

U.S. Department of Energy  
Washington, D.C.

ORDER

DOE 1700.1

11-19-79

SUBJECT: FREEDOM OF INFORMATION PROGRAM

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1. PURPOSE. The purpose of this Order is to establish guidelines and procedures for the processing of requests made to the Department of Energy (DOE) under the Freedom of Information Act (FOIA). These procedures do not apply to the Federal Energy Regulatory Commission.
  2. POLICIES.
    - a. It is the policy of the Department to make information publicly available to the fullest extent possible. Officers and employees of the Department may furnish to the public, informally and without compliance with procedures in this Order, information and records of types which officers and employees of the DOE customarily furnish to the public in the regular performance of their duties.
    - b. Information in the possession of the Department will be made available to the public unless it is exempt from mandatory public disclosure pursuant to one or more of the exemption provisions of the Freedom of Information Act, 5 U.S.C. 552 (Public Law 90-23, as amended) or other applicable statutes.
    - c. To the extent permitted by other laws, the DOE will make available records which it is authorized to withhold under the Freedom of Information Act. However, in light of a recent Supreme Court decision, any discretionary release of materials exempt under the fourth exemption and/or 18 U.S.C. §1905 should be coordinated with the office of General Counsel.
    - d. The policies and procedures stated in this Order shall be interpreted so as to be consistent with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579).
    - e. There is no obligation to compile or create a record solely for the purpose of satisfying a request for records.
  3. CONTRACTOR RECORDS. Where a contract with the DOE stipulated that any documents relating to work under the contract shall be the property of the Government, such records shall be considered to be agency records and subject to disclosure under the FOIA. However, if a contract does not make such specific provisions, no DOE contractor records shall be considered to be an agency record unless and until such time that the DOE acquires possession of the particular contractor documents.
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4. DEFINITIONS.

- a. Appeal Authority. The Office of Hearings and Appeals.
- b. Freedom of Information (FOI) Officer. The person designated to administer the Freedom of Information Act at the DOE locations shown in attachment 1.
- c. General Counsel. The General Counsel provided for in §202(b) of the DOE Organization Act, or any DOE attorney designated by the General Counsel as having responsibility for counseling the Department on Freedom of Information Act matters.
- d. Authorizing or Denying Official.
  - (1) The DOE officer or employee, as identified by the Director of Administration, having custody of or responsibility for records requested under 5 U.S.C. 552.
  - (2) The term refers in DOE Headquarters to officials who report directly to a Secretarial Officer. In the field, the term refers to the heads of the field locations identified in attachment 1 and those major field organizations which have organizational responsibilities through those listed offices. Thus, the following individuals will also be Authorizing or Denying Officials: District Managers and Deputy District Managers of the Office of Enforcement; District Directors of the Office of Special Counsel; and Energy Data Field Office Directors of the Energy Information Administration. Their actions will flow through the appropriate FOI office identified in attachment 1 from which they have organizational responsibilities. Heads of organizations as identified above, may at their discretion, delegate the above authority without power of further redelegation.



Charles W. Duncan, Jr.  
Secretary

U.S. Department of Energy  
Washington, D.C.

PAGE CHANGE

DOE 1700.1 Chg 1

10-8-81

SUBJECT: FREEDOM OF INFORMATION PROGRAM

1. PURPOSE. To transmit revised pages and Chapter V, "Freedom of Information Reading Room Procedures. "

2. EXPLANATION OF CHANGES.

- a. Chapter V establishes guidelines and procedures for providing the public the opportunity and location for inspecting and copying the Department of Energy (DOE) documents that are required to be made available under 5 U.S.C. 552(a)(2) and 10 C.F.R. 1004.3, as published in 44 FR 1908 on 1-8-79.
- b. Miscellaneous revisions reflecting the contents of Chapter V have been made in the basic Order and Chapter I.

3. FILING INSTRUCTIONS.

a. <u>Remove Page</u>	<u>Date</u>	<u>Insert Page</u>	<u>Date</u>
1	11-19-79	1	11-19-79
2	11-19-79	2	10-8-81
i (and ii)	11-19-79	i (and ii)	10-8-81
I-1 thru I-4	11-19-79	I-1 thru I-4	10-8-81
		V-1 thru V-3 (and V-4)	10-8-81
Atch 1, page 1	11-19-79	Atch 1, page 1	10-8-81
Atch 1, page 2	11-19-79	Atch 1, page 2 I	11-19-79

- b. After filing the attached pages, this transmittal may be discarded.



William S. Heffelfinger  
Assistant Secretary  
Management and Administration

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  2. POLICIES.
    - a. It is the policy of the Department to make information publicly available to the fullest extent possible. Officers and employees of the Department may furnish to the public, informally and without compliance with procedures in this Order, information and records of types which officers and employees of the DOE customarily furnish to the public in the regular performance of their duties.
    - b. Information in the possession of the Department will be made available to the public unless it is exempt from mandatory public disclosure " pursuant to one or more of the exemption provisions of the FOIA, 5 U.S.C. 552 (Public Law 90-23, as amended) or other applicable statutes.
    - c. To the extent permitted by other laws, DOE will make available records which it is authorized to withhold under the FOIA. However, in light of a recent Supreme Court decision, any discretionary release of materials exempt under the fourth exemption and/or 18 U.S.C. 1905 should be coordinated with the Office of General Counsel.
    - d. "The policies and procedures stated in this Order shall be interpreted so as to be consistent with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579).
    - e. There is no obligation to compile or create a record solely for the purpose of satisfying a request for records.
  3. CONTRACTOR RECORDS. Where a contract with the DOE stipulated that any documents relating to work under the contract shall be the property of the Government, such records shall be considered to be agency records and subject to disclosure under the FOIA. However, if a contract does not make such specific provisions, no DOE contractor records shall be considered to be agency records unless and until such time that the DOE acquires possession of the particular contractor documents.

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CHAPTER I

RESPONSIBILITIES AND AUTHORITIES

1. DIRECTOR OF ADMINISTRATION. Administers Departmentwide FOI activities.
2. DIRECTOR OF ADMINISTRATIVE SERVICES.
  - a. Develops and administers policies, standards, procedures and Federal regulations to implement the provisions of the FOIA on a Departmentwide basis.
  - b. Operates the FOI Office at Headquarters and designates the Headquarters FOI Officer.
  - c. Ensures the preparation of annual reports to Congress and any other special reports.
  - d. Maintains and operates a public records reading room for Headquarters. Maintains a list of all DOE public reading room facilities.
3. APPROPRIATE GENERAL COUNSEL.
  - a. Concurs in all determinations by Authorizing Officials to deny records and/or fee waivers to a requester.
  - b. Provides legal advice to DOE employees concerning the FOIA.
  - c. Assists the Department of Justice in representing DOE in litigation involving the FOIA.
  - d. Counsel at Headquarters maintains contact with the Department of Justice to remain aware of issues and litigation arising under the Act.
  - e. Concurs on any denial of a request for fee waiver.
4. DIRECTOR OF CLASSIFICATION. Concurs on release and serves as the Denying Official for that portion of a request involving classified records.
5. DIRECTOR OF HEARINGS AND APPEALS.
  - a. Makes determinations on appeals of denials of initial requests.

- b. Obtains concurrence from the Assistant Secretary for Defense Programs before releasing any classified record on appeals.
  - c. Maintains and operates a DOE Appeals Reading Room.
- 6. ASSISTANT SECRETARY FOR DEFENSE PROGRAMS. Concurs in final determinations, as appropriate, concerning the release of all classified records.
- 7. HEADS OF FIELD OFFICES.
  - a. Designate an FOI Officer for his/her respective location identified in attachment 1.
  - b. For locations identified in attachment 1, act as Authorizing Official and maintain a public records reading room.
- 8. FREEDOM OF INFORMATION OFFICERS.
  - a. Receive requests and determine whether they meet the requirements to be considered as a request under the FOIA.
  - b. If a request is determined to be one under the FOIA, log in the requests by date, and process them according to the procedures in chapter II.
  - c. Ascertain which organizations have primary responsibility for custody of or concern with the records requested and identify the appropriate Authorizing Official(s).
  - d. Where a FOI request entails records under the cognizance of more than one Authorizing Official, the FOI Officer shall designate a primary Authorizing Official who will be responsible for coordinating the search for all responsive records.
  - e. If a request will not be completely responded to within 10 days, send an acknowledgment letter to the requester stating the date of receipt, the date the initial response is due, and the Authorizing Official to whom the request has been sent.
  - f. If a request does not meet the requirement that it reasonably describe the records sought, the FOI Officer, in cooperation with the Authorizing Official, may assist the requester in reformulating the request.

CHAPTER 11

ACTION ON INITIAL REQUESTS

1. RECEIPT OF REQUEST.

- a. Submission of a Request. An FOI request need not be in any particular format, but it should meet the following procedural requirements:
  - (1) Addressed to FOI Officer. A request should be addressed to the FOI Officer. Both the envelope and the letter should be clearly marked "FOI Request." Requests are deemed to be received upon actual receipt by the appropriate FOI Office. Requests delivered after regular business hours are deemed to be received on the next regular business day.
  - (2) Request Should be in Writing and For Reasonably Described Records. A request for access to records should be submitted in writing and should reasonably describe the records requested so that DOE personnel can locate them with a reasonable amount of effort. A request for all records falling within a specific category shall be regarded as conforming to the statutory requirement that records be reasonably described if it can be reasonably determined which particular records are sought in the request and the DOE can identify and locate the records sought by a process that is not overly burdensome or disruptive of DOE operations. Where possible, the request should contain specific information regarding dates, titles, file designations, and any other pertinent information.
  - (3) Assurance of Willingness to Pay. If a requester is to be charged for the information, the request shall include an assurance to pay:
    - (a) Whatever fees will be assessed (for requests in excess
    - (b) Those fees not exceeding some specified dollar amount (see page 11-11, paragraph 6 on fees). No request shall be deemed to have been received until the DOE has received either a reasonable deposit or some other assurance of willingness to bear fees anticipated to be associated with the processing of the request.

b. Processing of Request.

- (1) Immediately upon receipt of a request, the FOI Officer will date stamp it and ascertain which Authorizing Official(s) have responsibility for, custody of, or concern with the records requested. The FOI Officer will consult with the Authorizing Official(s) for an assessment of:
  - (a) Whether the request reasonably describes the records sought;
  - (b) Whether fees are to be assessed; and
  - (c) If the amount which the requester agreed to bear will cover the anticipated fees.
- (2) When the request meets the requirements for submission, it will be "deemed to have been received."
  - (a) The FOI Officer shall forward the request to the Authorizing Official(s) for action; and the FOI Officer will acknowledge receipt of the request to the requester stating the date of receipt of the request, the response due date (10 working days from date of receipt), and the name of the primary Authorizing Official to whom the request was directed. A copy of the acknowledgment letter shall be sent to the Authorizing Official.
  - (b) Where a request involves records which are in the custody of, or the concern of, more than one Authorizing Official, the FOI Officer shall identify all Authorizing Officials and forward the request to the primary Authorizing Official who can reasonably be expected to have custody of the majority of the responsive records. However, only the primary Authorizing Official will be identified to the requester. The primary Authorizing Official shall coordinate the search for any responsive records, prepare a DOE response to the request, and shall identify those portions of the reply that relate to other Authorizing Officials.
- (3) If the requirements for submission are not met, the FOI Officer will, with the assistance of the Authorizing Official, prepare a letter addressing the following items as appropriate:

- g. Bill and ensure the collection of fees for costs associated with processing requests for DOE records and notifying the Authorizing Official when fees are received. The billing and collection of fees may be processed in accordance with existing financial procedures at a particular location, but the final responsibility for assuring the collection of fees rests with the FOI Officer.
- h. Maintain the necessary records and indexes to locate requests and to produce input for the annual reports and special Congressional and Office of Management and Budget (OMB) reports.
- i. Develop and maintain a status reporting system to assure that requests and appeals are responded to within the legal time limits or that extensions are requested, as appropriate.
- j. The Headquarters FOI Office prepares the FOI annual report to Congress.
- k. Consults with Authorizing Official on any request where assessment of fee, waiver of fee, or denial of fee waiver is proposed. Concurrence of Authorizing Official and the General Counsel is required for denial of fee waiver.

9. AUTHORIZING OFFICIALS.

- a. Advise the FOI Officer whenever a request does not reasonably describe the records sought. In such a case, provide information to the FOI Office to assist the requester in reformulating the request or directly assists the requester.
- b. Identify and review the records encompassed by requests referred by the FOI Office, and advise the requester within 10 working days, unless otherwise extended, whether the request is to be granted or denied.
- c. Consult with other agencies or other DOE offices before releasing records originated by them and, as appropriate, transfer requests to other agencies.
- d. Estimate costs of responding to FOI requests and, When fees are to be charged, notify the FOI Office. After notification by the FOI Officer that any assessed "fees have been paid, forward material to the requester.
- e. Consult with FOI Officer on all requests where assessment of fee or waiver of fee is proposed. Concur on all denials of requests for fee waiver.

- f. When requested, provide copies of denied records to the Appeal Authority.
- g. Establish effective controls and procedures to preclude the loss of time in routing requests and appeals to those who must act upon them.
- h. Transmit to the FOI Officer a copy of the incoming request and all correspondence with the requester, such as responses to requests, notices of extensions of time, consultation with other agencies, or transfers of requests to other agencies. (This does not include copies of voluminous data which may be sent to the requester as an enclosure or attachment.)
- i. Obtain appropriate General Counsel concurrence *on* any recommendation by an Authorizing Official to deny records to a requester or to deny a request for fee waiver.
- j. When designated by the FOI Officer as "Prime Authorizing Official," that Official will immediately send copies of the request to other appropriate Authorizing Officials and will be responsible for the coordination and preparation of a DOE response.

- (a) **Nonconforming Request.** If a request does not reasonably describe the records sought, the response shall specify the reasons why the request failed to meet the requirements, and shall extend to the requester an opportunity to confer with knowledgeable DOE personnel in an attempt to restate the request, or reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of the records. If a response is given by DOE stating that additional information is needed from the requester to render records reasonably described, any reformulated request submitted by the requester shall be treated as an initial request for purposes of time for DOE response. Efforts shall be made to resolve a nonconforming request by telephone before resorting to formal letter notification. Concurrence of appropriate General Counsel is required on letter notification.
- (b) **Fees.** If the request did not adequately address the issue of fees, DOE's response shall set forth the estimated cost, indicate whether a deposit is required before the request will be processed, and notify the requester that all fees must be paid before the information will be released. If a deposit is required, the Authorizing Official(s) may delay search for and collection of requested documents until such time as the deposit is received.
- (4) Any FOI request received directly by individuals not in the FOI Office shall be forwarded expeditiously to the appropriate FOI Officer for processing.

c. Availability of Information.

- (1) There is no obligation to compile or create a record solely for the purpose of satisfying a request for records. If a requested record is known to have been destroyed or otherwise disposed of, or if no such record is known to exist, the requester shall be appropriately notified.
- (2) There is no obligation to honor a request for records not yet in existence, even where such documents may be expected to come into existence at a later time. The requester may be notified when the document may be available.

d. Actions of Authorizing Officials.

- (1) Any Authorizing Official shall promptly identify and review the records, within his/her custody or concern, encompassed by the request (or where the requested material consists of multiple submissions of identical items, representative samples of such items). Consultation and concurrence of the appropriate General Counsel is required prior to any determination to deny access to records. When a request is denied because the record does not exist, concurrence is not required, but consultation should be held with either the FOI Officer or the appropriate General Counsel to assure records do not exist outside of the domain of the Authorizing Official. The Authorizing Official shall then prepare a written response either:
  - (a) Granting the request;
  - (b) Denying the request;
  - (c) Granting it in part and denying it in part;
  - (d) Replying with a response stating that the request has been referred to another agency;
  - (e) Denying the request because responsive records cannot be located or do not exist; or
  - (f) Replying with a response stating that additional information is needed from the requester to meet the reasonably described records requirement.
- (2) See page 11-5, paragraph 2 for processing of a request for classified records.
- (3) The Authorizing Official shall assure that responses are made within the 10 working days permitted by law or he/she shall arrange an extension as detailed on page 11-6, paragraph 3. It should be noted that the requester must be notified of the initial determination within 10 working days, but the records do not necessarily have to be sent within this 10 day period. However, the requester shall be notified of the reason why some or all of the records are not being made available and when he may expect to receive the records. The Authorizing Official shall list each document being denied with sufficient particularity to allow a meaningful appeal to be taken.



- e. Document: Originated in Other Federal Agencies. Where an entire document originated in another Federal agency, the Authorizing Official may refer the request to the originating agency, and shall inform the requester. A requester who does not object to the referral within 5 days will be deemed to have consented. However, where a requester objects to this procedure, DOE will continue to process the request in consultation with the originating agency.
  - (1) Document Containing Information from Another Agency or Jointly prepared. Requests for DOE records containing information received from another agency, or for records prepared jointly by DOE and other agencies, will be treated as requests for DOE records except that coordination will be effected by the Authorizing Official with the appropriate official of the other agency. Such coordination will be done on an expedited basis, for the purpose of determining whether the other agency wishes to deny the request and obtaining the certification, signature, and identity of the other agency's responsible official. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, shall cite the other agency's denial official, as well as the appropriate DOE Denying Official if a denial by DOE is also involved.
  - (2) Federal Energy Regulatory Commission (FERC). For purposes of this paragraph, FERC will be considered an agency other than DOE.
- f. Requests not Under the FOI. Should a request for information be received which is not an FOI request, the request will be forwarded to the appropriate DOE official and shall be treated as ordinary correspondence apart from the FOI process.
- g. Information in the Public Domain. A request for information in the public domain will be treated in a manner consistent with paragraph 1(f). Such a request may be forwarded to the appropriate DOE official for response or the requester may be informed from which public source the information is most readily available.

## 2. REQUESTS FOR CLASSIFIED DOCUMENTS.

- a. Availability. Requests for access to classified records in accordance with this Order, except those requests for access to classified records which are made specifically pursuant to the mandatory provisions of Executive Order 11652 or any successor

thereto (Classification and Declassification of National Security Information and Material) shall be considered a Freedom of Information Act request.

- b. Responsibility. Concurrence of the Director of Classification is required on all responses involving requests for classified records. The Director of Classification shall be informed of the request by the FOI Officer and the Authorizing Official to whom the action is assigned. The Director of Classification shall advise the office originating the records or having cognizance or responsibility for the records prior to making a determination under this chapter. The written notice of a determination to deny records, or portions of records, which contain both classified material and other exempt material shall be concurred in by the Director of Classification who shall be the Denying Official for the classified aspect of such records. If other DOE officials or appropriate officials of other agencies are responsible for denying any portion of the record, their names and titles or positions shall be listed in the notice of denial and it shall be clearly indicated what portion or portions they were responsible for denying.
- c. Appeals. The Assistant Secretary for Defense Programs or his designee shall be consulted on all appeal decisions, to the extent the appeal involves records or portions thereof which have been denied because they are classified.
- d. Other Agencies. Requests for DOE records containing classified information received from another agency, and requests for classified documents originating in another Federal agency shall be coordinated with or referred to the other agency consistent with page 11-1, paragraph 1. Coordination or referral of information or documents subject to this section shall be effected by the Director of Classification (in consultation with the Authorizing Official) with the appropriate official of the other agency.

### 3. TIME LIMITS AND EXTENSIONS.

- a. Time Requirements. The Authorizing Official shall take action to ensure that FOI requests are responded to within 10 working days of receipt, or that appropriate extensions are obtained.
- b. Agreements Between Requester and DOE.
  - (1) Nothing in this chapter shall preclude the Authorizing Official and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon for the initial determination.

- (2) It is the policy of this Department to negotiate with the requester for any required extension of time that is mutually agreeable by both parties. The statutory extension are to "unusual circumstances" should be used only as a last resort.

- c. Unusual Circumstances. If "unusual circumstances" require an extension of time before a decision on a request can be reached, the Authorizing Official may take an extension not to exceed 10 working days. The person requesting the records shall be promptly informed by the Authorizing Official in writing of the unusual circumstances, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. A copy of any such letter shall be sent to the FOI Officer. The term "unusual circumstances" means:
    - (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the offices processing the request;
    - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
    - (3) The need for consultation, which shall be conducted expeditiously, with another agency having a substantial interest in the determination of the request, or among two or more components of the Department having substantial subject-matter interest therein.
  - d. Other Agencies. If an Authorizing Official is coordinating a request with another Federal agency and DOE has completed its part of the request, but the other agency has not, he/she can determine whether to request an extension, or refer the request to the other agency. If the request is referred, he/she shall notify the requester with a copy to the other agency and the FOI officer.
  - e. Computation of Time. Except as otherwise noted, in computing any period of time prescribed or allowed, the day from which the designated period of time begins is not to be included; the last day of the period so computed is to be included. Saturdays, Sundays, and legal public holidays are excepted.
4. RESPONSES BY AUTHORIZING OFFICIALS--GRANTS AND DENIALS.
- a. Form of Grant. When a requested record has been identified and a determination made that it be released, the Authorizing Official

shall notify the requester as to when the record will be available. The qualification shall also advise the requester of any applicable fees. When fees are \$25 or less, or where it has been determined that the payment of applicable fees should be waived, the records shall be made available promptly. Where the applicable fees are in excess of \$25, and no waiver is granted, the records shall not be made available until all charges are paid in full. General Counsel concurrence on denial of fee waivers is necessary only when the requester has specifically asked that fees be waived and that request is being denied. If no such request is made, the requester may be charged as usual in accordance with DOE regulations.

- b. Form of Denial. A response denying a request for a record shall be in writing and shall be sent certified or registered mail, return receipt requested. It shall be signed by the Authorizing Official and concurred in by the appropriate General Counsel (concurrence of the appropriate General Counsel is not required when reason for denial is because records do not exist, or are known to have been destroyed). The reply denying the request shall include:

- (1) Reason for Denial. The response shall contain a statement of the reason(s) for denying the request.
  - (a) Exemption Category. Preference to the specific exemption(s) under the FOIA authorizing the withholding of the record, and to the extent consistent with the purposes of the exemption(s), a brief explanation on how the exemption(s) applies to the particular record withheld, and a statement of why a discretionary release is not appropriate. (See page 11-9, paragraph 5 for specific exemptions).
  - (b) Notification That Record Requested Cannot be Located or Does Not Exist. If a requested record is known to have been destroyed or otherwise disposed of or if no such record is known to exist, the requester shall be notified.
- (2) Official Responsible for Denial. A statement setting forth the name and the title or position of each Denying-Official, identifying the portion of the denial for which the Denying Official is responsible.
- (3) Segregation of Exempt Material. A statement addressing the issue of whether there is any segregable exempt material in the documents or portions thereof identified as being denied.
- (4) Administrative Appeal and Judicial Review. A statement that the denial may be appealed within 30 calendar days, after receipt, to the Office of Hearings and Appeals which will process the appeal. The letter will also state that judicial review will be thereafter available either in the district in

which the requester reside has a principal place of business, or in which the records are situated, or in the District of Columbia.

5. EXEMPTIONS FROM PUBLIC DISCLOSURE.

- a. Nine Exemptions. The FOI Act exempts from all of its publication and disclosure requirements nine categories of records. As specifically quoted by 5 U.S.C. 552(b), the public disclosure requirement does not apply to:
- (1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such Executive order;
  - (2) Related solely to the internal personnel rules and practices of an agency;
  - (3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute (a) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (b) establishes particular criteria for withholding or refers to particular types of matters to be withheld, in particular, for example Restricted Data and Formerly Restricted Data under the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011 et seq.) are covered by this exemption);
  - (4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. The following criteria will be considered, although no single one is conclusive in determining whether information is exempt from disclosure pursuant to exemption 4:
    - (a) Whether the information has been held in confidence by the person to whom it pertains;
    - (b) Whether the information is of a type customarily held in confidence by the person to whom it pertains and whether there is a reasonable basis therefore;
    - (c) Whether the information was transmitted to and received by the Department in confidence;
    - (d) Whether the information is available in public sources;
    - (e) Whether disclosure of the information is likely to impair the Government's ability to obtain necessary information in the future; or

- (f) Whether disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained;
  - (5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
  - (6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
  - (7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (a) interfere with enforcement proceedings, (b) deprive a person of a right to a fair trial or an impartial adjudication, (c) constitute an unwarranted invasion of personal privacy, (d) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (e) disclose investigative techniques and procedures, or (f) endanger the life or physical safety of law enforcement personnel;
  - (8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
  - (9) Geological and geophysical information and data, including maps, concerning wells.
- b. Notification. Where documents submitted to DOE that come within or might come within exemption 4, and may be exempt by law from mandatory disclosure, the DOE may request the submitter to: (1) submit copies of each document from which information claimed to be confidential has been deleted or (2) require that the submitter's views be otherwise made known at the time of the submission. Notice of a determination by DOE that a claim of exemption is being denied shall be given to a person making such a claim no less than 7 calendar days prior to intended public disclosure of the information in question. For purposes of this paragraph, notice is deemed to be given when mailed to the submitter at the submitter's last known address (also see page IV-1, paragraph 2a).

- c. General Counsel Coordination. Consultation by the Authorizing Official with the appropriate General Counsel should be effected whenever requested records contain information which may be proprietary information of a private business, foreign government or an international organization.

6. FEES AND FEE WAIVERS.

- a. When Charged. User fees pursuant to 5 U.S.C. 552, as amended, shall be charged according to the schedule contained on page 11-12, paragraph 6b, for services rendered in responding to requests for DOE records, unless the FOI officer determines, in conformity with the provision of 5 U.S.C. 552, as amended, that waiver of payment of such charges, or a portion thereof, is in the public interest.

(1) Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the particular requester. In making this determination, the FOI Officer, in consultation with the Authorizing Official, may consider several factors, including, but not necessarily limited to the following:

- (a) The current public interest in the subject matter to which the documents pertain.
- (h) The status of the requester as a representative of the news media.
- (c) The status of the requester as a representative of a bona fide public interest group.
- (d) The status of the requester as an indigent person.
- (e) The status of the requester as a historian or academician.
- (f) Whether the requester is engaged in administrative proceedings or litigation with the Government.
- (g) Whether the requester is making the request to further purely private commercial interests.

(2) Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests, to \$25 or less. Where fees in excess of \$25 are to be charged, fees will be assessed for the full amount, unless a portion thereof is waived in accordance with this chapter.

- (3) Ordinarily, fees for search shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to page 11-13, paragraph 6c, and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees for search may be charged.
  - (4) The determination to charge or waive fees shall be made by the Freedom of Information Officer after consultation with the Authorizing Official. The payee on all tendered documents will be "The Department of Energy." The Authorizing Official and the appropriate General Counsel must concur on any decision to deny a request for fee waiver.
- b. Services Charged For, and Amount Charged. For the services provided in locating or making available records or copies thereof, the following charges shall be assessed:
- (1) Copies. For copies of documents (maximum of one copy of any document will be supplied), \$0.10 per copy of each page.
  - (2) Certification. For each certification of true copies, each record \$1.
  - (3) Clerical Searches. Charges will be \$2.25 for each quarter hour spent by clerical personnel in searching for and producing a requested record.
  - (4) Nonclerical Searches. Where a search cannot be performed by clerical personnel (for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel) charges will be \$4.50 for each one quarter hour.
  - (5) Examination and Related Tasks in Screening Records. No charge shall be made for time spent in:
    - (a) Resolving legal or policy issues affecting access to records of known contents;
    - (b) Examining records to determine whether they are exempt from mandatory disclosure and should be withheld as a matter of policy; and
    - (c) Deleting material which is to be withheld from records.



- (6) Computerized Records. Fees for services in processing requests maintained in whole or in part in computerized form shall be made as follows:
  - (a) Services of personnel in the nature of a search will be charged for at rates consistent with page 11-12, paragraphs 6b(3) and (4).
  - (b) A charge may be made for the actual computer time involved based upon actual cost to the Government.
  - (c) A charge also may be made for any substantial amount of special supplies or materials used to contain, present, or make available the output of computers, based upon the actual cost to the Government.
  - (d) Nothing in this paragraph shall be construed to entitle any person, as a right, to any service in connection with computerized records, other than services to which such person may be entitled under the Freedom of Information Act.
- (7) Other Nonpaper Records. Fees for services in processing requests when records are maintained on microfiche, microfilm, recording tape, or in any other nonpaper form, shall be assessed at the actual cost to the Government.
- (8) Transcripts. Transcripts by a reporting firm under contract with DOE may be purchased directly from the reporting firm or DOE at the cost of reproduction, as provided for in the DOE contract with the reporting firm.
- (9) Copyrighted Material. Material which has been copyrighted ~~Will~~ not be reproduced in violation of the copyright laws.
- c. Notice of Anticipated Fees in Excess of \$25. Unless the requester specifically states that he is willing to pay whatever fees are assessed by DOE for meeting the request, or, alternatively, specifies an amount in excess of \$25 which he/she is willing to pay and which in fact covers the anticipated fees for meeting the request, a request that is expected to involve assessed fees in excess of \$25 will not be "deemed to have been received" (see page 11-1, paragraph 1) until the requester is advised of the anticipated cost and agrees to bear it and makes any advance deposit required. Such notification shall be made by the FOI Officer consistent with page 11-1, paragraph 1.
- d. Deposits. The FOI Officer, in consultation with the Authorizing ~~Official~~, may require an advance deposit from the requester prior to initiating the search for responsive material. The FOI Officer

shall exercise discretion in requiring deposits. Generally, requests for deposits should be limited to those instances where the fee amount to be charged is significant, where the requester has a previous history of nonpayment, or there is a clear indication that payment would not be forthcoming. The 10-day period for response will not commence until the deposit is received.

7. REQUESTS RELATED TO LITIGATION. Upon notification of pending litigation, ~~all requests that relate to that litigation will continue to be processed~~ but no release of documents or correspondence will be provided to a requester without concurrence from the Deputy General Counsel for Enforcement, or his designee.

CHAPTER III  
ACTIONS ON APPEALS

1. FORM OF SUBMISSION.

- a. Appeal Action. When the Authorizing Official has denied a request for records in whole or in part, including a response that there are no documents responsive to the request.; or when the FOI Officer has denied a request for waiver of fees, the requester may, within 30 calendar days of receipt of such a response, appeal the determination to the Office of Hearings and Appeals.
- b. Elements of an Appeal.
  - (1) The appeal shall be in writing and forwarded to the Office of Hearings and Appeals.
  - (2) Both the envelope and the letter shall be clearly marked, "Freedom of Information Act Appeal."
  - (3) The appeal should contain a concise statement of the grounds upon which it is brought and a description of the relief sought. The appeal should also include a discussion of any relevant authorities, including, but not limited to, DOE (and predecessor agencies) rulings, regulations, interpretations, and decisions on appeals and any judicial determinations relied upon to support the appeal.
  - (4) A copy of the letter that is the subject of the appeal shall be submitted with the appeal.
- c. Receipt of an Appeal. An appeal will be considered to be received when it has reached the Office of Hearings and Appeals. Individuals not in the Office of Hearings and Appeals receiving an appeal directly from a requester shall send it directly to the Office of Hearings and Appeals. Documents delivered after official business hours are deemed received on the next official business day.
- d. Action Within 20 Working Days.
  - (1) The Appeal Authority shall act upon the appeal within 20 working days of its receipt, or more rapidly if feasible. If unusual circumstances (as defined on page II-6, paragraph 3) require an extension of time before a decision on a request can be reached, the appeal authority may extend the time for final action for an additional 10 working days, less the number of days of any statutory extension which may have been taken by the Authorizing Official during the period of initial receipt of the request.

- (2) If no determination on the appeal has been dispatched at the end of the 20-day period or the last extension thereof, the requester may deem his/her administrative remedies to be exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a) (4) (B). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit the requester shall be informed of the reason for the delay; of the date on which a determination may be expected to be dispatched, and of his/her right to seek judicial review in the United States district court in the district in which he/she resides or has his/her principal place of business, the district in which the Department records are situated, or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.
- (3) Nothing in this chapter shall preclude the appeal authority and a requester from agreeing to an extension of time for a decision on the appeal. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon for the appeal.

## 2. FORM OF ACTION ON APPEAL.

- a. Administrative Determination. The appeal authority's action on an appeal shall be in writing, and shall set forth his/her name and title. A denial, in whole or in part, of an appeal shall set forth the exemption(s) relied on, a brief explanation consistent with the purpose of how the exemption applies to the records withheld, and a statement of why a discretionary release is not appropriate. It shall also contain a statement that it constitutes final Department action on the request and that judicial review will be available either in the district in which the requester resides or has a principal place of business, or in which the records are situated, or in the District of Columbia. Documents determined by the appeal authority to be documents subject to release shall be made promptly available to the requester upon payment of any applicable fee. A copy of all administrative determinations will be sent to the Headquarters FOI Office.
- b. Classified Records. The Assistant Secretary for Defense Programs or designee shall concur on all appeal decisions to be made to the extent the appeal involves records or portions thereof which have been denied because they are classified. In such cases, the Assistant Secretary for Defense Programs shall make the final determination if classified records are to be released.

Information Act, to be information referred to in 18 U.S.C. §1905, or to be otherwise exempt by law from mandatory public disclosure. The accompanying explanation should specify the justification for nondisclosure of any information under consideration. If the submitter states that the information comes within the exemption in 5 U.S.C. 552(b) (4) for trade secrets and commercial or financial information, the submitter shall include a statement specifying why such information is privileged or confidential and, where appropriate, shall address the criteria on page IV-3, paragraph 2a(5). In all cases, the submitter shall address the question of whether or not discretionary disclosure would be in the public interest.



## CHAPTER IV

### LEGAL CONSIDERATIONS

1. LEGAL PENALTIES AGAINST EMPLOYEES. The FOIA provides that: "Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendation to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends."
2. HANDLING OF INFORMATION OF A PRIVATE BUSINESS, FOREIGN GOVERNMENT, OR AN INTERNATIONAL ORGANIZATION.
  - a. Documents Submitted to the Department Requesting Privileged or Confidential Information.
    - (1) Whenever a document submitted to the DOE contains information which may be exempt by law from public disclosure, it shall be handled in accordance with the procedures in this paragraph. While the Authorizing Official responsible for making the final determination with regard to the disclosure or nondisclosure of information contained in requested documents, the Authorizing Official will consider the submitter's views (as that term is defined in this paragraph) in making the determination. Nothing in this paragraph shall preclude the submission of a submitter's views at the time of the submission of the document to which the views relate, or at any other time.
    - (2) When the DOE may determine, in the course of responding to a Freedom of Information request, not to release information submitted to DOE as described in paragraph 2a(1) and contained in a requested document without seeking any or further submitter's views, no notice will be given the submitter.

- (3) When the DOE, in the course of responding to a Freedom of Information request, cannot make the determination described on page IV-1, paragraph 2a(2) without having for consideration the submitter's views, the submitter shall be promptly notified and provided an opportunity to submit his/her views on whether information contained in the requested document (a) is exempt from the mandatory public disclosure requirements of the Freedom of Information Act; (b) contains information referred to in 18 U.S.C. §1905; or (c) is otherwise exempt by law from public disclosure. The DOE shall make its own determinations as to whether any information is exempt from disclosure. Notice of a determination by DOE that a claim of exemption made pursuant to this paragraph is being denied shall be given to a person making such a claim no less than 7 days prior to intended public disclosure of the information in question. For purposes of this paragraph, notice is deemed to be given when mailed to the submitter at the submitter's last known address.
- (4) When the DOE, in the course of responding to a Freedom of Information request, cannot make the determination described on page IV-1, paragraph 2a(2) of this section and without recourse to paragraph 2a(3), previously has received the submitter's views, DOE shall consider such submitter's views and shall not be required to obtain additional submitter's views under the procedure described in paragraph 2a(3) of this section. The DOE shall make its own determination with regard to any claim that information be exempted from disclosure. Notice of DOE's determination to deny a claim of exemption made pursuant to this paragraph shall be given to a person making such a claim no less than 7 days prior to its intended public disclosure.
- (5) When the DOE, in the course of responding to a Freedom of Information request, determines that information exempt from the mandatory public disclosure requirements of the Freedom of Information Act is to be released in accordance with 10 CFR §1004.1, DOE shall notify the submitter of the intended discretionary release no less than 7 days prior to intended public disclosure of the information in question.
- (6) As used in this chapter, the term "submitter's views" means, with regard to a document submitted to DOE, by a person (the "submitter")' an item-by-item indication, with accompanying explanation, addressing whether the submitter considers the information contained in the document to be exempt from the mandatory public disclosure requirements of the Freedom of



LOCATION OF FOI OFFICES AND READING ROOMS

The following organizations will appoint FOI officers, and establish DOE Reading Rooms.

1. Alaska Power Administration
2. Albuquerque Operations Office
3. Bartlesville Energy Technology Center
4. Bonneville Power Administration
5. Chicago Operations Office (To be included in Region V Reading Room.)
6. Grand Forks Energy Technology Center
7. Headquarters, Washington, D.C. (Headquarters will also maintain an Appeal Office Reading Room.)
8. Idaho Operations Office
9. Laramie Energy Technology Center
10. Morgantown Energy Technology Center
11. Nevada Operations Office
12. Oak Ridge Operations Office
13. Pittsburgh Energy Technology Center
14. Region I
15. Region 11
16. Region 111
17. Region IV
18. Region V
19. Region VI
20. Region VII

21. Region VIII
22. Region IX
23. Region X
24. Richland Operators Office
25. San Francisco Operations Office (to be included in Region IX Reading Room)
26. Savannah River Operations Office
27. Southeastern Power Administration
28. Southwestern Power Administration
29. Western Area Power Administration

U.S. Department of Energy  
Washington, D.C.

PAGE CHANGE

DOE 1700.1 Chg 1  
10-8-81

SUBJECT: FREEDOM OF INFORMATION PROGRAM

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1. PURPOSE. To transmit revised pages and Chapter V, "Freedom of Information Reading Room Procedures. "

2. EXPLANATION OF CHANGES.

- a. Chapter V establishes guidelines and procedures for providing the public the opportunity and location for inspecting and copying the Department of Energy (DOE) documents that are required to be made available under 5 U.S. C. 552(a)(2) and 10 C.F.R. 1004.3, as published in 44 FR 1908 on 1-8-79.
- b. Miscellaneous revisions reflecting the contents of Chapter V have been made in the basic Order and Chapter I.

3. FILING INSTRUCTIONS.

- a. 

<u>Remove Page</u>	<u>Date</u>	<u>Insert Page</u>	<u>Date</u>
1	11-19-79	1	11-19-79
2	11-19-79	2	10-8-81
i (and ii)	11-19-79	i (and ii)	10-8-81
I-1 thru I-4	11-19-79	I-1 thru I-4	10-8-81
		V-1 thru V-3 (and V-4)	10-8-81
Atch 1, page 1	11-19-79	Atch 1, page 1	10-8-81
Atch 1, page 2	11-19-79	Atch 1, page 2	11-19-79
- b. After filing the attached pages, this transmittal may be discarded.



William S. Heffelfinger  
Assistant Secretary  
Management and Administration

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DISTRIBUTION:  
All Departmental Elements  
Federal Energy Regulatory Commission (info)

INITIATED BY:  
Office of Administrative  
Services



# U.S. Department of Energy

Washington, D.C.

ORDER

DOE 1700.1

11-19-79

**SUBJECT:** FREEDOM OF INFORMATION PROGRAM

- 
1. PURPOSE. To establish guidelines and procedures for the processing of requests made to the Department of Energy (DOE) under the Freedom of Information Act (FOIA). These procedures do not apply to the Federal Energy Regulatory Commission.
  2. POLICIES.
    - a. It is the policy of the Department to make information publicly available to the fullest extent possible. Officers and employees of the Department may furnish to the public, informally and without compliance with procedures in this Order, information and records of types which officers and employees of the DOE customarily furnish to the public in the regular performance of their duties.
    - b. Information in the possession of the Department will be made available to the public unless it is exempt from mandatory public disclosure pursuant to one or more of the exemption provisions of the FOIA, 5 U.S.C. 552 (Public Law 90-23, as amended) or other applicable statutes.
    - c. To the extent permitted by other laws, DOE will make available records which it is authorized to withhold under the FOIA. However, in light of a recent Supreme Court decision, any discretionary release of materials exempt under the fourth exemption and/or 18 U.S.C. §1905 should be coordinated with the Office of General Counsel.
    - d. The policies and procedures stated in this Order shall be interpreted so as to be consistent with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579).
    - e. There is no obligation to compile or create a record solely for the purpose of satisfying a request for records.
  3. CONTRACTOR RECORDS. Where a contract with the DOE stipulated that any documents relating to work under the contract shall be the property of the Government, such records shall be considered to be agency records and subject to disclosure under the FOIA. However, if a contract does not make such specific provisions, no DOE contractor records shall be considered to be agency records unless and until such time that the DOE acquires possession of the particular contractor documents.

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**DISTRIBUTION:**

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Services

4. DEFINITIONS.

- d. Appeal Authority. The Office of Hearings and Appeals.
- b. Freedom of Information (FOI) Officer. The person designated to administer the FOIA at the DOE locations shown in Attachment 1.
- c. General Counsel. The General Counsel provided for in §202(h) of the DOE Organization Act, or any DOE attorney designated by the General Counsel as having responsibility for counseling the Department on FOIA matters.
- d. Records. For purposes of Chapter V, "Freedom of Information Reading Room Procedures," "record" means books, brochures, punchcards, magnetic tapes, paper tapes, sound recordings, maps, pamphlets, photographs, microfilm, microfiche, or other documentary materials regardless of physical form or characteristics, made or received by the Department in pursuance of Federal law or in connection with Departmental functions, policies, decisions, procedures, operations, programs, or other activities in transacting public business. "Record" does not include: Objects or articles such as tangible exhibits, models, equipment, processing materials, formulas, designs, drawings, items of value, books, magazines, pamphlets, or other reference material in formally organized and officially designated libraries of the Department, which are available under the rules of the particular library concerned.
- e. Authorizing or Denying Official. The term refers to any DOE officer or employee having custody of or responsibility for records requested under 5 U.S.C. 552. In DOE Headquarters, such an officer or employee will be a Secretarial Officer, an official who reports directly to a Secretarial Officer, or an individual to whom a Secretarial Officer has delegated such authority without power of further redelegation. In the field, such officers or employees will be heads of the field organizations identified in Attachment 1, heads of major field offices that have organizational responsibilities in the identified field locations (i.e., District Managers and Deputy District Managers of the Office of Enforcement; District Directors of the Office of Special Counsel; and Energy Data Field Office Directors of the Energy Information Administration), or individuals to whom the field organization heads have delegated such authority without power of further redelegation.



William S. Heffelfinger  
Assistant Secretary  
Management and Administration

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CHAPTER I

RESPONSIBILITIES AND AUTHORITIES

1. ASSISTANT SECRETARY, MANAGEMENT AND ADMINISTRATION. Administers Department-wide FOI activities.
2. DIRECTOR OF ADMINISTRATIVE SERVICES.
  - a. Develops and administers policies, standards, procedures, and Federal regulations to implement the provisions of the FOIA on a Departmentwide basis.
  - b. Operates the FOI Office at Headquarters and designates the Headquarters FOI Officer.
  - c. Ensures the preparation of annual reports to Congress and any other special reports.
  - d. Maintains and operates a public records reading room for Headquarters. Maintains a list of DOE public reading room facilities.
3. GENERAL COUNSEL. (Including Regional Counsel or Field Counsel, as appropriate.)
  - a. Concurs in all determinations by Authorizing Officials to deny records and/or fee waivers to a requester.
  - b. Provides legal advice to DOE employees concerning the FOIA.
  - c. Assists the Department of Justice in representing DOE in litigation involving the FOIA.
  - d. Counsel at Headquarters maintains contact with the Department of Justice to remain aware of issues and litigation arising under the Act.
  - e. Concurs in all determinations by Authorizing Officials to delete exempt information from records placed in a DOE reading room.
4. DIRECTOR OF CLASSIFICATION. Concurs on release and serves as the Denying Official for that portion of a request involving classified records.
5. DIRECTOR OF HEARINGS AND APPEALS.
  - a. Makes determinations on appeals of denials of initial requests.
  - b. Obtains concurrence from the Assistant Secretary of Defense Programs before releasing any classified record on appeals.
  - c. Maintains and operates a DOE Appeals Reading Room.

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- d. Provides Headquarters FOI Reading Room with copies of Department Decisions and Orders.

6. ASSISTANT SECRETARY FOR DEFENSE PROGRAMS.

- a. Concurs in final determinations, as appropriate, concerning the release of all classified records.
- b. Concurs in all final decisions to place previously classified materials in DOE reading rooms.

7. HEADS OF FIELD ORGANIZATIONS.

- a. Act as Authorizing or Denying Official.
- b. Designate an FOI Officer for his or her respective location identified in Attachment 1.
- c. Establish and maintain a FOI reading file for locations identified in Attachment 1.

8. FREEDOM OF INFORMATION OFFICERS.

- a. Receive requests and determine whether they meet the requirements to be considered as a request under the FOIA.
- b. If a request is determined to be one under the FOIA, log in the requests by date, and process them according to the procedures in Chapter II.
- c. Ascertain which organizations have primary responsibility for custody of or concern with the records requested and identify the appropriate Authorizing Official(s).
- d. Where a FOI request entails records under the cognizance of more than one Authorizing Official, the FOI Officer shall designate a primary Authorizing Official who will be responsible for coordinating the search for all responsive records.
- e. If a request will not be completely responded to within 10 days, send an acknowledgment letter to the requester stating the date of receipt, the date the initial response is due, and the Authorizing Official to whom the request has been sent.
- f. If a request does not meet the requirement that it reasonably describe the records sought, the FOI Officer, in cooperation with the Authorizing official, may assist the requester in reformulating the request.
- g. Bill and ensure the collection of fees for costs associated with processing requests for DOE records and notifying the Authorizing Official when fees are received. The billing and collection of fees may be

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processed in accordance with existing financial procedures at a particular location, but the final responsibility for assuring the collection of fees rests with the FOI Officer.

- h. Maintain the necessary records and indexes to locate requests and to produce input for the annual reports and special Congressional and Office of Management and Budget (OMB) reports.
- i. Develop and maintain a status reporting system to assure that requests and appeals are responded to within the legal time limits or that extensions are requested, as appropriate.
- j. The Headquarters FOI Office prepares the FOI annual report to Congress.
- k. Consults with Authorizing Official on any request where assessment of fee, waiver of fee, or denial of fee waiver is proposed. Concurrence of Authorizing Official and the General Counsel is required for denial of fee waiver.
- 1. Maintain and operate a FOI Reading Room for those locations identified in Attachment 1 containing 5 U.S.C. 552(a)(2) materials.
- m. Maintain and provide for public inspection and copying, materials and current indexes of the materials at their FOI Reading Room facility and, at their discretion, any other materials maintained in other FOI offices.
- n. Maintain records of the requests for inspection and copying of 5 U.S.C. 552(a)(2) materials.

9. AUTHORIZING OFFICIALS.

- a. Advise the FOI Officer whenever a request does not reasonably describe the records sought. In such a case, provide information to the FOI Office to assist the requester in reformulating the request or directly assist the requester.
- b. Identify and review the records encompassed by requests referred by the FOI Office, and advise the requester within 10 working days, unless otherwise extended, whether the request is to be granted or denied.
- c. Consult with other agencies or other DOE offices before releasing records originated by them and, as appropriate, transfer requests to other agencies.
- d. Estimate costs of responding to FOI requests and, when fees are to be charged, notify the FOI Office. After notification by the FOI Officer that any assessed fees have been paid, forward material to the requester.
- e. Consult with the FOI Officer on all requests where assessment of fee or waiver of fee is proposed. Concur on all denials of requests for fee waiver.

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- f. When requested, provide copies of denied records to the Appeal Authority.
- g. Establish effective controls and procedures to preclude the loss of time in routing requests and appeals to those who must act upon them.
- h. Transmit to the FOI Officer a copy of the incoming request and all correspondence with the requester, such as responses to requests, notices of extensions of time, consultation with other agencies, or transfers of requests to other agencies. (This does not include copies of voluminous data which may be sent to the requester as an enclosure or attachment.)
- i. Obtain appropriate General Counsel concurrence on any recommendation by an Authorizing Official to deny records to a requester or to deny a request for fee waiver.
- j. When designated by the FOI Officer as "Primary Authorizing Official," that Official will immediately send copies of the request to other appropriate Authorizing Officials and will be responsible for the coordination and preparation of a DOE response.
- k. Provide the FOI Officer with documents required by 5 U.S.C. §552(a)(2) to be placed in the reading room.
- l. Provide proper and complete indexes of all materials consigned to the reading room for public inspection and copying.
- m. Arrange for updating of all materials held in the reading room for which his or her program originally consigned to the reading room.
- n. Provide and ensure that all exempted material has been excised with the concurrence by the Office of General Counsel prior to placing that material in the reading room.

Vertical line denotes change.

CHAPTER V

FREEDOM OF INFORMATION READING ROOM PROCEDURES

1. CONTENTS OF READING ROOM.

- a. As required by 5 U.S.C. 552(a)(2) and DOE Regulations part 1004.3, each FOI Reading Room shall provide for public inspection and copying of the following records:
  - (1) All final opinions (including concurring and dissenting opinions), and all orders made in the adjudication of cases. An opinion or order is final when the Department makes a conclusive determination of the matter. "Adjudication of Cases" applies to decisions made by the Department on an issue between two opposing parties in a structured, relatively formal proceeding.
  - (2) Those statements of policy and interpretations which have been adopted by the Department and are not published in the Federal Register.
  - (3) Administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and copies offered for sale.
  - (4) Current indices of materials described in subparagraphs (1) through (3) above that are issued, adopted, or promulgated after 7-4-67. An index is a classification system which will substantially enable a member of the public to isolate desired materials from the mass of Departmental documents. The index may be organized by subject headings, by numbering system, by names of parties, or by any other useful classification device. The reading room personnel may provide assistance to a requester in using an index where the subject matter so requires.
- b. The Headquarters FOI Reading Room shall, in addition to items in paragraph 1a, contain the following records:
  - (1) Federal Energy Guidelines, and regulations of the Department contained therein, including those of the Federal Energy Regulatory Commission.
  - (2) Current indices of the foregoing materials issued, adopted, or promulgated after 7-4-67.
  - (3) Every amendment, revision, or repeal of the foregoing.
- c. Each Regional and Field FOI Reading Room shall contain (1) the records required by paragraph 1a; (2) records determined by the Headquarters FOI Officer; and (3) records determined by the appropriate FOI Officer.

Vertical line denotes change.

- d. Deletion of identifying details and other exempt material shall be made. To the extent required to prevent a clearly unwarranted invasion of the personal privacy of a person involved in any final opinion, order, or other materials requested to be made available pursuant to subsection (a) (2) of the Privacy Act, the names of the parties or other identifying detail may be removed or fictitious names substituted. In addition, the deletion of all other material exempt pursuant to 5 U.S.C. 552(b) shall also be made. A written justification for the deletions made will be provided in each case.
- e. Records which have been disposed of pursuant to (44 U.S.C. 3301-3310, 3312-3314), the Federal Property Management Regulations (41 C.F.R. Part 101-11.000), and DOE 1324.2, RECORDS DISPOSITION, will not be re-created. Records of all such documents so disposed of will be indexed and made a part of the reading room files.

## 2. PROCEDURES FOR READING ROOM PERSONNEL.

- a. When a request for documents or records is made in person at (1) the Department's !-headquarters FOI Reading Room or (2) the appropriate Regional or Field FOI Reading Room, as listed in Attachment 1, reading room personnel will provide materials in accordance with this Order.
- b. When a request is made for identifiable records of the Department, which have been retired to the National Archives, the requester will be directed to the National Archives for inspection and copying.
- c. When a request is made for identifiable records of the Department which have been stored in the record centers of the General Services Administration, but would otherwise be available under the FOIA, such records shall be retrieved by the Department for the requester.
- d. The FOI offices shall be open to the public on regular work days during the regular duty hours of the installation where located. The offices will be open for a minimum of 7 hours per day.
- e. Copies of available records shall be produced as promptly as possible; where available, public copying facilities will be provided. Not more than one copy of any document will be provided or copied. Records which are published or available for sale need not be copied. Material which has been copyrighted will not be reproduced in violation of the copyright laws.

## 3. FEES.

- a. The fee schedule for the DOE Reading Room is authorized by Chapter II, page II-11, paragraph 6, as follows:

(1) Fees shall not be charged where they would amount, in the aggregate, for a request or a series of related requests, to \$10.00 or less. Where fees in excess of \$10.00 are to be charged, fees will be assessed for the full amount.

Vertical line denotes change.

10-8-81

(2) For copies of documents, 10 cents per copy of each page.

- b. Where commercial copying devices are installed, fees will be charged on a per page basis.
- c. Records not susceptible to photocopying are charged at actual cost.
- d. There will be no charge for searching costs made by the reading room personnel for documents contained in the reading room.
- e. The reading room personnel at locations described in Attachment 1 will be responsible for determining fee amounts in each location in accordance with page V-2, paragraph 3(a). The billing of fees shall be processed in accordance with existing financial procedures at a particular location by the servicing finance office.
- f. The reading room personnel will submit all fee determinations for collection to designated financial organization representatives. Billing notices will instruct the register how to pay and where to remit the payment.

4. REPORTS.

- a. The Freedom of Information Office shall maintain an account of the total requests made to a Departmental reading room.
- b. A consolidation of costs and fees collected in the operation of each Departmental reading room will be provided to the Headquarters Director of Freedom of Information Division (MA-43) by 1-15 of each year.

Vertical line denotes change.





LOCATIONS OF DEPARTMENTAL READING ROOMS

1. Alaska Power Administration
2. Albuquerque Operations Office
3. Bartlesville Energy Technology Center
4. Bonneville Power Administration
5. Chicago Operations Office (To be included in Region V Reading Room)
6. Grand Forks Energy Technology Center
7. Grand Junction Office
8. Headquarters, Washington, D.C. (Headquarters will also maintain an Appeal Office Reading Room)
9. Idaho Operations Office
10. Laramie Energy Technology Center
11. Morgantown Energy Technology Center
12. Nevada Operations Office
13. Oak Ridge Operations Office
14. Pittsburgh Energy Technology Center
15. Region I
16. Region II
17. Region III
18. Region IV
19. Region V
20. Region VI
21. Region VII
22. Region VIII
23. Region IX
24. Region X

Vertical line denotes change.

25. Richland Operations Office
26. San Francisco Operations Office (to be included in Region IX Reading Room)
27. Savannah River Operations Office
28. Southeastern Power Administration
29. Southwestern Power Administration
30. Western Area Power Administration

4-5-82

SUBJECT: FREEDOM OF INFORMATION PROGRAM

1. PURPOSE. To transmit revised pages to DOE 1700.1, FREEDOM OF INFORMATION PROGRAM, of 11-19-79.
2. EXPLANATION OF CHANGES. Chapters II and V have been revised to:
- a. Reflect the adjusted charges for fees in processing Freedom of Information requests;
  - b. Identify the fee schedule; and
  - c. List the changes for computer time and nonpaper records.
3. FILING INSTRUCTIONS.
- | <u>Remove Page</u> | <u>Dated</u> | <u>Insert Page</u> | <u>Dated</u> |
|--------------------|--------------|--------------------|--------------|
| II-1 and II-2      | 11-19-79     | II-1 and II-2      | 4-5-82       |
| II-11 and II-12    | 11-19-79     | II-11              | 4-5-82       |
| II-13 and II-14    | 11-19-79     | II-12              | 11-19-79     |
| V-1 and V-2        | 10-08-81     | II-13 and II-14    | 4-5-82       |
|                    |              | V-1                | 10-08-81     |
|                    |              | V-2                | 4-5-82       |
- b. After filing the attached pages, this transmittal may be discarded.



William S. Heffelfinger  
Assistant Secretary  
Management and Administration

DISTRIBUTION:  
All Departmental Elements  
Federal Energy Regulatory Commission (info)

INITIATED BY:  
Office of Administrative Services



4-5-82

CHAPTER 11ACTION ON INITIAL REQUESTS1. RECEIPT OF REQUEST.

a. Submission of a Request. An FOI request need not be in any particular format, but it should meet the following procedural requirements:

- (1) Addressed to FOI Officer. A request' should be addressed to the FOI Officer. Both the envelope and the letter should be clearly marked "FOI Request." Requests are deemed to be received upon actual receipt. by the appropriate. FOI Office. Requests delivered after regular business hours are deemed to be received on the next regular business day.
- (2) Request Should be in Writing and For Reasonably Described Records. A request for access to records should be submitted in writing and should reasonably describe the records requested so that DOE personnel can locate them with a reasonable amount of effort. A request for all records falling within a specific category shall be regarded as conforming to the statutory requirement that records be reasonably described if it can be reasonably determined which particular records are sought in the request and the DOE can identify and locate the records sought by a process that is not overly burdensome or disruptive of DOE operations. Where possible, the request should contain specific information regarding dates, titles, file designations, and any other pertinent information.
- (3) Assurance of Willingness to Pay. If a requester is to be charged for the information, the request shall include an assurance to pay:
  - (a) Whatever fees will be assessed (for requests in excess of \$15);
  - (b) Those fees not exceeding some specified dollar amount (see page 11-11, paragraph 6, on fees). No request shall be deemed to have been received until the DOE has received either a reasonable deposit or some other assurance of willingness to bear fees anticipated to be associated with the processing of the request.

Vertical line denotes change.

b. Processing of Request.

- (1) Immediately upon receipt of a request, the FOI Officer will date stamp it and ascertain which Authorizing Official(s) have responsibility for, custody of, or concern with the records requested. The FOI Officer will consult with the Authorizing Official(s) for an assessment of:
  - (a) Whether the request reasonably describes the records sought;
  - (b) Whether fees are to be assessed; and
  - (c) If the amount which the requester agreed to bear will cover the anticipated fees.
- (2) When the request meets the requirements for submission, it will be "deemed to have been received."
  - (a) The FOI Officer shall forward the request to the Authorizing Official(s) for action; and the FOI Officer will acknowledge receipt of the request to the requester stating the date of receipt of the request, the response due date (10 working days from date of receipt), and the name of the primary Authorizing Official to whom the request was directed. A copy of the acknowledgment letter shall be sent to the "Authorizing Official."
  - (b) Where a request involves records which are in the custody of, or the concern of, more than one Authorizing Official, the FOI Officer shall identify all Authorizing Officials and forward the request to the primary Authorizing Official who can reasonably be expected to have custody of the majority of the responsive records. However, only the primary Authorizing Official will be identified to the requester. The primary Authorizing Official shall coordinate the search for any responsive records (see transmittal memo attached to request), prepare a DOE response to the request, and shall identify those portions of the reply that relate to other Authorizing Officials.
- (3) If the requirements for submission are not met, the FOI Officer will, with the assistance of the Authorizing Official, prepare a letter addressing the following items as appropriate.

Vertical line denotes change.

4-5-82

- c. General Counsel Coordination. Consultation by the Authorizing Official with the appropriate General Counsel should be effected whenever requested records contain information which may be proprietary information of a private business foreign government or an international organization.

6. FEES AND FEE WAIVERS.

- a. When Charged. User fees pursuant to 5 U.S.C. 552, as amended, shall be charged according to the schedule contained on page II-12, paragraph 6b, for services rendered in responding to requests for DOE records, unless the FOI Officer determines, in conformity with the provision of 5 U.S.C. 552, as amended, that waiver of payment of such charges, or a portion thereof, is in the public interest.

(1) Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the particular requester. In making this determination, the FOI Officer, in consultation with the Authorizing Official, may consider several factors, including, but not necessarily limited to the following:

- (a) The current public interest in the subject matter to which the documents pertain.
- (b) The status of the requester as a representative of the news media.
- (c) The status of the requester as a representative of a bona fide public interest group.
- (d) The status of the requester as an indigent person.
- (e) The status of the requester as a historian or academician.
- (f) Whether the requester is engaged in administrative proceedings or litigation with the Government.
- (g) Whether the requester is making the request to further purely private commercial interests.

(2) Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests, to \$15 or less. Where fees in excess of \$15 are to be charged, fees will be assessed for the full amount, unless a portion thereof is waived in accordance with this chapter.

Vertical line denotes change.

- (3) Ordinarily, fees for search shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to page 11-13, paragraph 6c, and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees for search may be charged.
  - (4) The determination to charge or waive fees shall be made by the Freedom of Information Officer after consultation with the Authorizing Official. The payee on all tendered documents will be "The Department of Energy." The Authorizing Official and the appropriate General Counsel must concur on any decision to deny a request for fee waiver.
- b. Services Charged For, and Amount Charged. For the services provided in locating or making available records or copies thereof, the following charges shall be assessed:
- (1) Copies. For copies of documents (maximum of one copy of any document will be supplied), \$0.10 per copy of each page.
  - (2) Certification. For each certification of true copies, each record \$1.
  - (3) Clerical Searches. Charges will be \$2.25 for each quarter hour spent by clerical personnel in searching for and producing a requested record.
  - (4) Nonclerical Searches. Where a search cannot be performed by clerical personnel (for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel) charges will be \$4.50 for each one quarter hour.
  - (5) Examination and Related Tasks in Screening Records. No charge shall be made for time spent in:
    - (a) Resolving legal or policy issues affecting access to records of known contents;
    - (b) Examining records to determine whether they are exempt from mandatory disclosure and should be withheld as a matter of policy; and
    - (c) Deleting material which is to be withheld from records.



4-5-82

(6) Computerized Records. Fees for services in processing requests maintained in whole or in part in computerized form shall be made as follows:

- (a) Services of personnel in the nature of a search will be charged for at rates consistent with page 11-12, paragraphs 6b(3) and (4).
- (b) A charge may be made for the actual computer time involved based upon actual cost to the Government.
- (c) A charge also may be made for any substantial amount of special supplies or materials used to contain, present, or make available the output of computers, based upon the actual cost to the Government.
- (d) Nothing in this paragraph shall be construed to entitle any person, as a right, to any service in connection with computerized records, other than services to which such person may be entitled under the Freedom of Information Act.
- (e) Charges for computer time involved is as follows:

1	Programming (per hour) -	\$17
2	Key punching/per 1,000 card usage -	\$183
3	Duplication per/hour -	\$45
4	Computer time per quarter hour -	\$219

(7) Other Nonpaper Records. Fees in processing requests when records are maintained on microfiche, microfilm, or recording tape shall be as follows:

1	105mm fiche (duplicate)	-\$1
2	100 ft. roll of 35mm microfilm -	\$7
3	100 ft. roll of 16mm microfilm -	\$6

Other nonpaper forms shall be assessed at the actual cost to the Government.

(8) Transcripts. Transcripts by a reporting firm under contract with DOE may be purchased directly from the reporting firm or DOE at the cost of reproduction, as provided for in the DOE contract with the reporting firm.

(9) Copyrighted Material. Material which has been copyrighted will not be reproduced in violation of the copyright laws.

c. Notice of Anticipated Fees in Excess of \$15. Unless the requester specifically states that he/she is willing to pay whatever fees are assessed by DOE for meeting the request, or, alternatively,

Vertical line denotes change.

specifies an amount in excess of \$15 which he/she is willing to pay and which in fact covers the anticipated fees for meeting the request, a request that is expected to involve assessed fees in excess of \$15 will not be "deemed to have been received" (see page II-1, paragraph 1) until the requester is advised of the anticipated cost and agrees to bear it and makes any advance deposit required. Such notification shall be made by the FOI Officer consistent with page II-1, paragraph 1.

- d. Deposits. The FOI Officer, in consultation with the Authorizing Official, may require an advance deposit from the requester prior to initiating the search for responsive material. The FOI Officer shall exercise discretion in requiring deposits. Generally, requests for deposits should be limited to those instances where the fee amount to be charged is significant, where the requester has a previous history of nonpayment, or there is a clear indication that payment would not be forthcoming. The 10-day period for response will not commence until the deposit is received.
7. REQUESTS RELATED TO LITIGATION. Upon notification of pending litigation, all requests that relate to that litigation will continue to be processed but no release of documents or correspondence will be provided to a requester without concurrence from the Deputy General Counsel for Enforcement, or his/her designee.

Vertical line denotes change.

## CHAPTER V

### FREEDOM OF INFORMATION READING ROOM PROCEDURES

#### 1. CONTENTS OF READING ROOM.

- a. As required by 5 U.S.C. 552(a)(2) and DOE Regulations Part 1004.3, each FOI Reading Room shall provide for public inspection and copying the following records:
  - (1) All final opinions (including concurring and dissenting opinions], and all orders, made in the adjudication of cases. An opinion or order is final when the Department makes a conclusive determination of the matter. "Adjudication of Cases" applies to decisions made by the Department on an issue between two opposing parties in a structured, relatively formal proceeding.
  - (2) Those statements of policy and interpretations which have been adopted by the Department and are not published in the Federal Register.
  - (3) Administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and copies offered for sale.
  - (4) Current indices of materials described in subparagraphs (1) through (3) above that are issued, adopted, or promulgated after 7-4-67. An index is a classification system which will substantially enable a member of the public to isolate desired materials from the mass of Departmental documents. The index may be organized by subject headings, by numbering system, by names of parties, or by any other useful classification device. The reading room personnel may provide assistance to a requester in using an index where the subject matter so requires.
- b. The Headquarters FOI Reading Room shall, in addition to items in paragraph 1a, contain the following records:
  - (1) Federal Energy Guidelines, and regulations of the Department contained therein, including the Federal Energy Regulatory Commission.
  - (2) Current indices of the foregoing materials issued, adopted, or promulgated after 7-4-67.
  - (3) Every amendment, revision, or repeal of the foregoing.
- c. Each Regional and Field FOI Reading Room shall contain (1) the records required by paragraph 1a; (2) records determined by the Headquarters FOI Officer; and (3) records determined by the appropriate FOI Officer.

- d. Deletion of identifying details and other exempt material shall be made. To the extent required to prevent a clearly unwarranted invasion of the personal privacy of a person involved in any final opinion, order, or other materials requested to be made available pursuant to subsection (a) (2) of the Privacy Act, the names of the parties or other identifying detail may be removed or fictitious names substituted. In addition, the deletion of all other material exempt pursuant to 5 U.S.C. 552(b) shall also be made. A written justification for the deletions made will be provided in each case.
- e. Records which have been disposed of pursuant to (44 U.S. C. 3301-3310, 3312-3314), the Federal Property Management Regulations (41 C.F.R. Part 101-11.000), and DOE 1324.2, RECORDS DISPOSITION, will not be recreated. Records of all such documents so disposed of will be indexed and made a part of the Reading Room files.

## 2. PROCEDURES FOR READING ROOM PERSONNEL

- a. When a request for documents or records is made in person at (1) the Department's Headquarters FOI Reading Room or (2) the appropriate Regional or Field FOI Reading Room, as listed in Attachment 1, the Reading Room personnel will provide materials in accordance with this Order.
- b. When a request is made for identifiable records of the Department, which have been retired to the National Archives, the requester will be directed to the National Archives for inspection and copying.
- c. When a request is made for identifiable records of the Department which have been stored in the record centers of the General Services Administration, but would otherwise be available under the FOIA, such records shall be retrieved by the Department for the requester.
- d. The FOI offices shall be open to the public on regular workdays during the regular duty hours of the installation where located. The offices will be open for a minimum of 7 hours per day.
- e. Copies of available records shall be produced as promptly as possible: where available, public copying facilities will be provided. "Not more than one copy of any document will be provided or copied. Records which are published or available for sale need not be copied. Material which has been copyrighted will not be reproduced in violation of the copyright laws.

## 3. FEES.

- a. The fee schedule for the DOE Reading Room is authorized by Chapter II, page 11-13, subparagraphs (6) and (7).

(1) Fees shall not be charged where they would amount, in the aggregate, for a request or a series of related requests, to \$10 or less. Where fees in excess of \$10 are to be charged, fees will be assessed for the full amount.

Vertical line denotes change.

U.S. Department of Energy  
Washington, D.C.

PAGE CHANGE

DOE 1700.1 Chg 3

5-18-92

SUBJECT: FREEDOM OF INFORMATION PROGRAM

1. PURPOSE. To transmit revised pages to DOE 1700.1, FREEDOM OF INFORMATION PROGRAM, of 11-19-79.
2. EXPLANATION OF CHANGE. To make organizational title and routing symbol editorial revisions required by SEN-6. No substantive changes have been made.
3. FILING INSTRUCTIONS.

a. <u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
1	11-19-79	1	11-19-79
2	10-8-91	2	5-18-92
i (and ii)	10-8-91	i (and ii)	5-18-92
I-1 thru I-4	10-8-91	I-1 thru I-5 (and I-6)	5-18-92
II-5	11-19-79	II-5	11-19-79
II-6	11-19-79	II-6	5-18-92
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III-2	11-19-79	III-2	5-18-92
V-3 (and V-4)	10-8-81	V-3 (and V-4)	5-18-92
Atch 1, Page 1	10-8-81	Atch 1, Page 1	5-18-92
Atch 1, Page 2	11-19-79	Atch 1, Page 2	5-18-92

- b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



DONALD W. PEARMAN, JR.  
Acting Director  
Administration and Human  
Resource Management

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Administrative Services



# U.S. Department of Energy

Washington, D.C.

## ORDER

DOE 1700.1

11-19-79

SUBJECT: FREEDOM OF INFORMATION PROGRAM

1. PURPOSE. To establish guidelines and procedures for the processing of requests made to the Department of Energy (DOE) under the Freedom of Information Act (FOIA). These procedures do not apply to the Federal Energy Regulatory Commission.
2. POLICIES.
  - a. It is the policy of the Department to make information publicly available to the fullest extent possible. Officers and employees of the Department may furnish to the public informally and without compliance with procedures in this Order, information and records of types which officers and employees of the DOE customarily furnish to the public in the regular performance of their duties.
  - b. Information in the possession of the Department will be made available to the public unless it is exempt from mandatory public disclosure pursuant to one or more of the exemption provisions of the FOIA, 5 U.S.C. 552 (Public Law 90-23, as amended) or other applicable statutes.
  - c. To the extent permitted by other laws, DOE will make available records which it is authorized to withhold under the FOIA. However in light of a recent Supreme Court decision, any discretionary release of materials exempt under the fourth exemption and/or 18 U.S.C. 1905 should be coordinated with the Office of General Counsel.
  - d. The policies and procedures stated in this Order shall be interpreted so as to be consistent with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579).
  - e. There is no obligation to compile or create a record solely for the purpose of satisfying a request for records.
3. CONTRACTOR RECORDS. Where a contract with the DOE stipulated that any documents relating to work under the contract shall be the property of the Government, such records shall be considered to be agency records and subject to disclosure under the FOIA. However, if a contract does not make such specific provisions, no DOE contractor records shall be considered to be agency records unless and until such time that the DOE acquires possession of the particular contractor documents.

**DISTRIBUTION:**

All Departmental Elements

**INITIATED BY:**

Office of Administrative Services

4. DEFINITIONS.

- a. Appeal Authority. The Director of Administration and Human Resource Management.
- b. Freedom of Information (FOI) Officer. The person designated to administer the FOIA at the DOE locations shown in Attachment 1.
- c. General Counsel. The General Counsel provided for in Section 202(b) of the DOE Organization Act, or any DOE attorney designated by the General Counsel as having responsibility for counseling the Department on FOIA matters.
- d. Records. For purposes of Chapter V, "Freedom of Information Reading Room Procedures," "record" means books, brochures, punchcards, magnetic tapes, paper tapes, sound recordings, maps, pamphlets, photographs, microfilm, microfiche, or other documentary materials regardless of physical form or characteristics, made or received by the Department in pursuance of Federal law or in connection with Departmental functions, policies, decisions, procedures, operations, programs, or other activities in transacting public business. "Record" does not include: Objects or articles such as tangible exhibits, models, equipment, processing materials, formulas, designs, drawings, items of value, books, magazines, pamphlets, or other reference material in formally organized and officially designated libraries of the Department, which are available under the rules of the particular library concerned.
- e. Authorizing or Denying Official. The term refers to any DOE officer or employee having custody of or responsibility for records requested under 5 U.S.C. 552. In DOE Headquarters, such officers or employees will be a Secretarial Officer, an official who reports directly to a Secretarial Officer, or an individual to whom a Secretarial Officer has delegated such authority without power of further redelegation. In the field, such officers or employees will be Heads of the Field Elements identified in Attachment 1, heads of major field offices that have organizational responsibilities in the identified field locations (i.e., District Managers and Deputy District Managers of the Office of Enforcement; District Directors of the Office of Special Counsel; and Energy Data Field Office Directors of the Energy Information Administration), or individuals to whom the field element heads have delegated such authority without power of further redelegation.

BY ORDER OF THE SECRETARY OF ENERGY:



DONALD W. PEARMAN, JR.  
Acting Director  
Administration and Human  
Resource Management



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ATTACHMENT 1 - LOCATIONS OF DEPARTMENTAL READING ROOMS

Vertical line denotes change.



CHAPTER I

RESPONSIBILITIES AND AUTHORITIES

1. DIRECTOR OF ADMINISTRATION AND HUMAN RESOURCE MANAGEMENT

- a. Administers Departmentwide FOI activities.
- b. Makes determinations on appeals of denials of initial requests.
- c. Obtains concurrence from the Director of Security Affairs before releasing any classified record on appeals.
- d. Provides Headquarters FOI Reading Room with copies of Department Decisions and Orders.

2. DIRECTOR OF ADMINISTRATIVE SERVICES.

- a. Develops and administers policies, standards, procedures, and Federal regulations to implement the provisions of the FOIA on a Departmentwide basis.
- b. Operates the FOI Office at Headquarters and designates the Headquarters FOI Officer.
- c. Ensures the preparation of annual reports to Congress and any other special reports.
- d. Maintains and operates a public records reading room for Headquarters. Maintains a list of DOE public reading room facilities.
- e. Maintains and operates a DOE Appeals Reading Room.

3. GENERAL COUNSEL. (Including Regional Counsel or Field Counsel, as appropriate.)

- a. Concurs in all determinations by Authorizing Officials to deny records and/or fee waivers to a requester.
- b. Provides legal advice to DOE employees concerning the FOIA.
- c. Assists the Department of Justice in representing DOE in litigation involving the FOIA.
- d. Counsel at Headquarters maintains contact with the Department of Justice to remain aware of issues and litigation arising under the Act.

Vertical line denotes change.

- e. Concurs in all determinations by Authorizing Officials to delete exempt information from records placed in a DOE reading room.

4. DIRECTOR OF SECURITY AFFAIRS.

- a. Concurs on release and serves as the Denying Official for that portion of a request involving classified records.
- b. Concurs in final determinations, as appropriate, concerning the release of all classified records.
- c. Concurs in all final decisions to place previously classified materials in DOE reading rooms.

5. HEADS OF FIELD ELEMENTS.

- a. Act as Authorizing or Denying Official.
- b. Designate an FOI Officer for his or her respective location identified in Attachment 1.
- c. Establish and maintain a FOI reading file for locations identified in Attachment 1.

6. FREEDOM OF INFORMATION OFFICERS.

- a. Receive requests and determine whether they meet the requirements to be considered as a request under the FOIA.
- b. If a request is determined to be one under the FOIA, log in the requests by date, and process them according to the procedures in Chapter II.
- c. Ascertain which organizations have primary responsibility for custody of or concern with the records requested and identify the appropriate Authorizing Official(s).
- d. Where a FOI request entails records under the cognizance of more than one Authorizing Official the FOI Officer shall designate a primary Authorizing Official who will be responsible for coordinating the search for all responsive records.
- e. If a request will not be completely responded to within 10 days, send an acknowledgment letter to the requester stating the date of receipt, the date the initial response is due, and the Authorizing Official to whom the request has been sent.

Vertical line denotes change.

- f. If a request does not meet the requirement that it reasonably describe the records sought, the FOI Officer, in cooperation with the Authorizing Official may assist the requester in reformulating the request.
- g. Bill and ensure the collection of fees for costs associated with processing requests for DOE records and notifying the Authorizing Official when fees are received. The billing and collection of fees may be processed in accordance with existing financial procedures at a particular location, but the final responsibility for assuring the collection of fees rests with the FOI Officer.
- h. Maintain the necessary records and indexes to locate requests and to produce input for the annual reports and special Congressional and Office of Management and Budget (OMB) reports.
- i. Develop and maintain a status reporting system to assure that requests and appeals are responded to within the legal time limits or that extensions are requested, as appropriate.
- j. The Headquarters FOI Office prepares the FOI annual report to Congress.
- k. Consults with Authorizing Official on any request where assessment of fee, waiver of fee, or denial of fee waiver is proposed. Concurrence of Authorizing Official and the General Counsel is required for denial of fee waiver.
- l. Maintain and operate a FOI Reading Room for those locations identified in Attachment 1 containing 5 U.S.C. 552(a)(2) materials.
- m. Maintain and provide for public inspection and copying, materials and current indexes of the materials at their FOI Reading Room facility and, at their discretion, any other materials maintained in other FOI offices.
- n. Maintain records of the requests for inspection and copying of 5 U.S.C. 552(a)(2) materials.'

7. AUTHORIZING OFFICIALS.

- a. Advise the FOI Officer whenever a request does not reasonably describe the records sought. In such a case, provide information to the FOI Office to assist the requester in reformulating the request or directly assist the requester.

Vertical line denotes change.

- b. Identify and review the records encompassed by requests referred by the FOI Office, and advise the requester within 10 working days, unless otherwise extended, whether the request is to be granted or denied.
- c. Consult with other agencies or other DOE offices before releasing records originated by them and, as appropriate, transfer requests to other agencies.
- d. Estimate costs of responding to FOI requests and, when fees are to be charged, notify the FOI Office. After notification by the FOI Officer that any assessed fees have been paid, forward material to the requester.
- e. Consult with the FOI Officer on all requests where assessment of fee or waiver of fee is proposed. Concur on all denials of requests for fee waiver.
- f. When requested, provide copies of denied records to the Appeal Authority.
- g. Establish effective controls and procedures to preclude the loss of time in routing requests and appeals to those who must act upon them.
- h. Transmit to the FOI Officer a copy of the incoming request and all correspondence with the requester, such as responses to requests, notices of extensions of time, consultation with other agencies, or transfers of requests to other agencies. (This does not include copies of voluminous data which may be sent to the requester as an enclosure or attachment.)
- i. Obtain appropriate General Counsel concurrence on any recommendation by an Authorizing Official to deny records to a requester or to deny a request for fee waiver.
- j. When designated by the FOI Officer as "Primary Authorizing Official," that Official will immediately send copies of the request to other appropriate Authorizing Officials and will be responsible for the coordination and preparation of a DOE response.
- k. Provide the FOI Officer with documents required by 5 U.S.C. 552(a)(2) to be placed in the reading room.

Vertical line denotes change.

1. Provide proper and complete indexes of all materials consigned to the reading room for public inspection and copying.
- m. Arrange for updating of all materials held in the reading room for which his or her program originally consigned to the reading room.
- n. Provide and ensure that all exempted material has been excised with the concurrence by the Office of General Counsel prior to placing that material in the reading room.





- e. Documents Originated in Other Federal Agencies. Where an entire document originated in another Federal agency, the Authorizing Official may refer the request to the originating agency, and shall inform the requester. A requester who does not object to the referral within 5 days will be deemed to have consented. However, where a requester objects to this procedure, DOE will continue to process the request in consultation with the originating agency.
    - (1) Document Containing Information from Another Agency or Jointly Prepared. Requests for DOE records containing information received from another agency, or for records prepared jointly by DOE and other agencies, will be treated as requests for DOE records except that coordination will be effected by the Authorizing Official with the appropriate official of the other agency. Such coordination will be done on an expedited basis, for the purpose of determining whether the other agency wishes to deny the request and obtaining the certification, signature, and identity of the other agency's responsible official. The notice of determination to the requester, in the event part or all of the record is recommended for denials by the other agency, shall cite the other agency's denial official, as well as the appropriate DOE Denying Official if a denial by DOE is also involved.
    - (2) Federal Energy Regulatory Commission (FERC). For purposes of this paragraph, FERC will be considered an agency other than DOE.
  - f. Requests Not Under the FOI. Should a request for information be received which is not an FOI request, the request will be forwarded to the appropriate DOE official and shall be treated as ordinary correspondence apart from the FOI process.
  - g. Information in the Public Domain. A request for information in the public domain will be treated in a manner consistent with paragraph 1(f). Such a request may be forwarded to the appropriate DOE official for response or the requester may be informed from which public source the information is most readily available.
2. REQUESTS FOR CLASSIFIED DOCUMENTS.
- a. Availability. Requests for access to classified records in accordance with this Order, except those requests for access to classified records which are made specifically pursuant to the mandatory provisions of Executive Order 11652 or any successor

thereto (Classification and Declassification of National Security Information and Material) shall be considered a Freedom of Information Act request.

- b. Responsibility. Concurrence of the Director of Security Affairs is required on all responses involving requests for classified records. The Director of Security Affairs shall be informed of the request by the **FOI** Officer and the Authorizing Official to whom the action is assigned. The Director of Security Affairs shall advise the office originating the records or having cognizance or responsibility for the records prior to making a determination under this chapter. The written notice of a determination to deny records, or portions of records, which contain both classified material and other exempt material shall be concurred in by the Director of Security Affairs who shall be the Denying Official for the classified aspect of such records. **If** other DOE officials or appropriate officials of other agencies are responsible for denying any portion of the record, their names and titles or positions shall be listed in the notice of denial and it shall be clearly indicated what portion or portions they were responsible for denying.
- c. Appeals. The Director of Security Affairs or his designee shall be consulted on all appeal decisions, to the extent the appeal involves records or portions thereof which have been denied because they are classified.
- d. Other Agencies. Requests for DOE records containing classified information received from another agency, and requests for classified documents originating in another Federal agency shall be coordinated with or referred to the other agency consistent with page **II-1**, paragraph 1. Coordination or referral of information or documents subject to this section shall be effected by the Director of Security Affairs (in consultation with the Authorizing Official) with the appropriate official of the other agency.

### 3. TIME LIMITS AND EXTENSIONS.

- a. Time Requirements. The Authorizing Official shall take action to ensure that **FOI** requests are responded to within 10 working days of receipt, or that appropriate extensions are obtained.
- b. Agreements Between Requester and DOE.
  - (1) Nothing in this chapter shall preclude the Authorizing Official and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon for the initial determination.

Vertical line denotes change.

### CHAPTER III

#### ACTIONS ON APPEALS

##### **1. FORMS OF SUBMISSION.**

- a. Appeal Action. When this Authorizing Official has denied a request for records in whole or in part, including a response that there are no documents responsive to the request; or when the FOI Officer has denied a request for waiver of fees, the requester may, within 30 calendar days of receipt of such a response, appeal the determination to the Office of Administration and Human Resource Management.
- b. Elements of an Appeal.
  - (1) The appeal shall be in writing and forwarded to the Office of Administration and Human Resource Management.
  - (2) Both the envelope and the letter shall be clearly marked, "Freedom of Information Act Appeal."
  - (3) The appeal should contain a concise statement of the grounds upon which it is brought and a description of the relief sought. The appeal should also include a discussion of any relevant authorities, including, but not limited to, DOE (and predecessor agencies) rulings, regulations, interpretations, and decisions on appeals and any judicial determinations relied upon to support the appeal.
  - (4) A copy of the letter that is the subject of the appeal shall be submitted with the appeal.
- c. Receipt of an Appeal. An appeal will be considered to be received when it has reached the Office of Administration and Human Resource Management. Individuals not in the Office of Administration and Human Resource Management receiving an appeal directly from a requester shall send it directly to the Office of Administration and Human Resource Management. Documents delivered after official business hours are deemed received on the next official business day.
- d. Action Within 20 Working Days.
  - (1) The appeal authority shall act upon the appeal within 20 working days of its receipt, or more rapidly if feasible. If unusual circumstances (as defined on page II-6, paragraph 3) require an extension of time before a decision on a request can be reached, the appeal authority may extend the time for final action for an additional 10 working days, less the number of days of any statutory extension which may have been taken by

5-18-92

the Authorizing Official during the period of initial receipt of the request:

- (2) If no determination on the appeal has been dispatched at the end of the 20-day period or the last extension thereof, the requester may deem his/her administrative remedies to be exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4)(B). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit the requester shall be informed of the reason for the delay; of the date on which a determination may be expected to be dispatched, and of his/her right to seek judicial review in the United States district court in the district in which he/she resides or has his/her principal place of business, the district in which the Department records are situated, or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.
- (3) Nothing in this chapter shall preclude the appeal authority and a requester from agreeing to an extension of time for a decision on the appeal. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon for the appeal.

## 2. FORM OF ACTION ON APPEAL.

- a. Administrative Determination. The appeal authority's action on an appeal shall be in writing, and shall set forth his/her name and title. A denial, in whole or in part, of an appeal shall set forth the exemption(s) relied on, a brief explanation consistent with the purpose of how the exemption applies to the records withheld, and a statement of why a discretionary release is not appropriate. It shall also contain a statement that it constitutes final Department action on the request and that judicial review will be available either in the district in which the requester resides or has a principal place of business, or in which the records are situated, or in the District of Columbia. Documents determined by the appeal authority to be documents subject to release shall be made promptly available to the requester upon payment of any applicable fee. A copy of all administrative determinations will be sent to the Headquarters FOI Office.
- b. Classified Records. The Director of Security Affairs or designee shall concur on all appeal decisions to be made to the extent the appeal involves records or portions thereof which have been denied because they are classified.



- (1) Fees shall not be charged where they would amount, in the aggregate, for a request or a series of related requests, to \$25 or less. Where fees in excess of \$25 are to be charged, fees will be assessed for the full amount.
  - (2) For copies of documents, 10 cents per copy of each page.
- b. Where commercial copying devices are installed, fees will be charged on a per page basis.
  - c. Records not susceptible to photocopying are charged at actual cost.
  - d. There will be no charge for searching costs made by the Reading Room personnel for documents contained in the reading Room.
  - e. The Reading Room personnel at locations described in Attachment 1 will be responsible for determining fee amounts in each location in accordance with paragraph 3(a). The billing of fees shall be processed in accordance with existing financial procedures ~~at a~~ particular location by the servicing finance office.
  - f. The Reading Room personnel will submit all fee determinations for collection to designated financial organization representatives. Billing notices will instruct the requester how to pay and where to remit the payment.

#### 4. REPORTS.

- a. The Freedom of Information Office shall maintain an account of the total requests made to a Departmental Reading Room.
- b. A consolidation of costs and fees collected in the operation of each Departmental Reading room will be provided to the Headquarters Reference and Information Management Division Director by 1-15 of each year.

LOCATIONS OF DEPARTMENTAL READING ROOMS

1. Alaska Power Administration
2. Bartlesville Energy Technology Center
3. Bonneville Power Administration
4. DOE Albuquerque Field Office
5. DOE Chicago Field Office (To be included in Region V Reading Room)
6. DOE Fernald Field Office
7. DOE Idaho Field Office
8. DOE Nevada Field Office
9. DOE Oak Ridge Field Office
10. DOE Richland Field Office
11. DOE San Francisco Field Office (to be included in Region IX Reading Room)
12. DOE Savannah River Field Office
13. Grand Forks Energy Technology Center
14. Grand Junction Office
15. Headquarters, Washington, D.C. (Headquarters will also maintain an Appeal Office Reading Room)
16. Laramie Energy Technology Center
17. Morgantown Energy Technology Center
18. Pittsburgh Energy Technology Center
19. Region I
20. Region II
21. Region III
22. Region IV

Vertical line denotes change.

- 23. Region V
- 24. Region VI
- 25. Region VII
- 26. Region VIII
- 27. Region IX
- 28. Region X
- 29. Southeastern Power Administration
- 30. Southwestern Power Administration
- 31. Western Area Power Administration

Vertical line denotes change.



U.S. Department of Energy  
Washington, D.C.

PAGE CHANGE

DOE 1700.1 Chg 4

8-21-92

**SUBJECT:** FREEDOM OF INFORMATION PROGRAM

1. PURPOSE. To transmit revised pages to DOE 1700.1, FREEDOM OF INFORMATION PROGRAM, of 11-19-79;
2. EXPLANATION OF CHANGE. To correct editorial revisions which were incorrectly made during the SEN-6 directives update project.
3. FILING INSTRUCTIONS.

a. <u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
1	11-19-79	1	11-19-79
2	5-18-92	2	8-21-92
i (and ii)	5-18-92	i (and ii)	8-21-92
I-1 thru I-5 (and I-6)	5-18-92	I-1 thru I-4	8-21-92
II-5	11-19-79	II-5	11-19-79
II -6	5-18-92	II-6	8-21-92
III-1	5-18-92	III-1	8-21-92
III -2	5-18-92	III-2	8-21-92
V-3 (and V-4)	5-18-92	V-3 (and V-4)	8-21-92

- b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



DOLORES L. ROZZI  
Director of Administration  
and Human Resource Management

**DISTRIBUTION:**

All Departmental Elements

**INITIATED BY:**

Office of Administrative Services



U.S. Department of Energy  
Washington, D.C.

ORDER

DOE 1700.1

11-19-79

**SUBJECT:** FREEDOM OF INFORMATION PROGRAM

- 
1. PURPOSE. To establish guidelines and procedures for the processing of request; made to the Department of Energy (DOE) under the Freedom of Information Act (FOIA).
  2. POLICIES.
    - a. It is the policy of the Department to make information publicly available to the fullest extent possible. Officers and employees of the Department may furnish to the public informally and without compliance with procedures in this Order, information and records of types which officers and employees of the DOE customarily furnish to the public in the regular performance of their duties.
    - b. Information in the possession of the Department will be made available to the public unless it is exempt from mandatory public disclosure pursuant to one or more of the exemption provisions of the FOIA, 5 U.S.C. 552 (Public Law 90-23, as amended) or other applicable statutes.
    - c. To the extent permitted by other laws, DOE will make available records which it is authorized to withhold under the FOIA. However, in light of a recent Supreme Court decision, any discretionary release of materials exempt under the fourth exemption and/or 18 U.S.C. 1905 should be coordinated with the Office of General Counsel.
    - d. The policies and procedures stated in this Order shall be interpreted so as to be consistent with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579).
    - e. There is no obligation to compile or create a record solely for the purpose of satisfying a request for records.
  3. CONTRACTOR RECORDS. Where a contract with the DOE stipulated that any documents relating to work under the contract shall be the property of the Government, such records shall be considered to be agency records and subject to disclosure under the FOIA. However, if a contract does not make such specific provisions, no DOE contractor records shall be considered to be agency records unless and until such time that the DOE acquires possession of the particular contractor documents.

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DISTRIBUTION

All Departmental Elements

INITIATED BY.

Office of Administrative  
Services

4. DEFINITIONS.

- a. Appeal Authority. The Office of Hearings and Appeals.
- b. Freedom of Information (FOI) Officer. The person designated to administer the FOIA at the DOE locations shown in Attachment 1.
- c. General Counsel. The General Counsel provided for in Section 202(b) of the DOE Organization Act, or any DOE attorney designated by the General Counsel as having responsibility for counseling the Department on FOIA matters.
- d. Records. For purposes of Chapter V, "Freedom of Information Reading Room Procedures," "record" means books, brochures, punchcards, magnetic tapes, paper tapes, sound recordings, maps, pamphlets, photographs, microfilm, microfiche, or other documentary materials regardless of physical form or characteristics, made or received by the Department in pursuance of Federal law or in connection with Departmental functions, policies, decisions, procedures, operations, programs, or other activities in transacting public business. "Record" does not include: Objects or articles such as tangible exhibits, models, equipment, processing materials, formulas, designs, drawings, items of value, books, magazines, pamphlets, or other reference material in formally organized and officially designated libraries of the Department, which are available under the rules of the particular library concerned.
- e. Authorizing or Denying Official. The term refers to any DOE officer or employee having custody of or responsibility for records requested under 5 U.S.C. 552. In DOE Headquarters, such an officer or employee will be a Secretarial Officer, an official who reports directly to a Secretarial Officer, or an individual to whom a Secretarial Officer has delegated such authority without power of further redelegation. In the field, such officers or employees will be Heads of the Field Elements identified in Attachment 1, heads of major field offices that have organizational responsibilities in the identified field locations (i.e., District Managers and Deputy District Managers of the Office of Enforcement; District Directors of the Office of Special Counsel; and Energy Data Field Office Directors of the Energy Information Administration), or individuals to whom the field element heads have delegated such authority without power of further redelegation.

BY ORDER OF THE SECRETARY OF ENERGY:

DOLORES L. ROZZI  
Director of Administration  
and Human Resource Management

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CHAPTER I

RESPONSIBILITIES AND AUTHORITIES

1. DIRECTOR OF ADMINISTRATION AND HUMAN RESOURCE MANAGEMENT (AD-1). Administers Departmentwide FOI activities.
2. DIRECTOR OF ADMINISTRATIVE SERVICES (AD-60).
  - a. Develops and administers policies, standards, procedures, and Federal regulations to implement the provisions of the FOIA on a Departmentwide basis.
  - b. Operates the FOI Office at Headquarters and designates the Headquarters FOI Officer.
  - c. Ensures the preparation of annual reports to Congress and any other special reports.
  - d. Maintains and operates a public records reading room for Headquarters. Maintains a list of DOE public reading room facilities.
3. GENERAL COUNSEL (GC-1). (Including Regional Counsel or Field Counsel, as appropriate.)
  - a. Concurs in all determinations by Authorizing Officials to deny records and/or fee waivers to a requester.
  - b. Provides legal advice to DOE employees concerning the FOIA.
  - c. Assists the Department of Justice in representing DOE in litigation involving the FOIA.
  - d. Counsel at Headquarters maintains contact with the Department of Justice to remain aware of issues and litigation arising under the Act.
  - e. Concurs in all determinations by Authorizing Officials to delete exempt information from records placed in a DOE reading room.
4. DIRECTOR OF SECURITY AFFAIRS (SA-1). Concurs in final appeal determinations, as appropriate, concerning the release of all classified records.
5. DIRECTOR OF CLASSIFICATION (SA-20). Concurs on release and serves as the Denying Official for that portion of a request involving classified records.
6. DIRECTOR OF HEARINGS AND APPEALS (HG-1).
  - a. Makes determinations on appeals of denials of initial requests.
  - b. Obtains concurrence from the Director of Security Affairs before releasing any classified record on appeals.

Vertical line denotes change.

- c. Maintains and operates a DOE Appeals Reading Room.
- d. Provides Headquarters FOI Reading Room with copies of Department Decisions and Orders.

17. HEADS OF FIELD ELEMENTS.

- a. Act as Authorizing or Denying Official.
- b. Designate an FOI Officer for his or her respective location identified in Attachment 1.
- c. Establish and maintain a FOI reading file for locations identified in Attachment 1.

18. FREEDOM OF INFORMATION OFFICERS.

- a. Receive requests and determine whether they meet the requirements to be considered as a request under the FOIA.
- b. If a request is determined to be one under the FOIA, log in the requests by date, and process them according to the procedures in Chapter II.
- c. Ascertain which organizations have primary responsibility for custody of or concern with the records requested and identify the appropriate Authorizing Official(s).
- d. Where a FOI request entails records under the cognizance of more than one Authorizing Official, the FOI Officer shall designate a primary Authorizing Official, who will be responsible for coordinating the search for all responsive records.
- e. If a request will not be completely responded to within 10 days, send an acknowledgment letter to the requester stating the date of receipt, the date the initial response is due, and the Authorizing Official to whom the request has been sent.
- f. If a request does not meet the requirement that it reasonably describe the records sought, the FOI Officer, in cooperation with the Authorizing Official, may assist the requester in reformulating the request.
- g. Bill and ensure the collection of fees for costs associated with processing requests for DOE records and notifying the Authorizing Official when fees are received. The billing and collection of fees may be processed in accordance with existing financial procedures at a particular location, but the final responsibility for assuring the collection of fees rests with the FOI Officer.
- h. Maintain the necessary records and indexes to locate requests and to produce input for the annual reports and special Congressional and Office of Management and Budget (OMB) reports.



- i. Develop and maintain a status reporting system to assure that requests and appeals are responded to within the legal time limits or that extensions are requested, as appropriate.
- j. The Headquarters FOI Office prepares the FOI annual report to Congress.
- k. Consults with Authorizing Official on any request where assessment of fee, waiver of fee, or denial of fee waiver is proposed. Concurrence of Authorizing Official and the General Counsel is required for denial of fee waiver.
- l. Maintain and operate a FOI Reading Room for those locations identified in Attachment 1 containing 5 U.S.C. 552(a)(2) materials.
- m. Maintain and provide for public inspection and copying, materials and current indexes of the materials at their FOI Reading Room facility and, at their discretion, any other materials maintained in other FOI offices.
- n. Maintain records of the requests for inspection and copying of 5 U.S.C. 552(a)(2) materials.

9. AUTHORIZING OFFICIALS.

- a. Advise the FOI Officer whenever a request does not reasonably describe the records sought. In such a case, provide information to the FOI Office to assist the requester in reformulating the request or directly assist the requester.
- b. Identify and review the records encompassed by requests referred by the FOI Office, and advise the requester within 10 working days, unless otherwise extended, whether the request is to be granted or denied.
- c. Consult with other agencies or other DOE offices before releasing records originated by them and, as appropriate, transfer requests to other agencies.
- d. Estimate costs of responding to FOI requests and, when fees are to be charged, notify the FOI Office. After notification by the FOI Officer that any assessed fees have been paid, forward material to the requester.
- e. Consult with the FOI Officer on all requests where assessment of fee or waiver of fee is proposed. Concur on all denials of requests for fee waiver.
- f. When requested, provide copies of denied records to the Appeal Authority.
- g. Establish effective controls and procedures to preclude the loss of time in routing requests and appeals to those who must act upon them.

- h. Transmit to the FOI Officer a copy of the incoming request and all correspondence with the requester, such as responses to requests, notices of extensions of time, consultation with other agencies, or transfers of requests to other agencies. (This does not include copies of voluminous data which may be sent to the requester as an enclosure or attachment.)
- i. Obtain appropriate General Counsel concurrence on any recommendation by an Authorizing Official to deny records to a requester or to deny a request for fee waiver.
- j. When designated by the FOI Officer as "Primary Authorizing Official," that Official will immediately send copies of the request to other appropriate Authorizing Officials and will be responsible for the coordination and preparation of a DOE response.
- k. Provide the FOI Officer with documents required by 5 U.S.C. 552(a)(2) to be placed in the reading room,
- l. Provide proper and complete indexes of all materials consigned to the reading room for public inspection and copying.
- m. Arrange for updating of all materials held in the reading room for which his or her program originally consigned to the reading room.
- n. Provide and ensure that all exempted material has been excised with the concurrence by the Office of General Counsel prior to placing that material in the reading room.

- e. Documents Originated in Other Federal Agencies. Where an entire document originated in another Federal agency, the Authorizing Official may refer the request to the originating agency, and shall inform the requester. A requester who does not object to the referral within 5 days will be deemed to have consented. However, where a requester objects to this procedure, DOE will continue to process the request in consultation with the originating agency.
  - (1) Document Containing Information from Another Agency or Jointly Prepared. Requests for DOE records containing information received from another agency, or for records prepared jointly by DOE and other agencies, will be treated as requests for DOE records except that coordination will be effected by the Authorizing Official with the appropriate official of the other agency. Such coordination will be done on an expedited basis, for the purpose of determining whether the other agency wishes to deny the request and obtaining the certification, signature, and identity of the other agency's responsible official. The notice of determination to the requester, in the event part or all of the record is recommended for denials by the other agency, shall cite the other agency's denial official, as well as the appropriate DOE Denying Official if a denial by DOE is also involved.
  - (2) Federal Energy Regulatory Commission (FERC). For purposes of this paragraph, FERC will be considered an agency other than DOE.
- f. Requests Not Under the FOI. Should a request for information be received which is not an FOI request, the request will be forwarded to the appropriate DOE official and shall be treated as ordinary correspondence apart from the FOI process.
- g. Information in the Public Domain. A request for information in the public domain will be treated in a manner consistent with paragraph 1(f). Such a request may be forwarded to the appropriate DOE official for response or the requester may be informed from which public source the information is most readily available.

2. REQUESTS FOR CLASSIFIED DOCUMENTS.

- a. Availability. Requests for access to classified records in accordance with this Order, except those requests for access to classified records which are made specifically pursuant to the mandatory provisions of Executive Order 11652 or any successor

thereto (Classification and Declassification of National Security Information and Material) shall be considered a Freedom of Information Act request.

- 1 b. Responsibility. Concurrence of the Director of Classification is required on all responses involving requests for classified records. 1 The Director of Classification shall be informed of the request by 1 the FOI Officer and the Authorizing Official to whom the action is assigned. The Director of Classification shall advise the office originating the records or having cognizance or responsibility for the records prior to making a determination under this chapter. The written notice of a determination to deny records, or portions of records, which contain both classified material and other exempt material shall be concurred in by the Director of Classification 1 who shall be the Denying Official for the classified aspect of such records. If other DOE officials or appropriate officials of other agencies are responsible for denying any portion of the record, their names and titles or positions shall be listed in the notice of denial and it shall be clearly indicated what portion or portions they were responsible for denying.
- c. Appeals. The Director of Security Affairs or his designee shall be consulted on all appeal decisions, to the extent the appeal involves records or portions thereof which have been denied because they are classified.
- d. Other Agencies. Requests for DOE records containing classified information received from another agency, and requests for classified documents originating in another Federal agency shall be coordinated with or referred to the other agency consistent with page 11-1, paragraph 1. Coordination or referral of information or documents subject to this section shall be effected by the Director 1 of Classification (in consultation with the Authorizing Official) with the appropriate official of the other agency.

### 3. TIME LIMITS AND EXTENSIONS.

- a. Time Requirements The Authorizing Official shall take action to ensure that FOI requests are responded to within 10 working days of receipt, or that appropriate extensions are obtained.
- b. Agreements Between Requester and DOE.
  - (1) Nothing in this chapter shall preclude the Authorizing Official and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon for the initial determination.

Vertical line denotes change.

## CHAPTER III

### ACTIONS ON APPEALS

#### 1. FORM OF SUBMISSION.

- a. Appeal Action. When the Authorizing Official has denied a request for records in whole or in part, including a response that there are no documents responsive to the request, or when the FOI Officer has denied a request for waiver of fees, the requester may, within 30 calendar days of receipt of such a response, appeal the determination to the Office of Hearings and Appeals.
- b. Elements of an Appeal.
  - (1) The appeal shall be in writing and forwarded to the Office of Hearings and Appeals.
  - (2) Both the envelope and the letter shall be clearly marked, "Freedom of Information Act Appeal."
  - (3) The appeal should contain a concise statement of the grounds upon which it is brought and a description of the relief sought. The appeal should also include a discussion of any relevant authorities, including, but not limited to, DOE (and predecessor agencies) rulings, regulations, interpretations, and decisions on appeals and any judicial determinations relied upon to support the appeal.
  - (4) A copy of the letter that is the subject of the appeal shall be submitted with the appeal.
- c. Receipt of an Appeal. An appeal will be considered to be received when it has reached the Office of Hearings and Appeals. Individuals not in the Office of Hearings and Appeals receiving an appeal directly from a requester shall send it directly to the Office of Hearings and Appeals. Documents delivered after official business hours are deemed received on the next official business day.
- d. Action Within 20 Working Days.
  - (1) The Appeal Authority shall act upon the appeal within 20 working days of its receipt, or more rapidly if feasible. If unusual circumstances (as defined on page II-6, paragraph 3) require an extension of time before a decision on a request can be reached, the appeal authority may extend the time for final action for an additional 10 working days, less the number of days of any statutory extension which may have been taken by the Authorizing Official during the period of initial receipt of the request.

(2) If no determination on the appeal has been dispatched at the end of the 20-day period or the last extension thereof, the requester may deem his/her administrative remedies to be exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4)(B). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his/her right to seek judicial review in the United States district court in the district in which he/she resides or has his/her principal place of business, the district in which the Department records are situated, or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(3) Nothing in this chapter shall preclude the appeal authority and a requester from agreeing to an extension of time for a decision on the appeal. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon for the appeal.

## 2. FORM OF ACTION ON APPEAL.

- a. Administrative Determination. The appeal authority's action on an appeal shall be in writing, and shall set forth his/her name and title. A denial, in whole or in part, of an appeal shall set forth the exemption(s) relied on, a brief explanation consistent with the purpose of how the exemption applies to the records withheld, and a statement of why a discretionary release is not appropriate. It shall also contain a statement that it constitutes final Department action on the request and that judicial review will be available either in the district in which the requester resides or has a principal place of business, or in which the records are situated, or in the District of Columbia. Documents determined by the appeal authority to be documents subject to release shall be made promptly available to the requester upon payment of any applicable fee. A copy of all administrative determinations will be sent to the Headquarters FOI Office.
- b. Classified Records. The Director of Security Affairs or designee shall concur on all appeal decisions to be made to the extent the appeal involves records or portions thereof which have been denied because they are classified. In such cases, the Director of Security Affairs shall make the final determination if classified records are to be released.

- (2) For copies of documents, 10 cents per copy of each page.
- b. Where commercial copying devices are installed, fees will be charged on a per page basis.
- c. Records not susceptible to photocopying are charged at actual cost.
- d. There will be no charge for searching costs made by the reading room personnel for documents contained in the reading room.
- e. The reading room personnel at locations described in Attachment 1 will be responsible for determining fee amounts in each location in accordance with page V-2, paragraph 3(a). The billing of fees shall be processed in accordance with existing financial procedures at a particular location by the servicing finance office.
- f. The reading room personnel will submit all fee determinations for collection to designated financial organization representatives. Billing notices will instruct the requester how to pay and where to remit the payment.

4. REPORTS.

- a. The Freedom of Information Office shall maintain an account of the total requests made to a Departmental reading room.
- b. A consolidation of costs and fees collected in the operation of each Departmental reading room will be provided to the Headquarters Director of Reference and Information Management (AD-62) by 1-15 of each year.

