FOIA written request is not properly identified as such, the receiving office, mail room, or other activity shall clearly and prominently mark it "Freedom of Information Request" before delivering it to an FOIA facility. (See 4.5(b) of the Rules.)

.02 "Officially Received" Time Factor.

Since the act contains specific limitations on the length of time the Department can use in responding to the FOIA request for records, the date a request is officially received is a critical factor. Accordingly, an (a) (3) request is deemed to be officially received only when it reaches the appropriate FOIA facility, as explained in 4.5(b) of the Rules.

SECTION 7. CONTROLLING AND ACTING ON AN (a) (3) REQUEST.

.01 General.

a. Control. Each (a) (3) request shall be controlled by an FOIA facility of the Department, shall be acted on by the facility or by an office or activity (the "Action Office") to which it is assigned by the facility, and shall be accounted for on a Form CD 244.* This section prescribes relevant procedures and the responsibilities of those involved, and provides sequential instructions for filling out the Form.

b. Form CD 244. In addition to facilitating control over a request, this Form is designed to provide an historical record for purposes of reference, public inspection, and statutory annual reporting. (This statutory reporting requirement will be dealt with in a separate issuance.) The Form is interleaved in 3 copies: White, Yellow, and Pink; it is stocked by the Department Forms store; and each FOIA facility should keep a supply on hand.

c. Applicable Rules. The Rules (at Attachment 2, hereto) shall apply throughout in the handling of all requests. In this order, the pertinent rule is referenced (sometimes parenthetically) by its section or subsection number, e.g., "4.6" or "(4.6(b) (2))," and it should be referred to if a questions or problem arise. If the Rules do not resolve the matter, the operating unit legal office or the Assistant General Counsel for Administration should be contacted.

.02 Accountability and Initial Processing of an (a) (3) Request.

The official receipt and initial processing of an (a) (3) request is the responsibility of the appropriate FOIA facility, and shall be recorded on Part I of the Form, as explained in subparagraphs a. through j. of this paragraph.

a. Item 1 - DOC/FOIA Facility. Attachment 2 hereto pertains. The Department's central facility shall use its abbreviation, CFFIR. Other facilities shall use the abbreviation of their operating unit (DIBA, SESA, etc.), plus further standard identification in the case of a facility in the field.

b. Item 2 - Request Number. Use the calendar year plus sequential numbering: 75-1, 75-2, 75-3, etc. (This number plus the Item 1 entry should provide a unique identification for every (a) (3) request received in the Department.)

*Operating units or FOIA facilities wishing to use the Form to keep a record of (a) (2) requests may do so, but only if any numbering system they might employ is separate and distinct from the system prescribed for (a) (3) requests in subparagraph .02b. of this section.

c. Item 3 - Name, address, etc. The requester's name and address is obviously necessary. The requester's phone number is optional with the requester, but its inclusion could help the Department provide faster service if a question arise concerning the request.

d. Item 4 - Description of records requested. Be explicit, but brief; 4.5(c) of the Rules applies.

e. Item 5 - Facility data is self-explanatory.

f. Item 6 - Request returned or requester contacted. If the facility's review finds the request so defective as to be obviously incapable of processing, this item should be checked and a brief statement of the defect and the facility's action shall be recorded on the reverse side of the White Copy. The applicable subsection of the Rules should be cited. Examples of when this item would be checked are:

1. The request was so broad that the facility knew the Department could not respond. In this situation the facility would contact the requester and help him refine his request (4.6(a) (5)); and

2. The request was obviously for records of another executive agency. In this situation the facility would refer the request to that agency and promptly notify the requester of this referral (4.6(a) (4)).

g. Item 7 - Request fulfilled by facility. The facility shall complete this item if it grants a request directly and does not assign it to another activity. (For example, when the request is for a copy of a releasable record which is on hand at the facility and which can be readily reproduced.) If item 7 is used, the facility should also complete such Part II items as may be appropriate.

h. Item 8 - Action Assignment. As a matter of policy, action on any given request should be assigned to the head, by title, of the lowest possible organizational level known to have control of the records requested and authority to make them available to the requester, i.e., a disclosure decision. In application, operating unit FOIA facilities shall assign action in accordance with the operating unit's FOIA instructions; at Department level, the CFFIF shall assign action to the director of the appropriate staff office. Any doubts or questions as to the appropriate Action Office should first be resolved over the phone by facility personnel in order to avoid the loss of critical time which an erroneous assignment could incur. (Note: Action should never be assigned to an individual by name, but a facility having certain knowledge that requests for records on a given topic are always reassigned by the Action Office head to a specific individual, may -- if operating unit instructions permit -- send an information copy of the request to the individual concurrent with transmittal of the official copy to the Action Office head.)

i. Item 9 - Due date. By law, this can be no later than the tenth working day from the date the appropriate facility receives the request.

j. Item 10 - Comments or instructions. This may be used in any manner the facility desires and operating unit instructions permit. For example, a facility could use this block to advise the Action Office that the requester is delinquent in payment of previously due FOIA fees, 4.9(c), or to advise that the request is for records in two or more operating units or Departmental staff offices and that Section 8 of this order applies.

.03 Transmittal for Action.

After completing the first part of the Form, the facility shall:

a. Detach the Pink Copy and place it in a 9-day tickles file (which shall be maintained in every facility) together with a copy of the original request; and,

b. Attach the original request to the White and Yellow copies and effect prompt delivery to the Action Office.

.04 Acting On and Responding to an (a) (3) Request.

Acting on a request is the process of reaching an "initial determination" to grant or deny (wholly or partially) the request. Section 4.6 of the Rules apply; and the Action Office shall complete the second part of the Form as explained in subparagraphs a. through g. of this paragraph.

a. Item 11 - Action Office data is self-explanatory.

b. Item 12 - Fee Provisions. See 4.9 of the Rules.

1. Make an estimate of the Collectible Costs and enter it in pencil in the first column of Item 15; then complete lines a. and b. of Item 12.

2. Under certain circumstances as explained in 4.9(b), fees may be waived or reduced. If the provisions of 4.9(b) pertain, line c. of Item 12 shall be checked and a proper explanation attached to the Form.

3. The last two lines of Item 12, d. and e., need posting only when 4.9(c) (6) is applied.

c. Item 13 - Trolling of Time Provisions. At this point, the entries on lines a. and b. of Item 12 and the estimate total in Item 15 shall be compared, and the requirements of 4.9(c) (1) through (3) applied to the comparison. If any of the requirements are found to pertain, the provisions of 4.9(c) (4) and (5) shall be applied; the appropriate Item 13 entry shall be checked; and the time limitations of the FOIA shall be tolled (i.e., suspended) as 4.9(c) (5) provides. (Note: Any action to toll the time under the FOIA could become a legal issue. Whenever Item 13 is used, therefore, the Action Office shall immediately advise the requester (4.9(c) (4)); keep a complete and accurate record or log of its actions; and keep the FOIA Facility concurrently informed.)

d. Item 14 - Initial Determination. This decision on whether or not to grant the request is the important part of the Action Office's responsibility under the Act. Section 4.6 of the Rules apply; and paragraph 5.03 of DAO 205-12 pertains. There are three steps: evaluation, implementation, and summarization, as explained below.

1. Evaluation. Careful evaluation of a request involves a number of factors which are explained in detail in the Rules. These factors and the pertinent parts of Section 4.6 of the Rules are as follows:

--valid FOIA request? (a) (1);

--reasonably described and locatable records? (a) (2);

--records exist under Action Office control? (a) (3);

--records are in or controlled by another Commerce unit (a) (3) or Federal agency? (a) (4);

--request for a broad group or category of records? (a) (5); (Also see Section 8 of this order.);

--availability of records determinable within 10 days? (b);

--"unusual circumstances" prevail? (b) (2). If so, note the special actions required and keep FOIA facility fully informed.)

Special Note: If an Action Office has reason to believe that other organizations within the Department have records that are covered it shall immediately bring the matter to the attention of its FOIA facility for coordinated actions, and for possible application of Section 8 of this order.

2. Implementation. After the requested records have been located and reviewed as necessary, the responsible official shall decide either to grant the request in its entirety or to recommend a partial or total denial of the request. If the request is granted, 4.6(b) (4) applies. If a denial is recommended, rule 4.6(b) (5) and paragraph 5.04 of DAO 205-12 apply.

3. Summarization. All elements of the evaluation and implementation shall be summarized in Item 14, of the Form. As a minimum, this summary shall:

--state what decision was reached;

--give the date and means by which the requester was informed of this initial determination, as well as the date, means, purpose, and response to any other contact with the requester;

--describe and explain any "unusual circumstances," delays, or time extensions 4.6(b) (2));

--show the amount of search fees and copying fees collected;

--include the name, position, and phone number of all Commerce officers or employees who were involved or consulted;

--when a request is granted, give the approximate date when the records will be sent to the requester;

--when a request is denied, in whole or in part, include a copy (by attachment) of the reply sent to the requester (4.6(b) (5)); and

--such other information s deemed appropriate.

e. Item 15 - Collectible Costs. This is self-explanatory. The Uniform Fee Schedule (4.9) applies.

f. Item 16 - Non-collectible costs. If a request involved services for which no fees can be charged, explain the services and estimate the costs and the time of each Department employee involved. Such services include, but are not limited to:

(1) man-hours spend in examining requested records to determine whether they are exempt from mandatory disclosure (Section 552(b) of the Act) or whether, even if exemptible, they should nevertheless be made available in whole or in part;

(2) deleting exempted matter from records so that the remaining portions may be made available;

(3) resolving legal, policy, or other issues affecting access to requested records; and (4) monitoring an inspection of records made available to a requester. Note: The cost of any fees which have been waived under the law shall also be shown and identified in Item 16. It is desirable to track these costs for budgetary reasons.

g. Item 17 - Signature and Filing. After the Form is filled out and reviewed for accuracy and completeness, it shall be signed by the head of the Action Office or his designee, the White Copy shall be returned to the facility with the original of the request and other attachments, as appropriate, and the Yellow retained by the Action Office. In addition, if the request was denied wholly or partially, the head of the Action office shall forward one well reproduced copy of the denial letter to the Assistant General Counsel for Administration, per 4.6(b) (6).

SECTION 8. REQUESTS INVOLVING TWO OR MORE OPERATING UNITS.

If an FOIA facility receives a request for records, ((a) (3) of the Act) which could possible encompass records in two or more units of the Department, it shall immediately transfer the request to the Department's Central Reference and Records Inspection Facility. Upon receipt of such a request (either directly or from an operating unit facility), CRRIF shall ascertain and assign lead responsibility to the predominantly interested unit, which shall coordinate and control the processing of the request for the Department.

SECTION 9. APPEALS OF INITIAL DETERMINATIONS.

Should a requester appeal an initial determination which denied his request (in whole or in part), the provisions of Section 4.8 of the Rules apply, paragraph 5.04 of DAO 205-12 pertains, and the Action Office shall -- after the appeal is resolved -- send a summary of the appeal and the results to the FOIA facility where the CD-244 is on file, for addition to the file. This summary must include:

- a. The result of the appeal;
- b. The reason for the action, if the appeal is denied; and
- c. The name and title of the Commerce official responsible for the appeal's denial.

SECTION 10. GUIDANCE AND SPECIAL REVIEW REQUIREMENTS.

FOIA facility or Action Office questions of a legal or interpretive nature are to be directed to the legal office for each Department operating unit, which may consult with the Assistant General Counsel for Administration. Questions of an administrative or procedural nature are to be directed to the Director, Departmental Office of Organization and Management Systems. No initial denial of requests for records

or appeal denials shall be made without the participation of the legal and other officials provided in paragraph 5.04 of the basic order.

(signed) _____

Acting Assistant Secretary for Administration

Index Changes

Add: FOIA Requests 205-14

Freedom of Information Act, Processing Requests Under The 205-14

Procedures Under The Freedom of Information Act 205-14

Appendix D

**Department of Commerce Administrative Order (DAO 205-14)
Amendment 2**

DAO 205-14
PROCESSING REQUESTS UNDER THE FREEDOM OF INFORMATION ACT
Amendment 2

Effective Date: February 2, 1982

Department Administrative Order 205-14 of June 30, 1975 is hereby further amended as shown below. The purpose of this amendment is to complete the centralization of the handling of appeals from initially denied requests under the Freedom of Information Act.

1. SECTION 6. PRIORITY FACTORS. The last line of subparagraph 6.01a. Is revised to read as follows:

"the nearest FOIA facility or the Assistant General Counsel for Administration for guidance."

2. SECTION 7. CONTROLLING AND ACTING ON AN (a)(3) REQUEST. a. The last sentence in subparagraph 7.01c. Is revised to read as follows:

"If the Rules do not resolve the matter, the Assistant General Counsel for Administration should be contacted."

b. In subparagraph 7.02a., the language "ITA, EDA" should be substituted for "DIBA, SESA."

c. A new subparagraph 7.03c. Is added to read as follows:

"c. At the same time as the request is sent to the action office, a copy of the request and action assignment shall be delivered to the operating unit Public Affairs Officer."

d. The second sentence of paragraph 7.04 is revised to read as follows:

"Section 4.6 of the Rules and paragraphs 5.03 and 5.04 of DAO 205-12 apply; and the Action Office shall complete the second part of the Form as explained in subparagraphs a. through g. of this paragraph."

e. The second sentence of subparagraph 7.04d. is revised to read as follows:

"Section 4.6 of the Rules apply; and paragraphs 5.03 and 5.04 of DAO 205-12 pertain."

f. The fifth indented phrase of subparagraph 7.04d.3. is revised to read as follows:

- include the name, position, and phone number of all Commerce officers or employees who were involved or consulted including, in the case of a denial, the name of the attorney in the Office of the General Counsel who cleared the denial;"

g. The last sentence in subparagraph 7.04g. is revised to read as follows:

"In addition, if the request was denied wholly or partially, the head of the Action Office shall forward one well reproduced copy of the request and denial letter to the Assistant General Counsel for Administration per 4.6(b)(6)."

3. SECTION 9. APPEALS OF INITIAL DETERMINATIONS. Section 9. Is revised to read as follows:

"The General Counsel shall receive and respond to appeals of initially denied requests and shall send a copy of the appeal and response to the Department's Central Reference and Records Inspection Facility."

4. SECTION 10. GUIDANCE AND SPECIAL REVIEW REQUIREMENTS. Section 10. Is revised to read as follows:

"SECTION 10. GUIDANCE AND SPECIAL REVIEW REQUIREMENTS.

"FOIA facility of Action Office questions of a legal or interpretive nature are to be directed to the Office of the Assistant General Counsel for Administration. Question of an administrative or procedural nature are to be directed to the Director, Office of Information Management. No initial denial or requests for records or appeal denials shall be made without the participation of the officials provided in paragraph 5.04 of the basic DAO 205-12."

(signed)

Assistant Secretary for Administration

Appendix E

**Department of Commerce Administrative Order (DAO 205-14)
Amendment 3**

DAO 205-14
PROCESSING REQUESTS UNDER THE FREEDOM OF INFORMATION ACT
Amendment 3

Effective Date: October 15, 1992

Department Administrative Order 205-14, dated June 30, 1975 is hereby further amended as shown below. This amendment reflects the delegation of authority to the Assistant General Counsel for Administration to decide Freedom of Information Act appeals, except for appeals for records which were initially denied by the Assistant General Counsel for Administration, which will be decided by the General Counsel.

Section 9. is revised to read as follows:

"SECTION 9. APPEALS OF INITIAL DETERMINATIONS.

"The Assistant General Counsel for Administration shall receive and respond to the appeals of initially denied requests, except for appeals for records which were initially denied by the Assistant General Counsel for Administration, which shall be decided by the General Counsel. Copies of all appeals and responses shall be sent to the Department's Central Reference and Records Inspection Facility."

(signed) Secretary of Commerce

Appendix F

National Oceanic Atmospheric Administration Administrative Order (NAO 205-14)

NAO 205-14
PROCESSING REQUESTS UNDER THE FREEDOM
OF INFORMATION ACT (FOIA)

Issued 3/28/94; Effective 3/14/94

SECTION 1. PURPOSE.

This Order provides guidance to all National Oceanic and Atmospheric Administration (NOAA) elements for processing requests under the Freedom of Information Act (FOIA).

SECTION 2. REFERENCES.

.01 Department Administrative Order (DAO) 205-14, Processing Requests Under the Freedom of Information Act, as amended.

.02 DAO 205-12, Public Information, as amended.

.03 15 Code of Federal Regulations (CFR), Part 4, dated January 1, 1993, as amended.

SECTION 3. AUTHORITY.

.01 Authority to Release Information. Individuals at the Branch Chief level or above may release information for FOIA requests.

.02 Authority to Initially Deny FOIA Information. NOAA's FOIA Officer, the Director, Procurement, Grants, and Administrative Services Office, and the Director, Systems Program Office may initially deny FOIA requests. Other NOAA officials authorized to initially deny FOIA information are listed in Appendix 3, 15 CFR Part 4 (attachment 1).

SECTION 4. RESPONSIBILITIES.

.01 The Office of Administration, Administrative Services Division, Paperwork Management Branch (PMB) serves as NOAA's Central FOIA facility. A PMB designee serves as NOAA FOIA Officer.

.02 The NOAA FOIA Officer shall:

a. coordinate all FOIA inquiries;

b. maintain the NOAA FOIA Control System that shows receipt, status, and resolution of FOIA requests;

c. initiate Form CD-244, FOIA Information and Action Record, for requests sent to the NOAA FOIA facility;

- d. assign due dates for completion of all FOIA requests within the 10-working-day response time established by the FOIA;
- e. forward FOIA requests to action offices for response to the requester;
- f. receive copies of answers to FOIA requests that action offices send to the requester;
- g. ensure that action offices comply with the 10-working-day response time established by the FOIA;
- h. forward fees collected for processing FOIA requests to the Finance Services Division, Information Systems and Finance Office; and
- i. prepare and submit the FOIA Annual Report to Congress to the Departmental FOIA Officer.

.03 FOIA Liaison Personnel shall:

- a. maintain a log of all FOIA requests in their offices. The log shall include the NOAA control number assigned by the NOAA FOIA Officer, name of requester, receipt date, due date, person to whom the FOIA is assigned, fulfillment date, exemption information, fees charged, and fees paid date;
- b. complete the Form CD-244 as required (see attachment 2);
- c. assign the FOIA to the appropriate action office for response;
- d. ensure that all FOIA requests are completed within the 10-working-day timeframe mandated by FOIA. If extensions are necessary, notify the requester and the NOAA FOIA Officer, and document in writing who approved the extension and the extension date;
- e. provide the NOAA FOIA Officer with regular status of outstanding FOIA requests;
- f. notify the NOAA FOIA Officer when he/she is no longer performing FOIA liaison duties; and
- g. supply the NOAA FOIA Officer with the replacement's name.

.04 FOIA Action Offices shall:

- a. complete the Form CD-244 as outlined in attachment 2;
- b. search for records responsive to FOIA requests;
- c. review records to determine what information is releasable and what information should be withheld under the FOIA exemptions;

d. calculate the charges associated with answering individual FOIA requests and notify the requester of any fees due according to 15 CFR Part 4 and show these amounts on the Form CD-244;

e. notify the requester of any fees due before processing FOIA requests;

f. notify the requester by letter that prepayment is required before FOIA information is released if the amount is greater than \$250, or if the requester has not paid for previous FOIA requests;

g. respond to all assigned FOIA requests within the 10-working-day response time established by the FOIA;

h. notify the NOAA FOIA Officer if a FOIA request was misdirected or incorrectly assigned to his/her office, or if an extension of a 10-working-day timeframe is needed;

i. send the NOAA FOIA Officer the completed Form CD-244 and a copy of the response letter for all FOIA requests; and

j. notify the NOAA FOIA Officer if a partial or full denial is recommended and document what concurrences were obtained. Before an initial denial is issued, the operating unit must include a memorandum to the file which demonstrates that it has addressed the issue of "foreseeable harm." The memo must document that the action office considered discretionary disclosure and document the harm which would result from disclosure.

SECTION 5. PROCEDURES.

.01 All FOIA requests, whether received at NOAA headquarters or NOAA field locations, MUST be controlled and assigned a FOIA number and due date by the NOAA FOIA Officer. It is critical that the NOAA FOIA Officer be notified of all FOIA requests upon receipt. FOIA requests which are the exclusive primary concern of other Federal agencies will be sent to the NOAA FOIA Officer. The NOAA FOIA Officer will send the request to the appropriate Federal agency for their direct response to the requester.

.02 NOAA headquarters offices shall send all misdirected or initially received FOIA requests to the NOAA FOIA Officer. The NOAA FOIA Officer will assign a NOAA FOIA number, enter the FOIA request into the FOIA control system, initiate a Form CD-244, FOIA Request and Action Record, and assign the request to the appropriate FOIA liaison personnel for that organization. The FOIA Officer will mail the white and yellow copies of the Form CD-244 and a photocopy of the requester's letter to the FOIA liaison for further assignment.

.03 NOAA field locations shall call the NOAA FOIA Officer for a NOAA control number and due date when FOIA requests are received directly. The FOIA field liaison initiates Form CD-244 (see attachment 2 for instructions), and FAXES a copy of the typed Form CD-244 and requester's incoming letter to the Paperwork Management Branch.

.04 After the FOIA requests are fulfilled, the FOIA action offices and the FOIA liaison personnel shall ensure that the Form CD-244 is properly completed. The completed Form CD-244 and a copy of the response letter sent to the requester shall be returned to the NOAA FOIA Officer.

.05 The NOAA FOIA Officer will enter all completed FOIA requests in the NOAA FOIA Control System and maintain copies of all FOIA requests at the NOAA Public Reference Facility, 6010 Executive Boulevard, Room 714, WSC-5, Rockville, MD 20852.

.06 Denials or partial denials of information may be issued by officials listed in 15 CFR, Part 4, Appendix C. Assigned offices must indicate the reasons for the denial and cite the appropriate FOIA exemption upon which the denial is based on the Form CD-244 and in the response letter to the requester.

.07 All checks or money orders received from requesters for processing FOIA requests must be made payable to the United States Treasury, must be identified by FOIA number, and sent to the NOAA FOIA Officer.

.08 FOIA liaison or FOIA action offices with questions about proposed denials are encouraged to contact the NOAA FOIA Officer. If there are non-routine legal questions regarding any FOIA request, the NOAA FOIA Officer will contact the appropriate Office of General Counsel for further guidance.

SECTION 6. FOIA REQUESTS FOR AGENCY RECORDS ORIGINATING FROM OR INVOLVING THE WHITE HOUSE.

.01 FOIA requests for agency records which originated in the White House or which involve the White House shall be sent to the NOAA FOIA Officer. FOIA documents which are the exclusive primary concern of other agencies shall be referred to those agencies by the NOAA FOIA Officer for direct response to the requester.

.02 The NOAA FOIA Officer shall be contacted for further instructions for processing White House FOIA requests.

SECTION 7. EFFECT ON OTHER ISSUANCES.

None.

SIGNED,
Director, Office of Administration

Attachment 1 (15 CFR Part 4)
Attachment 2 (COMPLETION OF FORM CD-244, FREEDOM OF INFORMATION ACT
REQUEST AND ACTION RECORD)

Attachment 3

Office of Primary Interest:

Paperwork Management Branch (OA332)

Administrative Services Division
Procurement, Grants, and Administrative Services Office
Office of Administration

Appendix G

**Memo by Attorney General
The Freedom of Information Act**

MEMORANDUM FOR: Heads of all Federal Departments and Agencies

FROM: John Ashcroft, Attorney General

SUBJECT: The Freedom of Information Act

As you know, the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000). It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed.

The Department of Justice and this Administration are equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy.

Our citizens have a strong interest as well in a government that is fully functional and efficient. Congress and the courts have long recognized that certain legal privileges ensure candid and complete agency deliberations without fear that they will be made public. Other privileges ensure that lawyers' deliberations and communications are kept private. No leader can operate effectively without confidential advice and counsel. Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), incorporates these privileges and the sound policies underlying them.

I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

In making these decisions, you should consult with the Department of Justice's Office of Information and Privacy when significant FOIA issues arise, as well as with our Civil Division on FOIA litigation matters. When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

This memorandum supersedes the Department of Justice's FOIA Memorandum of October 4, 1993, and it likewise creates no substantive or procedural right enforceable at law.

Appendix H

**Memo by Assistant General Counsel for Administration
Government-wide Freedom of Information Act (FOIA) Policy**

MEMORANDUM FOR: Secretarial Officers
Heads of Operating Units

FROM: Barbara S. Fredericks /s/ October 26, 2001
Assistant General Counsel
For Administration

SUBJECT: Government-wide Freedom of Information Act (FOIA) Policy

Last week, the Attorney General issued a memorandum reminding agencies that discretionary disclosures under FOIA should be made only after full and deliberate consideration of the institutional, commercial, and privacy interests that could be implicated by disclosure of the information. This is a change in policy from the foreseeable harm standard, which operated on the presumption of disclosure and required that exemptions be asserted only after a determination that there would be foreseeable harm to governmental or private interests. The new policy provides for withholding of information protected by FOIA exemptions, without requiring a foreseeable harm analysis.

When determining whether to make discretionary disclosures, an agency should consider such interests as national security, law enforcement effectiveness, business confidentiality, internal Government deliberations, and personal privacy. As always, information cannot be withheld under FOIA unless it is protected by a FOIA exemption. The written statement drafted by operating units prior to issuing an initial FOIA denial (formerly the foreseeable harm statement) must reflect why all withheld information falls within a FOIA exemption or exemptions.

If you have any questions about this issue, please contact me or Judith Means of my staff at (202) 482-0387. We are available to meet with members of your staff to discuss these changes.

cc: Department of Commerce FOIA officers

Appendix I

**NOAA Distribution List: Chapter 200-15 thru 17
Freedom of Information Act Files**

NOAA Disposition Handbook
Chapter 200: Administrative and Housekeeping Records
(Rev.1/02)

Index

- 200-01 Administrative Files
- 200-02 Audit Case Files
- 200-03 Budget Background Records
- 200-04 Budget Estimate and Narrative Statement Files
- 200-05 Agency-wide Budget Projection Files
- 200-06 Budget Tracking Files - Electronic
- 200-07 Combined Federal Campaign and Transitory Files
- 200-08 Committee Management Files
- 200-09 Credit/Bank Card Transactions
- 200-10 Electronic Versions of Records Scheduled for Disposal
- 200-11 EEO General Files
- 200-12 Electronic Mail Records
- 200-13 FFS Data Input Files
- 200-14 Finding Aids
- 200-15 Freedom of Information Act (FOIA) Requests Files**
- 200-16 Freedom of Information Act (FOIA) Control Files**
- 200-17 Freedom of Information Act (FOIA) Appeals Files**
- 200-18 Fund Use and Availability Files
- 200-19 Input Source Records
- 200-20 Key Accountability Files
- 200-21 Library Materials
- 200-22 Mail Management Files
- 200-23 Personnel files
- 200-24 Records Disposition Files
- 200-25 Reorganization Proposal Case Files
- 200-26 Routine Procurement/Contract Administration Files
- 200-27 Schedules of Daily Activities
- 200-28 Spread Sheets
- 200-29 Suspense Log
- 200-30 Technical Reference Materials
- 200-31 Time and Attendance Input Records
- 200-32 Time and Attendance Source Records
- 200-33 Tracking and Control Records
- 200-34 Word Processing Files – Electronic

NOAA Disposition Handbook
Chapter 200: Administrative and Housekeeping Records

This Chapter lists the most common administrative and housekeeping records that are maintained in all levels of NOAA offices. These records include routine and facilitative records that many or

all government agencies create and maintain for day-to-day administrative and management functions. These are already scheduled in the General Records Schedule (GRS), issued and approved by the National Archives.

200-15 Freedom of Information Act (FOIA) Requests Files

Files created in response to requests for information under the Freedom of Information Act, consisting of the original request, a copy of the reply thereto, and all supporting files which may include the official file copy of requested record or copy thereof.

Authorized Disposition (GRS 14,11)

a. Correspondence and supporting documents (EXCLUDING the official file copy of the records requested if filed herein).

(1) Granting access to all the requested records: Destroy 2 years after date of reply.

(2) Responding to requests for nonexistent records; to requesters who provide inadequate descriptions; and to those who fail to pay agency reproduction fees.

(a) Request not appealed: Destroy 2 years after date of reply.

(b) Request appealed: See Freedom of Information Act Appeals Files.

(3) Denying access to all or part of the records requested.

(a) Request not appealed: Destroy 6 years after date of reply.

(b) Request appealed: See Freedom of Information Act Appeals Files.

b. Official file copy of requested records: Dispose of in accordance with approved agency disposition instructions for the related records or with the related FOIA request, whichever is later.

c. Electronic copies created on word processing and electronic mail systems: Delete 180 days after recordkeeping copy has been produced.

200-16 Freedom of Information Act (FOIA) Control Files

Files maintained for control purposes in responding to requests, including registers and similar records listing date, nature, and purpose of request and name and address of requester.

Authorized Disposition (GRS 14,13)

a. Registers or listing: Destroy 6 years after date of last entry.

b. Other Files: Destroy 6 years after final action by the agency or after final adjudication by courts, whichever is later.

c. Electronic copies created on word processing and electronic mail systems: Delete 180 days after recordkeeping copy has been produced.

200-17 Freedom of Information Act (FOIA) Appeals Files

Files created in responding to administrative appeals under the FOIA for release of information denied by the agency, consisting of the appellant's letter, a copy of the reply thereto, and related supporting documents, which may include the official file copy of records under appeal or copy thereof.

Authorized Disposition (GRS 14,12)

- a. Correspondence and supporting documents (EXCLUDING the file copy of the records under appeal if filed herein): Destroy 6 years after final determination by agency, 6 years after the time at which a requester could file suit, or 3 years after final adjudication by the courts, whichever is later.
- b. Official file copy of records under appeal: Dispose of in accordance with approved agency disposition instructions for the related record or with the related FOIA request, whichever is later.
- c. Electronic copies created on word processing and electronic mail systems: Delete 180 days after recordkeeping copy has been produced.

Appendix J

FOIA Contacts

Federal Agency FOIA contacts may be obtained at <http://www.usdoj.gov/04foia/foiacontacts.htm>

Department of Commerce (DOC) FOIA contact:

Office of General Counsel
Attn: Brenda Dolan, DOC General Counsel
FOIA/PA Officer, Room 6020
14th Street and Constitution Avenue, NW
Washington, D.C. 20230
phone: (202) 482-4115 fax: (202) 482-3270
e-mail: bdolan1@doc.gov

National Oceanic and Atmospheric Administration (NOAA) FOIA contacts:

Public Reference Facility (OFAx2)
Attn: Marie Marks, NOAA FOIA Officer
1315 East-West Highway, Room 10651
Silver Spring, MD 20910
phone: (301) 713-3540 fax: (301) 713-1169
e-mail: Marie.H.Marks@noaa.gov

Public Reference Facility (OFAx2)
Attn: Jean Carter-Johnson, NOAA Assistant FOIA Officer
1315 East-West Highway, Room 10641
Silver Spring, MD 20910
phone: (301) 713-3540 fax: (301) 713-1169
e-mail: Jean.Carter.Johnson@noaa.gov

National Marine Fisheries Service (NMFS) FOIA contacts:

Headquarters Offices

NMFS Headquarters FOIA Office
Attn: Tonya Woods, NMFS FOIA Officer
1315 East-West Highway
Silver Spring, MD 20910
phone: (301) 713-1364, x147 fax: (301)713-1441
e-mail: Tonya.Woods@noaa.gov

NMFS Habitat Conservation
Attn: Roger Hutchinson, F/HC FOIA Coordinator
1315 East-West Highway, Room 14840
Silver Spring, MD 20910
phone: (301) 713-2325 x104 fax: (301) 713-1043
e-mail: Roger.Hutchinson@noaa.gov

NMFS Protected Resources

Attn: Jennifer Skidmore, F/PR FOIA Coordinator
1315 East-West Highway, Room 13710
Silver Spring, MD 20910
phone: (301) 713-2289 x112 fax: (301) 713-0376
e-mail: Jennifer.Skidmore@noaa.gov

NMFS Sustainable Fisheries

Attn: Stacy Birk, F/SF FOIA Coordinator
1315 East-West Highway, Room 13359
Silver Spring, MD 20910
phone: (301) 713-2334 x105 fax: (301) 713-0596
e-mail: Stacy.Birk@noaa.gov

NMFS Constituent Services

Attn: Tywana Otts, F/CS FOIA Coordinator
1315 East-West Highway, Room 9529
Silver Spring, MD 20910
phone: (301) 713-9503 fax: (301) 713-2384
e-mail: Tywana.Otts@noaa.gov

NMFS Science & Technology

Attn: Robert Brock, F/ST FOIA Coordinator
1315 East-West Highway, Room 12554
Silver Spring, MD 20910
phone: (301) 713-2363 x162 fax: (301) 713-1875
e-mail: Robert.Brock@noaa.gov

NMFS Office of Law Enforcement

Attn: Paula Stuart, OLE FOIA Coordinator
8484 Georgia Avenue, Room 415
Silver Spring, MD 20910-5612
phone: (301) 427-2300, x127 fax: (301) 427-2055
e-mail: Paula.Stuart@noaa.gov

*Regional Offices and Science Centers***Alaska Regional Office**

Attn: Lori Durall, AKR FOIA Coordinator
709 West 9th Street
Juneau, AK 99802-1668
phone: (907) 586-7247 fax: (907) 586-7557
e-mail: Lori.Durall@noaa.gov

Alaska Fisheries Science Center

Attn: Dan Ito, AFSC FOIA Coordinator
7600 Sand Point Way, NE, Room 1095
Seattle, WA 98115-6349
phone: (206) 526-4232 fax: (206) 526-6723
e-mail: Dan.Ito@noaa.gov

Alaska Center Observer Program

Attn: Bob Maier, AFSC Observer Program FOIA Coordinator
7600 Sand Point Way, NE, Room 1057
Seattle, WA 98115-6349
phone: (206) 526-4197 fax: (206) 526-4066
e-mail: Bob.Maier@noaa.gov

Northeast Regional Office

Attn: Nick Anderson, NER FOIA Coordinator
One Blackburn Drive
Gloucester, MA 01930-2298
phone: (978) 281-9383 fax: (978) 281-9333
e-mail: Nick.Anderson@noaa.gov

Northeast Fisheries Science Center

Attn: Jack Moakley, NEC FOIA Coordinator
166 Water Street, Room L201
Woods Hole, MA 02543
phone: (508) 495-2235 fax: (508) 495-2258
e-mail: Jack.Moakley@noaa.gov

Northwest Regional Office

Attn: Nicolle Hill, NWR FOIA Coordinator
7600 Sand Point Way NE, Building 1
Seattle, WA 98115
phone: (206) 526-4358 fax: (206) 526-6426
e-mail: Nicolle.Hill@noaa.gov

Northwest Fisheries Science Center

Attn: Jon Drake, NWFSC FOIA Coordinator
2725 Montlake Blvd. East
Seattle, WA 98112-2097
phone: (206) 860-3258 fax: (206) 860-3335
e-mail: Jon.Drake@noaa.gov

Pacific Islands Regional Office

Attn: John D. Kelly, Jr., PIR FOIA Coordinator
1601 Kapiolani Blvd., Room 1110
Honolulu, HI 96814-4700
phone: (808) 973-2935 x202 fax: (808) 973-2941
e-mail: John.D.Kelly@noaa.gov

Pacific Islands Fisheries Science Center

Attn: Brent Miyamoto, PIC FOIA Coordinator
2570 Dole Street, Room 221
Honolulu, HI 96822-2396
phone: (808) 983-5340 fax: (808) 983-2902
e-mail: Brent.Miyamoto@noaa.gov

Southeast Regional Office

Attn: Beverly J. Smith, SER FOIA Coordinator
9721 Executive Center Drive North
St. Petersburg, FL 33702-2439
phone: (727) 570-5762 fax: (727) 570-5490
e-mail: Beverly.Smith@noaa.gov

Southeast Fisheries Science Center

Attn: Sophia Howard, SEC FOIA Coordinator
75 Virginia Beach Drive, Room 207
Miami, FL 33149-1003
phone: (305) 361-4285 fax: (305) 361-4219
e-mail: Sophia.Howard@noaa.gov

Southwest Regional Office

Attn: Ana Liza Malabanan, SWR FOIA Coordinator
501 W. Ocean Boulevard, Suite 4200
Long Beach, CA 90802-4213
phone: (562) 980-4008 fax: (562) 980-4018/4000
e-mail: Ana.Liza.Malabanan@noaa.gov

Southwest Fisheries Science Center

Attn: Patricia Gaye Holder, SWC FOIA Coordinator
8604 La Jolla Shores Drive
La Jolla, CA 92037-1508
phone: (858) 546-7006 fax: (858) 546-7003
e-mail: Gaye.Holder@noaa.gov

Appendix K

NMFS FOIA Time Limits Memoranda

MEMORANDUM FOR: Regional Administrators, Science Center and Office Directors

FROM: John Oliver
Deputy Assistant Administrator for Operations

SUBJECT: Leadership Council Action: FOIA Time Limits

This memo responds to the NMFS Leadership Council's request for policy guidance concerning time limits as outlined under the Freedom of Information Act (FOIA), 5 U.S.C. 552 and the Department of Commerce (DOC) regulations at Title 15, Code of Federal Regulations (CFR), Section 4.6. NMFS responsibilities and requirements for responding to FOIA requests within 20 working days are outlined below.

Time Limits

DOC regulations require that all requests for information be in writing and described in enough detail to enable DOC personnel to locate the records with a reasonable amount of effort. In general, requests should be processed in the order in which they are received, except when a request is granted expedited treatment. Once NMFS receives a request, an initial response must be provided within 20 working days excluding weekends and legal holidays. Releasable documents should be provided to the requester either with the initial response or as soon as possible after a response determination has been provided.

Extended Processing

NMFS may extend the 20-working-day response time required by FOIA under certain circumstances. See below.

Unusual Circumstances

FOIA allows NMFS to extend the time to process a request for information by **10 working days** under "unusual circumstances." DOC regulations at 15 CFR 4.6 (c)(2) define "unusual circumstances" as:

- (1) The need to search for and collect requested records from field facilities or other establishments separate from the office processing the request;*
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or*
- (3) The need for consultation, which shall be conducted with all practicable speed, with another component or Federal agency having a substantial interest in the determination of the request.*

NMFS should provide the requester with written notification as soon as possible detailing the "unusual circumstances" as defined in the DOC regulations and a date when NMFS will complete the processing of the request (see attached example). If the extension is for more than **10 additional working days**, NMFS shall give the requester an opportunity to either modify the

request so that it can be processed within the applicable time limit or arrange for an alternate time frame for processing the request. Requests are modified, for example, by changing the scope of the request, narrowing dates of responsive records, providing agreed-upon partial releases, and/or providing only releasable records.

NMFS may not always meet the “unusual circumstances” threshold. However, nothing precludes NMFS from negotiating with the requester to obtain an extension of time to complete the request. NMFS should document such a negotiated extension of time in writing and provide the requester with a date by which NMFS intends to complete the processing of the request (see attached example).

Expedited Request Processing

Under certain conditions, FOIA requesters are entitled to have their request processed on an expedited basis. Requesters who demonstrate a “compelling need” may ask to have a request processed out of turn. The DOC defines compelling need at 15 CFR 4.6(e) as:

- (1) *Circumstances that could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;*
- (2) *The loss of substantial due process rights;*
- (3) *Widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence; or*
- (4) *An urgency to inform the public about an actual or alleged Federal Government activity if made by a person primarily engaged in disseminating information.*

A requester can make a request for expedited processing at the time of the initial request for records or at any later time. The requester must submit a statement explaining in detail the basis for requesting expedited processing. The statement must be certified as true and correct by the requester. NMFS has **10 calendar days** after receiving a request for expedited processing to either grant or deny the request.

Other Considerations

NMFS responsibility under FOIA is to respond to every request for information within the timeframe provided by FOIA. If NMFS fails to respond to a request for information within the statutory time limits, NMFS may be subject to an administrative appeal and legal action in Federal court to produce responsive records. Both an administrative appeal and litigation can result in litigation fees, attorney costs, and extended staff hours. In addition, processing FOIA requests under litigation or administrative appeal can disrupt the processing of other requests.

Communication between the requester and the NMFS staff charged with responding to the request should help reduce administrative appeals and prevent litigation. It is important as a matter of practice to **ALWAYS** properly arrange for time extensions and request modifications as needed in a timely manner. NMFS should document time extensions and request modifications in writing to the requester. During the processing of a request, NMFS should also

communicate with the requester and advise them of where the request is in the queue. The FOIA and the DOC regulations provide every opportunity for both the requester and NMFS to stay in close communication and negotiate the response to requests as needed. Consistent with our goal of transparency and openness, NMFS should make a good-faith effort to provide access to the greatest number of records in a time frame that is agreeable to both NMFS and the requester.

Appendix L

NMFS FOIA Forms

**FORM CD-244, FREEDOM OF INFORMATION ACT REQUEST AND ACTION
RECORD**

(Pursuant to 5 U.S.C. 552 and 15 C.F.R 4)

NOAA FOIA Officer will initiate the form and send a copy to the NMFS FOIA Officer whenever request is received by NOAA FOIA Facility and determined to be a NMFS FOIA request. NMFS FOIA Officer initiates the form whenever requests are sent directly to NMFS offices and determined to be a NMFS FOIA request.

- a. Item 1 - DOC/FOIA Facility
Completed by NOAA FOIA Officer upon receipt of the request.
- b. Item 2 - Request Number
Completed by the NOAA FOIA Officer upon receipt of the request.
- c. Item 3 - Name, Address, (Phone) of Requester
Completed by NOAA FOIA Officer or NMFS FOIA Officer upon receipt of the request.
- d. Item 4 - Description of Records Requested
Completed by NOAA FOIA Officer or NMFS FOIA Officer upon receipt of the request.
- e. Item 5 - Request Received
Completed by NOAA FOIA Officer upon receipt of the request.
- f. Item 6 - Request Returned
Completed by NMFS FOIA Officer.
- g. Item 7 - Request Fulfilled by Facility
Completed by NMFS FOIA Officer or Lead FOIA Coordinator after the FOIA request has been closed.
- h. Item 8 - Action Assigned
Completed by NOAA FOIA Officer and NMFS FOIA Officer.
- i. Item 9 - Due Date
Completed by the NOAA FOIA Officer.
- j. Item 10 - Comments or Instructions
Completed by NOAA FOIA Officer.
- k. Item 11 - Received in Action Office
Completed by Lead FOIA Coordinator upon receipt of the request.
- l. Item 12 - Fee Provisions
Completed by NMFS FOIA Officer and Lead FOIA Coordinator.

- m. Item 13 - Tolling of Time Provisions
Completed by Lead FOIA Coordinator.
- n. Item 14 - Initial Determination
Completed by NMFS FOIA Officer or Lead FOIA Coordinator.
- o. Item 15 - Collectible Costs per Fee Schedule
Completed by Lead FOIA Coordinator after all estimated and actual processing costs have been calculated on NMFS Fee Worksheet.
- p. Item 16 - Non-collectible Costs
Completed by Lead FOIA Coordinator.
- q. Item 17 - Action Office
Completed by Lead FOIA Coordinator.

FORM CD 244 (REV. 7-89) PRESCR. BY DAO 205-14		U.S. DEPARTMENT OF COMMERCE		1. DOC/FOI facility	
FOIA REQUEST AND ACTION RECORD (Pursuant to 5 U.S.C. 552 and 15 CFR 4)				2. Request No.	
3. Name, address, (phone) of requester			4. Description of records requested		
5. Request Received		Date	Time	By	
6. _____ request returned or requester contacted: to clarify, or for other reason. Explain on reverse side of White Copy.					
7. Request fulfilled by facility		Date	Time	By	
8. ACTION ASSIGNED TO:				Date:	
9. Due Date. By law, this request must be answered no later than:		10. Comments or Instructions:			
11. Received in Action Office		Date	Time	By	
12. Fee Provisions			13. Tolling of time Provisions (see 4.9.(d))		
a. Without further notice, requester agrees to pay: _____ or _____ up to \$_____. b. _____ Fees reduced or waived, and by whom; attach explanation; 4.9(b) applies. c. Notification of fees sent to requester on: _____, 19_____. \$ _____ on _____.			a. _____ estimated fee exceeds authorization. b. _____ estimated fee exceeds \$250 and lacks authorization. c. _____ requester delinquent in past payments.		
14. Initial Determination (Summarize per subparagraph 7.04d.3., DAO 205-14; attach another sheet if necessary; 4.6 applies.)					
14. a. Clearance Official(s) Name: _____ Title: _____ Date: _____					
15. Collectible Cost per Fee Schedule (4.9 (b))			16. Non-collectible Costs		
	Estimated		Actual		
Search fee	\$ _____		\$ _____		
Copying fee	_____		_____		
Review	_____		_____		
Total Collectible	\$ _____		\$ _____		
17. Action Office	Signature		Position title		Date

This form was electronically produced by Elite Federal Forms, Inc.

**Freedom of Information Act (FOIA)
Search, Review, Duplication Work Sheet**

Table 1. Estimated Labor Fees For Search

Name	GS Grade	Hourly Salary	Plus 16% Overhead	Number of Hours	Total
Total					

Table 2. Estimated Labor Fees For Review

Name	GS Grade	Hourly Salary	Plus 16% Overhead	Number of Hours	Total
Total					

Table 3. Estimated Duplication Costs – Paper Copies

Number of Inches	# Pages per Inch	Total	Copy Rate	Total Cost
			\$.16	

Total Costs _____

FOIA CLEARANCE

FOIA Number:

FOIA Requester and Phone Number:

Date FOIA received:

Due Date (20 working days from receipt of request/amendment):

Due Date Extensions:

Fee Waiver Approval or Denial:

Approved	Denied	Internal Concurrence	GC Concurrence

FOIA Assigned To Conduct Search:

Date	Name	Receipt of documents/No records & Date

DOCUMENT FULL RELEASE, WITHHOLDING or NO RECORD COMMENTS:

FOIA CLEARANCE CONT.

FINAL CONCURRENCE CLEARANCE:

Date	Signature	Office
		Lead Office FOIA Coordinator
		Supervisory clearance
		GC review/clearance

Appendix M

NMFS Sample FOIA Letters

SAMPLE LETTER INDEX

1. Full Denial Letter	115
2. Partial Denial Letter	118
3. Full Disclosure Letter	121
4. No Responsive Records Letter	122
5. Interim Response Letter	124
6. Referred Documents to Other Federal Agency Letter	125
7. Response to Request for Future Records Letter	126
8. Acknowledgement Letter	127
9. Backlog Letter	129
10. Unusual Circumstances Time Extension Letter	131
11. Informal Time Extension Letter	132
12. Fee Estimate Letter	133
13. All Other Requesters Fee Category Letter	135
14. Commercial Requester Fee Category Letter	137
15. News Media Requester Fee Category Letter	139
16. Educational Requester Fee Category Letter	141
17. Advance Payment Letter	143
18. Request for Payment Owed on and Earlier Request Letter	145
19. Partial Fee Refund Notice Letter	147
20. Fee Waiver Criteria Letter	149
21. Fee Waiver Denial Letter	152
22. FOIA Fee Notification Agreement	154

Please Note: This applies to all correspondence. Please don't list internal cc's on outgoing correspondence to the requester. Only list external cc's to the requester.

SAMPLE LETTER–FULL DENIAL

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester
Associated Company (if applicable)
Street Address
City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This letter completes our response to your request. A search has identified # documents responsive to your request. However, all are determined exempt from disclosure under (name the exemption(s) and the description of the exemption below). A listing of withheld documents is enclosed.

5 U.S.C. 552(b)(1), protects from disclosure national security information concerning the national defense or foreign policy; this information has been properly classified in accordance with the substantive and procedural requirements of Executive Order 12958.

5 U.S.C. 552(b)(2), prohibits from disclosure records related solely to the internal personnel rules and practices of an agency, as well as more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement.

5 U.S.C. 552(b)(3), prohibits from disclosure any information specifically exempted from disclosure by statute. The documents you are seeking are prohibited under statute (name the law/statute).

5 U.S.C. 552(b)(4), protects confidential business information (CBI) from disclosure when release would cause substantial harm to the competitive position of an individual, a partnership or a corporation from whom the information was obtained.

5 U.S.C. 552(b)(5), protects inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency. The document(s) were withheld under the (attorney-client privilege, attorney-work product privilege and/or predecisional deliberations).

5 U.S.C. 552(b)(6), protects information which would cause a clearly unwarranted invasion of personal privacy.

5 U.S.C. 552(b)(7)(a), protects information compiled for law enforcement purposes that could reasonably be expected to interfere with law enforcement proceedings.

5 U.S.C. 552(b)(7)(b), protects information compiled for law enforcement purposes that would deprive a person of a right to a fair trial or an impartial adjudication

5 U.S.C. 552(b)(7)(c), protects information contained in law enforcement records that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

5 U.S.C. 552(b)(7)(d), protects information compiled for law enforcement purposes which 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 with furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source.

5 U.S.C. 552(b)(7)(e), protects information that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines if disclosure would risk circumvention of the law.

5 U.S.C. 552(b)(7)(f), protects information that could reasonably be expected to endanger the life or physical safety of an individual.

5 U.S.C. 552(b)(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.

5 U.S.C. 552(b)(9), protects geological and geophysical information and data, including maps, covering wells.

Under Title 15, Code of Federal Regulations, Section 4.10(a), you have the right to appeal this (denial or partial denial, fee waiver denial, expedited assess, etc.) determination. The Assistant General Counsel for Administration must receive your appeal within **30 calendar days** of the date of the initial denial letter. Address your appeal to the following office:

**Assistant General Counsel for Administration
U.S. Department of Commerce
Room 5898-C
14th and Constitution Avenue, NW
Washington, D.C. 20230**

You may also send your appeal by e-mail to FOIAAppeals@doc.gov or by facsimile (fax) to **(202) 482-2552**. The appeal must include a copy of the original request, the response to the request, and a statement of why withheld records should be made available and why denial of the records was in error. The submission (including e-mail and fax submissions) is not complete

without the required attachments. The appeal, envelope, e-mail subject line, and fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, and Office of the General Counsel are monitored only on working days during normal business hours (8:30 am to 5:00 pm, Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box or sent to the fax machine, or Office of General Counsel after normal business hours will be deemed received on the next normal business day.

If you have any questions or concerns, please contact (Name of FOIA Coordinator), FOIA Coordinator, at (phone number).

Sincerely,

(Assistant Administrator for Fisheries)

Enclosures

Listing of Documents withheld
Responsive Documents

cc: Appropriate Line Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER–PARTIAL DENIAL

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This letter completes our response to your request. A search has identified # documents responsive to your request. Enclosed you will find # documents. The remaining # documents you are seeking are determined exempt from disclosure under (name the exemption and the description of the exemption). **OR** # documents contain portions of records that have been determined to be exempt from disclosure (name the exemption and the description of the exemption). A listing of withheld documents is enclosed.

5 U.S.C. 552(b)(1), protects from disclosure national security information concerning the national defense or foreign policy; this information has been properly classified in accordance with the substantive and procedural requirements of Executive Order 12958.

5 U.S.C. 552(b)(2), prohibits from disclosure records related solely to the internal personnel rules and practices of an agency, as well as more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement.

5 U.S.C. 552(b)(3), prohibits from disclosure any information specifically exempted from disclosure by statute. The documents you are seeking are prohibited under statute (name the law/statute).

5 U.S.C. 552(b)(4), protects confidential business information (CBI) from disclosure when release would cause substantial harm to the competitive position of an individual, a partnership or a corporation from whom the information was obtained.

5 U.S.C. 552(b)(5), protects inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency. The document(s) were withheld under the (attorney-client privilege, attorney-work product privilege and/or predecisional deliberations).

5 U.S.C. 552(b)(6), protects information which would cause a clearly unwarranted invasion of personal privacy.

5 U.S.C. 552(b)(7)(a), protects information compiled for law enforcement purposes that could reasonably be expected to interfere with law enforcement proceedings.

5 U.S.C. 552(b)(7)(b), protects information compiled for law enforcement purposes that would deprive a person of a right to a fair trial or an impartial adjudication

5 U.S.C. 552(b)(7)(c), protects information contained in law enforcement records that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

5 U.S.C. 552(b)(7)(d), protects information compiled for law enforcement purposes which 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 with furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source.

5 U.S.C. 552(b)(7)(e), protects information that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines if disclosure would risk circumvention of the law.

5 U.S.C. 552(b)(7)(f), protects information that could reasonably be expected to endanger the life or physical safety of an individual.

5 U.S.C. 552(b)(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.

5 U.S.C. 552(b)(9), protects geological and geophysical information and data, including maps, covering wells.

Under Title 15, Code of Federal Regulations, Section 4.10(a), you have the right to appeal this (denial or partial denial, fee waiver denial, expedited assess, etc.) determination. The Assistant General Counsel for Administration must receive your appeal within **30 calendar days** of the date of the initial denial letter. Address your appeal to the following office:

**Assistant General Counsel for Administration
U.S. Department of Commerce
Room 5898-C
14th and Constitution Avenue, NW
Washington, D.C. 20230**

You may also send your appeal by e-mail to FOIAAppeals@doc.gov or by facsimile (fax) to (202) 482-2552. The appeal must include a copy of the original request, the response to the

request, and a statement of why withheld records should be made available and why denial of the records was in error. The submission (including e-mail and fax submissions) is not complete without the required attachments. The appeal, envelope, e-mail subject line, and fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, and Office of the General Counsel are monitored only on working days during normal business hours (8:30 am to 5:00 pm, Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box or sent to the fax machine or Office of General Counsel after normal business hours will be deemed received on the next normal business day.

If you have any questions or concerns, please contact (Name of FOIA Coordinator), at (phone number).

Sincerely,

(Assistant Administrator for Fisheries of NMFS)

Enclosures

Listing of Documents withheld
Responsive Documents

cc: Appropriate Line Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER – FULL DISCLOSURE

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This letter completes our response to your request. We found (number) documents responsive to your request. These documents are enclosed and are being released to you in their entirety.

(Pick one of the following sentences, depending on whether fees were charged, waived, or not applicable:

(Because the search, review, and reproduction charges are under \$20.00, there is no charge to fill your request.)

(Payment in the amount of \$(amount) has been received.)

(You were granted a full-fee waiver; therefore, you were not charged for the associated costs of processing a FOIA request.)

Sincerely,

(Name of Lead FOIA Coordinator)

FOIA Coordinator

OR

(Name of Head of Office, Region, etc)

Title Signature Block

Enclosures

cc: Appropriate Line Offices concurrences

Lead FOIA Coordinator

NMFS HQ FOIA Officer

NOAA HQ FOIA Officer

SAMPLE LETTER – NO RESPONSIVE RECORDS

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This letter completes our response to your request. After an extensive search within (list the agencies and offices), we located no records responsive to your request.

Although this does not constitute a denial of your request (because no records were available or withheld), under Title 15, Code of Federal Regulations, Section 4.10(a), you have the right to appeal this “no records” determination. The Assistant General Counsel for Administration must receive your appeal within **30 calendar days** of the date of the initial denial letter. Address your appeal to the following office:

**Assistant General Counsel for Administration
U.S. Department of Commerce
Room 5898-C
14th and Constitution Avenue, N.W.
Washington, D.C. 20230**

You may also send your appeal by e-mail to FOIAAppeals@doc.gov or by facsimile (fax) to **(202) 482-2552**. The appeal must include a copy of the original request, the response to the request, and a statement why withheld records should be made available and why denial of the records was in error. The submission (including e-mail and fax submissions) is not complete without the required attachments. The appeal, envelope, e-mail subject line, and fax cover sheet should be clearly marked “Freedom of Information Act Appeal.” The e-mail, fax machine, and Office of the General Counsel are monitored only on working days during normal business hours (8:30 am to 5:00 pm, Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box or sent to the fax machine or Office of General Counsel after normal business hours will be deemed received on the next normal business day.

If you have any question or concerns, please contact (Name of Lead FOIA Coordinator), at (phone number).

Sincerely,

(Assistant Administrator for Fisheries)
(Title of Authorized)

cc: Appropriate Offices concurrences

Lead FOIA Coordinator

NMFS HQ FOIA Officer

NOAA HQ FOIA Officer

SAMPLE LETTER – INTERIM RESPONSE

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester
Associated Company (if applicable)
Street Address
City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This is an interim release of records concerning your request. We have enclosed #__ of documents **OR** an additional (number) documents totaling (number) pages. The records are provided to you without deletions.

We continue to search and review responsive material. We hope to complete the process shortly. If you have any questions, please call me at (phone number).

Sincerely,

(Name of Lead FOIA Coordinator)
_____ FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

Enclosures

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER – REFERRED DOCUMENTS TO OTHER FEDERAL AGENCY

Send via Certified Mail or Fed-Ex with Receipt Notification

U.S. Federal Agency
Attn: Name of FOIA Coordinator
Street Address
City, State Zip Code

Re: (FOIA) (NOAA Request # ____ - ____)

Dear Mr./Ms. (Name of FOIA Coordinator):

Enclosed you will find a copy of a request for agency records under the Freedom of Information Act (FOIA), 5 USC 552, from (Name of requester), (Associated company, if applicable), addressed to NOAA’s National Marine Fisheries Service (NMFS). The request asks for records related to (describe the information requested in the letter).

We found (number) documents pertaining to this request that is the exclusive or primary concern of the (U.S. Federal Agency). Accordingly, per our governing regulations, 15 CFR Part 4, we hereby refer the requester to (U.S. Federal Agency) for further action related to this document. You will find a copy of the final letter that was sent on behalf of NMFS.

A copy of the requested document(s) is enclosed with this letter. Please respond directly to the requester regarding these documents.

Thank you for your attention to this matter. Please do not hesitate to call me at (phone number), should you have any questions.

Sincerely,

(Name of Lead FOIA Coordinator)
_____ FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

Enclosures

cc: Appropriate Line Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER – RESPONSE TO REQUEST FOR FUTURE RECORDS

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester
Associated Company (if applicable)
Street Address
City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

FOIA does not require NOAA’s National Marine Fisheries Service (NMFS) to place a requester’s name on a distribution list for automatic receipt of certain kinds of records as they become available. The Act only establishes requirements for disclosure of existing records.

However, you may submit future requests under FOIA, if you wish to ascertain whether such records have been created and are available. Any such letter(s) should reference the period of time for which records are being requested.

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER-ACKNOWLEDGEMENT

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter). Your request was received on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

Your request has been sent to the (Line Office(s)) to conduct a search of its files for responsive documents. Upon completion of the search and the review of any documents located, a response will be provided to you.

In your letter you agreed to pay up to (\$ ____) for fees associated with the processing of the request. You also asked to be notified if fees will exceed that amount. **OR** Your letter did not provide an agreement to pay fees. The (Line Office) will provide you with a fee estimate if it is determined that your fees will exceed \$20.

For purposes of assessment of any fees, you have been categorized as a “Commercial Use” requester. In this category, you will be charged search, review, and duplication fees associated with the request.

OR

For purposes of assessment of any fees, you have been categorized an “All Other” requester. In this category, your chargeable fees are for search and duplication only. You are entitled to 2 hours of free search time and the first 100 pages at no cost.

OR

For purposes of assessment of any fees, you have been categorized as a “News Media” requester. In this category, your chargeable fees are for duplication only. You are entitled to the first 100 pages at no cost.

OR

For purposes of assessment of any fees, you have been categorized as an “Educational and Non-Commercial Scientific Institution” requester. In this category, your chargeable fees are for duplication only. You are entitled to the first 100 pages at no cost.

The above referenced number has been assigned to your request and you should refer to it in correspondence with NOAA’s National Marine Fisheries Service (NMFS) about this request.

If you have questions about the processing of the request, please contact Lead FOIA Coordinator in the (Lead FOIA Coordinator Address, and telephone number). You also may contact me at 301-713-1364.

I appreciate the opportunity to assist you.

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER-BACKLOG

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This letter confirms that we have responsive documents, but at this time have not identified all responsive documents or determined whether they can be released. Due to the large number of FOIA requests we receive, and the scope of your request, we anticipate it will take (# weeks/ months) to process your request.

Our initial review of your request reveals that many of the responsive documents are available in the public domain, often on our website or the web site of another Federal agency. For example, you have requested (describe the kinds of documents the requester is seeking). Several responsive documents are on our website at www.noaa.gov.

We receive a large number of requests and try to answer them quickly. The more detailed the request, the more efficient it is for us to answer. To expedite the process, please submit a more detailed request that identifies those documents not in the public domain you consider responsive. We will then be able to process your revised request more efficiently.

Thank you for your patience in this matter.

Sincerely,

(Name of Lead FOIA Coordinator)

FOIA Coordinator

OR

(Name of Head of Office, Region, etc)

Title Signature Block

cc: Appropriate Office concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER–UNUSUAL CIRCUMSTANCES TIME EXTENSION

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

A request for an extension is being invoked to ensure the orderly processing of your request. Pursuant to 15 CFR 4.6(c)(2)(i), this extension was necessary because of the need to search for and collect records from field facilities separate from the office processing the request; and/or the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; and/or the need for consultation, which shall be conducted with all practicable speed, with another component or Federal agency having a substantial interest in the determination of the request.

On (Month, Date, Year), you agreed to an extension for the processing of your request. We plan to respond to you by (Month, Date, Year).

If you have any questions, please feel free to call (name Lead FOIA Coordinator), at (phone number).

Sincerely,

(Assistant Administrator for Fisheries)

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER–INFORMAL TIME EXTENSION

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

On (Month, Date, Year), you agreed to an extension for the processing of your request. We plan to respond to you by (Month, Date, Year).

If you have any questions, please feel free to call (name Lead FOIA Coordinator), at (phone number).

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER–FEE ESTIMATE

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This notification is sent to inform you of the estimate of fees incurred for processing your FOIA request. **Your letter did not state an agreement to pay fees.** Pursuant to 15 CFR 4.11(e), if NOAA’s National Marine Fisheries Service (NMFS) estimates that the fees will total more than \$20, NMFS will notify the requester of the actual or estimated fees.

Under 15 CFR.4.11(c)(1)(i), you fall under the “All Other Requesters” Category. Your chargeable fees for this FOIA are: search and duplication (excluding the cost of the first 2 hours of search and 100 pages).

OR

Under 15 CFR.4.11(c)(1)(i), you fall under the “Commercial Requester” category. Your chargeable fees for this FOIA are: search, review, and duplication.

OR

Under 15 CFR.4.11(c)(1)(iii), you fall under the “Representatives of the News Media” category. Your chargeable fees for this FOIA are duplication only (excluding the cost of the first 100 pages).

OR

Under 15 CFR.4.11(c)(1)(ii), you fall under the “Educational and Non-commercial Scientific Institution Requester” category. Your chargeable fees for this FOIA are duplication (excluding the cost of the first 100 pages).

The estimated breakdown of your fees is as follows:

Search:	\$(<u>amount</u>)
Review:	\$(<u>amount</u>)
Duplication:	\$(<u>amount</u>)
TOTAL	\$(<u>Total amount</u>)

Pursuant to 15 CFR Part 4.11(e), because the cost to process your request exceeds \$20, we need your agreement to pay fees before we proceed. Please note that in compliance with our FOIA regulations, the 20-business-day time frame for completing your request does not begin until the enclosed fee agreement is completed and received by (Lead FOIA Coordinator). Once your agreement is received, our office will process your FOIA request.

If we do not receive your reply within 30 days, we will assume you do not wish to proceed and your request will be administratively closed. If you have any questions concerning this process, please contact (name Lead FOIA Coordinator), _____ FOIA Coordinator, at (phone number).

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Line Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER-ALL OTHER REQUESTERS FEE CATEGORY

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This notification is sent to inform you of fees incurred for processing your FOIA request. In your letter, **you agreed to pay the requisite fees** to process your FOIA request. Under 15 CFR.4.11(c)(1)(i), you fall under the “All Other Requesters” Category. Your chargeable fees for this FOIA are: search and duplication (excluding the cost of the first 2 hours of search and 100 pages). The breakdown of your fees is as follows:

Search:	<u>\$(amount)</u>
Duplication:	<u>\$(amount)</u>
TOTAL	<u>\$(Total amount)</u>

15 CFR 4.11(i)(4) states: “Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, the payment of such fee shall be received before the requested records, or a portion of the records, are made available to the requester.”

Please make your check or money order for \$(amount) payable to the “Treasury of the United States” and send your payment, a copy of this letter, and your signed copy of the letter’s attachment to the NOAA Freedom of Information Officer, 1315 East-West Highway, Public Reference Room 10730, OFAX2, SSMC-3, Silver Spring, Maryland 20910. Please note that if you do not pay this fee in a timely manner, you may be subject to pay interest on the money originally owed. In addition, the Department of Commerce reserves the right to use consumer reporting agencies and collection agencies, when appropriate, to encourage repayment as authorized by the Debt Collection Act of 1982 (15 CFR 4.11).

When your payment and authorization are received, your documents will be forwarded. If we do not hear from you within 30 calendar days of this fee notification letter, your request will be closed.

If you have any questions concerning this process, I can be reached at (Phone Number).

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER – COMMERCIAL REQUESTER FEE CATEGORY

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This notification is sent to inform you of fees incurred for processing your FOIA request. In your letter, **you agreed to pay the requisite fees** to process your FOIA request. Under 15 CFR.4.11(c)(1)(i), you fall under the “Commercial Requester” category. Your chargeable fees for this FOIA are: search, review, and duplication. The breakdown of your fees is as follows:

Search:	<u>\$(amount)</u>
Review:	<u>\$(amount)</u>
Duplication:	<u>\$(amount)</u>
TOTAL	<u>\$(Total amount)</u>

15 CFR 4.11(i)(4), states: “Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, the payment of such fee shall be received before the requested records, or a portion of the records, are made available to the requester.”

Please make your check or money order for \$(amount) payable to the “Treasury of the United States” and send your payment, a copy of this letter, and your signed copy of the letter’s attachment to the NOAA Freedom of Information Officer, 1315 East-West Highway, Public Reference Room 10730, OFAX2, SSMC-3, Silver Spring, Maryland 20910. Please note that if you do not pay this fee in a timely manner, you may be subject to pay interest on the money originally owed. Additionally, the Department reserves the right to utilize consumer reporting agencies, and collection agencies, when appropriate, to encourage repayment as authorized by the Debt Collection Act of 1982 (15 CFR 4.11).

Once your payment and authorization are received, your documents will be forwarded. If we do not hear from you within 30 calendar days of this fee notification letter, your request will be closed.

If you have any questions concerning this process, I can be reached at (Phone Number).

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Line Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER – NEWS MEDIA REQUESTER FEE CATEGORY

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This notification is sent to inform you of fees incurred for processing your FOIA request. In your letter, **you agreed to pay the requisite fees** to process your FOIA request. Under 15 CFR.4.11(c)(1)(iii), you fall under the “Representatives of the News Media” category. Your chargeable fees for this FOIA are duplication only (excluding the cost of the first 100 pages). The breakdown of your fees is as follows:

Duplication: \$(amount)
TOTAL \$(Total amount)

5 CFR 4.11(i)(4) states: “Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, the payment of such fee shall be received before the requested records, or a portion of the records, are made available to the requester.”

Please make your check or money order for \$(amount) payable to the “Treasury of the United States” and send your payment, a copy of this letter, and your signed copy of the letter’s attachment to the NOAA Freedom of Information Officer, 1315 East-West Highway, Public Reference Room 10730, OFAX2, SSMC-3, Silver Spring, Maryland 20910. Please note that if you do not pay this fee in a timely manner, you may be subject to pay interest on the money originally owed. In addition, the Department of Commerce reserves the right to use consumer reporting agencies, and collection agencies, when appropriate, to encourage repayment as authorized by the Debt Collection Act of 1982 (15 CFR 4.11).

When your payment and authorization are received, your documents will be forwarded. If we do not hear from you within 30 calendar days of this fee notification letter, your request will be closed.

If you have any questions concerning this process, I can be reached at (Phone Number).

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Line Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER – EDUCATIONAL REQUESTER FEE CATEGORY

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This notification is sent to inform you of fees incurred for processing your FOIA request. In your letter, **you agreed to pay the requisite fees** to process your FOIA request. Under 15 CFR.4.11(c)(1)(ii), you fall under the “Educational and Non-commercial Scientific Institution Requester” category. Your chargeable fees for this FOIA are duplication (excluding the cost of the first 100 pages). The breakdown of your fees is as follows:

Duplication: \$(amount)
TOTAL \$(Total amount)

15 CFR Part 4.11(i)(4), states: “Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, the payment of such fee shall be received before the requested records, or a portion of the records, are made available to the requester.”

Please make your check or money order for \$(amount) payable to the “Treasury of the United States” and send your payment, a copy of this letter, and your signed copy of the letter’s attachment to the NOAA Freedom of Information Officer, 1315 East-West Highway, Public Reference Room 10730, OFAX2, SSMC-3, Silver Spring, Maryland 20910. Please note that if you do not pay this fee in a timely manner, you may be subject to pay interest on the money originally owed. In addition, the Department of Commerce reserves the right to use consumer reporting agencies, and collection agencies, when appropriate, to encourage repayment as authorized by the Debt Collection Act of 1982 (15 CFR 4.11).

When your payment and authorization are received, your documents will be forwarded. If we do not hear from you within 30 calendar days of this fee notification letter, your request will be closed. If you have any questions concerning this process, I can be reached at (Phone Number).

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Line Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER–ADVANCE PAYMENT LETTER

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester
Associated Company (if applicable)
Street Address
City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This letter is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This notification is sent to inform you of the estimate of fees incurred for processing your FOIA request. Under 15 CFR.4.11(c)(1)(i), you fall under the “All Other Requesters” category. Your chargeable fees for this FOIA are: search and duplication (excluding the cost of the first 2 hours of search and 100 pages).

OR

Under 15 CFR.4.11(c)(1)(i), you fall under the “Commercial Requester” category. Your chargeable fees for this FOIA are: search, review, and duplication.

OR

Under 15 CFR.4.11(c)(1)(iii), you fall under the “Representatives of the News Media” category. Your chargeable fees for this FOIA are duplication only (excluding the cost of the first 100 pages).

OR

Under 15 CFR.4.11(c)(1)(ii), you fall under the “Educational and Non-commercial Scientific Institution Requester” category. Your chargeable fees for this FOIA are duplication (excluding the cost of the first 100 pages).

The estimated breakdown of your fees is as follows:

Search:	<u>\$(amount)</u>
Duplication:	<u>\$(amount)</u>
TOTAL	<u>\$(Total amount)</u>

It has been estimated that fees to process your request will exceed \$250. Pursuant to 15 CFR Part 4.11(i)(2), you are required to pay an advance payment before your request is processed further. Please make your check or money order payable to the "Treasury of the United States" and send your payment and your signed copy of this letter to the NOAA Freedom of Information Officer, 1315 East-West Highway, Public Reference Room 10730,)FAX2, SSMC-3, Silver Spring, MD 20910.

Please note that in compliance with our FOIA regulations, the 20-business-day time frame for completing your FOIA request does not begin until your payment is received by the NOAA FOIA Officer. Once your agreement is received, our office will process your FOIA request.

If we do not receive your reply within 30 days, we will assume you do not wish to proceed and your request will be administratively closed. If you wish to narrow the scope of your request, please contact (name Lead FOIA Coordinator), FOIA Coordinator, at (phone number).

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Line Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER – REQUEST FOR PAYMENT OWED ON EARLIER REQUEST

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

We cannot process your request because our records indicate you failed to pay an earlier fee billed for FOIA request # ____ - ____ (copy of letter enclosed) for the amount of \$ ____ including interest. You were assessed interest at the rate provided in 31 U.S.C. 3717. Under 15 CFR 4.11(i)(3), our agency requires that you pay the full amount due on any previous properly charged FOIA fee. Additionally, you must also pay an advance estimated payment on any current FOIA request.

For purposes of calculating the time limit to respond to your current request, we will not consider it received until NOAA has received full payment of all past fees and interest and an advance payment for your new request if costs exceed \$20. To settle your unpaid bill, or if you believe a mistake has been made, please contact (Name of NOAA FOIA Officer), NOAA FOIA Officer, at (301) 713-3540 or write to the following address:

National Oceanic and Atmospheric Administration
Public Reference Facility (OFAX2)
1315 East-West Highway (SSMC3)
Room 10730
Silver Spring, MD 20910

Pursuant to 15 C.F.R. 4.11(i)(3), this notification is also sent to inform you of the estimate of fees incurred for processing your current FOIA request. Pursuant to 15 CFR 4.11(e), if NOAA's National Marine Fisheries Service (NMFS) estimates that fees will total more than \$20, NMFS will notify the requester of the actual or estimated fees.

Under 15 CFR.4.11(c)(1)(i), you fall under the "All Other Requesters" category. Your chargeable fees for this FOIA are: search and duplication (excluding the cost of the first 2 hours of search and 100 pages).

OR

Under 15 CFR.4.11(c)(1)(i), you fall under the “Commercial Requester” category. Your chargeable fees for this FOIA are: search, review, and duplication.

OR

Under 15 CFR.4.11(c)(1)(iii), you fall under the “Representatives of the News Media” category. Your chargeable fees for this FOIA are duplication only (excluding the cost of the first 100 pages).

OR

Under 15 CFR.4.11(c)(1)(ii), you fall under the “Educational and Non-commercial Scientific Institution Requester” category. Your chargeable fees for this FOIA are duplication (excluding the cost of the first 100 pages).

The estimated breakdown of your fees is as follows:

Search:	<u>\$(amount)</u>
Duplication:	<u>\$(amount)</u>
TOTAL	<u>\$(Total amount)</u>

Once your payment is received, we will start processing your FOIA request. If we do not hear from you within 30 calendar days of this fee notification letter, your request will be closed.

If you have any questions, I can be reached at (Phone Number).

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER – PARTIAL FEE REFUND NOTICE

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester
Associated Company (if applicable)
Street Address
City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms.(Name of Requester):

This is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

We have now completed the processing of your FOIA request. Our search identified # documents totaling # pages responsive to your request.

In accordance with our regulations at 15 CFR 4.11(i)(2), it was estimated that the fees to process your request would total approximately \$ _____. The actual charges for processing your request are:

Search:	\$ _____
Review:	_____
Duplication:	_____
TOTAL:	\$ _____

Because the estimated fee exceeded the actual total fee by \$ _____, the difference will be refunded to you. Please complete the enclosed Vendor Profile Information Form for submission to the Office of Finance Division (OFD). So that we may process your refund, please fax this letter and the Vendor Profile Information Form to Marie Marks, NOAA FOIA Officer, at (301) 713-2303, or send by mail to the following address:

National Oceanic and Atmospheric Administration
Attn: Marie Marks, NOAA FOIA Officer
Public Reference Facility (OFax2)
1315 East-West Highway (SSMC3)
Room 10730
Silver Spring, MD 20910

If you have any questions, please feel free to call (name Lead FOIA Coordinator), at (phone number)

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

Enclosure

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER–FEE WAIVER CRITERIA

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

This correspondence addresses your request for a waiver of fees. It has been determined that you did not provide sufficient information to qualify for a fee waiver. Pursuant to 15 CFR 4.11(k) (copy enclosed), fees will be waived or reduced if (1) disclosure of the requested 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 (2) disclosure of the information is not primarily in the commercial interest of the requester.

Our regulations set forth six factors that are considered by NOAA’s National Marine Fisheries Service (NMFS) to determine if you qualify for a fee waiver. If you would like further consideration of your fee waiver request, please provide additional information that addresses the following factors:

1. The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government.
2. The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of Government operations or activities.
3. The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of people interested in the subject.
4. The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities.
5. The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.
6. The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

For fee purposes, under 15 CFR.4.11(c)(1)(i), you fall under the “All Other Requesters” category. Your chargeable fees for this FOIA are: search and duplication (excluding the cost of the first 2 hours of search and 100 pages).

OR

For fee purposes, under 15 CFR.4.11(c)(1)(i), you fall under the “Commercial Requester” category. Your chargeable fees for this FOIA are: search, review, and duplication.

OR

For fee purposes, under 15 CFR.4.11(c)(1)(iii), you fall under the “Representatives of the News Media” category. Your chargeable fees for this FOIA are duplication only (excluding the cost of the first 100 pages).

OR

For fee purposes, under 15 CFR.4.11(c)(1)(ii), you fall under the “Educational and Non-commercial Scientific Institution Requester” category. Your chargeable fees for this FOIA are duplication (excluding the cost of the first 100 pages).

The estimated breakdown of your fees is as follows:

Search:	<u>\$(amount)</u>
Review:	<u>\$(amount)</u>
Duplication:	<u>\$(amount)</u>
TOTAL	<u>\$(Total amount)</u>

You may submit your fee waiver justification to determine if you qualify for a waiver. Please send your fee waiver justification to (Lead FOIA Office, Lead FOIA Office address and fax number.)

If we do not receive your fee waiver submission (Month, Date, Year – reflecting 30 calendar days), we will assume you do not wish to proceed with your fee waiver request. If you decide not to pursue a waiver of fees, our regulations at 15 CFR 4.11(e)(2) state that you agree in writing to pay the anticipated total fee. Your request will not be processed further until our office receives your written agreement to pay fees.

OR

If we do not receive your fee waiver submission by (Month, Date, Year – reflecting 30 calendar days), we will assume you do not wish to proceed with your fee waiver request. If you decide not to pursue a waiver of fees, our regulations at 15 C.F.R. 4.11(i)(2) state that you are required to pay an advance payment of the amount above before your request is processed further. It has been estimated that fees to process your request will exceed \$250. Please make your check or money order payable to the “Treasury of the United States” and send your payment and your

signed copy of this letter to the NOAA Freedom of Information Officer, 1315 East-West Highway, Public Reference Room 10730, FAX2, SSMC-3, Silver Spring, MD 20910.

Please note that in compliance with our FOIA regulations, the 20-business-day time frame for completing your FOIA request does not begin until your **(agreement to pay or payment)** is received by the NOAA FOIA Officer. Once your **(agreement to pay or payment) is received**, our office will process your FOIA request.

If you have any questions, please feel free to call (name Lead FOIA Coordinator), at (phone number)

Sincerely,

(Name of Lead FOIA Coordinator)
FOIA Coordinator

OR

(Name of Head of Office, Region, etc)
Title Signature Block

Enclosure
Fee Waiver regulations

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

SAMPLE LETTER – FEE WAIVER DENIAL

Send via Certified Mail or Fed-Ex with Receipt Notification

Mr./Ms. First Name Last Name of Requester

Associated Company (if applicable)

Street Address

City, State Zip Code

RE: Freedom of Information Act Request # ____ - ____

Dear Mr./Ms. (Name of Requester):

This is in response to your Freedom of Information Act (FOIA) request # ____ - ____ dated (date on request letter) and received by our office on (date received on CD-244 by HQ). You specifically requested (describe the information requested in the letter).

In your letter, you request a waiver of all associated fees. Based on the information available to me, I must deny your request for a waiver. The statutory test for evaluating fee waiver requests is whether release 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, in which event a fee waiver or reduction is required by law. 5 U.S.C. 552 (a)(4)(A)(iii). To ensure that the basic requirements for a waiver are met, I rely on six factors in my determination as to whether your request satisfies this statutory standard (See 15 C.F.R. 4.11(k)): (1) whether the subject of the requested records concerns the operations or activities of the Government; (2) whether the disclosure is likely to contribute to an understanding of Government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the general public; (4) whether the disclosure is likely to contribute significantly to public understanding of government operations or activities; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether any such commercial interest outweighs the public interest in disclosure.

In reaching my conclusion on your fee waiver (or partial fee waiver) denial, I have analyzed these six factors as they apply to the circumstances of your request. On the basis of the information available to me, I have concluded that your fee waiver request must be denied because (state the basis for denying the fee waiver for all or part of the requested records).

Under Title 15, Code of Federal Regulations, Section 4.10(a), you have the right to appeal this (denial or partial denial, fee waiver denial, expedited assess, etc.) determination. The Assistant General Counsel for Administration must receive your appeal within **30 calendar days** of the date of the initial denial letter. Address your appeal to the following office:

**Assistant General Counsel for Administration
U.S. Department of Commerce
Room 5898-C**

**14th and Constitution Avenue, NW
Washington, D.C. 20230**

You may also send your appeal by e-mail to FOIAAppeals@doc.gov or by facsimile (fax) to **(202) 482-2552**. The appeal must include a copy of the original request, the response to the request, and a statement of why withheld records should be made available and why denial of the records was in error. The submission (including e-mail and fax submissions) is not complete without the required attachments. The appeal, envelope, e-mail subject line, and fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, and Office of the General Counsel are monitored only on working days during normal business hours (8:30 am to 5:00 pm, Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box or sent to the fax machine or Office of General Counsel after normal business hours will be deemed received on the next normal business day.

If you have any questions, please feel free to call (name Lead FOIA Coordinator), at (phone number).

Sincerely,

(Assistant Administrator of Fisheries)
(Title of Authorized)

cc: Appropriate Offices concurrences
Lead FOIA Coordinator
NMFS HQ FOIA Officer
NOAA HQ FOIA Officer

FOIA Fee Notification Agreement

FOIA Request # _____ dated _____

I agree to pay all fees associated with processing this request.

OR

I agree to pay all fees associated with processing this request. I understand that the payment enclosed is based on an estimate only, and I will pay any additional fees assessed.

Signature

Date