

**Defendants.**

Civil Action No. 19-cv-2181 (TJK)

1. I am an attorney with the United States Environmental Protection Agency (EPA). I make this declaration for the sole purpose of transmitting certain documents to the Court.
2. Attached to this declaration as Exhibit A is a true and correct copy of EPA's Procedures for Responding to Freedom of Information Act Requests, CIO 2157-P-01.1, dated September 30, 2014 and a memorandum titled "The Freedom of Information Policy and Procedures Update" dated February 15, 2019.
3. Attached to this declaration as Exhibit B are true and correct copies of ten redelegations of authority within EPA's regional offices.
4. Attached to this declaration as Exhibit C is a true and correct copy of EPA's 1200 Delegations Manual - Introduction, approved February 10, 2017.
5. Attached to this declaration as Exhibit D is a true and correct copy of a letter from EPA Administrator Andrew Wheeler to Chairman Lisa Murkowski and Ranking Member Tom Udall dated October 22, 2019.

6. Attached to this declaration as Exhibit E is a true and correct copy of EPA's Delegation of Authority, 1-30, Freedom of Information, updated November 8, 2019.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13<sup>th</sup> day of December, 2019.

A handwritten signature in black ink, reading "Joan G. Kaminer", is written over a horizontal line.

Joan G. Kaminer  
Attorney-Advisor  
General Law Office  
Office of General Counsel  
U.S. Environmental Protection Agency

# **Exhibit A**

# **Tab 1**



## INFORMATION DIRECTIVE PROCEDURE

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Procedures for Responding to Freedom of Information Act Requests	
EPA Classification No.: CIO 2157-P-01.1	CIO Approval Date: 09/30/2014
CIO Transmittal No.: 14-006	Review Date: 09/30/2017

*Issued by the EPA Chief Information Officer,  
Pursuant to Delegation 1-19, dated July 7, 2005*

### **Procedures for Responding to Freedom of Information Act Requests**

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#### **1. PURPOSE**

These procedures provide basic instructions for responding to Freedom of Information Act (FOIA) requests submitted to EPA. They address statutory, regulatory, policy, procedural and processing requirements to be followed by all EPA organizations and must comprise the core of all office-specific FOIA processing procedures.

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#### **2. SCOPE AND APPLICABILITY**

The scope of these procedures covers work performed by EPA employees, grantees, contractors, and interns in support of FOIA administration activities in Headquarters, regional offices, field offices and EPA laboratories.

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#### **3. AUDIENCE**

The audience for these procedures includes all EPA organizations, officials, and employees. The audience for these procedures is also contractors or grantees and others operating on behalf of the EPA.

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#### **4. BACKGROUND**

The FOIA, 5 U.S.C. § 552, was enacted in 1966. The law gives any requester the right to obtain access to federal agency records unless such records or portions of such records are protected

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from public disclosure by one or more of the nine exemptions or three law enforcement exclusions contained in the statute. There are nine FOIA exemptions:

- 1) Classified national defense and foreign relations information.
- 2) Internal agency rules and practices.
- 3) Information that is prohibited from disclosure by another federal law.
- 4) Trade secrets and other confidential business information.
- 5) Inter-agency or intra-agency communications that are protected by legal privileges.
- 6) Information involving matters of personal privacy (protected under the Privacy Act or containing sensitive personally identifiable information).
- 7) Information compiled for law enforcement purposes, to the extent that the production of those records:
  - a) Could reasonably be expected to interfere with enforcement proceedings.
  - b) Would deprive a person of a right to a fair trial or an impartial adjudication.
  - c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
  - d) Could reasonably be expected to disclose the identity of a confidential source.
  - e) Would disclose techniques and procedures for law enforcement, investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions.
  - f) Could reasonably be expected to endanger the life or physical safety of any individual.
- 8) Information relating to the supervision of financial institutions.
- 9) Geological information on wells.

The FOIA applies only to administrative agencies within the federal Executive Branch. It does not apply to records held by Congress, the courts, or by state, local, or tribal government agencies. The FOIA has undergone several amendments since its passage, including the e-FOIA amendments of 1996 and the Open Government Act of 2007. The e-FOIA amendments clarified how electronic records should be handled under the FOIA and extended the statutory time to respond from ten working days to twenty working days. The Open Government Act of 2007 made changes to promote a more open and accountable government and established a requirement for each agency to have a Chief FOIA Officer and a FOIA Public Liaison to assist in reducing delays, increasing transparency and resolving disputes. It also established the Office of Government Information Services within the National Archives and Records Administration to provide mediation services for resolution of disputes between persons making FOIA requests and administrative agencies as well as to provide input and guidance on the effective administration of the FOIA across federal agencies.

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The Open Government Act promotes the use of technology to achieve more efficient disclosure of information to the public. To improve its FOIA management and processes, the EPA deployed FOIAonline, a shared service, as its new FOIA management system in October 2012. FOIAonline automates core processing and administrative activities. All FOIA requests received at the EPA will be managed throughout their lifecycle in FOIAonline. All records provided by the EPA in response to a FOIA request will be entered into FOIAonline for public viewing and searching unless the volume of paper records is very large and conversion to electronic format is not practical or the response is subject to special handling requirements or policies (e.g., contains Confidential Business Information that is only appropriate to release to the requester/owner of the CBI and is not appropriate for public release). These exceptions will be reviewed on a case by case basis by the Agency FOIA Officer. A copy of the exception decision will be maintained in the system. If records provided in response to a request are not entered into FOIAonline because of these conditions, a placeholder document must be uploaded with contact information for obtaining a copy of the response. The organizational unit that has responsibility for responding to the request (known throughout this document as the Action Office) must maintain the records and make them readily available for responding to future requests.

This document does not provide “how-to” instructions for using FOIAonline, but does reference features of the system that help accomplish certain FOIA tasks outlined in this procedure. The Agency sponsors FOIAonline trainings for managers, supervisors and staff and has developed FOIAonline user guides that are available at <https://foiaonline.regulations.gov/foia/action/public/home>.

These procedures are intended to ensure that the Agency responds to FOIA requests in accordance with statutory requirements, the EPA’s implementing regulations, and open government and transparency policies.

Program Offices and Regions will develop or update organizational FOIA procedures to conform to this document within 180 days of this document being finalized. All procedures must be consistent with the EPA’s FOIA regulations and statutory requirements.

These procedures will be supplemented by role-based and general awareness trainings for the audience identified under Section 3, above.

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## 5. AUTHORITY

[Freedom of Information Act](#) , 5 U.S.C. § 552.  
[EPA's FOIA Regulations](#), Title 40, C.F.R. Part 2, Subpart A.  
[CIO Policy 2157.0, Freedom of Information Act \(FOIA\) Policy](#)

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## 6. PROCEDURES

The Agency's FOIA regulations direct the public to send FOIA requests, in writing, to EPA Headquarters, Regional FOIA Offices or through a form on the Agency's FOIA website (which provides a link to FOIAonline). Requests received in any other Agency office should be immediately forwarded to the appropriate FOIA Officer so that the requester does not incur undue processing delays. See 40 C.F.R. 2.102(a).

The actions identified in Steps 1-5, below, are performed by staff in FOIA offices. Regions and Program Offices will decide who performs the steps identified in these procedures.

### INITIATING THE PROCESS

The FOIA process officially begins when a request is received in any Agency FOIA Office. Requesters may request a fee waiver and/or expedited processing at the time they submit their request.

**Step 1 – Receive, Review, and Acknowledge Incoming Requests.** The public may submit requests to the Agency via FOIAonline, postal mail, email, or hand delivery. The FOIA Office receiving the request will verify that the request: 1) is in writing; 2) provides a mailing address; 3) asks for Agency records; and 4) reasonably describes the records sought. A description is sufficient if it enables an Agency employee familiar with the subject area to locate the record with a reasonable amount of effort. See also, 40 C.F.R. § 2.102(c).

- ☐ **Improper FOIA requests include:**
    - ☐ Requests that do not reasonably describe the records sought;
    - ☐ Requests that pose questions, rather than seek documents.
  - ☐ **FOIA does not require EPA to:**
    - ☐ Create new records or future records in response to a request;
    - ☐ Re-create records which were properly disposed of;
    - ☐ Produce records the Agency retains no control over;
    - ☐ Re-provide records which EPA already makes available to the public; or
    - ☐ Produce purely personal records.

If the requestor provided an email address, FOIAonline will automatically send a receipt to the requester that includes the tracking number and submission date for all requests processed in the system. Requests received after 5 pm EST or on weekends or holidays are not considered received until the next business day. If a request is not received through FOIAonline, the FOIA Office will enter the request in the system within one working day of receipt and issue an acknowledgement through FOIAonline if an email address is provided. Postal mail will be used by the FOIA Office if an email address is not provided. The



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acknowledgement letter will provide the tracking number and the date the request was received by EPA.

**Step 2 – Determine if the Request is in the Correct FOIA Office.** The receiving FOIA Office will determine where responsive records are most likely located in the Agency. When a request is received at an Agency FOIA Office and all responsive records are determined to be located in another Region or Headquarters, the receiving FOIA Office will assign the request in FOIAonline to the appropriate FOIA Office for processing. If the receiving FOIA Office does not know where responsive records are located, the FOIA Office will consult with the Headquarters FOIA Office. See also, 40 C.F.R. § 2.103(a).

The FOIA allows agencies up to 10 working days to route a misdirected request before the 20 working day period to respond begins. For the purposes of this 10 day allowance, a request is “misdirected” if it is sent to a FOIA Office that is not located with the Program or Regional Office that will have the responsive records. Requests sent by the public to an office other than a FOIA Office are also misdirected and must be immediately sent to the local FOIA Office.

After steps 1 and 2 are complete, the request is considered “perfected.” Requests should be “perfected” on the same day they are received by the correct FOIA Office. The FOIA Office will enter the “perfected” status in FOIAonline to initiate the 20 day working period. FOIAonline will automatically initiate the 20 working day period on the 11<sup>th</sup> working day after the request was received, even if the request has not been perfected.

**Step 3 – Determine the Fee Category.** EPA FOIA Offices will determine how requesters will be charged processing fees based on their fee category. The fee categories under the FOIA are: (1) Commercial Use, (2) Educational Institution or Non-Commercial Scientific Institution, (3) Representative of the News Media and (4) Other. See also, 40 C.F.R. § 2.107. (See Step 8 below for information on calculating fees.)

**Step 4 – Process Fee-Waiver (FW) and Expedited Processing (EP) Requests.** All requests for fee waivers and expedited processing must be submitted with the initial FOIA request (see 40 C.F.R. § 2.107(l) (5)). Decisions on FW and EP requests will be made by the Agency FOIA Officer based on the factors outlined in 40 C.F.R. § 2.107(l) (5) and 2.104(e), respectively.

FW and EP requests submitted to a Regional FOIA Office will be transferred by the Regional FOIA Officer to the Headquarters FOIA Office through FOIA-online for processing. (Please note that the region retains the responsibility for responding to the request for records.)

Whether a request is likely billable or unbillable will be communicated to the Headquarters FOIA Office by the organization to which the request is assigned within 48 hours of receipt of the request. The Agency FOIA Officer will determine if fees will likely be incurred by the requester before deciding on the request. (A request for a fee waiver is moot when no fees are associated with processing the request.)

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The Agency FOIA Officer will make the initial decision whether to grant or deny a FW or EP request. The individual assigned the request will be notified via an email from FOIAonline that a determination has been issued. If the FW and EP request is assigned to a group rather than to an individual, FOIAonline will not send an email, but will alternatively provide an internal system message to each group member the next time that person logs on.

The Agency must decide whether to grant or deny an EP request within 10 calendar days of receipt. If the request is granted, it must be given priority by the Action Office and be the next request in line for processing. See C.F.R. § 2.104(3) (4). However, the request itself is not required to be processed within the 10 calendar days.

**Step 5 – Assign the Request to the Action Office.** In most cases, the FOIA Office will assign the request in FOIAonline to the primary FOIA Coordinator in the Program or Regional Office believed to most likely house the majority of responsive records. The FOIA Coordinator will assign a lead office within that organization (the “Action Office”). When the requester is seeking records about or created by an individual, the organization where the individual worked at the time the records were created will become the Action Office and have responsibility for processing the request.

Often, additional Programs and/or Regions may have responsive records (“Contributing Office”). The Action Office will assign each Contributing Office a task in FOIAonline for them to provide responsive records. These Contributing Offices will coordinate the Agency’s response with the Action Office, including uploading responsive records to the system.

## PROCESSING THE REQUEST IN ACTION OFFICES

An organization’s<sup>1</sup> internal FOIA processing procedures will determine who performs steps 6-16 identified in this procedure on behalf of the Action Office and the FOIA Coordinator. However, the steps will remain the same regardless of who performs them.

At Headquarters, each Office of an Assistant Administrator and the Office of the Administrator has a primary FOIA Coordinator who receives the assignment from the Headquarters FOIA Office. FOIA requests in regions are received by the Regional FOIA Officer who selects the appropriate division, branch or individual within the organization which is known as the Action Office. Regions have a primary FOIA Coordinator and the function may be performed by various staff persons. At Headquarters, the primary FOIA Coordinator will assign the request to the Action Office. Non-primary FOIA Coordinators may also be located at the division and branch levels at Headquarters and in regions depending on the business practices of the particular organization. An organization’s business practices determine the workflow and roles and responsibilities when a request is received for action. These practices will be detailed in the organization’s FOIA procedures.

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<sup>1</sup> An EPA region (e.g., Region 1) or the Office of an Assistant Administrator (e.g., OGC).

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When an assignment is received from a FOIA Office, the primary FOIA Coordinator or regional person (designated by the Regional FOIA Officer) will determine which of the offices in the organization (e.g., staff offices, divisions, or branches) are likely to have records responsive to the request. The primary FOIA Coordinator or regional person will assign the request to the appropriate office or FOIA professional using FOIAonline. If the description of the records requested is not sufficient for the primary FOIA Coordinator or regional person to assign the request to an office, the primary FOIA Coordinator or regional person will contact the requester for additional information. All communications, including verbal conversations with the requester, will be documented for the official record and entered into FOIAonline. Communications may include discussion of scope, deadlines, or other issues.

*NOTE: For large, complex FOIA requests, it is suggested that the Action Office convene meetings with all interested Agency parties in order to clarify responsibilities, methods to be used for collection, and similar issues. Those meetings should include programmatic experts, Records Liaison Officers, information technology specialists, and legal counsel, as appropriate.*

**Step 6 – Determine Search Parameters.** The Action Office will determine the cut-off date for records subject to the request. Under the EPA’s regulations (40 C.F.R. § 2.103 (a)) for determining what records are within the scope of the request, the Action Office will usually include only those records in its possession as of the date the request was received by the FOIA Office, unless the request specifically seeks a more limited scope. If a different date is used, the Action Office will inform the requester of that date.

The request will also be reviewed to determine the subject matter of the records the requester is seeking. If it is deemed necessary for the person processing the FOIA to obtain clarification or additional information from the requester, the time necessary to reformulate the request will be excluded from the statutory 20 working day period (or any authorized extension of time) that the EPA has to respond to the request. The FOIA permits the Agency to “stop the clock” **one** time during the first 20 days after receipt, to seek information and clarification from the requester. Although the requester may be contacted as many times as needed to clarify the scope of the request, the clock may only be stopped once. Once the clock has been stopped, it should not be restarted until the information or clarification is provided. All communications must be documented for the official record and entered into FOIAonline, and the deadlines adjusted in the system, as appropriate.

**Step 7 – Determine if Additional Responsive Records are in Other Agency Organizations.** When additional responsive records are determined to be located in other Agency organizations, or the request is incorrectly assigned, the appropriate FOIA Office should be notified by the FOIA Coordinator or the organizational subject matter expert within two working days of receiving the assignment. Action Offices should return misdirected requests to the local FOIA Office for re-assignment within two working days.

*NOTE: The FOIA Office will create a task in FOIAonline to request additional records from*

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*another EPA organization.*

**Step 8 – Estimate Processing Fees.** The EPA’s FOIA regulations require an assurance of payment from the requester if fees are expected to exceed \$25.00 or an amount specified by the requestor. Unless a waiver of fees has been granted by the Agency FOIA Officer, the Action Office will estimate the processing fee which will be charged as specified in 40 C.F.R. § 2.107. Search fees may apply even when no responsive records are identified or no responsive records are disclosed to the requester. The EPA’s FOIA Regulations (40 C.F.R. § 2.107(j)) also define circumstances where it may be appropriate to require advance payment of the estimated fees, if the fees are expected to exceed \$250.

Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. Fees are calculated as follows:

Type of Staff	Charge Per Quarter Hour
Clerical Staff	\$4.00 per ¼ hr
Professional Staff	\$7.00 per ¼ hr
Managerial Staff	\$10.25 per ¼ hr

Type of Requester	Fee Category to be Charged		
	Search	Review	Duplication
Commercial	Yes *	Yes	Yes
Educational	No	No	Yes (100 pages free)*
Non-commercial	No	No	Yes (100 pages free)*
Scientific			
News Media	No	No	Yes (100 pages free)*
All Others	Yes (First 2 hours free)*	No	Yes (100 pages free)

\*Fees shaded in grey above cannot be charged if the Agency fails to comply with time limits for response.

**Step 9 - Determine Response Time.** The FOIA requires agencies to provide a substantive response within 20 working days. In such instances when the Action Office determines the response cannot be completed within 20 working-days, the EPA may extend the due date if “unusual circumstances,” as defined by the FOIA, apply.

An “unusual circumstance” exists when there is: (1) a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and (3) a need for consultation, which will be conducted with all practicable speed, with another

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agency or among two or more components of the EPA having a substantial interest in the determination of the request.

If unusual circumstances exist and there is a need to extend the due date for 10 working days or less, the Action Office must, within the 20 working day time limit, notify the requester in writing that unusual circumstances exist and provide the new due date. When the unusual circumstances result in a need to extend the due date for more than 10 working days, the Action Office must also provide the requester, within the 20 working days, the contact information for the EPA's FOIA Public Liaison and an opportunity to either (a) modify the request so that it may be processed within the 10 working day extension or (b) arrange an alternative time period for processing the original or modified request.

If unusual circumstances do not exist, or if the due date has already been extended and additional time is needed to complete the response, the Action Office should seek a reasonable extension from the requester. To aid the requester, the Action Office will provide the requester the contact information for the EPA FOIA Public Liaison, who will assist in the resolution of any disputes between the requester and the EPA. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible. The requester may file an administrative appeal or may pursue litigation. For instances where the FOIA requester is the prevailing party of a litigation case and the EPA is required to pay legal fees, please refer to Office of the Chief Financial Officer's FOIA Fee Policy, RMDS 2540-04-P2. In any event, the Action Office should communicate any extensions and expected completion dates with the requester. All communications must be documented for the official record and entered into FOIAonline.

The Action Office also enters the new requested due date and the justification for the extension into FOIAonline. The system generates a notice to the Headquarters or appropriate Regional FOIA Office for approval. The FOIA Office will make a decision within two working days, document the decision, with comments if necessary, in FOIAonline, and communicate the new date to the Action Office. The Action Office will communicate the new due date to the requestor.

**Step 10 – Collect and Review the Records.** The Action Office and each Contributing Office is responsible for identifying, collecting and reviewing records within the scope of the request as discussed in Step 6, and as outlined in any organization-specific procedures. This includes the responsibility for consultation and referral with other federal agencies. Contributing Offices are also responsible for coordinating responsive activities with the Action Office (i.e., the office that is determined to have the majority of responsive records) when more than one office has responsive records (see Step 5 above). The Action Office and each Contributing Office should also assure that protected information has been redacted from records before they are released.

The Action Office and Contributing Offices will: 1) ensure that redacted information cannot be read through photocopied records; 2) remove "hidden" metadata as appropriate (e.g. Microsoft Word document properties); and 3) annotate records with the applicable FOIA exemption(s) at the location of the redacted information. A copy of both the original and redacted record will be

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stored in FOIAonline, unless subject to special handling requirements (e.g., large volume) or policies. Exceptions to this storage requirement are approved on a case by case basis by the Agency FOIA Officer. FOIAonline allows FOIA professionals to put records in the system that are not released to the public. This protects records that have been withheld.

If records provided in response to a request are not entered into FOIAonline because of special handling requirements or policies, or because the volume of files make it impractical to upload the complete response, a placeholder document must be uploaded with contact information for how to obtain a copy of the response that the responding office will maintain and make readily available.

*NOTE: Only records that have been: 1) marked published and 2) approved for release are available to the public in FOIAonline.*

**Step 11 – Determine Which Records (or Portions) May Be Released.** After thorough review, the Action Office will prepare to release responsive, non-exempt records or portions of records. All records released or being withheld in total in response to a FOIA request must be reviewed by at least two knowledgeable individuals, including one manager or supervisor to ensure openness, transparency, consistency, and the appropriate application of FOIA exemptions. One of the reviews may be performed by the individual who processes the request. Action Offices may consult with the Agency FOIA Officer, their Office of Regional Counsel (ORC), or Office of General Counsel (OGC) for questions regarding withholding of records under a FOIA exemption. If a discretionary FOIA exemption (Exemptions 2, 5, 7 (excluding 7(c)), 8 and 9) is implicated, Action Offices should only withhold records, or portions of records, when they reasonably foresee that disclosure would harm an interest protected by one of the exemptions or when disclosure is prohibited by law.

Responsive records that have been properly reviewed and redacted (if necessary) will be subject to one of the following outcomes:

- a) Release in Full. The record, in its entirety, may be released to the requester.
- b) Partial Grant/Partial Denial. Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester.
- c) Withhold in Full. The record, in its entirety, will be withheld from the requester if covered by either one or multiple FOIA exemptions.
- d) No Record. If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester will be informed in writing. A no records certification form must be completed for no record responses and entered in FOIAonline. Please note: This form is not sent to the requester.
- e) Confidential Business Information (CBI). For records or parts of records that have been claimed as CBI or would be claimed as CBI if the business knew the EPA proposed to disclose the information, the procedures set out in 40 C.F.R. § 2.204 must be followed.

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- f) Glomar Response. In some instances, the EPA may expressly refuse to confirm or deny the existence of records responsive to a FOIA request; this is called a Glomar response. The response letter will inform the requester that the request is denied because "either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of FOIA." The Action Office must obtain approval from OGC or ORC prior to issuing a Glomar response.

**Step 12 – Prepare Response Letter.** The Action Office will prepare the response letter using standard language, if suitable, and obtain necessary concurrences. All response letters must include: (1) the FOIA tracking number and (2) appeal language, as appropriate. FOIA requesters have the right to appeal initial FOIA decisions made by the EPA if:

- No records were found;
- The response time has exceeded the statutory authority or documented extensions;
- The request for expedited processing was denied;
- The request for a fee waiver was denied;
- The requestor believes some records or portions of records were improperly withheld;
- The requestor believes the search was inadequate; or
- The requestor believes the fee category in which they were placed is incorrect.

In addition, response letters that withhold Agency records, in total or in part, are required to identify the:

- Records withheld individually or by category of similar documents if voluminous;
- Applicable FOIA exemption(s) under which the record is being withheld and a brief statement explaining the reason for the denial; and
- Authorizing official by name and title (see Step 14 below for list of Authorized Officials).

**Step 13 – Finalize Processing Fees.** The Action Office will inform the requesters in the response letter if fees for processing the request are not billable (i.e., equal to or less than \$14.00). If the processing fees are billable (i.e., greater than \$14.00), FOIAonline will generate the invoice.

*NOTE: The Administrative Cost section in FOIAonline must be completed to document billable and unbillable costs in FOIAonline. All offices working on a request will enter their administrative costs in FOIAonline. The EPA is required to document actual fees charged to the public (billable) and the administrative costs (unbillable) incurred by the agency in processing FOIA requests.*

**Step 14 – Obtain Approval from an Authorized Official to Release or Withhold Records.** The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of headquarters staff offices (or their appropriate designee) are delegated the authority to issue initial determinations

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to release or withhold records in response to FOIA requests. See EPA Freedom of Information Delegation of Authority, Section 1-30.

*NOTE: Initial determinations (both release and withholding determinations) may be redelegated only to persons occupying positions not lower than division director or equivalent.*

**Step 15 – Respond to Request.** The Action Office will provide the response letter, responsive records and invoice (when applicable) to the requester through FOIAonline. If an email address is provided, the requester will be notified via email that the responsive records are available in FOIAonline. Otherwise, the response package will be provided via postal mail.

The response letter must include a description of the information withheld either by category and volume, or by a list. In all cases the response letter must also include the standard administrative appeal language.

**Step 16 – Finalize Actions.** The Action Office will ensure all supporting documentation is entered in FOIAonline (e.g., records of conversations or notes to the record). The record copy of the FOIA response will be maintained in FOIAonline, including all responsive records. Once published, these records become available for public searching and viewing.

If the volume of paper records is very large and conversion to electronic format is not practical or the response is subject to special handling requirements or policies, the Agency FOIA Officer will consider granting an exception to the requirement to load the records into FOIAonline. Reviews are made on a case by case basis. A copy of the decision by the Agency FOIA Officer will be maintained in the system. If the exception is granted, a placeholder document must be uploaded in FOIAonline with contact information for obtaining a copy of the responsive records. The Action Office that has responsibility for responding to the request must maintain the records according to applicable record schedules and make them readily available for responding to future requests.

The Action Office will close the request in FOIAonline.

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## 7. RELATED DOCUMENTS

- <http://www.epa.gov/FOIA/FOIAregs.htm>
  - <http://www.justice.gov/oip/amended-FOIA-redlined.pdf>
  - <http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2171-p-01.pdf>
  - <http://www.archives.gov/about/organization/summary/ogis.html>
-



Procedures for Responding to Freedom of Information Act Requests	
EPA Classification No.: CIO 2157-P-01.1	CIO Approval Date: 09/30/2014
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## 8. ROLES AND RESPONSIBILITIES

**Action Office** – The organizational unit that maintains the majority of records responsive to a FOIA request.

**Agency FOIA Officer** – The Agency FOIA Officer is the program manager for the National FOIA program. The Agency FOIA Officer coordinates and oversees the EPA FOIA administration responsibilities; issues expedited processing and fee waiver determinations; develops and reviews FOIA procedures, policies, and guidance; provides advice to Agency FOIA personnel in the program and regional offices; prepares annual reports to the Department of Justice (DOJ); and provides FOIA training to agency employees and other individuals covered under Section 3 of these procedures. The Agency FOIA Officer is located in the Office of Environmental Information at EPA headquarters.

**Authorized Officials** – The Deputy Administrator, Assistant Administrators, Associate Administrators, the Inspector General, the General Counsel, Heads of Headquarters Staff Offices and Regional Administrators (or their appropriate designee) are authorized under section 2.113(b) of EPA's FOIA regulations to issue initial determinations to release or withhold records in response to FOIA requests. Freedom of Information, EPA Delegations Manual, Chapter 1, Section 30, provides that this authority may be redelegated to the office director level or equivalent, who may redelegate to the division director level or equivalent.

**Contributing Office** – Organizational units that possess responsive records in addition to the Action Office.

**Chief FOIA Officer** – The designated high-level official within each federal agency who has overall responsibility for the agency's compliance with the FOIA. At the EPA, the Assistant Administrator for the Office of Environmental Information is the Chief FOIA Officer. The Chief FOIA Officer is responsible for ensuring the efficiency and effectiveness of the Agency's FOIA administration including compliance, accountability and reporting to the Administrator, the Department of Justice, and the Office of Management and Budget on the status of the Agency's FOIA program. NOTE: This role is different from that of the Agency FOIA Officer above.

**FOIA Coordinators** – FOIA Coordinators stay informed on requests and assignments; route requests to the appropriate Action Office or subject matter expert within the Program Office; track FOIA requests for timeliness; monitor the quality of the responses; and provide guidance to program personnel including overdue reports, in collaboration with the Agency FOIA Officer. Each Headquarters Program Office has a lead FOIA Coordinator who works under the general direction of the Agency FOIA Officer. See also "Primary FOIA Coordinators".

**FOIA Officer** – See "Agency FOIA Officer" or "Regional FOIA Officers."

**FOIA Offices** – The FOIA Office is the point of receipt for Agency FOIA requests where they are reviewed for conformance with the Act, acknowledged and assigned to the appropriate

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Action Office. The locations are identified in the EPA's FOIA regulations for submitting FOIA requests. Agency FOIA Offices are located in each Region and in the National FOIA Program at Headquarters.

**FOIA Professional** – An EPA employee or contractor who directly interacts with FOIA requesters and is responsible for the day-to-day FOIA processing activities.

**FOIA Public Liaison** – The FOIA Public Liaison is the EPA contact point for the public if they have any issues with the handling of their FOIA request by the Agency. In the EPA, the FOIA Public Liaison is the Chief of the FOIA and Privacy Branch in the Office of Information Collection within the Office of Environmental Information. The Public Liaison supervises the staff in the FOIA Requester Service Center and is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

**FOIA Requester Service Center** – The FOIA Requester Service Center (FOIA Hotline) provides the public information on the status of their requests if they do not have access to FOIAonline, general information on how and where to submit a FOIA request, or information about the types of information available on the EPA's websites. The Center is staffed by the FOIA Public Liaison, Agency FOIA Officer and National FOIA Specialists. The Hotline number is 202-566-1667.

**Managers and Supervisors** – EPA managers and supervisors oversee FOIA Officers and FOIA Coordinators to ensure that they have the knowledge, skills and ability to perform their duties and respond in a timely manner in accordance with the FOIA. They review and approve all FOIA responses before release.

**National FOIA Program** – The National FOIA Program is staffed by the Agency FOIA Officer and National FOIA Specialists who develop Agency-level policies, procedures and trainings, respond to questions, provide guidance, deliver training, and make decisions on fee waiver and expedited processing requests. The National FOIA Program is located in the Office of Environmental Information.

**National FOIA Specialists** – National FOIA Specialists manage the lifecycle of FOIA requests received at Headquarters; assign requests to Headquarter FOIA Coordinators; prepare responses to fee waiver and expedited processing requests; approve requests to extend due dates; respond to questions from Agency employees; and staff the FOIA Requester Service Center.

**Office of General Counsel (OGC)** – OGC provides legal advice on FOIA matters; issues final decisions on FOIA appeals, final confidentiality determinations for CBI claims originating in HQ, and fee waiver appeal determinations, except when a conflict of interest arises; provides counsel on FOIA exemptions and exclusions; and assists the U.S. Department of Justice attorneys in FOIA litigation.

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**Office of Inspector General (OIG)** – OIG and the Counsel to OIG provide advice on FOIA matters pertaining to its organization; issue initial determinations and final decisions on FOIA appeals, final confidentiality determinations, except when a conflict of interest arises; provide counsel on FOIA exemptions and exclusions; and assist the U.S. Department of Justice attorneys in FOIA litigation.

**Office of Regional Counsel (ORC)** – ORC provides legal advice on FOIA matters, final confidentiality determinations for CBI claims originating in the Region, FOIA litigation support to regional employees, and information as needed to the Agency FOIA Officer on fee waiver requests. ORC also assists OGC on appeals, as appropriate.

**Primary FOIA Coordinator** – The lead FOIA Coordinator in an organization who works under the general direction of the Agency FOIA Officer.

**Regional FOIA Officers** – Regional FOIA Officers assign requests to the appropriate Action Office within the region; track FOIA requests; provide guidance to regional personnel in collaboration with the Agency FOIA Officer; coordinate with the Agency FOIA Officer and Action Offices on initial fee waiver decisions; compile data for the annual FOIA report; and monitor the quality and timeliness of responses in the regions. Regional FOIA Officers work under the general direction of the Agency FOIA Officer.

**Subject Matter Experts** – Subject matter experts identify and locate records requested under FOIA. These individuals are located in all EPA organizations and include all professional disciplines. If permitted under the applicable delegation and after obtaining any necessary concurrences, the subject matter experts may respond to requests directly or provide the responsive records to the FOIA Coordinator who facilitates the response for the Agency. They must, however, follow the review process prescribed in this procedure.

## 9. DEFINITIONS

**Administrative Appeal** – An independent review of the initial determination made in response to a FOIA request. Requestors who are dissatisfied with the response made on their initial request have a statutory right under 40 C.F.R. § 2.104(j) to appeal the initial determination to an office in the Agency which will conduct an independent review. *(NOTE: OGC is responsible for managing all FOIA appeals at the EPA with the exception of appeals that involve FOIA requests to the OIG or FOIA requests where OGC is the Action Office on the initial response. OIG handles its own appeals. The Office of the Administrator processes appeals where the OGC is the Action Office on the initial response.)*

**Case** – All records pertaining to a FOIA request.

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**Commercial Use** – A type of request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial, trade, or profit interests, which can include furthering those interests through litigation.

**Consultation** – When an agency locates a record or a record that contains information provided by or of interest to another agency, it will ask for the views of that other agency on the disclosability of the records before any final determination is made. This process is called a “consultation.” (See also “referral.”)

**Confidential Business Information** – Trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.

**Educational Institution** – A preschool, 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, which operates a program or programs of scholarly research.

**Existing records** – Agency records that exist as of the date a FOIA request is received by the EPA.

**Expedited Processing** – The processing of a FOIA request out of the order in which it was received and prioritized over other pending FOIA requests. The standards for expedited processing are set out in the FOIA and in the regulations of each federal agency.

**Fee Categories** – Categories under FOIA that determine assessments of fees to requesters. Requesters fall into one of five fee categories: (1) commercial requesters; (2) educational; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all other requesters (i.e., requesters who do not fall into any of the other four categories).

**Fee Waiver** – A request made to an agency to waive any applicable fees for its processing of a FOIA request. Fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for a fee waiver are evaluated on a case-by-case basis.

**FOIAonline** – The EPA’s FOIA tracking and management system.

**FOIA Exemptions** – Contained at 5 U.S.C. § 552(b) (1)-(9). See <http://intranet.epa.gov/foia/exemptions.html> or the box on page 2 of these procedures.

**FOIA Time Limits** – The time period in the FOIA statute for an agency to respond to a FOIA request (ordinarily twenty working days from the day a FOIA request is received and logged in by the appropriate FOIA Office).

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**Freedom of Information Act (FOIA)** – The Freedom of Information Act (FOIA) was signed into law in 1966. The law provides individuals with a statutory right of access to certain federal agency records. The FOIA requires agencies to disclose requested records unless they are protected from public disclosure by the FOIA. Congress included in the FOIA nine exemptions and three law enforcement exclusions to protect important interests such as national security, personal privacy, privileged communications, and law enforcement.

**Full Denial** – An agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located. A denial response must be signed by an Authorized Official.

**Full Grant** – An agency decision to disclose all records in full in response to a FOIA request.

**Glomar Response** – An agency's express refusal to confirm or deny the existence or non-existence of records responsive to a FOIA request.

**Initial Request** – The request submitted by an individual to a federal agency for access to agency records on any topic. A FOIA request can generally be made by any person, to any federal agency, and only requires that requesters reasonably describe the records they are seeking and comply with agency regulations for making such requests.

**Media Requester** – Any person making a FOIA request who actively gathers news for an entity that is organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use.

**Non-Commercial Scientific Institution** – An institution that is not operated on a commercial basis but operated solely for conducting scientific research, the results of which are not intended to promote any particular product or industry.

**No Records Response** – A FOIA request for which no responsive records were located.

**Partial Grant/Partial Denial** – An agency decision to disclose records or portions of records while withholding other records or portions of records that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

**Pending Request or Administrative Appeal** – A request or administrative appeal for which an agency has not taken final action in all respects.

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**Perfected Request** – A request for records that clearly describes the records sought and the procedures that will be followed to develop a response.

**Processed Request or Processed Administrative Appeal** – A request or administrative appeal for which an agency has taken final action in all respects.

**Records** – Information in an agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, "records" includes *all* tangible documentations of information regardless of whether they are records under 44 U.S.C. § 3301. (NOTE: This is a broader definition than that used by the EPA records program and records schedules.)

**Redact** – The act of removing exempt information from responsive documents either manually or utilizing redaction software.

**Referral** – When an agency locates a record that originated with, or is of otherwise primary interest to another agency, it will forward that record to the other agency to process the record and to provide the final determination directly to the requester. This process is called a "referral." (See also "consultation.")

**Requester** – Any individual (including non-U.S. citizens), corporation or association, public interest group, and state, local, tribal, or foreign government making a FOIA request. Requests from federal agencies, the Government Accountability Office, or Congress (e.g., the Speaker of the House, the President of the Senate, or the chair of a committee or subcommittee) are not processed under these procedures.

**Responsive Record** – A record falling within the scope of a FOIA request that an agency has located that may be provided or is under consideration for inclusion in a response to a FOIA request. A record may be "responsive" to a FOIA request, but may still be withheld as protected from disclosure by a FOIA exemption.

**Unusual Circumstances** – When there is: (1) a need to search and collect documents from organizations separate from the organization processing the request; (2) a need to search and collect a large volume of records; or (3) a need to consult with another agency (or a separate subdivision of the same agency) having a substantial subject-matter interest in the request.

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## 10. WAIVERS

No waivers will be accepted from the requirements of this procedure.

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## 11. RELATED PROCEDURES, STANDARDS AND GUIDANCE

Not applicable.

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## 12. MATERIAL SUPERSEDED

Interim Procedures for Responding to Freedom of Information Act (FOIA) Requests (CIO 2157-P-01-0/Transmittal 13-010 dated September 30, 2013)

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## 13. ADDITIONAL INFORMATION

This document is not intended to create any rights or privileges for the public, or obligations on the part of EPA.



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***Renee P. Wynn***  
***Acting Assistant Administrator for Environmental Information  
and Chief Information Officer  
U.S. Environmental Protection Agency***

## **Tab 2**





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 15 2019

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

**SUBJECT:** Freedom of Information Act (FOIA) Policy and Procedures Update

**FROM:** Matthew Z. Leopold  
General Counsel

A handwritten signature in blue ink, appearing to read "MZL", is written over the name "Matthew Z. Leopold".

**TO:** Assistant Administrators  
Associate Administrators  
Deputy Assistant Administrators  
Deputy Associate Administrators  
Regional Administrators  
Deputy Regional Administrators  
Regional Counsels  
Deputy Regional Counsels  
FOIA Officers  
FOIA Coordinators  
OGC NFO

In 2018, the Environmental Protection Agency (EPA or Agency) reorganized the Agency's offices that implement the FOIA by redelegating the Chief FOIA Officer functions to the General Counsel and by moving the National FOIA Program staff from the former Office of Environmental Information (OEI) to a new National FOIA Office (NFO) in the Office of General Counsel (OGC).<sup>1</sup> This Memorandum reaffirms, on an interim basis, the attached EPA FOIA Policy and Procedures, which the Chief FOIA Officer issued when that function was in OEI.<sup>2</sup>

Each Organization shall ensure their implementation of the FOIA and their FOIA procedures comply with the attached Agency FOIA Policy and Procedures and this Memorandum. Going forward, the following terms used in the Agency FOIA Policy and Procedures have the following meanings.

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<sup>1</sup> OEI merged with the Office of Administration and Resources Management to form the Office of Mission Support.

<sup>2</sup> U.S. Env'tl. Prot. Agency, Freedom of Information Act Policy, CIO 2157.1 (Sept. 30, 2014); U.S. Env'tl. Prot. Agency, Freedom of Information Act Procedure, CIO 2157-P-01.1 (Sept. 30, 2014).

- The Chief FOIA Officer is the General Counsel.
- The National FOIA Program means the National FOIA Office in the Office of General Counsel.
- The Office of General Counsel replaces the Office of Environmental Information.
- The FOIA Public Liaison is the Director of the National FOIA Office, and the FOIA Requester Service Center is located in the National FOIA Office.

EPA will interpret the FOIA Policy and Procedures consistent with FOIA. OGC has issued guidance on the FOIA Improvement Act of 2016, a copy of which is attached. Additionally, NFO is developing changes to the Agency's FOIA regulations. After EPA's updated FOIA regulations take effect, I direct NFO to fully review and revise the attached FOIA Policy and Procedures. In February 2018, EPA released its Reform Plan in response to Executive Order 13781, *Comprehensive Plan for Reorganizing the Executive Branch*. EPA's Reform Plan includes greater consistency in EPA's regional organizational structure to increase visibility into regional FOIA operations. NFO's full revisions of the FOIA Policy and Procedures will reflect the reorganization of regional FOIA offices into the Offices of Regional Counsel.

This Memorandum is effective immediately.

Attachment

# **Exhibit B**

# **Tab 1**

ENVIRONMENTAL PROTECTION AGENCY  
REGION I - BOSTON

CLASS. NO. 1200  
DELEGATION NO. 1-30

DELEGATION OF AUTHORITY

DATE: 11/10/82

GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS

1-30. Freedom of Information

1. PURPOSE AND LEGAL AUTHORITY.

A. Purpose. To redelegate the authorities contained in Delegation 1-14-A issued by EPA Headquarters on August 23, 1978.

B. Authority.

(1) To make initial positive and negative determinations relative to the release of information;

(2) waive payment of fees;

(3) and extend the date for mailing an initial determination pursuant to the Freedom of Information Act, 5 U.S.C. §552 and 40 CFR Part 2.

2. TO WHOM DELEGATED.

A. The authority to make initial positive and negative determinations is delegated to the Region I Division or Office Director responsible for the area to which the requested information relates.

B. If the requested information relates to more than one area, this authority is delegated to the Division or Office Director taking the lead for the request.

3. REDELEGATION AUTHORITY.

A. Further redelegation of the authority to make initial negative determinations is not authorized.

B. The authority to make initial positive determination may be redelegated by the appropriate Division or Office Director to a subordinate at the GS-6 or higher level.

4. LIMITATION.

A. Initial positive and negative determinations relating in any way to the following matters must receive concurrence from the Office of Regional Counsel.

(1) Civil or criminal enforcement matters, whether pending, closed, or potential.

(2) Requests involving litigation or potential litigation, whether or not the Agency is a party.

ENVIRONMENTAL PROTECTION AGENCY  
REGION I - BOSTON

CLASS. NO. 1200  
DELEGATION NO. 1-30

DELEGATION OF AUTHORITY

DATE: 11/10/82

GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS

1-30. Freedom of Information (cont'd)

(3) Requests which will be denied or partially denied.

(4) Requests in which the requesting party is an attorney.

(5) Any other request which, in the Division or Office Director's judgment, require a legal determination, except for specific cases in which a determination has been made by Headquarters or the Office of Regional Counsel that the information requested is public information.

\s\

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Lester A. Sutton, P.E.  
Regional Administrator

## **Tab 2**



**E**nvironmental

**P**rotection

**A**gency

# ORDER

R-1200

**Region 2**

April 11, 2003

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## Delegation of Authority

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### 1-30. Freedom of Information

1. PURPOSE: This order redelegates certain authorities conferred on the Regional Administrator by Delegation 1-30 of the EPA Delegations Manual.
2. AUTHORITY: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, and 40 CFR Part 2, the authority to:
  - a. make initial positive determinations relative to the release of information;
  - b. make initial negative determinations relative to the release of information;
  - c. waive payment of fees in whole or in part; and
  - d. extend the date for mailing an initial determination.
3. TO WHOM REDELEGATED: The authorities specified in 2.a. and 2.b are redelegated to Division Directors regionwide. The authorities specified in 2.c. and 2.d. are redelegated to the Director of the Public Affairs Division.
4. LIMITATIONS:
  - a. Division Directors must obtain the concurrence of the Regional Counsel, Deputy Regional Counsel, or designee before exercising the authority under 2.b. to issue denials of requests for existing, located records.
  - b. Individuals exercising the authorities specified in 2.a., 2.c., and 2.d. should feel free to consult an attorney in the Office of Regional Counsel but are not required to do so. The General Law Team of ORC's Water and General Law Branch is available to provide guidance regarding the provisions of the Freedom of Information Act.
5. FURTHER REDELEGATION:
  - a. The authority specified in 2.b. to issue initial denials of requests for existing, located records may not be further redelegated.
  - b. The authority specified in 2.a. is hereby redelegated to Deputy Division Directors, Branch Chiefs, matrix managers, and senior policy advisors regionwide, and, through intervening supervisory levels as applicable, to Section Chiefs and Team Leaders regionwide. In addition,

# ORDER

R-1200

Divison Directors may further redelegate this authority to specific individuals at or above the staff level. Such re delegation must be in writing and may include whatever additional limitations are deemed appropriate; copies of the re delegation memo should be submitted to the Regional Directives Officer and the Regional Freedom of Information Officer.

c. The authorities specified in 2.c. and 2.d. are hereby further redelegated through the Chief of PAD's Public Outreach Branch to the Regional FOI Officer.

6. ADDITIONAL REFERENCES:

- a. 40 CFR Part 2, Subpart A.
- b. EPA Freedom of Information Manual (1550 dated 05/04/92).

/s/

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Jane M. Kenny  
Regional Administrator

# **Tab 3**

DELEGATIONS MANUAL

1200 TN RIII 207

**1-30. Freedom of Information (1200 TN 543 1-30)**

1. **AUTHORITY.** The following determinations will be made in accordance with the Freedom of Information Act, 5 U.S.C. § 552 and 40 CFR Part 2.
  - a. To make initial positive determinations relative to the release of information;
  - b. To make initial negative determinations relative to the release of information;
  - c. To extend the date for transmitting an initial determination to the requestor.
2. **TO WHOM DELEGATED.**
  - a. The authority in 1.a. above shall be delegated to staff level personnel with concurrence from their first line supervisor, division director, and the Region III Freedom of Information Act Officer.
  - b. The authority in 1.b. above shall be delegated to division directors with concurrence from the Regional Counsel or his/her delegate.
  - c. The authority in 1.c. above shall be delegated to the Region III Freedom of Information Act Officer.
3. **LIMITATIONS.** Region III's Freedom of Information Act Procedures must be consulted to determine who will make the above determinations when a Freedom of Information Act request has been assigned to multiple Divisions/Offices for response.
4. **REDELEGATION AUTHORITY.**
  - a. These authorities may not be redelegated further without formal amendment.
  - b. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.
5. **SUPERSESSSION.** Delegations Manual, Regional Delegation 1-30. Freedom of Information, 1200 TN RIII 202 (January 23, 2018).

Date: APR 15 2019

  
Cosmo Servidio  
Regional Administrator

## **Tab 4**

**1-30. Freedom of Information**

**1. AUTHORITY**

To make the following determinations in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and 40 C.F.R. Part 2.

- a. to make initial positive determinations relative to the release of information;
- b. to make initial negative determinations relative to the release of information;
- c. to make initial determinations that no records exist;
- d. to waive payment of fees in whole or in part; and
- e. to extend the date for making an initial determination.

**2. TO WHOM DELEGATED**

- a. The authority in 1.a. above (Release) is delegated to the Chief of the FOIA, Privacy and Litigation Support Office, Office of Regional Counsel (ORC). Concurrence from the Chief of the Office of General Law, Criminal Law and Cross-Office Support, ORC, or his/her designee, will be necessary if material relates to personnel or labor matters, or litigation or potential litigation.
- b. The authority in 1.b. above (Denial) is delegated to the Regional Counsel and the Deputy Regional Administrator.
- c. The authority in 1.c. above to issue a determination that requested records do not exist or cannot be located is delegated the Chief of the FOIA, Privacy and Litigation Support Office (ORC).
- d. The authority in 1.d. above to waive payment of fees rests with the National Freedom of Information Act Officer, Office of General Counsel
- e. The authority in 1.e. above is delegated to the Chief of the FOIA, Privacy and Litigation Support Office (ORC).

**3. LIMITATIONS**

- a. The authority to issue initial denials of FOIA requests, concerning the release of information, cannot be redelegated lower than the Regional Counsel. The following positions shall have sole authority to issue an initial denial: Regional Administrator, Deputy Regional Administrator and Regional Counsel.

**Delegation of Authority from the  
Regional Administrator**

TN (4 -24 -19)  
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CHAP 1

- b. Individuals exercising the authorities specified in 2.a., 2.c., and 2.e. should consult an attorney in the Office of Regional Counsel (ORC), as needed, but are not required to do so. The ORC Information Law Team is available to provide guidance regarding the provisions of the FOIA.
- c. If any records are proposed to be withheld, or if the request relates to enforcement or personnel sensitive records, the draft FOIA response must be reviewed by the assigned ORC attorney and the final reply must be concurred on by relevant legal Office Chief in ORC.

#### 4. REDELEGATION AUTHORITY

This authority may not be redelegated.

#### 5. RETENTION OF AUTHORITY

An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

#### 6. REFERENCES

- a. The authorities in this delegation may not be redelegated to a lower level pursuant to the Headquarters' delegation. *See* EPA Delegation 1-30 (November 1, 1983); 1200 TN 91; Administrative Update (December 15, 2016).
- b. 40 C.F.R. Part 2, Subpart A.
- c. EPA Freedom of Information Manual (1550 dated 05/04/92).

Delegation of Authority from the  
Regional Administrator

TN (4 -24 -19)  
129

CHAP 1

## **Tab 5**



## CHAPTER 1

## GENERAL, ADMINISTRATIVE AND MISCELLANEOUS

## REGION 5 MANUAL

## DELEGATIONS

1-30. Freedom of Information

1. **AUTHORITY.** To make initial positive and negative determinations relative to the release of information, waive payment of fees, and extend the date for mailing an initial determination pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA) and EPA Delegation 1-30 from Headquarters.

2. **TO WHOM DELEGATED.** Division and Office Directors, Branch Chiefs, and Section Chiefs, except that the authority to issue initial denials of requests for existing, located records may not be delegated below Division Director or equivalent.

3. **LIMITATIONS.** Initial determination not to release information requires concurrence by the Regional Counsel, Deputy Regional Counsel, or a Branch Chief in the Office of Regional Counsel. Determinations to release information also require concurrence by the Office of Regional Counsel where the information sought is material to an active enforcement case or other matter in administrative or judicial litigation.

4. **REDELEGATION AUTHORITY.** Division and Office Directors have the authority to redelegate all authorities except the authority to issue initial denials of requests for existing, located records; provided that redelegation below the Section Chief level may be made only to EPA employees who have completed the FOIA training offered by the Regional FOIA Officer.

5. **REFERENCES.** EPA Delegations 1-30 and 1-31.

NOTE: Previous Region 5 numbers - 1-1, 1-2, 1-14, 1-14A, 1-14B.

## **Tab 6**

[Return to List of Delegations](#)

REGION 6  
DELEGATION

TN-246  
January 14, 1997

GENERAL, ADMINISTRATIVE AND MISCELLANEOUS

R6-1-30 Freedom of Information

1. AUTHORITY. To make initial positive and negative determinations relative to the release of information, waive payment of fees, and to extend the date for mailing an initial determination pursuant to the Freedom of Information Act, 5U.S.C. 552 and 40CFR Part 2.
2. TO WHOM DELEGATED.
  - a. The Assistant Regional Administrator for Management, who has the overall responsibility for the Regional Freedom of Information Program.
  - b. Supervisors, as appropriate, may only make positive determinations to release information and extend due dates.
3. LIMITATIONS. The authority to make negative determinations relative to the release of information and to waive payment of fees is limited to the Assistant Regional Administrator for Management.
4. REDELEGATION AUTHORITY. With the concurrence of the Assistant Regional Administrator for Management, the authority to release information and extend due dates may be redelegated.
5. SUPERSESSSION. This delegation supersedes R6-1-30, TN-69 dated December 1, 1986.

Delegation of Authority from the  
Regional Administrator

# **Tab 7**



# **REDELEGATION OF AUTHORITY**

## **U.S. EPA Region 7**

**Regional Delegations Manual  
R7-1-30**

**Issued: TN 18, 1/26/1986  
Revised: TN R7-133, 4/29/2019**

### **CHAPTER 1**

#### **GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS**

##### **Freedom of Information**

#### **1. AUTHORITY.**

- a. To make initial positive and negative determinations relative to the release of information, waive payment of fees, and extend the date for mailing a determination pursuant to the Freedom of Information Act, 5 U.S.C. § 552 and 40 C.F.R. Part 2, Subpart A.
- b. To issue denials of Freedom of Information Requests for existing, located records pursuant to the freedom of Information Act, 5 U.S.C. § 552 and 40 C.F.R. Part 2, Subpart A.

#### **2. TO WHOM REDELEGATED.**

- a. The authority in paragraph 1.a. is redelegated to the Freedom of Information Officer.
- b. The authority in paragraph 1.b. is redelegated to the regional counsel.

#### **3. LIMITATIONS. None.**

#### **4. REDELEGATION AUTHORITY.**

- a. These authorities may not be redelegated.
- b. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

#### **5. ADDITIONAL REFERENCES. None.**

# **Tab 8**


DELEGATIONS MANUAL

R8.1200

GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS

1-30. Freedom of Information

1. **AUTHORITY.** Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and EPA regulations at 40 C.F.R. Part 2, the authority:
  - a. To make initial positive and negative determinations relative to the release of information; and
  - b. To extend the date for mailing an initial determination.
2. **TO WHOM DELEGATED.** All division directors or equivalent, including the associate deputy regional administrator and the regional counsel. The authority to extend the date for mailing an initial determination also is redelegated through the regional counsel to the Region 8 FOIA officer.
3. **LIMITATIONS.** Initial determinations not to release information require concurrence by an attorney in the Office of Regional Counsel.
4. **REDELEGATION AUTHORITY.**
  - a. The authority to make initial positive and negative determinations may not be redelegated further.
  - b. The authority to extend the date for mailing an initial determination may not be redelegated below the FOIA officer.
  - c. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.
5. **ADDITIONAL REFERENCES.**
  - a. 5 U.S.C. § 552.
  - b. 40 C.F.R. Part 2.
  - c. EPA Information Directive Procedure CIO 2157-P-01.1, Procedures for Responding to Freedom of Information Act Requests.

  
\_\_\_\_\_  
Debra H. Thomas  
Acting Regional Administrator

APR 30 2019  
\_\_\_\_\_  
Date

## **Tab 9**



**EPA Region 9**

**DELEGATION OF AUTHORITY**

R9-1200 TN 2019-01

05/01/2019

**R9 1-30. Freedom of Information Act**

1. **AUTHORITY**

To make initial positive and negative determinations relative to the release of information, and extend the date for mailing an initial determination, pursuant to the Freedom of Information Act, 5 U.S.C. 552 and 40 CFR Part 2.

2. **TO WHOM REDELEGATED**

a. The authority to issue initial full releases and full or partial denials of requests for existing, located records is delegated to the deputy regional administrator and division directors.

b. The authority to issue a determination that requested records do not exist or cannot be located is delegated to the deputy regional administrator and division directors.

c. The authority to extend the date for mailing an initial determination is delegated to the deputy regional administrator, division directors, deputy directors, branch managers or equivalent, section managers, and staff.

3. **LIMITATIONS**

a. The authority to waive payment of fees rests with the National Freedom of Information Act Officer, Office of General Counsel.

b. For multi-division FOIAs, the director for the division designated as the Action Office or Lead Office/Division signs the FOIA response letter.

c. If any records are withheld, the Action Office or Lead Office/Division must coordinate the FOIA response with the Office of Regional Counsel. The draft FOIA response must be reviewed by the responsible ORC attorney before it is finalized.

4. **REDELEGATION AUTHORITY**

a. These authorities may not be further redelegated.

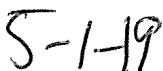
b. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

5. **ADDITIONAL REFERENCES**

a. 40 C.F.R. Part 2.

b. EPA Freedom of Information Act Policy CIO 2157.1 and Procedures CIO 2157-P-01.1 (September 30, 2014)

  
MICHAEL STOKER  
Regional Administrator

  
Date

# **Tab 10**

R10 1-30

**DELEGATION OF AUTHORITY  
GENERAL, ADMINISTRATIVE, MISCELLANEOUS**

**FREEDOM OF INFORMATION ACT**

1. AUTHORITY: To make initial positive and negative determinations relative to the release of information, waive payment of fees, and extend the date for mailing an initial determination pursuant to the Freedom of Information Act, 5 U.S.C. 552 and 40 C.F.R. Part 2.
2. TO WHOM DELEGATED:
  - a. The authority to make initial positive and negative determinations (denials) relative to the release of information is delegated to all Office Directors, including the Regional Counsel. All partial and full negative determinations (denials) must receive the concurrence of the Office of Regional Counsel prior to making the negative determination.
  - b. The authority to make initial positive determinations relative to the release of information is delegated through the Office Directors and the Regional Counsel to the Unit Managers.
  - c. The authority to waive payment of fees, and to determine the appropriate fee category is delegated to the Freedom of Information (FOI) Officer. The determination of fee waivers and fee categories is to be made by the FOI Officer in coordination with the Office of Regional Counsel and the relevant program offices.
  - d. The authority to extend the date for mailing an initial determination is delegated to the FOI Officer. Extension of this time limit requires an interim response to the requester noting the reason for the extension and the estimated date of final response.
3. LIMITATIONS: The foregoing authorities may not be redelegated.
4. SUPERSESSSION: This delegation supersedes R10 1235.1 (9/29/95), R10 1235.2 (9/29/95) and any prior delegation of this same authority.
5. REFERENCES: Delegation 1-30 (11/1/83).

May 27, 2004  
Date

/s/ L. John Iani  
L. John Iani  
Regional Administration

# **Exhibit C**

# 1200 Delegations Manual – Introduction

**Approved: 02/10/2017**

## A. PURPOSE.

This document sets forth the U.S. Environmental Protection Agency policy and procedures governing the EPA's delegations of authority.

Delegations of authority represent the formal assignment or commitment of legal power, usually to subordinate officials, to make decisions and take actions that have legal significance.

Delegations provide basic direction from the Administrator to agency officials to carry out these responsibilities on the Administrator's behalf. Some delegations may be further redelegated to subordinate officials. In order for agency management, employees and representatives to act on behalf of the Administrator, the authority granted by the Congress or the Executive branch must be delegated by the Administrator.

These delegations are recorded in the agency's manual, 1200 Delegations Manual. This manual is a record of the authority of an agency official to act on behalf of the Administrator. This manual is both a legal and management document. First, it is a legal record documenting which agency officials have authority to act on behalf of the Administrator. Second, it is a record of the operating conditions among the agency's organizations and individuals as they carry out delegated authorities. The manual is maintained by the central directives officer in the Office of Administration and Resources Management, Office of Human Resources, Program Management Staff.

For authorities that are redelegated, each assistant administrator's office, region and applicable laboratory and field locations is required to maintain written redelegations that are readily available to officials in those respective offices. These redelegations require periodic review and update to ensure they are current.

## B. POLICY.

Delegations and redelegations are governed by the following tenets:

1. **General.** The Administrator delegates authority to senior management officials reporting directly to the Administrator, e.g., assistant administrators, regional administrators, associate administrators, the general counsel, staff office directors reporting directly to the Administrator, and the inspector general. If the delegation permits, these officials may sequentially redelegate the authority to subordinate levels within their organizations.
2. **Delegations by title.** Generally, delegations and redelegations should be made to the incumbent of official positions using the title of the position. Authority delegated to a position by title may be exercised by a person designated to serve in such position in either a permanent or acting capacity. A redelegation to named person X in the capacity of position Y will be considered a redelegation to position Y by title.
3. **Redelegations.** Authority may be redelegated only when permitted in the delegation. However, where a delegation of authority is contained in a regulation, the authority may

- be redelegated, unless expressly provided otherwise in the regulation. All limitations in the original delegation must be carried forward into the corresponding redelegation. Redelegations should be made sequentially from one level to the next, e.g. assistant administrator to office director to division director, rather than from the assistant administrator directly to a division director. When the lowest official to whom an enforcement authority can be redelegated is an attorney, the original delegatee can still redelegate the authority to non-legal enforcement managers as appropriate (i.e., a regional administrator may redelegate authorities to both enforcement program and legal managers), but when redelegating to the staff level, the authority can only be redelegated to legal staff. A redelegation does not release the original delegatee or any redelegates from responsibility or accountability.
4. **Retained authority upon delegation or redelegation.** An official who delegates or redelegates an authority, including the Administrator, retains the right to exercise or withdraw the authority that official has delegated or redelegated. Delegated or redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically delegated or redelegated.
  5. **Conformance with limitations.** An official to whom an authority is delegated or redelegated must exercise such authority in conformance with any requirements or limitations that govern its use. Such requirements may be found within the limitations section in the agency delegation of authority or redelegation, as well as within applicable statutes, regulations, executive orders, the Office of Management and Budget guidance, agency directives, policy guidance and national program guidance.
  6. **Delegations made in writing.** Delegations and redelegations must be made in writing and must include a date when the delegation or redelegation becomes effective. A copy of redelegations for a particular region, assistant administrator office or other senior management office should be maintained either electronically or in a central location readily accessible to employees. Offices should consider placing redelegations, to the extent practicable, on their intranet site.
  7. **Code of Federal Regulations as interim delegation.** To the extent that a delegation of authority is contained in a part of the Code of Federal Regulations, it shall serve as an interim delegation until a permanent delegation of authority is made by the Administrator and incorporated into the delegation manual. Programs should make certain that delegations based on sections of the CFR are drafted and incorporated into the delegations manual as soon as practical after a delegation in the CFR is published.
  8. **Geographic limitations.** Generally, unless authorized by a specific delegation, regional administrators and other field officials will exercise delegated authorities only within the geographic boundaries of their respective regions, laboratories, centers, facilities, complexes or other assigned areas.
  9. **Chain of command.** Generally, officials redelegate within their chain of command. However, sometimes redelegation outside the delegatee's direct supervisory chain of command is appropriate. For example, as the National Program Manager for Enforcement, the assistant administrator for the Office of Enforcement and Compliance Assurance may redelegate enforcement authorities to enforcement officials in the regions even if the assistant administrator does not directly supervise those officials. In addition, although regional counsels are supervised directly by either the General Counsel or the Office of Enforcement and Compliance Assurance, they also report to the regional

administrator. Therefore, a regional administrator may redelegate authority to the regional counsel in their region.

10. **Redelegation to, and limitations requiring coordination with, regional counsel.** Some delegations allow redelegation to a regional counsel or equivalent, and/or require the official exercising delegated authority to consult or otherwise coordinate with a regional counsel or equivalent before acting. In some regions, the highest-level legal enforcement manager is not the regional counsel. Thus, in delegations involving enforcement authorities, where the redelegation floor is regional counsel or equivalent, the delegation is interpreted to allow redelegation to the highest-level legal enforcement manager in the region. Similarly, in delegations involving enforcement authorities, any limitations to coordinate with regional counsel or equivalent can be satisfied by coordinating with the highest-level legal enforcement manager in the region.
11. **Amendments to delegations.** If a delegation is amended to add a delegated authority but the original delegated authorities remain unchanged, any redelegations that have been made regarding the unchanged authorities will remain in full force and effect unless specifically rescinded.

### C. CONSIDERATIONS REGARDING PROPOSED DELEGATIONS OF AUTHORITY.

Helpful considerations when developing delegations of authority:

1. **Efficient program implementation.** If an action is recurring, the authority should be delegated from the Administrator to the appropriate senior management official, and ultimately to the lowest organizational level capable of performing the task.
2. **Administrative updates.** Delegations are issued by the Administrator. A revision to an existing delegation that substantially deviates from or adds a responsibility to a previously approved delegation requires new approval through the directives clearance review process. Amended delegations that do not represent new authority and are primarily administrative in nature may be considered for an administrative update implemented by the CDO. Administrative revisions may include but are not limited to program name/organizational transfers/position-function updates from an agency-approved reorganization and certain clarification on procedural guidance or legislatively changed programmatic features within the existing approved authority. All proposed delegation revisions are reviewed for potential administrative updates and final decisions are coordinated with legal counsel.
3. **Geographic scope.** If the responsibilities principally affect regional or field operations, the authority should be delegated to the regional administrator(s) or senior official of the field office. Generally, if the actions are multi-regional or national in significance, the authorities are retained by the Administrator or delegated to senior officials at headquarters. The Administrator may choose; however, to delegate authority to one regional administrator to exercise on behalf of all regions due to the delegated region's expertise or to further efficiencies when an action involves more than one region.
4. **Policy content.** If action under the authority is likely to set legal or programmatic precedents, it should remain with the Administrator or assistant administrator(s). For example, actions such as rulemaking and standard setting which set long-term commitments for the agency and which often affect more than one program are generally reserved to the Administrator.

5. **Links to other program or agency actions.** When authorities are delegated to both headquarters and regional officials or to more than one headquarters office, the delegation should indicate as clearly as possible the circumstances under which each delegatee should exercise the authority.
6. **Additional questions to consider:**
  - a. What type of action(s) will the delegatee perform to exercise the proposed authority? If the delegation involves the signature of a letter, notice, order, permit or award document, is this the final step in the process? Is the authority permanent and likely to be recurring or will the authority change in the foreseeable future? Does the authority to approve an action also mean that the delegatee will disapprove actions? Unless otherwise specified, the presumption is that the authority to approve an action also confers the authority to disapprove the action.
  - b. Are limitations to the delegation of authority necessary to assure coordination, legal sufficiency and/or program consistency? If they are necessary, notification and/or consultation, rather than advance concurrence are the preferred types of limitations. Types of limitations are discussed further in the limitations section.
  - c. Should redelegation be authorized? If so, why, and to which level, either in headquarters or the regional offices? Unless specifically stated otherwise, the original delegates generally should redelegate only within their respective chains of command. All delegations should specify the lowest level an authority may be redelegated (the redelegation floor).

#### **D. PROCEDURES.**

Guidelines for when and how a directives clearance review is conducted.

1. Before a proposed delegation of authority is submitted to the Administrator, it is subject to agency directives clearance review. A copy of the proposed delegation is circulated to all agency offices and regions to review and offer comments. The initiating office is responsible for addressing any comments received and resolving the comments or amending the proposed delegation of authority as appropriate. The CDO is responsible for managing the review process and maintaining a record of all approved delegations of authority.
2. In addition to the administrative amendments discussed above, there are two additional potential exceptions to the requirement of agencywide directives clearance review. First, delegations that repeat without amendment authority expressly specified in applicable statutes, regulations, executive orders or policy guidance do not require agencywide clearance review. Second, proposed delegations that have a limited scope of impact and/or do not materially affect operations outside of the initiating program may also receive consideration for an exemption from the DCR. Modified reviews which reduce the 15-business day review may also be used to streamline the DCR process in the event of time sensitive authorities and other high priority agency needs.
3. Temporary delegations of authority which usually provide authority for a one-time activity or where the activities do not exceed one year in duration, do not require agencywide directives clearance review. Although not subject to agency review,



temporary delegations of authority must be issued by the Administrator and are included in the Delegations Manual. The Administrator always has discretion to issue delegations of authority without using the DCR process.

4. The agencywide clearance review process for delegations consists of the following steps:
  - a. Prior to proposing a new delegation of authority or a revision to an existing delegation, the initiating office should consult with the CDO and Office of General Counsel/program counsel who will review existing delegations to determine if there is any conflict or overlap with the proposed authority.
  - b. The initiating office drafts a proposed delegation using the format detailed in Part E, and discusses the proposal with the affected offices before it is submitted for DCR. The initiating office must secure the OGC concurrence on the proposed delegation prior to requesting DCR.
  - c. The initiating office prepares a request memorandum from its assistant administrator/regional administrator to the director, OHR PMS, requesting the CDO to begin the review process. The memorandum explains the proposed delegation of authority in terms of the criteria in Section C above.
  - d. The CDO determines which organizations are included in the directives clearance review. Proposed directives are circulated for a maximum of 15 business days. Comments including “no comment,” “advisory comment” or “issue resolution comment” are submitted electronically to the CDO via EPA Form 1315-17 by the review closing date. Programs that do not submit written comments by the closing date are considered to have submitted a “no comment” response.
  - e. Upon receipt of the final revised draft delegation from the initiating office, the CDO finalizes the package for issuance by the Administrator. Edits to the delegation of authority occurring during the review routing must receive program and the OGC’s approval.
  - f. All new and revised delegations must be signed and issued by the Administrator, or Deputy Administrator if he or she is acting for the Administrator unless the Deputy Administrator is prohibited by statute from issuing a delegation on behalf of the Administrator.

## **E. FORMATTING DELEGATIONS OF AUTHORITY AND REDELEGATIONS.**

To promote consistency throughout the agency, all delegations of authority are issued in writing and published on the directives website. Delegations should adhere to the Five Point format:

- a. **Section 1. AUTHORITY.** This section describes the specific authority being delegated, including a citation to the relevant statute, regulation or executive order as appropriate. Any statutory or regulatory citations refer to the most recent versions of those statutes and regulations; these citations should be updated when changes occur to the statute or regulation. Citations to recurring authority should be written in a manner that does not expire with periodic versions of the regulation, e.g., yearly appropriation legislation. Citations to statutes implicitly include any implementing regulations.
- b. **Section 2. TO WHOM DELEGATED.** This section identifies, by title, the senior agency official(s) to whom the Administrator delegates the authority.
- c. **Section 3. LIMITATIONS.** This section delineates any conditions or restrictions placed on the exercise of the authority. If the authority does not contain limitations, this section

should indicate that there are none. Most often, limitations establish operating procedures between organizations which share the delegated authority or which are responsible for separate parts of a process. As noted in section B.5., any limitations placed on an original delegatee apply to an official to whom the authority is redelegated. The following are terms frequently used in the limitations paragraph. Other limitations may be used if the parameters of the limitations are defined in the delegation of authority:

- i. "Must notify": The delegatee must inform the other official(s) named. Notification may take place before or after the authority is exercised, but the limitation should specify when the notification should occur.
- ii. "Must consult with": The delegatee must discuss the action with the other named official(s) on the proposed action prior to exercising the authority.
- iii. "Must obtain advance concurrence": Except where specified otherwise, the delegatee must obtain the written agreement of the other official(s) named before exercising the authority.
- iv. "May be waived": The official(s) who must concur, be notified, or be consulted by the delegatee may waive the limitation. The delegatee should maintain a written record of the waiver of any limitation.
- v. Dollar limitations may also be used in conjunction with limitations; e.g., for expenditures over a certain dollar amount, the delegatee must consult with another office.

The other official named in any limitation (e.g., the other official receiving notice) may designate another person within his or her organization to act on his or her behalf.

- d. **Section 4. REDELEGATION AUTHORITY.** This section indicates whether the authority may be redelegated to a lower level within the delegatee's organization.
  - i. If the authority may be redelegated, this section must identify the lowest official within the delegatee's organization to whom the authority may be redelegated (redelegation floor).<sup>1</sup>
  - ii. All delegations to the assistant administrator level at headquarters should authorize redelegation at least to the principal deputy assistant administrator level unless prohibited by law.
  - iii. For delegations other than those to assistant administrators, if the authority cannot be redelegated, this section must state so explicitly by indicating that there are none.

EPA's regional offices are not required to have the same organizational structures or to use particular job titles. Therefore, some officials may encumber an "equivalent" position that is described in some other manner. For purposes of regional enforcement delegations, the following chart may be helpful in determining "equivalent" positions in a region.

<b>Title Specified National Delegation</b>	<b>Equivalent Regional Position</b>
Office director	First supervisory level down from regional administrator
Division director	Second supervisory level down from RA
Branch chief	Third supervisory level down from RA
Section chief	Fourth supervisory level down from RA

- iv. All delegations or redelegations must contain the following language in the redelegations section: *An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.*
- e. Section **5. ADDITIONAL REFERENCES**. Information in this section is optional, but it can be very helpful to include references. If used, it may contain citations that support or clarify the delegated authority; i.e., any relevant regulations, statutes, or guidance. This paragraph has no legal effect on delegated authorities. If the authority does not contain references, this section should indicate that there are none.

#### **F. PERIODIC REVIEW.**

The OHR and the OGC will periodically review the 1200 Delegations Manual to ensure its continued effectiveness. The CDO will secure input and circulate updated information to the agency via the directives clearance file managers' system.

# **Exhibit D**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 22 2019

THE ADMINISTRATOR

The Honorable Lisa Murkowski  
Chairman  
Subcommittee on Interior, Environment  
and Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

The Honorable Tom Udall  
Ranking Member  
Subcommittee on Interior, Environment  
and Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

Dear Chairman Murkowski and Ranking Member Udall:

I am writing in response to the Committee Report 116-123 the Subcommittee on the Interior, Environment, and Related Agencies issued on September 26, 2019, which requests the U.S. Environmental Protection Agency to provide quarterly briefings on its compliance with the requirements of the Freedom of Information Act (FOIA). It appears the drafters of this report language may be unaware of the amendments to the FOIA statute passed by Congress, which prompted the EPA's recent regulatory changes, as well as the regular reporting that the EPA already does on FOIA.

On June 26, 2019, the EPA published in the *Federal Register* the Agency's "Freedom of Information Act Regulations Update," 84 Fed. Reg. 30028. The Agency updated its FOIA regulations to bring the EPA into compliance with current FOIA statutory requirements at the direction of Congress. The EPA had no discretion for the changes mandated by the amendments to FOIA in 2007, 2009, and 2016 passed by Congress. Congress specifically mandated that we update our regulations to come into compliance with the statutory changes. Most agencies and departments met this obligation by 2016—for whatever reason the Obama Administration EPA did not. The Agency's regulations now finally comply with amendments that go back more than a decade.

In 2018, the U.S. Government Accountability Office issued a report urging agencies to update their FOIA regulations to bring them into compliance with a series of FOIA amendments enacted over the last several years. The Agency's updated regulations are now in compliance with these amendments. Despite inaccurate claims by the media and others that the updated regulations increase the ability of political appointees to claim that portions of a document are not responsive to a FOIA request or are exempt from disclosure, political appointees have no additional or

expanded authority under the updated regulations. The updated regulations do not and cannot change the statute Congress passed, nor do they expand the EPA's authority to determine responsive records. The EPA's updated regulation does not authorize the Agency to withhold a portion of a record as not responsive in violation of the statute or applicable case law.

The only discretionary change, not mandated by Congressional amendments, in the updated regulations was adopted consistent with the recommendations from the FOIA Federal Advisory Committee—an advisory committee convened by the National Archives, independent of any EPA authority, which develops consensus recommendations for improving FOIA administration and proactive disclosures. In 2018, the FOIA Federal Advisory Committee recommended that federal departments and agencies “centralize FOIA processing where appropriate.” Therefore, at the specific direction of the FOIA Federal Advisory Committee, the Agency's recent updates provided for the centralization of the submission and receipt of all requests. The EPA is not centralizing the processing and response to all requests, merely the submission and receipt of all requests—the decision-making authority for FOIA responses remains with the offices that are document custodians. Regional and program offices will still conduct search, collection, review, and record releases once the National FOIA Office has assigned a request to a Region or program office.

When the Agency's career FOIA attorneys provided Congress with bipartisan briefings on the updated regulations, the only significant concern mentioned was the potential for confusion during the centralization transition. In response to those concerns, the Agency voluntarily instituted a glidepath towards implementing centralized intake by instructing Regions that receive improperly submitted mailed or emailed requests directly from requesters to continue accepting those requests until August 23, 2019. For requests improperly submitted after August 23, 2019, the Agency also instructed Regions to inform requesters of the proper methods for submitting FOIA requests under the updated FOIA regulation.

The EPA strongly believes that the actions the Agency took to update the regulations were a direct response to comply with current FOIA statutory requirements and improve the Agency's FOIA response at the direction of Congress and independent consensus recommendations. The concerns detailed in the Committee Report are misplaced and create an additional burden on the Agency's career staff that have already devoted extensive effort to improve a broken and backlogged FOIA process that this Administration inherited.

The EPA's annual and quarterly reports to the Department of Justice include information on the number of times Agency officials issue final determinations under FOIA statutory requirements and the EPA's FOIA regulations during the period covered by those reports, and the annual report includes information on the specific statutory exemptions under which records, or portions thereof are withheld. The EPA already posts this information publicly on its website (<https://www.epa.gov/foia/quarterly>).

If the Committee has questions regarding specific changes to the Agency's FOIA regulations or program beyond the information that is already public, the Agency is willing to work with your staff on how best to accommodate the Committee's interests. If you have further questions, you may contact me, or your staff may contact Travis Voyles in the EPA's Office of Congressional and Intergovernmental Relations at [Voyles.Travis@epa.gov](mailto:Voyles.Travis@epa.gov) or (202) 564-6399.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Wheeler", with a long horizontal flourish extending to the right.

Andrew R. Wheeler

# **Exhibit E**



## **1-30. Freedom of Information**

**1200 TN 91**

**11/01/83**

**Administrative Update 11/08/2019**

1. **AUTHORITY.** To make Freedom of Information Act determinations relative to the release of information, and extend the date for mailing a final determination pursuant to the Freedom of Information Act, 5 U.S.C. 552 and 40 CFR Part 2, Subpart A.
2. **TO WHOM DELEGATED.**
  - a. Deputy Administrators;
  - b. Assistant Administrators;
  - c. Deputy Assistant Administrators;
  - d. Associate Administrators;
  - e. Heads of Staff Offices to the Administrator
  - f. Regional Administrators;
  - g. Deputy Regional Administrators;
  - h. General Counsel;
  - i. Deputy General Counsels;
  - j. Regional Counsels;
  - k. Deputy Regional Counsels; and
  - l. Inspector General.
3. **LIMITATIONS.** None
4. **REDELEGATION AUTHORITY.**
  - a. This authority may be redelegated except that the authority to issue final determinations relating to existing, located records may not be redelegated below headquarters division director or the second supervisory level down from Regional Administrator.
  - b. Retained authority upon delegation or redelegation. An official who delegates or redelegates an authority, including the Administrator, retains the right to exercise or withdraw the authority that official has delegated or redelegated. Delegated or redelegated authority may be exercised by any official in the chain of command to the official to whom it has been specifically delegated or redelegated.
5. **REFERENCES.** None.