

SAMPLE LETTER
RECORDS CANNOT BE LOCATED

ADDRESS

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request of April 15, 1992. You requested records of phone conversations between the State regulatory agency and the Kentucky Field Office on the Hazard Mine Company between January 1990 and April 1990. We have reviewed our files and were unable to locate any records responsive to your request.

Under 43 CFR 2.14(c), the Agency is not required to create or compile a record to respond to a FOIA request. The Act applies only to records in existence at the time the request is made.

Under 43 CFR 2.18, you may appeal this response by writing to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS - 2242, MIB, Washington, D.C. 20240. Your appeal must be received no later than 20 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records do in fact exist, including where they might be found, if the location is known to you.

Sincerely,

(NAME)
Freedom of Information
Act Officer

**(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF
THE FIELD OFFICE OR SUPPORT CENTER HAS ACTION)**

SAMPLE LETTER
A NEW COMPUTER DOCUMENT TOO COSTLY TO PROGRAM

ADDRESS

Dear _____:

This letter is in response to your Freedom of Information Act (FOIA) request of November 8, 1991. You requested Applicant/Violator System (AVS) information containing: the name of every corporation or person that violated Federal laws and/or regulations as they pertain to the Office of Surface Mining Reclamation and Enforcement (OSM), the law and/or regulation that was violated for each violation incident, the assessed penalty or settlement, and the date at which the enforcement action was completed.

After consultation with the AVS contractor who provides programming services for the AVS system, OSM has determined that significant and costly reprogramming would be required to compile, retrieve, and process the data responsive to your FOIA request. Under FOIA, an agency is not required to create a computer program to retrieve data not already so compiled for agency purposes. Clarke v. Department of the Treasury, Civil No. 84-1873, slip op. at 2-3, (E.D. Pa., Jan. 24, 1986). OSM would not otherwise do the necessary reprogramming, and OSM has no use for the resulting compilation and format that would justify the cost of the reprogramming to create the document you have requested. Therefore, under FOIA, OSM is not required to prepare and provide the information you requested, as the document you requested does not exist.

Should you have questions concerning this response or choose to make any changes to your original request, please contact me at (202) 208-2562.

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD SIGNS IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)

SAMPLE LETTER
FEES UNDER \$15
(and releasing all documents)

ADDRESS

Dear _____:

Thank you for your Freedom of Information Act request of (date) requesting (information requested).

Enclosure A lists the documents which we are providing in response to your request. Fees for providing these documents are less than \$15 and are not being charged in accordance with 43 CFR 2.20(a)(2).

Sincerely,

(NAME)
Freedom of Information
Act Officer

(OR FIELD OFFICE DIRECTOR OR
SUPPORT CENTER AD)

Enclosures

Enclosure A

	<u>DATE</u>	<u>SUBJECT</u>
A-1.	08/23/88	Site Monitoring Program, Emergency Action Plan and Evacuation Procedures - River Hurricane Coal Company, Mine No. 1 Outcrop Area Anderson Hollow.
A-2.	12/16/87	Outcrop Barrier Stability Investigation for River Hurricane Coal Company, Mine No. 1 in the Lower Elkhorn Seam on Anderson Hollow.

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APPENDIX D

Category of Requests
and Fee Charges
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CALCULATING FEE CHARGES

Note: The Department's FOIA regulations provide that we charge different fees according to the category of the request. The different categories are: Commercial use requests, educational and noncommercial scientific institution requests, news media requests and other requests (See 43 CFR 2.20(b) to (e)) for further explanations of each category). Paragraphs I. through V. of Appendix D provide examples of fee charges applicable to each category of request.

For fees which are under \$15, see Appendix C, Illustration 14.

For fees which exceed \$250, see Appendix C, Illustration 9.

Computer charges are broken down in Appendix D, Paragraph V.

For fee waivers, see Appendix C, Illustration 6.

I. Commercial Use Requests:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
Document Search Time:			
Clerical	00 hrs.	@ \$ 9.20/hr.	* \$0000
Professional or Managerial	00 hrs.	@ \$18.60/hr.	* 0000
Document Review Time:			
Clerical	00 hrs.	@ \$ 9.20/hr.	* 0000
Professional or Managerial	00 hrs.	@ \$18.60/hr.	* 0000
Duplication:	00 pages	@ \$.13/page	** 0000
Postage: ***			0000

		Total	\$ 0000

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter. ****

II. Educational and Noncommercial Scientific Institution:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
Duplication:	00 pages (The first 100 pages are not charged)	\$.13/page **	\$0000
Postage: ***			0000
		Total	----- \$0000

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter. ****

III. News and Media Requests:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
Duplication:	00 pages (The first 100 pages are not charged)	\$.13/page **	\$0000
Postage: ***			0000
		Total	----- \$0000

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter. ****

IV. Other Requests:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
Document Search Time:			
Clerical	00 hrs.	@ \$ 9.20/hr. *	\$0000
Professional or Managerial	00 hrs. (The first 2 hrs. are not charged)	@ \$18.60/hr. *	0000
Duplication:	00 pages (The first 100 pgs. are not charged)	@ \$.13/page **	0000
Postage: ***			0000
		Total	----- \$0000

A confirming invoice formally billing you for the amount and indicating where your payment should be forwarded will be sent by separate letter. ****

V. Fees for Computerized Records:

Charges for services in processing requests maintained in computerized form will be calculated in accordance with criteria provided at 43 CFR Part 2, Appendix A, and the Departmental Manual 383 DM 15, FOIA Handbook. ADP facility managers will ensure that all cost estimates are accurate, and be prepared to substantiate the rates. As with other requests, if costs exceed \$250, OSM will request pre-payment of 80 percent. (See Appendix C, Illustration 9.)

Criteria for estimating computer costs:

- (1) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.
- (2) Maintain an itemized listing of operations required to process the job (i.e., time for central processing unit, input/output remote terminal, storage, plotters, printing, tape/disk mounting, etc.) with related associated costs.
- (3) Material costs (i.e., paper, disks, tape, etc.) will be calculated using the latest acquisition.
- (4) Requests entitled to two hours of free search time under 43 CFR 2.20(e) will not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.

Sample listing of computer costs:

	<u>Total No. of Units</u>	<u>Total Unit Charges</u>	<u>Amount</u>
Input/Output Units	365,364	\$20.40 x 36	\$ 734.40
CPU Units	321,444	7.25 x 36	260.28
Systems Analysis	4 hrs.	24.00 hr.	48.00
Program Development	10 hrs.	27.00 hr.	270.00
Postage: ***			
		Total	----- \$1275.48

NOTE: Depending on the fee category: It may be required that the equivalent of the first 100 pages or \$13.00; and minus the equivalent of 2 free hours of search time or \$48.00 will have to be subtracted (assuming systems analysis is analogous to search time).

For example: "The equivalent of 2 hrs. of search time at \$18.60/hr., which is \$37.20, are not charged", and "The first 100 pgs. of duplication at \$.13/hour, which is \$13, are not charged".

Note:

- * Billings may include increments as small as 1/4 hr. For clerical: \$2.30 per 1/4 hr. For professional: \$4.65 per 1/4 hr.
- ** See 43 CFR Part 2, Appendix A, (10), concerning unique copying costs such as photographs, blueprints, computer tapes, etc.
- *** OSM will charge mailing costs only for services (DHL, Express Mail, etc.) that exceed the cost of first class postage, and have been specified by the FOIA requester.
- **** Once the response has been signed, a copy should be sent via memorandum to:

Chief, Programmatic Accounting
P.O. Box 25065, Room D-2025
Denver, Colorado 80225

The Programmatic Accounting Office will then send the requester a bill for the FOIA response costs.

SAMPLE FORM TO CALCULATE FEE CHARGES

DOCUMENTATION OF FEES

CIMS # _____ ACTION OFFICE _____

FEE CATEGORY _____ FEE WAIVER _____

NAME OF REQUESTER/SUBJECT _____

ACTION OFFICE INSTRUCTIONS: Complete the box below and return as processing shall be computed on all requests even if there is no collection action.

NAME/TITLE	SEARCH HOURS	REVIEW HOURS	ACTUAL COSTS INCURRED			
			ADMINISTRATIVE	HRS	RATE	AMOUNT
			Clerical Search		\$2.30 (1/4 hr)	\$
			Professional Search		\$4.65 (1/4 hr)	\$
			Clerical Review		\$2.30 (1/4 hr)	\$
			Professional Review		\$4.65 (1/4 hr)	\$
			Duplication		\$.13/pg	\$
			Unique Copying		Cost	\$
			Postage		Cost	\$
			Computerized Records		Cost	\$
			Certifications		\$.25	\$
			Total			\$

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8.1.4 Disqualifications.

No individual may practice before the Department if such practice would violate the provisions of 18 U.S.C. sections 203, 205, or 207.

8.1.5 Signature to constitute certificate.

When an individual who appears in a representative capacity signs a paper in practice before the Department, his signature shall constitute his certificate:

(a) That under the provisions of this part and the law, he is authorized and qualified to represent the particular party in the matter;

(b) That, if he is the partner of a present or former officer or employee, including a special Government employee, the matter in respect of which he intends to practice is not a matter in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through a decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise and that the matter is not the subject of such partner's official Government responsibility;

(c) That, if he is a former officer or employee, including a special Government employee, the matter in respect of which he intends to practice is not a matter in which he participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed and, if a period of one year has not passed since the termination of his employment with the Government, that the matter was not under his official responsibility as an officer or employee of the Government; and

(d) That he has read the paper: that to the best of his knowledge, information, and belief there is good ground to support its contents; that it contains no scandalous or indecent matter; and that it is not interposed for delay.

§ 1.6 Disciplinary proceedings.

(a) Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the De-

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partment on grounds that he is incompetent, unethical, or unprofessional, or that he is practicing without authority under the provisions of this part, or that he has violated any provisions of the laws and regulations governing practice before the Department, or that he has been disbarred or suspended by any court or administrative agency. Individuals practicing before the Department should observe the Canons of Professional Ethics of the American Bar Association and those of the Federal Bar Association, by which the Department will be guided in disciplinary matters.

(b) Whenever in the discretion of the Solicitor the circumstances warrant consideration of the question whether disciplinary action should be taken against an individual who is practicing or has practiced before the Department, the Solicitor shall appoint a hearing officer to consider and dispose of the case. The hearing officer shall give the individual adequate notice of, and an opportunity for a hearing on, the specific charges against him. The hearing shall afford the individual an opportunity to present evidence and cross-examine witnesses. The hearing officer shall render a decision either (1) dismissing the charges, or (2) reprimanding the individual or suspending or excluding him from practice before the Department. (c) Within 30 days after receipt of the decision of the hearing officer reprimanding, suspending, or excluding an individual from practice before the Department, an appeal may be filed with the Solicitor, whose decision shall be final.

PART 2—RECORDS AND TESTIMONY; FREEDOM OF INFORMATION ACT

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OR
APPENDIX: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701; and 43 U.S.C. 1460.
SOURCE: 40 FR 7305, Feb. 19, 1975, unless otherwise noted.

Subpart A—Opinions in Adjudication of Cases, Administrative Manuals

§ 2.1 Purpose and scope.
This subpart contains the regulations of the Department of the Interior concerning the availability to the public of opinions issued in the adjudication of cases and of administrative manuals. Persons interested in obtaining access to other records are directed to the procedures for submission of Freedom of Information requests set out in Subpart B of this part.

§ 2.2 Opinions in adjudication of cases.

(a)(1) Copies of final decisions and orders issued on and after July 1, 1970, in the following categories of cases are available for inspection and copying in the Office of Hearings and Appeals, Ballston Building, No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203:

- (i) Contract appeals;
- (ii) Appeals from decisions rendered by departmental officials relating to the use and disposition of public lands and their resources and the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf;
- (iii) Appeals from orders and decisions issued by departmental officials and administrative law judges in proceedings relating to mine health and safety; and
- (iv) Appeals from orders and decisions of administrative law judges in Indian probate matters other than those involving estates of Indians of

the Five Civilized Tribes and Osage Indians.

(2) Copies of final opinions and orders issued in the following categories of cases are available for inspection and copying in the Docket and Records Section, Office of the Solicitor, Interior Building, Washington, DC 20240:

(1) Tort claims decided in the headquarters office of the Office of the Solicitor, and appeals from decisions of Regional Solicitors or Field Solicitors on tort claims;

(ii) Irrigation claims under Public Works Appropriation Acts (e.g., 79 Stat., 1103) or 25 U.S.C. 388 decided in the headquarters office of the Office of the Solicitor, and appeals from decisions of Regional Solicitors on irrigation claims;

(iii) Appeals under § 2.18 respecting availability of records;

(iv) Appeals from decisions of officials of the Bureau of Indian Affairs, and Indian enrollment appeals; and

(v) Appeals from decisions of officers of the Bureau of Land Management and of the Geological Survey in proceedings relating to lands or interests in land, contract appeals, and appeals in Indian probate proceedings, issued prior to July 1, 1970.

(3) An Index-Digest is issued by the Department. All decisions, opinions and orders issued in the categories of cases described in paragraphs (a)(1), (i), (ii), and (iii) of this section (that is, contract appeals, land appeals, and mine health and safety appeals), are covered in the Index-Digest. In addition, the Index-Digest covers the more important decisions, opinions and orders in the remaining categories of cases described in paragraphs (a)(1)(iv) and (a)(2) (i) through (iv) of this section, and the more important opinions of law issued by the Office of the Solicitor. The Index-Digest is available for use by the public in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, in the Docket and Records Section, Office of the Solicitor, Interior Building, Washington, DC 20240, and in the offices of the Regional Solicitors and Field Solicitors. Selected decisions, opinions, and orders are published in a series en-

titled "Decisions of the United States Department of the Interior" (cited as I.D.), and copies may be obtained by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(4) Copies of final opinions and orders issued by Regional Solicitors on tort claims and irrigation claims, and copies of final opinions and orders on appeals in Indian probate proceedings issued by Regional Solicitors prior to July 1, 1970, are available for inspection and copying in their respective offices. Copies of final opinions and orders issued by Field Solicitors on tort claims are available for inspection and copying in their respective offices.

(b)(1) Copies of final decisions and orders issued prior to July 1, 1970, on appeals to the Director, Bureau of Land Management, and by hearing examiners of the Bureau of Land Management, in proceedings relating to lands and interests in land are available for inspection and copying in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, and in the offices of the Departmental administrative law judges.

(2) Copies of final decisions, opinions and orders issued on and after July 1, 1970, by departmental administrative law judges in all proceedings before them are available for inspection and copying in their respective offices and in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203.

(3) Copies of final decisions, opinions and orders issued by administrative law judges in Indian probate proceedings are available for inspection and copying in their respective offices.

§ 2.3 Administrative manuals.

The Departmental Manual is available for inspection in the Departmental Library, Interior Building, Washington, D.C., and at each of the regional offices of bureaus of the Department. The administrative manuals of those bureaus which have issued such documents are available for inspection at the headquarters offices and at the regional offices of the bureaus.

Subpart B—Requests for Records

Source: 52 FR 45586, Nov. 30, 1987, unless otherwise noted.

§ 2.11 Purpose and scope.

(a) This subpart contains the procedures for submission to and consideration by the Department of the Interior of requests for records under the Freedom of Information Act.

(b) Before invoking the formal procedures set out below, persons seeking records from the Department may find it useful to consult with the appropriate bureau FOIA officer. Bureau offices are listed in Appendix B to this part.

(c) The procedures in this subpart do not apply to:

(1) Records published in the Federal Register, opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under Subpart A of this part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 2.13(c)(7) if—

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that—

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by a criminal law enforcement component of the Department under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

§ 2.12 Definitions.

(a) Act and FOIA mean the Freedom of Information Act, 5 U.S.C. 552.

(b) Bureau refers to all constituent bureaus of the Department of the Interior, the Office of the Secretary, and the other Departmental offices. A list

of bureaus is contained in Appendix B to this part.

(c) Working day means a regular Federal workday. It does not include Saturdays, Sundays or public legal holidays.

§ 2.13 Records available.

(a) Department policy. It is the policy of the Department of the Interior to make the records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) Statutory disclosure requirements. The Act requires that the Department, on a request from a member of the public submitted in accordance with the procedures in this subpart, make requested records available for inspection and copying.

(c) Statutory exemptions. Exempted from the Act's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) 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 the Privacy Act), provided that such statute—

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

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

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(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

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

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

(d) *Decisions on requests.* It is the policy of the Department to withhold information falling within an exemption only if—

(1) Disclosure is prohibited by statute or Executive order or

(2) Sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under

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the procedures in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released.

§ 2.14 Requests for records.

(a) *Submission of requests.* (1) A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the requester, he or she may direct a request to the head of the appropriate bureau or to the bureau's FOIA officer. Addresses for bureau heads and FOIA officers are contained in Appendix B to this part.

(2) *Exceptions.* (i) A request for records located in all components of the Office of the Secretary (other than the Office of Hearings and Appeals) shall be submitted to: Director, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240. A request for records located in the Office of Hearings and Appeals shall be submitted to: Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(ii) A request for records of the Office of Inspector General shall be submitted to: Inspector General, Office of the Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(iii) A request for records of the Office of the Solicitor shall be submitted to: Solicitor, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

(b) *Form of requests.* (1) Requests under this subpart shall be in writing and must specifically invoke the Act.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Department familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it

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was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall—

(A) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requester claims the request to fall and the basis of this claim (see § 2.20(b) through (e) for definitions) and

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under § 2.20 (f) and (g), the time for responding to requests may be delayed—

(A) If a requester has not sufficiently identified the fee category applicable to the request,

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Department or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Department.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 2.21 are met.

(5) To ensure expeditious handling, requests should be prominently marked, both the envelope and on the face of the request, with the legend "FREEDOM OF INFORMATION REQUEST."

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Department determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Department may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

quency distributions, trends or comparisons. In those instances where the Department determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Department may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

§ 2.15 Preliminary processing of requests.

(a) *Scope of requests.* (1) Unless a request clearly specifies otherwise, requests to field installations of a bureau may be presumed to seek only records at that installation and requests to a bureau head or bureau FOIA officer may be presumed to seek only records of that bureau.

(2) If a request to a field installation of a bureau specifies that it seeks records located at other installations of the same bureau, the installation shall refer the request to the other installation(s) or the bureau FOIA officer for appropriate processing. The time limit provided in § 2.17(a) does not start until the request is received at the installation having the records or by the bureau FOIA officer.

(3) If a request to a bureau specifies that it seeks records of another bureau, the bureau may return the request (or the relevant portion thereof) to the requester with instructions as to how the request may be resubmitted to the other bureau.

(b) *Intradepartmental consultation and referral.* (1) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that originated with or are of substantial concern to another bureau, it shall consult with that bureau before deciding whether to release or withhold the records.

(2) As an alternative to consultation, a bureau may refer the request (or the relevant portion thereof) to the bureau that originated or is substantially concerned with the records. Such referrals shall be made expeditiously and the requester shall be notified in writing that a referral has been made. A referral under this paragraph does not restart the time limit provided in § 2.17.

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(c) Records of other departments and agencies. (1) If a requested record in the possession of the Department of the Interior originated with another Federal department or agency, the request shall be referred to that agency unless—

- (1) The record is of primary interest to the Department.
- (ii) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure, or
- (iii) The originating agency is not subject to the Act.

The Department has primary interest in a record if it was developed or prepared pursuant to Department regulations, directives or request.

(2) In accordance with Executive Order 12356, a request for documents that were classified by another agency shall be referred to that agency.

(d) Consultation with submitters of commercial and financial information. (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the bureau processing the request shall provide the submitter with notice of the request whenever—

- (1) The submitter has made a good faith designation of the information as commercially or financially sensitive, or
- (ii) The bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(2) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the in-

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formation is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(3) If a submitter's statement cannot be obtained within the time limit for processing the request under § 2.17, the requester shall be notified of the delay as provided in § 2.17(c).

(4) Notification to a submitter is not required if:

- (1) The bureau determines, prior to giving notice, that the request for the record should be denied;
- (ii) The information has previously been lawfully published or officially made available to the public;
- (iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this subpart);
- (iv) Disclosure is clearly prohibited by a statute, as described in § 2.13(c)(3);
- (v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm.

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Department more than 10 years prior to the date of the request, unless the bureau has reason to believe that it continues to be confidential.

(5) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

§ 2.16 Action on initial request.

(a) Authority. (1) Requests to field installations shall be decided by the head of the installation or by such higher authority as the head of the bureau may designate in writing.

(2) Requests to the headquarters of a bureau shall be decided only by the head of the bureau or an official

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whom the head of the bureau has in writing designated.

(3) Requests to the Office of the Secretary may be decided by the Director of Administrative Services, an Assistant Secretary or Assistant Secretary's designee, and any official whom the Secretary has in writing designated.

(4) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the office of the appropriate associate, regional, or field solicitor.

(b) Form of grant. (1) When a requested record has been determined to be available, the official processing the request shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the official shall state the amount of fees due and the procedures for payment, as described in § 2.20.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

- (1) A statement of the reasons why the submitter's objections were not sustained;
- (ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and
- (iii) A specified disclosure date.

(3) If a claim of confidentiality has been found frivolous in accordance with § 2.15(d)(4)(v) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

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(c) Form of denial. (1) A decision withholding a requested record shall be in writing and shall include:

- (i) A reference to the specific exemption or exemptions authorizing the withholding;
- (ii) If neither a statute or an Executive order requires withholding, the sound ground for withholding;
- (iii) A listing of the names and titles or positions of each person responsible for the denial; and
- (iv) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

- (1) A description of the basis of the decision;
- (ii) A list of the names and titles or positions of each person responsible; and
- (iii) A statement that the matter may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

§ 2.17 Time limits for processing initial requests.

(a) Basic limit. Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than 10 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) Running of basic time limit. (1) The 10 working day time limit begins to run when a request meeting the requirements of § 2.14(b) is received at a field installation or bureau headquarters designated in § 2.14(a) to receive the request.

(2) The running of the basic time limit may be delayed or tolled as explained in § 2.20 (f), (g) and (h) if a requester—

(1) Has not stated a willingness to pay fees as high as are anticipated and has

§ 2.18 Appeals.

- (a) *Right of appeal.* A requester may appeal to the Assistant Secretary—Policy, Budget and Administration when—
 - (1) Records have been withheld.
 - (2) A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located.
 - (3) A fee waiver has been denied, or
 - (4) A request has not been denied within the time limits provided in § 2.17.
- (b) *Time for appeal.* An appeal must be received no later than 20 working days after the date of the initial denial, in the case of a denial of an entire request, or 20 working days after records have been made available, in the case of a partial denial.
- (c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appeal process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error. (2) The appeal shall be addressed to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240. (3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend "FREEDOM OF INFORMATION APPEAL."

§ 2.19 Action on appeals.

- (a) *Authority.* Appeals shall be decided by the Assistant Secretary—Policy, Budget and Administration, or the Assistant Secretary's designee, after consultation with the Solicitor, the Director of Public Affairs and the appropriate program Assistant Secretary.
- (b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 2.18(c).

- (c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 2.17(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 2.17(c) requires an extension.
- (2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.
- (3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, 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). When no determination can be reached 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 reached to be dispatched and of the right to seek judicial review.
- (d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Assistant Secretary—Policy, Budget and Administration shall immediately make the records available or instruct the appropriate bureau to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the U.S. District Court for the district in which the withheld records are located, or in which the requester resides or has his or her principal place of business or in the U.S. District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.
- (2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), the submitter shall be provided notice as described in § 2.16(b)(2).

§ 2.20 Fees.

- (a) *Policy.* (1) Unless waived pursuant to the provisions of § 2.21, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the schedule of charges contained in Appendix A to this part. (2) Fees shall not be charged if the total amount chargeable does not exceed \$15.00. (3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.
- (b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search, duplication and review. (2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records. (3) A commercial use request is a request from or on behalf of a person who seeks information for a use or purpose that further the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.
- (c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the aus-

places of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof) if the records are in some other form shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in—

(i) Searching for requested records;

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure;

(iii) Deleting reasonably segregable exempt matter;

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(3) An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(4) A "noncommercial scientific institution" is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) *News media requests.* (1) A representative of the new media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof) if the records are in some other form shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in—

(i) Searching for requested records;

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure;

(iii) Deleting reasonably segregable exempt matter;

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(3)(i) A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category.

(ii) Free-lance journalists may be considered "representatives of the news media." If they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it, a publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c) or (d) of this section shall be charged fees for document search and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof) if the records are in some other form shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in—

(i) Examining requested records to determine whether they are exempt from disclosure;

(ii) Deleting reasonably segregable exempt matter;

(iii) Monitoring the requester's inspection of agency records, or

(iv) Resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient

information to determine whether it is covered by paragraph (b), (c), (d) or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Department, and the requester has not sought and been granted a full waiver of fees under § 2.21, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed \$250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 calendar days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request.

(3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 2.17 until receipt of payment.

(i) *Form of payment.* Payment of fees should be made by check or money order payable to the Department of the Interior or the bureau furnishing the information. The term United States or the initials "U.S." should not be included on the check or money order. Where appropriate, the official responsible for handling a re-

quest may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection, Form DI-1040, shall be prepared for each request that requires collection of fees. The requester shall be provided the first sheet of the DI-1040. This Accounting Copy of the Form shall be transmitted to the agency's finance office for entry into accounts receivable records. Upon receipt of payment from the requester, the recipient shall forward the payment along with a copy of the DI-1040 to the finance office.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 calendar days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of state or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees (see 4 CFR Parts 101-105).

§ 2.21 Waiver of fees.

(a) *Statutory fee waiver.* (1) Documents shall be furnished without charge or at a charge reduced below the fees chargeable under § 2.20 and Appendix A to this part if disclosure of the information is in the public interest because it—

(i) Is likely to contribute significantly to public understanding of the operations or activities of the government and

(ii) Is not primarily in the commercial interest of the requester.

(2) Factors to be considered in determining whether disclosure of information "is likely to contribute significantly to public understanding of the operations or activities of the government" are the following:

(i) Does the record concern the operations or activities of the government? Records concern the operations or activities of the government if they

relate to or will illuminate the manner in which the Department or a bureau is carrying out identifiable operations or activities or the manner in which an operation or activity affects the public. The connection between the records and the operations and activities to which they are said to relate should be clear and direct, not remote and attenuated. Records developed outside of the government and submitted to or obtained by the Department may relate to the operations and activities of the government if they are informative on how an agency is carrying out its regulatory, enforcement, procurement or other activities that involve private entities.

(ii) If a record concerns the operations or activities of the government, is its disclosure likely to contribute to public understanding of these operations and activities? The likelihood of a contribution to public understanding will depend on consideration of the content of the record, the identity of the requester, and the interrelationship between the two. Is there a logical connection between the content of the requested record and the operations or activities in which the requester is interested? Are the disclosable contents of the record meaningfully informative on the operations or activities? Is the focus of the requester on contribution to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? Does the requester have expertise in the subject area and the ability and intention to disseminate the information to the general public or otherwise use the information in a manner that will contribute to public understanding of government operations or activities? Is the requested information sought by the requester because it may be informative on government operations or activities or because of the intrinsic value of the information independent of the light that it may shed on government operations or activities?

(iii) If there is likely to be a contribution to public understanding, will that contribution be significant? A contribution to public understanding will be significant if the information disclosed is new, clearly supports

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public oversight of Department operations, including the quality of Department activities and the effect of policy and regulations on public health and safety, or otherwise confirm or clarifies data on past or present operations of the Department. A contribution will not be significant if disclosure will not have a positive impact on the level of public understanding of the operations or activities involved that existed prior to the disclosure. In particular, a significant contribution is not likely to arise from disclosure of information already in the public domain because it has, for example, previously been published or is routinely available to the general public in a public reading room.

(3) Factors to be considered in determining whether disclosure "is primarily in the commercial interest of the requester" are the following:

- (1) Does the requester have a commercial interest that would be furthered by the requested disclosure? A commercial interest is a commercial, trade or profit interest as these terms are commonly understood. An entity's status is not determinative. Not only profit-making corporations, but also individuals or other organizations, may have a commercial interest to be served by disclosure, depending on the circumstances involved.
- (2) If the requester has a commercial interest, will disclosure be primarily in that interest? The requester's commercial interest is the primary interest if the magnitude of that interest is greater than the public interest to be served by disclosure. Where a requester is a representative of a news media organization seeking information as part of the news gathering process, it may be presumed that the public interest outweighs the organization's commercial interests.
- (4) *Notice of denial.* If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:
 - (i) A statement of the basis on which the waiver or reduction has been denied.
 - (ii) A listing of the names and titles or positions of each person responsible for the denial.

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(iii) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

- (b) *Discretionary waivers.* Fees otherwise chargeable may be waived at the discretion of a bureau if a request involves:
 - (1) Furnishing unauthenticated copies of documents reproduced for gratuitous distribution.
 - (2) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department.
 - (3) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held.
 - (4) Furnishing records to donors with respect to their gifts.
 - (5) Furnishing records to individuals or private non-profit organizations having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department.
 - (6) Furnishing records to state, local and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Department and to do so will help to accomplish the work of the Department.
 - (7) Furnishing a record when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Department's fee for the service would be included in a billing against the Department).
 - (8) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees).
 - (9) Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he or she is entitled (e.g., veterans or their dependents, employees with Government employee compensation

claims or persons insured by the Government).

§ 2.22 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

(a) *Definition.* As used in the section:

- (1) *Act* means the Mineral Leasing Act of February 25, 1920, as amended by the Act of August 4, 1976, Pub. L. 94-377, 90 Stat. 1083 (30 U.S.C. 181 *et seq.*), and the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 *et seq.*)
- (2) *Exploration license* means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Act pursuant to the authority in section 2(b) of the Act, as amended (30 U.S.C. 201(b)).
- (3) *Fair-market value of coal* to be leased means the minimum amount of a bid the Secretary has determined he is willing to accept in leasing coal within leasing tracts offered in general lease sales or reserved and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations, controlled by any of such entities pursuant to section 2(a) of the Act (30 U.S.C. 201(a)(1)).
- (4) *Information* means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources, which fit within an exemption to the Freedom of Information Act, 5 U.S.C. 552(b).
- (b) *Applicability.* This section applies to the following categories of information:
 - (1) *Category A.* Information provided to or obtained by a bureau under section 2(b)(3) of the Act from the holder of an exploration license.
 - (2) *Category B.* Information acquired from commercial or other sources under service contract with Geological Survey pursuant to section 8A(b) of the Act, and information developed by the Geological Survey under an exploratory program authorized by section 8A of the Act.
 - (3) *Category C.* Information obtained from commercial sources which the commercial source acquired while

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not under contract with the United States Government;

(4) *Category D*. Information provided to the Secretary by a Federal department or agency pursuant to section 8A(e) of the Act; and

(5) *Category E*. The fair-market value of coal to be leased and comments received by the Secretary with respect to such value.

(c) *Availability of information*. Information obtained by the Department from various sources will be made available to the public as follows:

(1) *Category A—Information*. *Category A* information shall not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first.

(2) *Category B—Information*. *Category B* information shall not be withheld from the public; it will be made available by means of and at the time of open filing or publication by Geological Survey.

(3) *Category C—Information*. *Category C* information shall not be made available to the public until after the areas to which the information pertains have been leased by the Department.

(4) *Category D—Information*. *Category D* information shall be made available to the public under the terms and conditions to which, at the time he or she acquired it, the head of the department or agency from whom the Secretary later obtained the information agreed.

(5) *Category E—Information*. *Category E* information shall not be made public until the hands to which the information pertains have been leased, or until the Secretary has determined that its release prior to the issuance of a lease is in the public interest.

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Subpart C—Declassification of Classified Documents

§ 2.41 Declassification of classified documents.

(a) *Request for classification review*. (1) Requests for a classification review of a document of the Department of the Interior pursuant to section 5(c) of Executive Order 11652 (37 FR 5209, March 10, 1972) and section III B of the National Security Council Directive Governing Classification, Downgrading, Declassification and Safeguarding of National Security Information (37 FR 10053, May 1972) shall be made in accordance with the procedures established by this section.

(2) Any person desiring a classification review of a document of the Department of the Interior containing information classified as National Security Information by reason of the provisions of Executive Order 12065 (or any predecessor executive order) and which is more than 10 years old, should address such request to the Chief, Division of Enforcement and Security Management, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240.

(3) Requests need not be made on any special form, but shall, as specified in the executive order, describe the document with sufficient particularity to enable identification of the document requested with expenditure of no more than a reasonable amount of effort.

(4) Charges for locating and reproducing copies of records will be made when deemed applicable in accordance with Appendix A to this part and the requester will be notified.

(b) *Action on requests for classification review*. (1) The Chief, Division of Enforcement and Security Management, shall, unless the request is for a document over 30 years old, assign the request to the bureau having custody of the requested records for action. In the case of requests for declassification of records in the custody of the Office of the Secretary and less than 30 years old, the request shall be processed by the Chief, Division of Enforcement and Security Management.

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Requests for declassification of documents over 30 years shall be referred directly to the Archivist of the United States. The bureau which has been assigned the request, or the Chief, Division of Enforcement and Security Management, in the case of requests assigned to him, shall immediately acknowledge the request in writing. Every effort will be made to complete action on each request within thirty (30) days of its receipt. If action cannot be completed within thirty (30) days, the requester shall be so advised.

(2) If the requester does not receive a decision on his request within sixty (60) days from the date of receipt of his request, or from the date of his most recent response to a request for more particulars, he may apply to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240, for a decision on his request. The Committee must render a decision within thirty (30) days.

(c) *Form of decision and appeal to Oversight Committee for Security*. In the event that the bureau to which a request is assigned or the Chief, Division of Enforcement and Security Management, in the case of a request assigned to him, determines that the requested information must remain classified by reason of the provisions of Executive Order 11652, the requester shall be given prompt notification of that decision and, whenever possible, shall be provided with a brief statement as to why the information or material cannot be declassified. He shall also be advised that if he desires he may appeal the determination to the Chairman, Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240. An appeal shall include a brief statement as to why the requester disagrees with the decision which he is appealing. The Department Oversight Committee for Security shall render its decision within thirty (30) days of receipt of an appeal. The Departmental Committee shall be authorized to over-ride previous determinations in whole or in part when, in its judgement, continued protection is no longer required.

(d) *Appeal to Interagency Classification Review Committee*. Whenever the Department of the Interior Oversight Committee for Security confirms a determination for continued classification, it shall so notify the requester and advise him that he is entitled to appeal the decision to the Interagency Classification Review Committee established under section 8(A) of the Executive Order 11652. Such appeals shall be addressed to the Interagency Classification Review Committee, the Executive Office Building, Washington, DC 20500.

(e) *Suggestions and complaints*. Any person may also direct suggestions or complaints with respect to the administration of the other provisions of Executive Order 11652 and the NSC Directive by the Department of the Interior to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240.

(40 FR 7305, Feb. 19, 1975, as amended at 47 FR 38327, Aug. 31, 1982)

Subpart D—Privacy Act

Source: 40 FR 44505, Sept. 26, 1975, unless otherwise noted.

§ 2.45 Purpose and scope.

This subpart contains the regulations of the Department of the Interior or implementing section 3 of the Privacy Act, Sections 2.47 through 2.57 describe the procedures and policies of the Department concerning maintenance of records which are subject to the Act, Sections 2.60 through 2.66 describe the procedure under which individuals may determine whether their records are subject to the Act and the procedure under which they may seek access to existing records. Sections 2.70 through 2.77 describe the procedure under which individuals may petition for amendment of records subject to the Act relating to them. Section 2.79 lists records systems that have been exempted from certain requirements of the Act.

(48 FR 56583, Dec. 22, 1983)

§ 2.80

- from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:
- (1) Investigative Records, Interior/Office of Inspector General-2.
- (2) Permits System, Interior/FWS-21.
- (3) Criminal Case Investigation System, Interior/BLM-18.
- (4) Civil Trespass Case Investigations, Interior/BLM-19.
- (5) Employee Conduct Investigations, Interior/BLM-20.
- (6)-(7) [Reserved]
- (8) Employee Financial Irregularities, Interior/NPS-17.
- (9) Trespass Cases, Interior/Reclamation-37.
- (10) Litigation, Appeal and Case Files System, Interior/Office of the Solicitor-1 to the extent that it consists of investigatory material compiled for law enforcement purposes.
- (11) Endangered Species Licenses System, Interior/FWS-19.
- (12) Investigative Case File, Interior/FWS-20.
- (13) Timber Cutting and Trespass Claims Files, Interior/BIA-24.
- (c) Investigatory records exempt under 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these subsections:
 - (1) [Reserved]
 - (2) National Research Council Grants Program, Interior/GS-9
 - (3) Committee Management Files, Interior/Office of the Secretary-68.
- (5 U.S.C. 301, 552a and 5 U.S.C. app. sections 90a)(1)(X)(D) and 9(d); 5 U.S.C. 301, 552, and 552a; 31 U.S.C. 483a; and 43 U.S.C. 1460)
- (40 FR 44505, Sept. 26, 1975, as amended at 40 FR 54790, Nov. 26, 1975; 47 FR 38326, Aug. 31, 1982; 48 FR 37412, Aug. 18, 1983; 48 FR 56586, Dec. 22, 1983; 49 FR 6907, Feb. 24, 1984)

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Support E—Compulsory Process and Testimony of Employees

§ 2.80 Compulsory process.

- (a) If the production of any record of the Department is sought by compulsory process and if it is determined in accordance with the provisions of § 2.13 that the record should not be disclosed, the person making such determination shall immediately report the matter to the Solicitor. The person to whom the compulsory process is directed shall appear in answer to the process and respectfully decline to produce the record on the ground that the disclosure, pending the receipt of instructions from the Secretary of the Interior, is prohibited by the regulations in this subpart.
- (b) The solicitor of the Department of the Interior is authorized to exercise all of the authority of the Secretary of the Interior under this section.

§ 2.82 Testimony of employees.

- (a) An officer or employee of the Department shall not testify in any judicial or administrative proceeding concerning matters related to the business of the Government without the permission of the head of the bureau, or his designee, or of the Secretary of the Interior, or his designee. If the head of a bureau or his designee, concludes that permission should be withheld, he shall report the matter immediately to the Solicitor for a determination, and the officer or employee shall appear in answer to process and respectfully decline to testify, pending the receipt of instructions from the Secretary, on the ground that testimony is prohibited by the regulations in this part. Pending instructions from the Secretary or his designee, an officer or employee shall follow the same procedure.

- (b) Any person (including a public agency) wishing an officer or employee of the Department to testify in a judicial or administrative proceeding concerning a matter related to the business of the Government may be required to submit a statement setting forth the interest of the litigant and the information with respect to which

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the testimony of the officer or employee of the Department is desired, before permission to testify will be granted under this section.

- (c) The Solicitor of the Department of the Interior is authorized to exercise all of the authority of the Secretary of the Interior under this section.

APPENDIX A TO PART 2—FEES

The following uniform fee schedule is applicable to all constituent units of the Department. It states the fees to be charged to members of the public for services performed in searching for, reviewing and duplicating requested records in connection with FOIA requests made under Subpart B of this part and to services performed in making documents available for inspection and copying under Subpart A of this part. The duplicating fees stated in the schedule are also applicable to duplicating of records in response to requests made under the Privacy Act. The schedule also states the fee to be charged for certification of documents.

- (1) Copies, basic /cc. For copies of documents reproduced on a standard office copying machine in sizes to 8 1/2" x 14", the charge will be \$0.13 per page.

Example: For one copy of a three-page document, the fee would be \$0.39. For two copies of a three-page document, the fee would be \$0.78. For one copy of a 60-page document, the fee would be \$7.80.

- (2) Copies, documents requiring special handling. For copies of documents which require special handling because of their age, size, etc., cost will be based on direct costs of reproducing the materials.
- (3)-(4) [Reserved]

- (5) Searches. For each quarter hour, or portion thereof, spent by clerical personnel in manual searches to locate requested records: \$2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in manual searches to locate requested records because the search cannot be performed by clerical personnel: \$4.65.

Search time for which fees may be charged includes all time spent looking for material that is responsive to a request, including line-by-line or page-by-page search to determine whether a record is responsive, even if the search fails to locate records or the records located are determined to be exempt from disclosure. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester. Line-by-line or page-by-page identification should not be necessary if it is clear on the face of a document that it is covered by a request.

- (6) Review of records. For each quarter hour, or portion thereof, spent by clerical personnel in reviewing records: \$2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in reviewing records: \$4.65.

Review is the examination of documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld and the subsequent processing of documents for disclosure by exchanging exempt material or otherwise preparing them for release. Review does not include time spent in resolving general legal or policy issues regarding the application of exemptions.

- (7) [Reserved]
- (8) Certification. For each certificate of verification attached to authenticated copies of records furnished to the public the charge will be \$0.25.
- (9) [Reserved]

(10) Computerized records. Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

- (a) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.
- (b) An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output, remote terminal, storage, plotters, printing, tape/disk mounting, etc.) with related associated costs applicable to each operation.
- (c) Material costs (i.e., paper, disks, tape, etc.) will be calculated using the latest acquisition price paid by the facility.
- (d) ADP facility managers must assure that all cost estimates are accurate, and if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, itemized listings of operations and associated costs for processing the job may be furnished to members of the public.

- (e) Requesters entitled to two hours of free search time under 43 CFR 2.201(e) shall not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.
- (11) Postage/mailing costs. Mailing charges may be added for services (such as express mail) that exceed the cost of first class postage.
- (12)-(13) [Reserved]
- (14) Other services. When a response to a request requires services or materials other

than those described in this schedule, the direct cost of such services or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

(15) *Effective date.* This schedule applies to all requests made under the Freedom of Information Act and Privacy Act after December 30, 1987.

152 FR 45592, Nov. 30, 1987]

APPENDIX B TO PART 2—BUREAUS AND OFFICES OF THE DEPARTMENT OF THE INTERIOR

1. *Bureaus and Offices of the Department of the Interior.* (The address for all bureaus and offices, unless otherwise indicated, is U.S. Department of the Interior, Washington, DC 20240.)

Secretary of the Interior, Office of the Secretary
 Office of Administrative Services (for Office of the Secretary components)
 Assistant Secretary, Territorial and International Affairs
 Commissioner, Bureau of Indian Affairs
 Director, U.S. Fish and Wildlife Service
 Director, National Park Service, P.O. Box 37127, Washington, DC 20013-7127
 Commissioner, Bureau of Reclamation
 Director, Bureau of Land Management
 Director, Minerals Management Service
 Director, Bureau of Mines, Columbia Plaza, 2401 E Street NW, Washington, DC 20241
 Director, Geological Survey, The National Center, Reston, VA 22092
 Director, Office of Surface Mining Reclamation and Enforcement
 Director, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203
 Inspector General, Office of Inspector General

Solicitor, Office of the Solicitor
 2. *Freedom of Information Officers of the Department of the Interior.* (The address for all Freedom of Information Officers, unless otherwise indicated, is U.S. Department of the Interior, Washington, DC 20240.)
 Director, Office of Administrative Services (for Office of the Secretary components), U.S. Department of the Interior
 Director, Office of Administration, Bureau of Indian Affairs
 Freedom of Information Act Officer, Bureau of Land Management
 Assistant Director, Finance and Management, Bureau of Mines, Columbia Plaza, 2401 E Street NW, Washington, DC 20241
 Freedom of Information Act Officer, Bureau of Reclamation
 Chief, Division of Media Information, National Park Service

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Chief, Regulatory Development and Issues Management, Office of Surface Mining Reclamation and Enforcement
 Chief, Directives Management Branch, Fish and Wildlife Service
 Chief, Paperwork Management Unit, U.S. Geological Survey, The National Center, Reston, VA 22092
 Freedom of Information Act Officer, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091
 Information Officer, Office of Inspector General

3. Office of Hearings and Appeals—Field Offices:

Administrative Law Judge, 1111 Northshore Drive, Suite 202, Bldg. #1, Knoxville, TN 37919
 Administrative Law Judges, 6432 Federal Bldg., Salt Lake City, UT 84138
 Administrative Law Judge (Indian Probate), Federal Bldg., Rm. 3427, 230 N. First Ave., Phoenix, AZ 85025
 Administrative Law Judge (Indian Probate), 2020 Hurley Way, Suite 150, Sacramento, CA 95825
 Administrative Law Judges (Indian Probate), Federal Building, Rooms 674 and 688, Fort Snelling, Twin Cities, MN 55111
 Administrative Law Judge (Indian Probate), 421 Gold SW., Rm. 303, Albuquerque, NM 87102
 Administrative Law Judge (Indian Probate), 215 Dean A. McGee Ave., Rm. 218, Oklahoma City, OK 73102
 Administrative Law Judge (Indian Probate), Federal Bldg. & Courthouse, 515 9th St., Suite 201, Rapid City, SD 57701
 Administrative Law Judge (Indian Probate), Federal Bldg. & Courthouse, Rm. 3329, 316 N. 26th St., Billings, MT 59101
 4. *Office of the Solicitor—Field Offices.*

Regional Solicitors:

Regional Solicitor, U.S. Department of the Interior, 701 C Street, Anchorage, AK 99513
 Regional Solicitor, U.S. Department of the Interior, Room E-2753, 2800 Cottage Way, Sacramento, CA 95825
 Regional Solicitor, U.S. Department of the Interior, P.O. Box 25007, Denver, Federal Center, Denver, CO 80225
 Regional Solicitor, U.S. Department of the Interior, Richard B. Russell Federal Building, 75 Spring Street, SW., Suite 1328, Atlanta, GA 30303
 Regional Solicitor, U.S. Department of the Interior, Suite 612, One Gateway Center, Newton Corner, MA 02158
 Regional Solicitor, U.S. Department of the Interior, Room 3068, Page Belcher Federal Building, 333 West 4th Street, Tulsa, OK 74103

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Regional Solicitor, U.S. Department of the Interior, Lloyd 500 Portland, Suite 607, 500 NE Multnomah, Portland, OR 97232
 Regional Solicitor, U.S. Department of the Interior, Suite 6201, Federal Building, 125 South State Street, Salt Lake City, UT 84138

Field Solicitors:

Field Solicitor, U.S. Department of the Interior, Suite 150, 505 North Second St., Phoenix, AZ 85004
 Field Solicitor, U.S. Department of the Interior, P.O. Box M, Window Rock, AZ 86515
 Field Solicitor, U.S. Department of the Interior, Box 36064, 450 Golden Gate Avenue, Room 14126, San Francisco, CA 94102
 Field Solicitor, U.S. Department of the Interior, Box 020, Federal Building, U.S. Courthouse, 550 West Fort Street, Boise, ID 83724
 Field Solicitor, U.S. Department of the Interior, 896 Federal Building, Twin Cities, MN 55111
 Field Solicitor, U.S. Department of the Interior, Room 5431, Federal Building, 316 N. 26th Street, Billings, MT 59101
 Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, NM 87504
 Field Solicitor, U.S. Department of the Interior, Osage Agency, Grandview Avenue, Pawhuska, OK 74056
 Field Solicitor, U.S. Department of the Interior, Suite 6022, U.S. Post Office and Courthouse, Pilsburgh, PA 15219
 Field Solicitor, U.S. Department of the Interior, P.O. Box 15006, Knoxville, TN 37901
 Field Solicitor, U.S. Department of the Interior, 1190 South Fillmore, Amarillo, TX 79101
 Field Solicitor, U.S. Department of the Interior, 603 Morris Street, 2nd Floor, Charleston, WV 25301

152 FR 45592, Nov. 30, 1987, as amended at 53 FR 16126, May 5, 1988]

PART 3—PRESERVATION OF AMERICAN ANTIQUITIES

Sec. 3.1 Jurisdiction.
 3.2 Limitation on permits granted.
 3.3 Permits; to whom granted.
 3.4 No exclusive permits granted.
 3.5 Application.
 3.6 Time limit of permits granted.
 3.7 Permit to become void.
 3.8 Applications referred for recommendation.
 3.9 Form and reference of permit.
 3.10 Reports.
 3.11 Restoration of lands.
 3.12 Termination.
 3.13 Report of field officer.

Sec. 3.14 Examinations by field officer.
 3.15 Persons who may apprehend or cause to be arrested.
 3.16 Seizure.
 3.17 Preservation of collection.
 Authority: Secs. 3, 4, 34 Stat. 225, as amended; 16 U.S.C. 432.
 Source: 19 FR 8838, Dec. 23, 1984, unless otherwise noted.

§ 3.1 Jurisdiction.

Jurisdiction over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic and scientific interest, shall be exercised under the act by the respective Departments as follows:

(a) By the Secretary of Agriculture over lands within the exterior limits of forest reserves;
 (b) By the Secretary of the Army over lands within the exterior limits of military reservations;
 (c) By the Secretary of the Interior over all other lands owned or controlled by the Government of the United States. *Provided*, The Secretaries of the Army and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects covered by the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431-433), as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

§ 3.2 Limitation on permits granted.

No permit for the removal of any ancient monument or structure which can be permanently preserved under the control of the United States in situ, and remain an object of interest, shall be granted.

§ 3.3 Permits; to whom granted.

Permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity will be granted, by the respective Secretaries having jurisdiction, to reputable museums, universities, colleges, or other recognized scientific or educational institutions, or to their duly authorized agents.

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THE FREEDOM OF INFORMATION ACT

5 U.S.C. §552

As Amended

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

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

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

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

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

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

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

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

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

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

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

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

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

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unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

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

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

(ii) Such agency regulations shall provide that --

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

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

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

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public

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interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

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

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

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

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

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

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

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

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

(D) [Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest

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practicable date and expedited in every way.] Repealed.
Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat.
3335, 3357.

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

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

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

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

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

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

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

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request--

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

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

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

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

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

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

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

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

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

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

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

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion

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of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

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

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

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

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

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

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

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

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

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

FREEDOM OF INFORMATION ACT

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

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

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

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

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

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

* * * * *

Section 1804. Effective Dates [not to be codified].

(a) The amendments made by section 1802 [the modification of Exemption 7 and the addition of the new subsection (c)] shall be effective on the date of enactment of this Act [October 27, 1986], and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

FREEDOM OF INFORMATION ACT

(b) (1) The amendments made by section 1803 [the new fee and fee waiver provisions] shall be effective 180 days after the date of the enactment of this Act [April 25, 1987], except that regulations to implement such amendments shall be promulgated by such 180th day.

(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.

Presidential Documents

Executive Order 12600 of June 23, 1987

Predisclosure Notification Procedures for Confidential Commercial Information

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide predisclosure notification procedures under the Freedom of Information Act concerning confidential commercial information, and to make existing agency notification provisions more uniform, it is hereby ordered as follows:

Section 1. The head of each Executive department and agency subject to the Freedom of Information Act shall, to the extent permitted by law, establish procedures to notify submitters of records containing confidential commercial information as described in section 3 of this Order, when those records are requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, if after reviewing the request, the responsive records, and any appeal by the requester, the department or agency determines that it may be required to disclose the records. Such notice requires that an agency use good-faith efforts to advise submitters of confidential commercial information of the procedures established under this Order. Further, where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

Sec. 2. For purposes of this Order, the following definitions apply:

(a) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(b) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

Sec. 3. (a) For confidential commercial information submitted prior to January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, provide a submitter with notice pursuant to section 1 whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) the department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) For confidential commercial information submitted on or after January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, establish procedures to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. Such agency procedures may provide for the expiration, after a specified period of time or changes in circumstances, of designations of competitive harm made by submitters. Additionally, such

procedures may permit the agency to designate specific classes of information that will be treated by the agency as if the information had been so designated by the submitter. The head of each Executive department or agency shall, to the extent permitted by law, provide the submitter notice in accordance with section 1 of this Order whenever the department or agency determines that it may be required to disclose records:

- (i) designated pursuant to this subsection; or
- (ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm.

Sec. 4. When notification is made pursuant to section 1, each agency's procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

Sec. 5. Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the submitter a written statement briefly explaining why the submitter's objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

Sec. 6. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, each agency's procedures shall require that the submitter be promptly notified.

Sec. 7. The designation and notification procedures required by this Order shall be established by regulations, after notice and public comment. If similar procedures or regulations already exist, they should be reviewed for conformity and revised where necessary. Existing procedures or regulations need not be modified if they are in compliance with this Order.

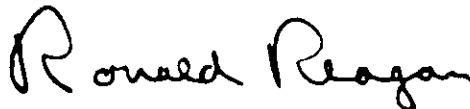
Sec. 8. The notice requirements of this Order need not be followed if:

- (a) The agency determines that the information should not be disclosed;
- (b) The information has been published or has been officially made available to the public;
- (c) Disclosure of the information is required by law (other than 5 U.S.C. 552);
- (d) The disclosure is required by an agency rule that (1) was adopted pursuant to notice and public comment, (2) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act, and (3) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;
- (e) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to section 7, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or
- (f) The designation made by the submitter in accordance with agency regulations promulgated pursuant to section 7 appears obviously frivolous; except that, in such case, the agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

Sec. 9. Whenever an agency notifies a submitter that it may be required to disclose information pursuant to section 1 of this Order, the agency shall also notify the requester that notice and an opportunity to comment are being

provided the submitter. Whenever an agency notifies a submitter of a final decision pursuant to section 5 of this Order, the agency shall also notify the requester.

Sec. 10. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
June 23, 1987.

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