

FREEDOM OF INFORMATION
AND PRIVACY ACT
PROCESSING GUIDANCE FOR
LIAISONS

FOIA AND PRIVACY ACT PROCESSING GUIDANCE FOR LIAISONS

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- *REVISION CHRONOLOGY* -

FOIA AND PRIVACY ACT PROCESSING GUIDANCE FOR LIAISONS

The purpose of this memorandum is to provide guidance to persons designated as FOIA Liaisons for conducting records searches and responding to the FOIA/PA Office when a FOIA request is referred to the program office or division.

1. Overview of Office of Freedom of Information and Privacy Act Operations (FOIA/PA Office).

The mission of the FOIA/PA Office 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 statute. All FOIA and PA requests received by the Commission are processed through the Office of FOIA and PA Operations. The Commission has a centralized FOIA & PA process, therefore, no requests are considered "received" by the Commission until received in the FOIA/PA Office. The FOIA/PA Office staff receives and assigns tracking numbers for all incoming requests. FOIA Research Specialists perform initial research on requests to determine which office(s) may hold records responsive to the request. The request may then be referred to the FOIA Liaison(s) for the appropriate offices.

The FOIA/PA Office also receives all incoming appeals of denials under the FOIA and Privacy Act. Once a FOIA or PA request has been denied in full or granted in part, or a finding of "no responsive records" is rendered, the requestor is provided appeal rights instructing the submission of an appeal to the Office of the General Counsel (OGC). However, the FOIA/PA Office receives all incoming appeals, assigns a tracking number and forwards the appeal to the OGC for direct response to the requestor.

2. FOIA/PA Statutes and Regulations.

The Freedom of Information Act (FOIA), 5 USC 552, the Privacy Act (PA), 5 USC 552a, and the Commissions FOIA and PA regulations, 17 CFR 200.80, may be accessed via the FOIA/PA page on the INSIDER.

3. The FOIA Liaison Role.

- A. FOIA Responsibility Commission-wide: The Chairman, in her November 2009 message to all employees, stated:

"As an SEC employee, you may be called upon to locate or review documents that are responsive to a FOIA request. It is your responsibility to do so in a timely manner so that a prompt response can be provided to the requestor. The public's interest about our work is at an all-time high, and this presents an opportunity to illustrate the dedication and effort that you put forth everyday on behalf of the investor community and the American public."

See the full message at:

http://insider.sec.gov/whats_happening/at_the_sec/november_2009/chairman-foia-11232009.html

- B. Liaison Purpose: Each division and program office director designates one or more FOIA liaison(s) as contact points for the FOIA/PA 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 liaison. A FOIA liaison should be of sufficient grade or experience within the office to be knowledgeable about the work and the records of the program entity; the staff member should have the time and ability to accurately search for records or direct other staff members to conduct searches *and perform document-by-document reviews, if necessary*; and the liaison should be able to provide a written response to the FOIA/PA Office responding to the referral in a timely and accurate manner. FOIA liaisons should have knowledge of the law (FOIA and Privacy Act) which is commensurate with the volume and complexity of referrals to the program office.

- C. Liaison Listing and e-mail accounts:

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D. Liaison Use of FOIAXpress: (b)(2)

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E. Changes or Additions to FOIA Liaison Designation: (b)(2)

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F. Payroll Activity Code: (b)(2)

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4. FOIA/PA Reference Materials.

The FOIA/PA page on the INSIDER provides internal guidance and information for FOIA liaisons and all staff including links to reference material including:

- SEC FOIA and Privacy Act Regulations;
- The Freedom of Information Act (5 USC 552);
- The Privacy Act (5 USC 552a);
- SEC Privacy Act System of Records Notices (SORN's);
- SEC Confidential Treatment Rule 83 (17 CFR 200.83);
- SEC Annual FOIA Reports;
- Department of Justice Guide to the FOIA;
- Department of Justice FOIA Post (includes on-going litigation updates, Attorney General Announcements and information for the FOIA community);
- Department of Justice listings of all agency FOIA/PA Officers; and
- FOIA/PA Training availability

5. FOIA/PA Training.

Liaisons may obtain training on the FOIA and Privacy Acts through the following sources via links on the FOIA/PA INSIDER page:

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

6. Overview of FOIA/PA Request Process.

- A. Agency Receipt of FOIA/PA Requests and Appeals: The FOIA Office receives all FOIA and Privacy Act requests and subsequent appeals via e-mail account (foiapa@sec.gov), fax or postal mail. FOIA and PA requests and appeals are received in the FOIA/PA Office 24 hours a day, including weekends. Some requests are dated days or months in advance of receipt, however, the statutory time frame for response does not begin until the request is received in the FOIA/PA Office.
- B. Receipt of Requests by Other Offices: Should any other office receive a request for non-public records or information from a member of the public, which is outside the normal course of business (or authority to release information – such as access requests) for the receiving office or entity, the request should immediately be forwarded to the FOIA/PA Office for tracking and coordination of response. The FOIA/PA Office routinely coordinates requests for the release of sensitive information under the FOIA and PA, as well as to Congressional members, with the Offices of the General Counsel, Public Affairs, and Legislative Affairs. All requests and responses are tracked in the e-FOIA tracking system (FOIAXpress) to ensure accuracy, completeness and consistency of responses from the Commission.
- C. Tracking of FOIA and PA Requests: Once received in the FOIA/PA Office, all FOIA requests, PA requests and appeals are date-stamped, scanned into the FOIAXpress (FX) tracking system, and assigned a request number. The requestor is immediately notified of the receipt of the request and given the request tracking number for future correspondence. The FOIA request number is in the following format as shown in the example:

10-01234-FOIA

- The first 2 digits = fiscal year request received;
- The next 5 digits = chronological numbering of requests as received for the fiscal year;
- 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 referral to SEC
 - REMD – Remand on appeal
 - CONG– Request from Congressional
 - CHAI – Request directed to Chairman’s Office
 - PAAM – Privacy Act amendment
 - FIFO – First-In, First-Out

D. **Initial Review, Research and Referral of FOIA requests:** Each FOIA request is assigned to a FOIA Research Specialist within the FOIA/PA Office whose role is to facilitate processing of the request within 20 working days. If a requester is granted “expedited treatment” the request will be responded to as soon as possible and as an agency priority. The Research Specialist will review the content of the request and search appropriate Commission databases, including SEC websites, to determine the existence of responsive records, and how best to obtain those records for review and processing under the FOIA. Once the request has been reviewed, the Specialist may contact the requestor for further information or clarification, and/or may need to request additional time for processing. After initial review and research is completed, the FOIA Specialist may forward the request to one or more program office(s) or division FOIA liaison(s) for review of the request and to search for and provide responsive records back to the FOIA Research Specialist. If the request has been granted expedited treatment, the liaison office will be notified to prioritize the processing.

The FOIA Office will provide a referral memo to the liaison office and attach a complete copy of the incoming request. The full request is provided to the liaison(s) to preclude any discrimination regarding the requester or stated motives for the request and any confusion on the interpretation of the content of the request.

The liaison is directed to provide the FOIA Office a recommendation as to releasability in full or in part of the requested records; and if any records or portions thereof are to be denied, the FOIA exemption should be cited. In addition, the liaison is directed 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 additional time (over 20 days) has been secured.

- E. Receipt of Liaison Response: Once the liaison response is received in the FOIA/PA Office, the response is scanned into the FOIAXpress tracking system and the Specialist will prepare a response to the request reflecting the recommendation of the liaison office and the availability of responsive records. All redacting of records will be done by FOIA Research Specialists using FOIA specific redaction tools in FOIAXpress.
- F. Requests for Confidential Treatment under Rule 83 (17 CFR 200.83): Certain records submitted to the Commission, normally in conjunction with an Enforcement investigation, may also have a submission requesting confidential treatment (CT) in the event that a FOIA request is received for the submitted materials. In the event that records requested under FOIA are marked as "CT requested" and/or bates stamped indicating they are part of a CT submission, the FOIA Office will contact the submitter to request a substantiation of the request for CT. Once substantiation is received by the FOIA Office, the liaison may be asked to review and comment on the basis claimed for confidential treatment. The FOIA Office will notify the submitter of the determination to grant or deny CT for which the basis is Exemption 4 of the FOIA (5 USC 552(b)(4)).
- G. Review of Final or Partial FOIA or PA Responses: Final or partial FOIA and PA responses may be provided for review prior to release 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. Should a division or program office specifically want to review the final response before it is released, the FOIA Specialist should be notified by the liaison by stating the request in the recommendation memo (see paragraph 8.D.)

7. FOIA/PA Specialist Responsibilities.

- A. Referral Memo to Liaison: 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. Any additional information in the case can be viewed in FOIAXpress. All FOIA liaisons have been placed in user groups in FOIAXpress; and each designated liaison has access to the cases assigned to the user group. All referrals are done via FOIA e-mail accounts, which contain the names of the liaisons for the division or program office.
- B. Reviewing and Redacting Responsive Records: *The FOIA Staff has the responsibility to do a document by document review of responsive records provided by agency components which are considered to be responsive to the request and to officially redact and prepare those documents for release.* Liaison offices should not redact documents for release. The FOIA Staff will process the records for a final response, applying exemptions and preparing records for release. The FOIA Office will scan 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, including FOIA management and often the Office of the General Counsel.
- C. Review of Final or Partial Responses: The FOIA Office is responsible for scanning all records associated with the request in 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. Final or partial FOIA/PA responses may be provided for review prior to release 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.

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8. FOIA/PA Liaison Responsibilities.

- A. Time frame 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 5 working 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 Specialist as soon as possible to relay the need for additional time to the requestor. (b)(2)

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- B. Review the request and search for records: Upon receipt of a FOIA referral memo, the liaison should read the request carefully to determine if there are records within the division or program office which may be responsive to the request:

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E. Providing Releasable Records: The FOIA liaison, or persons designated by the liaison, should forward to the FOIA/PA Office a copy of the responsive records to be released in full; or

F. Providing Records to be Redacted.

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G. Transmit Response to the FOIA Office:

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9. FOIA Reports and Recordkeeping.

A. FOIA Annual Report to DOJ. The FOIA requires that agencies produce a report of all FOIA activities on a fiscal year basis. The Commission's Annual FOIA Reports are posted on the FOIA page at www.sec.gov. The Annual FOIA Report is prepared during Oct thru Dec 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/PA 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.

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C. FOIA/PA Request Recordkeeping. 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.

10. FOIAXpress Guidance for Liaisons.

FOIAXpress (FX) is an electronic document management system designed specifically for use in FOIA Offices across the government. The SEC

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- 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.*