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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
STATION PLACE  
100 F STREET, NE  
WASHINGTON, DC 20549-2465

Office of FOIA Services

January 18, 2017

Mr. John Greenewald  
The Black Vault



Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552  
Request No. 17-01206-FOIA

Dear Mr. Greenewald:

This letter is in response to your request, dated and received in this office on January 5, 2017, for a copy of the "FOIA/PA Work Procedure Manual (also known as the FOIA/PA Working Procedure Manual)."

We conducted a thorough search of the appropriate offices but were unable to locate a copy of the requested manual. Please note that this manual is no longer in use by the SEC FOIA Office. However, we are enclosing the Freedom of Information and Privacy Act Request Processing Guidance for Liaisons (SEC FOIA Liaison Guidance) which was drafted and implemented circa late 2009/early 2010. In addition, our FOIA regulations and policies are publicly available on our website at the following link: [www.sec.gov/oso/foia-relevant-foia-docs.html](http://www.sec.gov/oso/foia-relevant-foia-docs.html).

You have the right to appeal the adequacy of our search or finding of no responsive information to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(d)(5)(iv). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at [https://www.sec.gov/forms/request\\_appeal](https://www.sec.gov/forms/request_appeal) or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address. Also, send a copy to the SEC Office of at the Station Place address.

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If you have any questions, please contact me at [hallr@sec.gov](mailto:hallr@sec.gov) or (202) 551-6376. You may also contact me at [foiapa@sec.gov](mailto:foiapa@sec.gov) or (202) 551-7900. You also have the right to seek assistance from Jeffery Ovall at (202) 551-7900 as a FOIA Public Liaison for this office, or contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or <https://ogis.archives.gov/?p=/ogis/index.html>.

Sincerely,

A handwritten signature in black ink that reads "Ronnye L. Hall". The signature is written in a cursive style with a large initial "R".

Ronnye L. Hall  
FOIA Research Specialist

Enclosure

**FREEDOM OF INFORMATION and  
PRIVACY ACT REQUEST  
PROCESSING GUIDANCE  
FOR LIAISONS**

*Prepared by:  
Office of FOIA Services  
Room 2736  
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**FREEDOM OF INFORMATION AND PRIVACY ACT (FOIA & PA)  
REQUEST  
PROCESSING GUIDANCE FOR LIAISONS**

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# FOIA and PRIVACY ACT REQUEST PROCESSING GUIDANCE FOR LIAISONS

## 1. Purpose.

The purpose of this guidance is to describe the basic processes and procedures for FOIA liaisons and staff of SEC divisions and program offices to assist the FOIA Office staff in processing requests under the Freedom of Information Act (5 U.S.C. 552) and Privacy Act (5 U.S.C. 552 a). The Commissions' FOIA and Privacy Act regulations, 17 CFR 200.80 and 17 CFR 200.300, may be accessed via the FOIA page on the INSIDER. For your convenience, links to these materials and others can be found in the attachments to this guidance.

*NOTE: This guidance document is not an all-inclusive guide to FOIA processing. Rather, it provides the most basic information and guidance needed by all FOIA Liaisons to be able to perform the role within the division or program office. Always contact the FOIA Research Specialist assigned to a request for more information regarding the processing of the request referral.*

## 2. Overview of the SEC FOIA Program.

- A. **FOIA Program.** The purpose of the FOIA Program is to facilitate the Commission's response to FOIA and Privacy Act requests and to manage the processing of requests, the tracking system, and reporting functions as mandated by the statutes. All FOIA and PA requests received by the Commission are processed in the FOIA Office. All Privacy Act requests received by the Commission are processed under both the FOIA and the Privacy Act.
- B. **Office of FOIA Services.** The Office of FOIA Services (formerly called the Office of FOIA and Privacy Act Operations, and referred to hereinafter as the "FOIA Office") is co-located with the Office of Records Management Services (RMS) and the Security Service in the Office of FOIA, Records Management and Security (OFRMS). The Office of FOIA Services is headed by the Commission's FOIA Officer; the Director OFRMS is also designated as the Chief FOIA/PA Officer of the Commission. The OFRMS Office organizational chart is located on the INSIDER Directory and a FOIA staff listing is on the INSIDER FOIA page. The staff of the FOIA Office primarily consists of FOIA Research Specialists who are knowledgeable in the FOIA and PA statutes and searching Commission records and databases.



- C. **Centralized Processing.** The Commission has a *centralized* process for receiving FOIA and Privacy Act requests. Requests are considered “received” by the Commission when received in the FOIA Office. All requests are received, tracked and responded to by the FOIA Office. No other entity in the Commission responds to FOIA or PA requests. The FOIA Office staff receives and assigns tracking numbers for all incoming requests. FOIA Research Specialists perform a review of the request to be sure it meets the criteria of a FOIA request and then perform initial research on requests to determine which office(s) may hold records responsive to the request and to determine if the requested records constitute agency records. The request may then be referred to a FOIA liaison(s) for the appropriate office(s). Once all research is completed and records responsive to the request have been received, the FOIA Office is responsible for preparing a final response to the requester and maintaining the Commission's FOIA records.
- D. **Appeals.** The FOIA Office receives all incoming appeals of denials under the FOIA or PA, and assigns a tracking number to those appeal requests. Appeals are forwarded to the Office of General Counsel (OGC) for processing. All appeals not received in the FOIA Office should be immediately forwarded to the FOIA Office for tracking.
- E. **Rule 83 Confidential Treatment (CT) Requests.** All submissions to the Commission including a request for confidential treatment (CT) under FOIA Rule 83 (17 CFR 200.83) must include a copy of the CT request for the FOIA Office.

### 3. SEC Staff FOIA Responsibilities.

- A. **FOIA Responsibility Commission-wide.** All SEC employees may be called upon to locate or review documents that are responsive to a FOIA request. It is the responsibility of all employees to do so in a timely manner so that a prompt response can be provided to the requester. See the Chairman's full message at: [http://insider.sec.gov/whats\\_happening/at\\_the\\_sec/november\\_2009/chairman-foia-11232009.html](http://insider.sec.gov/whats_happening/at_the_sec/november_2009/chairman-foia-11232009.html)
- B. **FOIA Liaisons in Divisions and Offices.**
- (1) **Designated FOIA Liaison.** Each division and program office director designates one or more FOIA liaison(s) as contact points for the FOIA Office and to receive and coordinate responses to FOIA requests which are referred to the division or program office. Each division and program office must have at least one staff member designated as the primary FOIA liaison. It is recommended that each primary liaison have at least one alternate. A FOIA liaison should be a staff member of sufficient grade or experience to be knowledgeable about the work and the records of the office. This staff member should be a sufficient subject matter expert and have the time and ability to accurately search for records, and/or direct or coordinate other staff members to conduct searches, and to perform document-by-document reviews, if necessary.

- (2) **FOIA Liaison Duties.** The FOIA liaison should be able to coordinate with the FOIA Office in order to provide a timely and accurate written response, which addresses the content and volume of the requested records and to provide the recommendation as prepared by the liaison or another staff member. FOIA liaisons should have knowledge of the law (FOIA and PA) which is commensurate with the volume and complexity of referrals to the program office. (See paragraph 10. FOIA and PA Training.) Each designated liaison will be asked to review this guidance and to sign and forward the acknowledgement set forth in paragraph 10.B. and ATTACHMENT 2.

- C. FOIA Staff and Liaison Listing and e-mail accounts.** Listings of the FOIA Office Staff and the FOIA liaisons are maintained by the FOIA Office and posted on the INSIDER web page. The FOIA Office also maintains e-mail distribution groups for liaisons, listed in MS Outlook by searching “#FOIA”. Certain offices maintain their own FOIA mailboxes. These mailboxes are used to forward FOIA referrals to the liaison offices. FOIA liaison responses can be returned to the FOIA Office at [foiapa@sec.gov](mailto:foiapa@sec.gov). Any changes to the FOIA liaison designation should be sent to the FOIA Officer at the same e-mail address.

#### **4. Overview of Basic Request Process.**

The basic process for responding to FOIA requests is as follows:

- A. Agency Receipt of Requests**
- B. Initial Review and Research**
- C. Referral to Office or Division FOIALiaison**
- D. Final Commission Response**

##### **A. Agency Receipt of Requests.**

- (1) **Receipt by FOIA Office.** The FOIA Office receives all FOIA and Privacy Act requests and subsequent appeals, and Public Info requests via e-mail account ([foiapa@sec.gov](mailto:foiapa@sec.gov)), fax or postal mail. All types of requests are received in the FOIA Office 24 hours a day, 7 days a week. Although some requests are dated days or months in advance of receipt, the statutory time frame for response does not begin until the request is received in the FOIA Office. FOIA requests may be submitted in writing to:

SEC Office of FOIA Services  
100 F Street NE  
Mail Stop 2736  
Washington, DC 20549  
Via e-mail to: [foiapa@sec.gov](mailto:foiapa@sec.gov)  
Via Fax to: 202-772-9336 or 9337  
FOIA Recorded Information: 202-551-8300  
FOIA Office: 202-551-7900

- (2) Receipt of Requests by Other Offices. Should any other office or employee receive a FOIA request or any request for non-public records from a member of the public, which is outside the normal course of business (or authority to release) for the receiving office or entity, the request should immediately be forwarded to the FOIA Office for tracking and coordination of response. Requests may be forwarded to [foiapa@sec.gov](mailto:foiapa@sec.gov), or the submitter may be advised to submit the request directly to the FOIA Office using the options listed above. The options are also listed on [www.sec.gov/foia](http://www.sec.gov/foia).
- (3) Assignment and Tracking. All requests and responses are tracked in the e-FOIA tracking system, FOIAXpress (FX), to ensure accuracy, completeness and consistency of responses within the Commission.
- (4) Timeframe for Responding. The FOIA requires that when an agency receives a proper FOIA request, it has twenty working days in which to make a determination on the request. An agency is not necessarily required to release the records within that statutory time limit, but it must make its determination within that time and access to releasable records should, at a minimum, be granted promptly thereafter. The statutory 20 working day period commences on the date on which the request is first received by the FOIA Office, but in any event not later than ten days after the request is first received by any component of the agency. *See* 5 USC § 552(a)(6)(A)(ii). (Also see Paragraph 5.F. of this guidance.)

- B. **Initial Review and Research.** Each FOIA request is assigned to a FOIA Research Specialist within the FOIA Office whose role is to facilitate processing of the request within 20 working days. Once the request has been reviewed, the FOIA Office may contact the requester for further information or clarification, and/or may need to coordinate for additional processing time and for fees.

Agency Records Defined. Under the FOIA “agency records” are records that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. The term includes electronic media.

C. **Referral to Office or Division FOIA Liaison.**

- (1) Referral. After initial review and research is completed, the FOIA Research Specialist may forward the request to one or more program office or division FOIA liaison(s) for review of the request and to search for and provide responsive records or information back to the FOIA Office. The FOIA Office will issue a referral memo to the liaison and attach a complete copy of the incoming request as well as describe any needed information. The full request is provided to the liaison to preclude any confusion regarding interpretation of the substance of the request.

(2) **Liaison Response.** In response to the referral from the FOIA Office, the liaison will provide a recommendation describing the search conducted, the volume of responsive records and the releasability in full or in part of those records; and if any records or portions thereof are to be denied, the FOIA exemption should be cited.

D. **Final Commission Response.** Once records are retrieved and/or a liaison response is received in the FOIA Office the FOIA Specialist prepares a response to the request based upon the recommendation of the liaison office and the availability of responsive records. With respect to the application of FOIA exemptions, after collaboration with the appropriate FOIA liaison(s), final preparation of releasable records will be accomplished by the FOIA Office using FOIA-specific redaction tools in FOIAXpress.

## 5. General FOIA Processing Information.

- A. **Records Retention Schedule.** Certain defined agency records are maintained in accordance with the Commission's Records Retention Schedule, as set forth by the Archivist of the Commission in the Office of Records Services/OFRMS. Records NOT destroyed pursuant to the retention schedule, *are subject* to the FOIA. If requested records have been destroyed based on the schedule, the requester will be so notified. The SEC Records Retention Schedule is linked in ATTACHMENT 1.
- B. **Rule 83 Confidential Treatment (CT) Requests (17 CFR § 200.83).** Certain records submitted to the Commission, normally in conjunction with an Enforcement matter, may also have a submission requesting confidential treatment (CT) in the event that a FOIA request is received for the submitted materials. These requests for CT will be addressed by the FOIA Office if determined that they seek protection of records which may be responsive to a FOIA request.
- C. **Public Record Requests.** The FOIA Office responds to public record requests formerly processed by the Public Reference Room. These requests are now received by the FOIA Office via email at [publicinfo@sec.gov](mailto:publicinfo@sec.gov).
- D. **Privacy Act Requests.** The FOIA Office processes all requests made under the Privacy Act. Privacy Act requests are those requests made by an individual for records relating to him or herself and retrieved by a personal identifier. Documents are subject to request under the Privacy Act only where they are part of a system of records. The Commission's system of records notices (SORN's) are published in the Federal Register and posted to the SEC's website.
- E. **Fees.** Fees for services provided in connection with requests made pursuant to the FOIA are charged by the Commission. A link to fee regulations can be located on the FOIA page of the Commission's external website at <http://www.sec.gov/foia.shtml> (17 CFR § 200.80(e)).

- F. **Timeframe for Responding to Requests.** The 20 working day response period commences on the date on which the request is first received by the FOIA Office, but in any event not later than ten days after the request is first received by any component of the agency. *See* 5 USC § 552(a)(6)(A)(ii). The FOIA Office will determine if any exceptions to the timeframe for response exist.
- (1) **Expedited Processing.** If a requester requests and is granted “expedited treatment” the request will be responded to “as soon as practicable.” *See* 5 USC § 552 (a)(6)(E)(iii). The determination to grant or deny expedited processing will be made by the FOIA Office within 10 calendar days of receipt of the request. *See* 5 USC § 552 (a)(6)(E)(ii)(I). This determination is based upon demonstration by the requester of a compelling need as defined at 5 USC § 552 (a)(6)(E)(v), 17 CFR § 200.80(d)(5)(iii). Where a request has been granted expedited treatment, the FOIA liaison will be notified immediately so that processing may be prioritized accordingly.
  - (2) **Unusual Circumstances.** The FOIA provides that an agency can extend the 20-day time limit for processing a FOIA request if it tells the requester in writing why it needs the extension and when it will make a determination on the request. The FOIA defines “unusual circumstances” as (a) the need to search for and collect records from separate offices; (b) the need to search for, collect, and examine a voluminous amount of records “demanded in a single request”; and (c) the need to consult with another agency or two or more agency components. If the above circumstances exist, the FOIA Research Specialist will notify the requester of the need for additional time via a “20 day consulting letter”.
  - (3) **Multi-track (FIFO).** In exceptional circumstances, agencies still cannot meet the time limits due to a high volume of requests, resource limitations, or other reasons (such as the volume of records responsive to the request). The Commission has a FIFO (First-In, First-Out) multi-track process to accommodate with these types of requests, which is described at 17 CFR 200.80(c)(5)(ii). The primary criteria for placement in the FIFO queue is the volume of records requested, which must exceed 3 paper record boxes or the electronic equivalent. Requests of this volume require a significant commitment of staff time and resources to process, and are accomplished one at a time with a project team of FOIA Staff. Requesters are notified of the volume of their request and given the opportunity to narrow the scope of the request, prior to being placed in the FIFO queue. Please contact the FOIA Research Specialist when the volume of records requested will be a factor in the response.
  - (4) **Clarification or Narrowed Scope Needed.** The FOIA allows agencies to toll the 20-day response period (i.e., Stop the clock) to obtain clarification from the requester one time during the process of the request. However, the FOIA Office may contact the requester as many times as necessary in order to process the request.
  - (5) **Fee negotiations.** The FOIA allows agencies to toll the 20-day response period (i.e., Stop the clock) as often as necessary to clarify fee-related issues.

## 6. FOIA Office Responsibilities.

The basic FOIA Office processing responsibilities are as follows:

- A. Receipt of Requests
- B. Initial Review and Research
- C. Referral to Program Office Liaison(s)
- D. Preparing Responsive Records
- E. Prepare Agency Responses

### A. Receipt of Requests.

- (1) Numbering and Tracking Requests. Upon receipt in the FOIA Office, all forms of requests and appeals are date-stamped, scanned into the FOIAXpress (FX) tracking system, and assigned a request tracking number. The requester is immediately issued a letter with notification of receipt of the request and given the request tracking number for future correspondence and to request a status. The request tracking number follows the format as shown in the example below:

**11-01234-FOIA**

The first 2 digits = fiscal year request received;

The next 5 digits = chronological number of request as received for the FY;

The suffix which denotes the type of request, as follows:

- FOIA – Freedom of Information Act request
- FOPA- FOIA and Privacy Act request
- APPS – Appeal
- GOVT – Government Agency request or referral to SEC
- REMD – Remanded on appeal
- CONG- Request from Congressional
- CHAI – Request directed to Chairman’s Office
- PAAM – Privacy Act amendment
- FIFO – First-In, First-Out
- PUBS – Requests for public records

- (2) Assignment of Requests. Once a request is assigned a tracking number, the FOIA Officer or designee will review and assign the request to the appropriate FOIA Research Specialist for processing. The FOIA Research Specialist will make determinations with regard to request scope, validity, expedition, fees/fee waivers, time frame for search, etc.

- (3) Appeals and Remands. The FOIA Office receives all incoming appeals of denials under the FOIA. Once a FOIA request has been denied in full, denied in part, a finding of “no responsive records” has been rendered, or no response has been issued within the statutory timeframe, the requester has appeal rights to the Office of the General Counsel (OGC). Under the Commission’s regulations at 17 CFR § 200.80(d)(6)(ii) the appeal must be mailed to the Office of FOIA Services and a copy mailed to the General Counsel. Upon receipt, the FOIA Office inputs the appeal



into FOIAXpress and assigns it a tracking number with the suffix “APPS.” A copy of the appeal and the original request are forwarded to the OGC for direct response to the requester. The OGC staff may contact liaisons and other staff members directly, when making a determination on appeal. In the event of a remand, the FOIA Office will follow the direction of the Office of the General Counsel. Liaisons may receive referrals with a tracking number reflecting that the original response and recommendation has been “remanded” for re-processing. These requests will have the suffix “REMD.”

- (4) Public Record Requests. The FOIA Office also responds to public record requests formerly processed by the Public Reference Room pursuant to 5 USC 552(a)(2). These requests are now received by the FOIA Office via email at [publicinfo@sec.gov](mailto:publicinfo@sec.gov). Requests that seek public reference materials (e.g. corporate filings, forms, no-action letters) are designated with a tracking number with the suffix “PUBS.” These requests are generally processed without referral to a program office or division. The FOIA Office will access various databases, such as Thomson, WEB CRD or LexisNexis, in order to obtain responsive records. In the event a referral is necessary, the FOIA liaison should process the PUBS request as they would a normal FOIA request. The same time and search parameters should be observed. The designation “PUBS” is made only for the FOIA Office’s internal tracking purposes. There are no denials or appeal rights to PUBS requests.
- (5) Privacy Act and Privacy Act Requests for Amendment of Records (PAAM). The FOIA Office processes all requests made under the Privacy Act as well as Privacy Act Amendment of Records requests. Privacy Act requests are those requests made by an individual for records relating to him or herself and retrieved by a personal identifier. Documents are subject to the Privacy Act only where they are maintained in a system of records. The Commission’s system of records notices (SORN’s) are published in the Federal Register and posted to the SEC’s website. All Privacy Act requests are also processed under the FOIA and are designated with the suffix “FOPA.” Privacy Act request processes are found at 17 CFR 200.301-313.

## **B. Initial Review and Research.**

- (1) Reasonable Search. The FOIA staff assigned to a request will research the subject matter and determine the appropriate program offices and/or divisions where responsive records might be located. This initial search, as well as any additional search conducted by a FOIA Liaison and/or program office staff, is measured by a reasonableness standard. As a general rule, an agency must undertake a search that is reasonably calculated to uncover all relevant, responsive documents.
- (2) Databases Searched. The FOIA Office will review the content of the request and search appropriate Commission databases (e.g. NRSI, ACTS, IRIS, EDGAR) including internal and external websites, to determine the existence of responsive records, and how best to locate and obtain those records for review and processing under the FOIA. The FOIA Office will also determine the public availability of

responsive records prior to referral to any FOIA liaison. Generalized internet searches, as well as searches of LexisNexis and PACER, will be conducted when deemed necessary.

**C. Referral to Liaison(s).** The FOIA Research Specialist assigned to process the request will forward an e-mail containing a FOIA Referral Memo to the appropriate liaison(s) including a copy of the FOIA request. All additional information in the case file can be viewed in FOIAXpress (See Paragraph 11. FOIAXpress Guidance). In addition, the liaison is asked to respond to the request within a specified period of time in order to comply with the statutory response time, including expedited treatment, as well as when an extension beyond the statutory timeframe has been secured. The referral memo may also include information the requestor has provided to assist with the search and/or information located by the FOIA Research Specialist linking the request to the specific program office or division.

**D. Preparing Responsive Records.**

- (1) Reviewing and Redacting Records. Once the FOIA Office obtains records and/or the liaison(s) have provided responsive records and recommendations, the FOIA Office has the responsibility to conduct a review of records deemed responsive and to officially redact and prepare those documents for release. The FOIA Office will input all responsive records into the FOIAXpress document management component, and will electronically apply a redaction layer to the records. Electronically redacted records can be reviewed by others prior to release. Records received by liaison offices should be free of redactions.
- (2) Requests for Confidential Treatment (CT) under Rule 83 (17 CFR 200.83). Title 17 CFR 200.83(a)(3) directs submitters of information to provide a copy of a written request for CT to the FOIA Office and to the Commission program office or division receiving the production. Program offices and divisions should maintain their copy of the CT request letter with the records for which protection is sought. When the FOIA Office is made aware of a request for CT (whether by correspondence provided directly to the FOIA Office from the submitter, by notice from the program office or division maintaining the records, or by notation on the records themselves), a FOIA Research Specialist will contact the submitter of the information to request a substantiation of the request for CT. The FOIA Office may seek the advice of the FOIA Liaison to review and comment/make determination on an incoming CT substantiation. Any adverse determination is appealable to the Office of the General Counsel by both the FOIA requester and/or the CT submitter.
- (3) Publicly Available Records. In certain instances records that are responsive to a FOIA request might also be available elsewhere in the public domain (such as court records). Despite the public availability of the records, if the documents are deemed “agency records” within the meaning the FOIA, then the Commission is obligated to produce them, albeit subject to exemption or exclusion. Certain records are made publicly available by posting to the Commission’s website. On occasion, public



filings and other records are not posted although they should be publicly available. In these instances, a referral memo will be issued by the FOIA Office to obtain the records and/or request posting.

#### **E. Prepare Agency Responses.**

- (1) **Interim, Partial and Final responses.** The FOIA Office is responsible for all communication with the requester including interim/status letters, and partial or full responses. The FOIA Office will input all responsive records into the electronic case file in FOIAXpress. All full and partial responses to a request are located in the FOIAXpress case file, which liaisons can view at any time.
- (2) **Review of Final or Partial response.** Prior to release, final or partial FOIA responses may be provided as notification to the program office or division, the Office of Public Affairs, the Office of the General Counsel, the Office of Legislative Affairs and the Office of the Chairman. If a division or program office specifically wants to be notified of the final response before it is released, the recommendation memo should include a request for program review of the final release.
- (3) **Calculate Fees and Invoice.** Fees for services provided in connection with requests made pursuant to the FOIA are charged by the Commission. A link to fee regulations can be located on the FOIA page of the Commission's external website at <http://www.sec.gov/foia.shtml> (17 CFR § 200.80(e)). Certain types of requestors are eligible for fee reduction or waiver. The criteria for determining applicability of a fee waiver can be located at 17 CFR § 200.80(e)(4). The FOIA Research Specialist will make the decision regarding fee waivers or reductions and will prepare and issue an invoice to the requestor attached to an interim or final response.

### **7. FOIA Liaison Responsibilities.**

The basic FOIA Liaison processing responsibilities are as follows:

- A. Review Request**
- B. Search or Coordinate Search for Records**
- C. Determine Search Results**
- D. Prepare Recommendation Memo**
- E. Provide Records**
- F. Monitor Cost**

- A. **Review Request.** Upon receipt of a FOIA referral memo, the liaison should *read the request carefully* to determine if paper or electronic records exist within the division or program office which may be responsive to the request. *Please note that liaisons are only required to conduct a reasonable search, not an exhaustive one.* The liaison should timely refer or notify others in the program office or division of the receipt of a FOIA request and refer that request (using internal office procedures) to persons within the office or division who have knowledge of the requested records. In the event the request

is overly broad or complex, the FOIA Liaison should contact the FOIA Research Specialist to assist in processing.

(1) **Clarification of request.** If the liaison needs clarification of the request, or feels it is too broad or complex and needs more information or a narrowing of the scope of the request in order to proceed, the liaison should contact the FOIA Specialist as soon as possible in order to continue processing of the request within the response time frame. The options to obtain clarification of the request are as follows:

- (a) The liaison may ask the FOIA Specialist to arrange a conference call or meeting with the requester to clarify request, or
- (b) The liaison may relay questions/concerns to the FOIA Specialist who will contact the requester. The requester may subsequently amend the request and the FOIA Specialist will inform the Liaison and note phone calls and contacts in the FX case file.

(2) **Timeframe for response.** All FOIA Referral Memos require a response from the Liaison within the time frame specified in the Referral Memo. Regardless of when the request was received in the Commission, the liaison will generally be given ten (10) business days to provide a response to the FOIA Office. Depending on the nature of the request, more time may be allocated. If additional time is needed, the liaison should contact the FOIA Research Specialist as soon as possible to relay the need for additional time to the requester. Should the liaison not respond within the time frame provided, the FOIA Specialist will follow-up with an additional referral memo – and track the time frame for the liaison response. Non-response to a FOIA Referral Memo will result in contact by a FOIA Manager. (See Paragraph 5.F. of this guidance).

B. **Search or Coordinate Search for Records.** The liaison should determine if paper or electronic records exist within the division or program office which may be responsive to the request and use their knowledge of the office records as well as databases available within the office to search for records. The liaison may be the FOIA point of contact for the office but may not be responsible for search and review of records. The liaison should therefore refer or notify others in the program office or division of the receipt of a FOIA request and refer that request (using internal office procedures) to persons within the office or division who have knowledge of the requested records. The liaison should be familiar with the following procedures, and make those within the program office or division aware of the following, which may affect the response to the FOIA referral:

(1) **Records Retention and Disposition.** (See Paragraph 5.A. of this guidance)

- (a) **Retired Records.** Based on the Records Retention Schedule, if records have been retired to the Federal Records Center through Records Management, notify the FOIA Specialist who will obtain the records from Records Management.

- (b) Destroyed Records. Based on the Records Retention Schedule, if records were considered “temporary” and have been destroyed please indicate to the FOIA Office that records have been destroyed and indicate the retention schedule.
  - (c) Retention Schedule Not Followed. If records should have been retired or destroyed, but were NOT as of the time the FOIA request was received, the records should be provided to the FOIA Office in response to the request.
- (2) Email Records. Please note that email records within the division or program office are often responsive to FOIA requests. For email that has not yet been archived, it is the responsibility of the FOIA liaison to have individual staff members or the office OIT specialist conduct a search that will produce the responsive email records. If the email records have been archived, please advise the FOIA Office and provide appropriate search terms so the OIT FOIA liaison can be contacted and a search can be conducted. Contact the FOIA Research Specialist with any questions regarding e-mail searches.
- (3) Records Generated or Held by Contractors. FOIA liaisons should be aware that records held by contractors are potentially responsive to FOIA requests. The FOIA liaison should contact the COTR for the specific contract to assist them in retrieving responsive records from the contractor. If the contractor and/or the FOIA liaison are concerned that the records may be proprietary in nature, or may not be “agency records” subject to potential disclosure, then the FOIA Research Specialist should be contacted so that a determination can be made. Proprietary information may be subject to a confidential treatment (CT) analysis as discussed in paragraph 5.D.2 of this guidance.
- (4) Voluminous Record Collections. If the volume of responsive records exceeds three (3) boxes or the electronic equivalent, the request may be deemed voluminous and placed within the First-In First-Out (FIFO) queue. Please refer to 17 CFR § 200.80(d)(5)(ii) for additional information concerning the treatment of voluminous records requests. Where subject to the FIFO, the liaison should obtain the records for review by the FOIA Office only when advised by the FOIA Specialist.

**C. Determine Search Results.**

- (1) Provide Located Records. If the responsive records do not exceed (3) three boxes (including electronic records), the liaison program office should review each document and provide a release recommendation, along with copies of the responsive records. If records appear to be in excess of 3 boxes, please see paragraph 7.B.4.
- (2) Withhold Located Records. If the FOIA liaison and/or record subject matter experts determine that an entire group of responsive records (for example, compliance exams or inspections, or some open investigations) will be withheld pursuant to a FOIA exemption, a recommendation denying the records in their entirety must be provided to the FOIA Office, however, no records will be provided to the FOIA Office.

- (3) Located Records Should be Public. If responsive records are located which are meant to be publicly available via SEC website (e.g. comment/response letters, paper filings...), but which are not posted to the Commission's website, the FOIA liaison should obtain the records and have them properly posted and notify the FOIA Office. If responsive records are publicly available elsewhere, the liaison should notify the FOIA Office where to locate them.
- (4) Duplicate Records. If responsive records exist in the program office, but may be duplicative and should be obtained from the office responsible for the official file or overarching collection of records, that program office or division should be identified and the FOIA Office should be notified to contact that office.
- (5) Records not located. If no responsive records are located within the liaison's program office, notify the FOIA Specialist of the search conducted and that no responsive records could be located. Provide information and/or what program entity may be able to provide responsive records, if known.
- (6) Other. Other search results may include:
  - The records are lost or destroyed (if the RCS is known – please cite);
  - The records do not belong to the Commission (i.e., they originated with another Federal, State or local government agency, or non-government entity such as exchange or FINRA);
  - The records are sealed or otherwise restricted by court order;
  - The Commission will neither confirm nor deny the existence of the requested records; or
  - Any other finding (including exclusions)

D. **Recommendation Memo**: All FOIA Referral Memos require a response from the liaison office via the FOIA liaison within the time frame specified in the Referral Memo. The response is provided to the FOIA Office in the form of a Recommendation Memo. The Recommendation Memo may be in *any format* but must include the items stipulated below as it will become part of the FOIA administrative record and will be stored in the FOIAXpress case file. Information within Recommendation Memos may form the basis for declarations used in support of FOIA litigation. A complete and accurate Recommendation Memo is critical in establishing a sound administrative record. Liaison responses may be used in processing appeals and litigation in terms of content of response and in terms of adequacy of search and may be used to prepare declarations of fact for the court.

*Therefore, all liaison responses must be accurate and reflect the items indicated in items 1- 6 below, or they may be returned to the program office liaison:*

## FOIA RESPONSE RECOMMENDATION MEMO

1. Brief Description of Records: Description of requested records, or portion thereof, for which the program office has been asked to provide responsive records;
2. Description of Search: Description and method used to conduct search for responsive records, to include the volume of records searched if appropriate, and the system(s) searched, (e.g., CATS, NRSI, ACTS, IRIS, other database, paper, or other form of search tool). The systems searched might only direct the liaison to the specific program office staff that handled the responsive records. Greater detail about the responsiveness and volume of the records is often obtained from these individuals. The Description of Search should include a brief narrative describing the liaison's interaction with any other staff that assisted in locating records.
3. Records Located and Recommendation: (Select one or more of the following)
  - a) Records located and granted in full. If responsive records are located and provided to the FOIA Office with a recommendation of "Grant in Full."
  - b) Records located and released with redactions. If responsive records are located and provided to the FOIA Office with recommendations for redactions, a description of the basis for withholding should be provided. The FOIA exemptions are listed in Section 9. Records should be provided to the FOIA Office with either highlighted portions for redaction, or penciled brackets surrounding material recommended to be redacted.
  - c) Records located but voluminous. Provide the results of the search for responsive records – describe the responsive records located – provide the estimated volume of all responsive records – include whether an index is available for the responsive records. The FOIA Specialist will determine whether the request will be placed into the FIFO queue.
  - d) Records located but not provided to FOIA. If the records or portions of the records are located but will not be released to the FOIA Office, provide a statement that records were located but will not be provided to the FOIA Office and stating the volume of records (both paper and electronic) and the reason(s) and exemptions cited for not providing the records to FOIA; or
  - e) Duplicate records. A finding that responsive records exist in the program office, but may be duplicative and should be obtained from the official file which is located in another program office or division and identify that office;
  - f) Records publicly available or made publicly available. If the responsive records are publicly available, or based on the FOIA request are made publicly available, state where these records can be located. If it is determined that the records are meant to be publicly posted, the FOIA liaison

*should coordinate the posting, and the Recommendation Memo should reflect the date of such posting and location.*

g) Other findings:

- *There are no responsive records located in the program office;*
  - *The records are lost or destroyed (if the RCS is known – please cite);*
  - *The records do not belong to the Commission (i.e., they originated with another Federal, State or local government agency, or non-government entity such as exchange or FINRA);*
  - *The records are sealed or otherwise restricted by court order;*
  - *The Commission will neither confirm nor deny the existence of the requested records; or*
  - *Any other finding (including exclusions).*
4. Staffing resources used: *The name(s) of persons primarily involved in the records search, and an estimate of the time each person spent searching for records. This information will be used in the Annual FOIA Report and contribute to calculations on the cost of FOIA processing for the fiscal year. No salary or SK level is requested or needed.*
5. Sign and date: *The response should be signed or initialed and dated by the FOIA liaison. An e-mail signature is sufficient.*
6. Review of final or partial response. *Should a division or program office specifically want to be notified of the final response before it is released, or to review a copy of the response and responsive records, the Recommendation Memo should include that request.*

E. **Provide Releasable Records:**

- (1) Delivery. The FOIA liaison, should forward to the FOIA Office copies of the responsive records to be released in full via e-mail whenever possible. Otherwise, deliver paper or electronic media to the FOIA Office via hand carry. Please contact the FOIA Specialist to arrange delivery. Please do not put responsive records in inter-office mail.
- (2) Providing Records for Redaction: Liaisons should provide copies of the responsive records marked to show portions to be deleted under a FOIA exemption. Do not provide originals and do not mark redactions on originals. Liaison offices should not provide the FOIA Office with copies of redacted documents; rather, the liaison should indicate the records or portions thereof which are recommended for redaction by annotating a copy of the records via *a) bracketing lines or paragraphs with a pale pencil or yellow highlighter, or b) by providing a line by line or page by page description of exempted materials.* For information that the program office seeks to withhold, the liaison should provide the rationale for nondisclosure, either citing a



specific FOIA exemption or providing a generalized reason (e.g. attorney work product, exam report, interference with ongoing investigation). The FOIA Staff has the responsibility to redact the documents provided by the program office liaison(s) for public release. The FOIA Staff will prepare all correspondence to the FOIA requester, and process any records for release, applying exemptions where appropriate. The records, as redacted, should derive from a collaborative effort with the liaison. Information will be withheld only where such nondisclosure is supported by reference to 5 USC § 552, controlling case law and USDOJ Guidance. In circumstances where the program office or division and the FOIA Office cannot agree as to the disclosure or nondisclosure of records, the Office of the General Counsel may be consulted. Contact with the Office of the General Counsel should occur only after the program office or division and the FOIA Office have initially collaborated. The FOIA Office will input responsive documents into the FOIAXpress document management component and will electronically apply a redaction layer to the records. Electronically redacted records can be reviewed by others prior to release.

- (3) **Transmit Response to the FOIA Office:** Liaison responses (Recommendation Memos and records) should be e-mailed to [foiapa@sec.gov](mailto:foiapa@sec.gov) with a copy of the e-mail to the FOIA Research Specialist who sent the referral. If necessary, the responsive records may be hand carried to Room 2736, or the specialist can be contacted for pick-up. Responsive records should not be placed in inter-office mail.

**F. Payroll Activity Codes Used to Monitor Cost of FOIA Program.**

- (1) **Cost of SEC FOIA Program.** All Federal agencies must report, on a fiscal year basis, the cost of their FOIA Program via the Annual FOIA Report (See Paragraph 8.A. FOIA Annual Report.) The FOIA Office will use the data from the activity code in Quicktime, as reported by liaisons and others involved in FOIA processing, to determine Commission costs. If liaisons and others do not use Quicktime to report activities, they will be asked to report their cost information when the FOIA Office is preparing the Annual FOIA Report in October – November of each year.
- (2) **FOIA Payroll Activity Code.** The Commission requires that staff keep track of their time spent on various activities by using payroll activity codes in Quick time. Liaisons should keep track of daily time spent on FOIA processing duties by using activity code 4.3.1 in Quicktime to record their FOIA workload. Liaisons should instruct any program office staff who assisted in responding to the FOIA request to similarly enter such time in Quicktime. Please refer to the INSIDER for instructions.

## 8. FOIA Reports and Records.

- A. **FOIA Annual Report.** The FOIA requires that agencies produce a report of all FOIA activities on a fiscal year basis to the Department of Justice (DOJ). The Commission's Annual FOIA Reports are posted on the FOIA page at [www.sec.gov](http://www.sec.gov). The Annual FOIA Report is prepared during October through December of each year. Liaisons may be contacted to provide or clarify information regarding the processing of referrals sent to their office during the fiscal year. The contact would primarily be to provide input in determining the cost of the FOIA processing to the Commission for the fiscal year.
- B. **Aging Reports.** The FOIA Officer routinely runs reports via FOIAXpress to determine what requests remain open and aging and determine why certain requests remain unresolved. There are many reasons why a request remains open for a long period of time, including the complexity or volume of the request; the need to consult with other agencies; the confidential treatment substantiation process; and litigation. The lack of response from a liaison office is another common reason why requests remain open. When a liaison office does not reply to a FOIA referral, this information may be reported via the Chief Operating Officer's (COO) Dashboard report as overdue FOIA requests. The FOIA liaison will be notified prior to escalating the issue and the program office or division will be given every opportunity to resolve the request prior to escalation to the Chairman's level via the COO report.
- C. **FOIA Records.** The FOIAXpress system contains the official electronic case file for all FOIA and PA requests. Liaisons are not required to do any official recordkeeping regarding FOIA requests. FOIA, Privacy Act and appeal files are considered temporary administrative records and are maintained government-wide in accordance with the National Archives General Records Schedule (GRS) Number 14. The FOIA Liaison may provide any information pertinent to the request to the FOIA Office for placement in the electronic case file. The FOIA Staff will scan or import any record provided by the liaison into the case file.
- D. **Custom Reports.** The FOIAXpress system can generate a wide variety of reports including workload reports by program or division office. The Liaison has access to FX in order to generate reports and may request that the FOIA Office assist in setting up reports frequently used by the program or division office. The Liaison may also request of the FOIA Office, at any time, a workload report pertaining to any particular program or division, or based on any type of request statistics pertaining to the FOIA program. To request a custom report, please contact the FOIA Officer or send an e-mail to [foiapa@sec.gov](mailto:foiapa@sec.gov).



## 9. FOIA Exemptions.

Below are the nine exemptions to releasing information under the FOIA based on 5 USC 552(b)(1) – (9)

1	Classified national defense and foreign relations information.
2	Internal agency personnel rules and practices.
3	Information that is prohibited from disclosure by another federal law.
4	Trade secrets and commercial or financial information obtained from a person that is privileged or confidential.
5	Inter-agency or intra-agency memoranda or letters that are protected by legal privileges.
6	Personnel, medical, financial, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
7	Certain types of information compiled for law enforcement purposes.
8	Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.
9	Geological and geophysical information and data, including maps, concerning wells.

## 10. FOIA and PA Training.

A) **Training on the statutes.** Liaisons may obtain training on the FOIA and Privacy Acts through the following sources via links on the FOIA/PA INSIDER page:

- SEC University contracts for FOIA/PA training annually or bi-annually;
- Department of Justice (DOJ);
- ASAP (American Society of Access Professionals);
- Graduate School (formerly USDA Graduate School).

B) **Training on SEC Liaison Guidance.** Liaisons will utilize this guidance for instruction in FOIA and Privacy Act processing within the Commission. All liaisons are asked to read the guidance document and provide the FOIA Office with verification that the guidance has been reviewed and understood. The FOIA Office will offer training on this guidance to all liaisons as well as staff of program offices and divisions upon request. All liaisons needing additional training or additional guidance may contact the FOIA Officer to arrange such training. Liaisons may complete and send the attached ***Acknowledgement of FOIA and Privacy Act Processing Guidance for Liaisons (Attachment 2)*** or may send an e-mail acknowledging their review and understanding of the guidance. The e-mail may be sent to the FOIA Officer via [foiapa@sec.gov](mailto:foiapa@sec.gov).

## 11. FOIAXpress Guidance.

- A. **E-FOIA System.** FOIAXpress (FX) is an electronic document management system designed specifically for use in FOIA Offices across the government. The system is a tool whereby the FOIA staff can track, coordinate, and respond to FOIA/PA requests as well as appeals, subsequent remands, and all public info and other types of requests processed in the FOIA Office. All requests received in the FOIA Office are entered into the FX system and an electronic case file is created. All process-related documents are electronically generated or scanned in and managed electronically. The system tracks and monitors progress on the complete casework associated with a request. The system does not track the substantive workload that goes on at the liaison office level.
- B. **Liaison Access to FX.** All FOIA liaisons have read-only access to FOIAXpress. The FOIA staff does all data entry in the FX System. Existing users may access the system via the INSIDER under SEC IT Systems by clicking on e-FOIA. New users may request access to FOIAXpress via the ITSM Self-Service Module under SEC Technology on the OIT INSIDER page @ <http://wapps.sec.gov/oitintranet>.
- C. **User Groups.** All liaisons are placed in a user group for their division or program office in FOIAXpress, and in an e-mail account for the user group. Referrals are forwarded to FOIA liaisons via the e-mail account which is embedded in FOIAXpress.
- D. **Changes or Additions to FOIA Liaison Designation.** Any changes or additions to the FOIA liaison(s) for an office should be promptly e-mailed to the FOIA Officer at [foiapa@sec.gov](mailto:foiapa@sec.gov). All changes to the liaison list, the FOIAXpress user group and the #FOIA Outlook e-mail accounts are managed by the FOIA Officer. New users may request access to FOIAXpress via the ITSM Self-Service Module under SEC Technology on the OIT INSIDER page @ <http://wapps.sec.gov/oitintranet>
- E. **FX User Guide.** The FOIA webpage on the INSIDER contains detailed information on the use of FOIAXpress (FX) for liaisons.
- F. **FX Training.** All liaisons and other SEC staff with access to FOIAXpress may request on-site training at any time by contacting the FOIA Officer at [foiapa@sec.gov](mailto:foiapa@sec.gov).

## ATTACHMENT 1

### FOIA and PA Reference Materials

- A. **External website.** The public FOIA website, <http://www.sec.gov/foia.shtml> provides access to information regarding the Commission's FOIA program, How to File FOIA, Privacy Act and Confidential Treatment (Rule 83) Requests, as well as requests for public records.
- B. **Internal website:** The FOIA INSIDER page [http://insider/divisions\\_offices/hqo/foia/foia\\_index.html](http://insider/divisions_offices/hqo/foia/foia_index.html) provides internal guidance and information for FOIA liaisons and all Commission staff. Where possible we have included links to these reference materials:
- Chairman Shapiro's Memo ([http://insider/whats\\_happening/at\\_the\\_sec/november\\_2009/chairman-foia-11232009.html](http://insider/whats_happening/at_the_sec/november_2009/chairman-foia-11232009.html)) including:
    - From the President: Memorandum for the Heads of Executive Department and Agencies on the FOIA ([http://insider.sec.gov/whats\\_happening/at\\_the\\_sec/november\\_2009/president-memo-foia-nov2009.pdf](http://insider.sec.gov/whats_happening/at_the_sec/november_2009/president-memo-foia-nov2009.pdf)), and
    - From the Attorney General: Memorandum for the Heads of Executive Departments and Agencies on the FOIA ([http://insider.sec.gov/whats\\_happening/at\\_the\\_sec/november\\_2009/usag-memo-foia-nov2009.pdf](http://insider.sec.gov/whats_happening/at_the_sec/november_2009/usag-memo-foia-nov2009.pdf))
- C. **SEC Regulations, Notices and Privacy Act Systems of Records Notices (SORNs):**
- [SEC FOIA Regulations](#) (17 CFR § 200.80) and
  - [SEC Privacy Act Regulations](#) (17 CFR § 200.301);
  - SEC Privacy Act System of Records Notices (SORN's <http://www.sec.gov/about/privacy/secprivacyoffice.htm>);
  - SEC Confidential Treatment Rule 83 ([SEC FOIA Regulations](#)) (17 CFR § 200.83);
  - SEC Annual FOIA Reports (<http://www.sec.gov/foia.shtml>);
  - SEC Records Retention Schedule: [http://insider.sec.gov/divisions\\_offices/hqo/OS/sec\\_retention.pdf](http://insider.sec.gov/divisions_offices/hqo/OS/sec_retention.pdf)
  - FOIA/PA Training availability ([http://insider.sec.gov/divisions\\_offices/hqo/foia/foia-pa-training.html](http://insider.sec.gov/divisions_offices/hqo/foia/foia-pa-training.html)).

**D. Statutes and DOJ Guidance:**

[The Freedom of Information Act \(5 USC 552\);](#)

[The Privacy Act \(5 USC 552a\);](#)

- Department of Justice Guide to the FOIA ([http://www.justice.gov/oip/foia\\_guide09.htm](http://www.justice.gov/oip/foia_guide09.htm));
- Department of Justice FOIA Post (includes on-going litigation updates, Attorney General Announcements and information for the FOIA community) (<http://www.justice.gov/oip/foiapost/mainpage.htm>);
- Department of Justice listings of all agency FOIA/PA Officers (<http://www.foia.gov/report-makerequest.html>);

**E. Additional FOIA Reference sites.** There are a variety of websites and blogs relating to the FOIA and processing. The most comprehensive listing would be available by searching the internet by FOIA keywords.

**ATTACHMENT 2**

**Acknowledgement of FOIA and Privacy Act  
Processing Guidance for Liaisons**

I have reviewed the FOIA and Privacy Act Processing Guidance for Liaisons and understand that it sets forth the policy of the Office of FOIA Services with respect to the responsibilities of all FOIA Liaisons within each Commission component.

\_\_\_\_\_  
FOIA Liaison Signature

\_\_\_\_\_  
FOIA Liaison Printed Name

\_\_\_\_\_  
Date

### ATTACHMENT 3

- **REVISION CHRONOLOGY** -

*June 30, 2010*      *Initial Version of Liaison Guidance, as released on July 1, 2010;*

*August 27, 2010*      *Revision released to update paragraphs 3.B.; 7.B.; and 8.B. to further  
define responsibilities for conducting document search and review.*

*August 29, 2011*      *Complete revision to initial version issue.*