

FSA
HANDBOOK

Freedom of Information Act

For All Offices

SHORT REFERENCE

2-INFO
(Revision 1)

UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

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**Freedom of Information Act
2-INFO (Revision 1)**

Amendment 1

Approved by: Acting Administrator



Amendment Transmittal

A Reason for Revision

This handbook has been revised to update FSA guidance on processing requests for FSA documents, data, and information requested by the public under the Freedom of Information Act.

B Obsolete Material

The following are obsolete by this revision:

- 2-INFO
- FSA-533.

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Part 1 Basic Provisions

1 Overview

A Purpose

This handbook:

- provides policy and general guidance for administering and implementing FOIA, 5 U.S.C. 552, as amended, within FSA
- applies to all FSA offices that receive and respond to FOIA requests
- is subject to the requirements of FOIA and USDA FOIA regulations.

If there are any inconsistencies between this handbook and USDA FOIA regulations, USDA FOIA regulations will prevail.

B Regulatory References

Authority for administering FOIA is provided by the following:

- FSA FOIA regulations, 7 CFR Part 798
- USDA FOIA regulations, 7 CFR Part 1, Subpart A
- USDA Privacy Act regulations, 7 CFR Part 1, Subpart G
- 5 U.S.C. 552, as amended
- the Privacy Act, 5 U.S.C. 552a
- DOJ FOIA Guide
- DOJ FOIA Guide and Privacy Act Overview
- DOJ FOIA Updates/FOIA Posts.

C Related Handbooks

This table lists all handbooks related to FOIA.

IF the questions or concern is about....	THEN see...
fee payment information	3-FI and 43-FI.
Privacy Act operations	3-INFO.
program appeals, mediation, and litigation	1-APP.

1 Overview (Continued)

D FSA's FOIA Web Site

To access FSA's FOIA public web site, go to **www.fsa.usda.gov/FSA/webapp?area=home&subject=landing&topic=landing**, scroll to the bottom and in the lower-left corner, CLICK "FOIA". Currently FSA's FOIA public web site contains links to the following:

- requester Service Center list
- USDA's FOIA Home Page
- DOJ's FOIA Home Page
- electronic FSA FOIA request forms
- electronic "reading room".

Web site additions are forthcoming.

2 Policy and Applicability

A Policy

It is FSA's policy to:

- make FSA records available to the public consistent with the letter and spirit of the FOIA and Privacy Act
- furnish non-exempt records promptly to any member of the public upon written request, according to FSA's fee structure
- respond to all FOIA requests "first-in, first-out".

B Applicability

The policy and procedures in this handbook apply to all records in the possession and control of FSA, regardless of format, including records in the possession and control of contractors performing functions in support of FSA missions, with the following **exceptions**.

IF...	THEN FOIA...
records are the personal records of FSA employees	applies only to FSA records. The distinction between FSA and personal records can be difficult to determine. Personal records generally are not: • subject to FSA record retention requirements • distributed to other employees for official use • integrated into FSA's official file system. Personal records are created, used, and maintained primarily for the convenience of the employee. In determining whether records are FSA or personal records, documents should be reviewed on a case-by-case basis. For additional guidance, see subparagraph C.
commercially available records	does not apply to documents available for purchase by the general public.
artwork and other tangible objects	does not apply to items; such as museum exhibits, even when these items have evidentiary or documentary value for FSA.
records not yet available or no longer available	does not apply to records that are not available on the date when a request for them is received by FSA, either because they have not yet been created or issued, or because they have been destroyed, whether according to approved FSA records schedules, inadvertently, or because of fire or flood.

2 Policy and Applicability (Continued)

C Personal Documents Versus FSA Documents

FOIA **only** applies to FSA records. It does **not** apply to personal records of individual FSA employees.

At times, the distinction between FSA and personal records can be difficult to determine. This determination is heavily fact-driven. Similar documents created by different employees might be treated differently depending on applying the following 10 factors.

Personal records generally are **not** subject to FSA record requirements, and are **not** distributed to other employees for official use. They are created, used, and maintained primarily for convenience of the employee. In determining whether documents are personal records, evaluate the documents according to the following criteria.

Item	Criteria
Creation	Was the document created or received by an FSA employee, on FSA time, with FSA materials, at FSA expense? If not , then it is not likely to be an FSA record on this basis alone.
Content	Does the document contain substantive information? If not , then it is not likely to be an FSA record, on this basis alone. Does the document contain personal as well as business information? Even though a record may have certain personal information in it, it may be an FSA record if its release would shed light on the activities of the Government.
Purpose	Was the document created solely for an individual employee's personal convenience; such as to serve as a memory jogger? Alternatively, to what extent was it created to facilitate FSA business?
Distribution	Was the document distributed to anyone else for any reason; such as for a business purpose?
Use	To what extent did the document's author actually use the document to conduct FSA business? Did others use it?

2 Policy and Applicability (Continued)

C Personal Documents Versus FSA Documents (Continued)

Item	Criteria
Maintenance	Was the document kept in the author's possession, or was it placed in an official FSA file? Personal records should be maintained separately and not placed in official files along with FSA records. Placing a record in an FSA file creates the presumption that it is an FSA record. Once a FOIA request is received for an FSA file, any personal records in that file will automatically be subject to disclosure under FOIA. Note: The nature of the document rather than its location or marking must be considered. The fact that an employee stamps a record "Personal" and places it in his/her desk drawer does not make it a personal record.
Disposition	Was the document's author free to dispose of the document at his/her personal discretion? What was the actual disposal practice?
Control	Has FSA attempted to exercise control over the document through applicable maintenance and disposition regulations? Did it do so by requiring the document to be created in the first place? If so, then it is an FSA record.
Segregation	Is there any practical way to segregate out any personal information in the document from official business information?
Revision	Was the document revised or updated after the fact for record keeping purposes?

2 Policy and Applicability (Continued)

C Personal Documents Versus FSA Documents (Continued)

Documents should be reviewed on a case-by-case basis considering the totality of the circumstances surrounding each document. The following examples illustrate how to apply these criteria to typical FSA situations.

Example	Scenario
1	A supervisor maintains his/her own personal notes to use as a memory jogger for performance evaluations. They are maintained privately and not circulated to or verbally shared with any other employee. The notes are not required to be kept in official FSA files; the supervisor can remove them from the office and destroy them at will. Although the notes are physically located in FSA and concern FSA employees, they are not under the control of FSA and are not subject to FOIA or the Privacy Act. The supervisor created the notes solely for his/her convenience and he/she is the only person with access to them. However, if the notes are passed on to another supervisor, verbally shared, or used wholly or in-part to support a performance rating or any personnel action, they will become FSA records. Otherwise, the notes are considered personal records and not subject to FOIA or Privacy Act provisions. Note: If personal records; such as supervisor's notes, are removed from the immediate custody of the supervisor and placed in official personnel files that the supervisor maintains on employees, they will be subject to FOIA provisions. Once a FOIA request is received, the files cannot be altered.
2	An employee attends a meeting in FSA and takes personal notes to refresh his/her memory on the issues discussed as he/she works on a long-term project. The notes are maintained in a file folder on the employee's desk, are not disseminated to or verbally shared with any other employee, or used to conduct FSA business. The employee uses the notes solely as a memory jogger. The employee's notes are not FSA records subject to FOIA or Privacy Act provisions. The notes would not be considered FSA records unless the employee treated them as such, by sharing them with others, used them to support an FSA action, conducted business, or placed them within FSA's official files on the subject.

2 Policy and Applicability (Continued)

C Personal Documents Versus FSA Documents (Continued)

Example	Scenario
3	Every week the FSA director's secretary prepares a calendar listing the activities for each day of the upcoming week. The calendar is provided to the staff either on paper or by e-mail to inform them of the director's availability. The calendar is an FSA record. The document, which is created at FSA's expense by an FSA employee, is circulated to the staff for business purposes. It is created for the express purpose of facilitating the daily activities of the office; that is to inform the staff of the availability of the director. Any personal information could easily be segregated from the business material, if necessary.
4	A supervisor keeps an appointment calendar on his/her desk to note upcoming business meetings and personal appointments; such as lunch with old friends, doctor's appointment, etc. The secretary may note appointments that have been scheduled for him/her on the calendar. The calendar is not an FSA record. Although created by an FSA employee at FSA expense, it contains little, if any, substantive information. The calendar was created for the supervisor's personal convenience so that he/she could organize both his/her personal and business appointments. It is not circulated to other employees as it was not intended for their use. FSA did not require the supervisor to maintain the calendar and he/she is free to destroy it at any time. Exception: Certain calendars may be controlled by FSA record disposition schedules; such as calendars of higher level FSA officials. If FSA officials are required to maintain calendars that must be retained for a specific period before being destroyed, they are FSA records. Note: Individuals whose calendars are considered FSA records may wish to maintain 2 calendars, 1 for business use and 1 for personal use.

3 Responsibilities

A FSA FOIA Officer

FSA's FOIA Officer, located in OEA, Office of the Administrator, is responsible for administering FOIA within FSA, and for managing the Washington, DC, FOIA Office.

B National FOIA Offices

The Washington, DC, and KC FOIA Offices function as FSA's National FOIA Offices and will work together to provide FOIA guidance to all FSA personnel, including FOIA Officers and coordinators in State and County Offices.

C KC FOIA Officer

The KC FOIA Office supervisor has been designated as the National FOIA Officer responsible for managing FSA's primary processing office for FSA record requests in electronic format.

D State Office Designated FOIA/Privacy Act Coordinators

State Office employees designated as State FOIA/Privacy Act coordinators are responsible for:

- processing requests for FSA documents within their respective offices
- providing training to and coordinating the work of FSA County Offices within their respective States in responding to and reporting on FOIA and Privacy Act requests
- acting as liaison between the Appeals and Litigation Staff and County Offices for FOIA and Privacy Act appeals and litigation.

3 Responsibilities (Continued)

E County Office Designated FOIA Coordinators

County Office employees designated as FOIA coordinators, or employees assigned FOIA responsibilities as a part of their collateral duties, are responsible for:

- coordinating with their designated State FOIA/Privacy Act coordinators to process requests for FSA documents received within their respective County Offices
- logging and tracking requests for FSA documents
- taking time extensions, when applicable.

Note: CED's and FLM's are responsible for making determinations on requests for expedited processing and FOIA fee waivers, withholding records, making discretionary releases, and making partial or total releases.

F Offices Possessing Records

FSA offices that possess FOIA requested records are responsible for searching for records requested under FOIA when contacted by FSA staff authorized to process FOIA requests, in a timely manner, to enable FSA to comply with statutory time limits for processing FOIA requests (Exhibit 5).

4 Relationship Between FOIA and the Privacy Act

A First Party Requests Asking for Their Records From Privacy Act System of Records

When an individual requests access to records about himself/herself that are contained in a Privacy Act System of Records; that is personal information under the control of FSA that is contained in a System of Records whose records are retrieved by FSA using the requester's name or some other personal identifier, the request will be processed under **both** FOIA and the Privacy Act regardless of the statutes cited, so that the individual is granted the greatest access to his/her records that either FOIA or the Privacy Act provides. **Before** FSA begins processing a request covered by the Privacy Act, FSA will ensure that the requester has provided the necessary information to identify himself/herself as the subject to whom the information sought pertains.

Note: See 3-INFO, Exhibit 4 for FSA's Privacy Act Systems of Records.

B First Party Requests Asking for Their Records From Other FSA Files

If an individual submits a FOIA request for records about himself/herself that are **not** covered by the Privacy Act, the request will be treated as any other FOIA request. However, in reviewing records responsive to such a request, FSA will **not** invoke exemption 6 or 7(c) where the only privacy interest to be protected is the requester's.

Example: If a requester's home address is included in a record **not** covered by the Privacy Act, the requester's home address will **not** be withheld according to either exemption 6 or 7(c). In such an instance, a release "to one person" is **not** a "release to all", as is generally the case, under FOIA.

4 Relationship Between FOIA and the Privacy Act (Continued)

C Third Party Requests Asking for Records About Individuals From Privacy Act System of Records

When a third party, an individual other than the person who is the subject of the Privacy Act record, submits a FOIA request for information that is subject to the Privacy Act; such as, “Send me all the records FSA has on my spouse, an employee of FSA”, the material will **not** be disclosed without **prior** written approval of the individual on whom the record is maintained, unless at least 1 of the following is true:

- release is permissible under 1 of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)); such as the release to the requester would be for 1 of the routine uses listed in the applicable Privacy Act SORN
- the information is required to be released under FOIA
- individual on whom the record is maintained is deceased; however, if releasing the information would result in a clearly unwarranted invasion of the personal privacy of a living individual; such as a member of the deceased individual’s family, the information **must** be withheld.

D Criminal Penalties

Any employee who knowingly or willfully discloses information protected by the Privacy Act may be subject to civil or criminal penalties. See 1-APP for additional information about criminal penalties set forth in the Privacy Act.

E Interaction of FOIA and Privacy Act Exemptions for First Party Requests

The Privacy Act **never** prohibits disclosing material that FOIA requires to be released, such as Federal and non-Federal employee grade level and salary.

To withhold information from the subject of the file (a first party requester) both a Privacy Act and a FOIA exemption **must** apply, as indicated in the following example taken from the 2010 edition of DOJ’s Freedom of Information Act Guide and Privacy Act Overview:

“Suppose John Q. Citizen writes to Agency, ‘Please send to me all records that you have on me.’

For purposes of this example, assume that the only responsive records are contained in a System of Records retrieved by Mr. Citizen’s own name or personal identifier. Thus, both the Privacy Act and FOIA potentially apply to the records.”

4 Relationship Between FOIA and the Privacy Act (Continued)

E Interaction of FOIA and Privacy Act Exemptions for First Party Requests (Continued)

“[1.] IF NO PRIVACY ACT EXEMPTION APPLIES.

Note: There are 10 Privacy Act exemptions (5 U.S.C. 552a(d)(5), (j), and (k)). Generally applicable to records maintained by law enforcement or investigatory agencies, they **exempt** particular systems of records from the Privacy Act notice, access, and amendment requirements. Privacy Act exemptions are generally **not** invoked like FOIA exemptions, on a document-by-document basis. Privacy Act exemptions are generally invoked by FSA for an **entire** Privacy Act System of Records.

Result: Mr. Citizen should receive access to his Privacy Act records where Agency can invoke no Privacy Act exemption. The agency **cannot** rely upon a FOIA exemption alone to deny Mr. Citizen access to any of his records under the Privacy Act.

[2.] IF A PRIVACY ACT EXEMPTION APPLIES.

Result: Where a Privacy Act exemption applies, Mr. Citizen is **not** entitled to obtain access to his records *under the Privacy Act*. But he still may be able to obtain access to his records (or portions thereof) under FOIA.

[3.] IF NO PRIVACY ACT EXEMPTION AND NO FOIA EXEMPTION APPLIES.

Result: the information should be disclosed.

[4.] IF BOTH PRIVACY ACT AND FOIA EXEMPTIONS APPLY.”

Result: the record should be withheld, unless FSA, after careful consideration, decides to disclose the record to the first-part requester as a matter of administrative discretion.

4 Relationship Between FOIA and the Privacy Act (Continued)

F Applicability of Privacy Act and FOIA

The Privacy Act, unlike FOIA, **only** applies to U.S. citizens or lawfully admitted aliens. FOIA applies to any individual **except** fugitives from justice.

G Combined FOIA/Privacy Act Requests

In handling combined FOIA/Privacy Act requests, the time limits applicable to FOIA apply to processing the entire request. FOIA fee provisions apply to the records processed under FOIA. Privacy Act fee provisions apply to records processed under the Privacy Act.

H Differences in Fee Provisions

For records that are subject to the Privacy Act, FSA can charge the person who is the subject of the records **only** for duplicating the material and **not** for search or review time. However, an individual receiving records under the Privacy Act is **not** entitled to receive the first 100 pages without charge. Duplication fees apply to **all** pages provided. There will be no charge if the fee for processing the entire request is \$25 or less.

Fees chargeable under FOIA are also discussed in Part 4.

5 FOIA FSA Reading Room Requirements and Frequently Requested Records

A Type of Records Required To Be Made Available For Public Information

According to FOIA and 7 CFR Subtitle A, Part 1, Section 1.4, FSA is **required** to make the following records available for public inspection and copying in its public “reading room”:

- final opinions, including concurring and dissenting opinions, and orders made in case adjudications
- policy statements and interpretation adopted by FSA that are **not** published in FR
- administrative staff manuals and instructions to staff that affect a member of the public
- copies of **all** records, regardless of form or format, which have been released according to a FOIA request and which, because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records, based on the following factors:
 - FSA’s previous experience with similar records
 - particular characteristics of the records involved, including their nature and the type of information contained in them
 - identity and number of requesters, and whether there is widespread media, historical, academic, or commercial interest in the records.

B Documents Frequently Requested

Copies of documents frequently requested by the public under FOIA are made available electronically on FSA’s FOIA public web site. See subparagraph 1 D. Copies of other documents required to be made available electronically to the public are accessible on FSA’s public web site. Together, these “pages” constitute FSA’s public “reading room”.

6 Annual FOIA Reports

A Compiling FSA Reports

Annually, FSA is **required** to submit a FOIA report to the Departmental FOIA Officer on or before **December 31**. The report includes information about FOIA requests, appeals, and litigation against the Department, costs to administer the program, total amount of fees collected for processing requests, and other data about the Department's FOIA request processing.

Annual reports shall be compiled from information entered into FOIA-CAP, FSA's official system for tracking FOIA requests, and from information submitted, on an annual basis, on FSA-538. FOIA-CAP is available at <https://wdcprod81.sc.egov.usda.gov/foiacap> that includes guidance through "Help".

B USDA Reports to DOJ

On or before February 1 of each year, the Department is **required** to submit a report covering FSA's FOIA activities for the preceding FY to the Office of Information and Privacy, DOJ. To access USDA's annual report go to the Departmental Administration's FOIA Electronic Reading Room at www.da.usda.gov/foia_reading_room.htm. USDA's annual report contains detailed information about FOIA request processing within each of its agencies.

7-10 (Reserved)

Part 2 Controlling FOIA Requests**11 FOIA-CAP****A What is FOIA-CAP**

FOIA-CAP is FSA's official electronic system for tracking and managing FOIA requests. Using FOIA-CAP will assist FSA offices with processing requests more efficiently, ensuring consistency in responses, and facilitate preparing FSA's annual report to DOJ and Congress.

B Usage Requirements

FSA State and County Offices authorized to respond to FOIA requests will track the requests in FOIA-CAP and submit additional DOJ-required cost and staffing information about administering FOIA annually on FSA-538. FOIA-CAP is accessible at <https://wdcprod81.sc.egov.usda.gov/foiacap>.

Note: National FSA FOIA Offices are required to track FOIA requests in FOIAXpress, USDA's enterprise-wide FOIA tracking system. Currently, cost and training considerations prevent FSA from expanding FOIAXpress usage to State and County Offices.

C FOIA-CAP Guidance

Guidance for using FOIA-CAP:

- will be issued annually in notices
- is available at <https://wdcprod81.sc.egov.usda.gov/foiacap> through "Help".

D Manual FOIA Log

Offices with significant FOIA workloads are advised to maintain a manual log of FOIA requests as a backup when FOIA-CAP is unavailable.

12 Official FOIA Records

A Case Files

FSA offices authorized to respond to FOIA requests will maintain an official file on **each** FOIA request received. A separate case file; that is a folder labeled with the control number of each request, name of the requester, and the retention date of FOIA request case file, will be maintained for each FOIA request. These files will include, at a **minimum**, a copy of the following:

- original FOIA request as received from the requester
- subsequent correspondence from the requester to FSA about the request; such as a letter modifying or clarifying the scope of a request and a letter providing written assurance for paying FOIA fees
- all written communications from FSA to the requester, including the following, as applicable:
 - acknowledgement letter
 - subsequent written communications with the requester
 - FSA's response to a request for expedited processing
 - FSA's response to a request to waive FOIA fees
 - FSA's final response letters
- all intra-agency or interagency communications about the request; such as e-mail messages generated in the process of locating responsive records
- notes made justifying withholding any records or issuing discretionary releases
- an unredacted (original) copy of all responsive records
- copy of all responsive records in the form in which they were released to the requester with all redactions made
- records of FOIA fee bills issued and collected.

12 Official FOIA Records (Continued)**B FOIA Record Retention**

Records maintained in the official FOIA request case files will be maintained as official FSA records, for record management purposes.

FOIA case files are covered by NARA Transmittal No. 8, dated December 1998, General Records Schedule 14, Item 11, titled, "FOIA Request Files". For State and County Offices, these files are covered by 25-AS, Exhibit 45, under "Informational Service Files, INFO 2". Generally, they will be retained for the following time periods:

- 6 calendar years following date of response, for all requests in which records were withheld in-full or in-part; that is denials and partial grants, for all requests for which a request for expedited processing or fee waiver request was denied, and/or for all requests that were subsequently appealed or litigated
- 2 calendar years after date of response, for all other requests.

Retention date of a FOIA request case file means the date when the official FSA Federal records within the file may be destroyed, under the Federal Records Act.

Examples: The retention date for a FOIA request completed on:

- September 13, 2008, for a request in which all records were granted, is September 30, 2010
- September 5, 2008, for a request in which some of the records requested were withheld (a partial grant), is September 30, 2014.

13 Converting From Paper to Electronic FOIA Case Files (Optional)

Note: FSA Offices are not required to convert from paper to electronic FOIA case files. If FSA Offices choose to convert, to reduce FOIA program administration costs, they should follow the guidance in this paragraph.

A Overview

Establishing and maintaining electronic FOIA case files is **not** simply a matter of duplicating paper case files in electronic format. The key to establishing electronic FOIA case files economically, **without** purchasing and implementing specialized case management software, requires consistently applying the following 2 principles:

- using a standard document naming convention
- segregating public records from nonpublic records.

B Benefits

Establishing and maintaining electronic FOIA case files can reduce FOIA program administration costs, as follows:

- less space is required to store FOIA case files
- responsive records can be distributed by CD ROM instead of paper, eliminating copying and reducing shipping costs
- responsive records can be electronically redacted
- costs for sharing case files with appeals staff and legal counsel, when required, are greatly reduced
- costs for copying previously requested records are reduced
- FSA can make frequently requested records available to the public on its public FOIA web site.

13 Converting From Paper to Electronic FOIA Case Files (Optional) (Continued)

C Conversion Process Documentation

In each office, it is important to document the following:

- extent to which FOIA case files have been automated
- date FOIA case files automation began
- electronic location of the files being created and maintained.

D Electronic File Storage

It is easier to misplace files electronically than to misplace paper files. It is important that FOIA case files be stored on servers that are backed up **regularly**. In offices where FOIA responsibilities are handled by more than 1 employee, all FOIA processor employees **must** have access to all of the office's electronic FOIA case files. Electronic FOIA case files, like paper case files, **must** be accessible when employees working on them are absent from the office. FOIA case files, like FSA program files, are legal documents.

Note: FOIA case files should **never** be stored in an individual's personal, working drive.

13 Converting From Paper to Electronic FOIA Case Files (Optional) (Continued)

E Naming Electronic Files

Electronic FOIA case files shall be named using the following standard naming convention for folders and files within folders, consistently. This will enable anyone working with the files to identify and locate both specific case files and specific documents within specific case files.

Some minor adaptations may be necessary to accommodate voluminous quantities of responsive records.

Rule	Description
1	Store all electronic case files for a given FOIA FY in a primary folder, designated by FY. Example: 2008, 2009, 2010, 2011, 2012, 2013.
2	Store all documents for each FOIA request in a secondary folder, designated by FOIA control number; that is 2-digit State code, 3-digit county code, 4-digit year, and 6-digit request number, sequentially starting with 000001 (ss-ccc-yyyy-nnnnnn). Example: For the Texas State Office, the first 3 FOIA request electronic files for 2012 would be numbered as follows: • 48-002-2012-000001 • 48-002-2012-000002 • 48-002-2012-000003.

13 Converting From Paper to Electronic FOIA Case Files (Optional) (Continued)

E Naming Electronic Files (Continued)

Rule	Description	
3	Name records as they are chronologically received or generated and added to FOIA case files, according to their function within the file, using FOIA case file number; for example: 48-002-2012-000001. Records under the individual FOIA control number will be numbered with the 2-digit year, sequential control number, and 2-letter code. <u>1</u> /	
	Example Record Code	Record Description
	08-000001aa (ab, ac, ad...)	Answers to requester query; communications from FSA to the requester; such as acknowledgement letter, clarification letter, response letter, etc.
	08-000001ba (bb, bc, bd...)	Billing records; such as bill for collection, check received in payment, etc.
	08-000001ca through pz and ra through wa <u>1</u> /	Responsive records; documents asked for by requester.
	08-000001qa (qb, qc, qd, etc.)	Query from requester; communications from requester to FSA; such as initial request, agreement to pay fees, etc.
	08-000001xa through yz Note: Occasionally, as when processing requests for confidential commercial or financial information, FOIA processor may want to qualify a document “suffix” for ease of later location; such as 08-000001xm-submitter letter.	All other administrative request processing; such as request for file search, notes to file, etc.
	08-000001za (zb, zc, zd, etc.)	Records relating to request appeal or litigation.

1/ For requests in which there are a voluminous number of records; for example, over 520 documents; unique record “suffixes” will need to either be extended to more than 2-letters, or extended by some other means to accommodate all responsive records.

13 Converting From Paper to Electronic FOIA Case Files (Optional) (Continued)**E Naming Electronic Files (Continued)**

When extending file names, remember that every record in each electronic FOIA case folder **must** have a unique name. When naming records, considerable time is saved by **not** giving records names that are reflective of their function or content. As long as records are added to the electronic file in chronological order, as they are created or received, it is relatively easy to locate the “second interim response letter” by browsing through the list of “a” records (aa, ab, ac, ad, ae, af) and opening only 1 or 2 files. If FOIA processors try to name records based on their function and content, FOIA processors will quickly exhaust the standard designations and cause unnecessary time to be spent devising appropriate names and adding the names to both the electronic files and paper records. **Before** leaving any electronic record created and named according to this subparagraph, write the name of the record; such as 08-00000qa, in pencil, in the upper left-hand corner of the document on the reverse side of the last page of the paper records to which it applies.

13 Converting From Paper to Electronic FOIA Case Files (Optional) (Continued)

F Segregating Public Records From Nonpublic Records

Maintaining original copies of FSA nonpublic records that require redaction before release to the requester, separate from copies of records in the form they were released to the requester (public records), guards against inadvertently releasing records containing information that is protected by 1 of the 9 exemptions. **Both** of the following methods of keeping the versions segregated should be used:

- establish separate subfolders for nonpublic FSA records from the public version
- when naming the 2 versions of records, systematically differentiate by a method that allows easy linking of the 2 versions; such as omitting the year prefix for the nonpublic version of the document.

Example: For request 48-002-2012-000001, there were 5 paper responsive records as follows:

- record ra: releasable-in-full
- record rb: releasable-in-part ; redacted under exemption 3
- record rc: releasable-in-part; redacted under exemption 6
- record rd: releasable-in-full
- record re: denied-in-full under exemption 5.

FOIA processor would create the following electronic documents, in the following subfolders, within FOIA case file folder 20-105-2008-000001.

Nonpublic Subfolder	Public Subfolder
	08-000001ra
000001rb	08-000001rb
000001rc	08-000001rc
	08-000001rd
000001re	

13 Converting From Paper to Electronic FOIA Case Files (Optional) (Continued)**F Segregating Public Records From Nonpublic Records (Continued)**

Using the naming convention in this subparagraph makes:

- reviewing CD ROM's prepared for release to a requester relatively easy, to determine if the public version of all releasable records has been copied properly

Note: All records released should contain FY prefixes.

- locating the 2 versions of the record easier when legal review is required.

By maintaining a set of records requiring redaction **before** being released in a nonpublic file, and a set of records released to the public in a public file, the number of records retained in the case file is minimized.

Note: Maintaining **nonpublic** and **public** records, instead of all **original** and **released** records, reduces record storage by not keeping duplicate sets of records that can be released without redaction.

14-20 (Reserved)

Part 3 Processing FOIA Requests

21 Official FOIA Requests

A Validating FOIA Requests

Upon receiving a request for FSA records or information, FOIA processors will confirm that the request is a valid FOIA request.

Request Requirement	Explanation
In writing.	FSA does not accept verbal requests for FSA records received over the telephone or in person; such as a requester walking into an FSA County Office, and asking for copies of records. Individuals making verbal requests for FSA records should be asked to document the requests in writing. Although many FOIA requests are signed, there is no requirement that a FOIA request contain an original signature or a copy of the requester's signature. FSA accepts written FOIA requests sent to FSA through USPS, commercial delivery services, e-mail, FAX, FSA web site forms, or delivered in person.
For FSA records.	An FSA record is any record or documentary material that has been created or received by FSA or for FSA by an entity under contract to FSA. FSA records include, but are not limited to program applications and contracts, letters, memoranda, e-mail, technical reports, manuals, papers, maps, photographs, microfiche, and data in electronic databases of all types. FSA records do not include the following: • artwork or other tangible objects; such as items in museum exhibits • documents; such as books, atlases, or audiovisual materials commercially available for purchase by the general public. Note: The Federal Records Act definition of an FSA record is not the same as the FOIA definition. The FOIA definition is much broader. Under FOIA, an annotated copy of a document is a wholly separate record, and all records in FSA's possession, including records maintained for FSA by contractors, but excluding FSA employee personal records, constitute FSA records.

21 Official FOIA Requests (Continued)

A Validating FOIA Requests (Continued)

Request Requirement	Explanation
Access to or copies of FSA records.	If a requester seeks answers to questions, or explanations of FSA policies, procedures, or actions, the requester's letter should be referred to the appropriate FSA office for response in a timely manner (Exhibit 5). FOIA does not require FSA to answer questions posed as FOIA requests.
Access to or copies of FSA records in FSA's possession at the time that the search to locate records is conducted.	FSA will not accept requests for records that have not yet been created or received, or "standing requests" for records as they are created, in the future. Requesters seeking access to records not yet in existence should be advised that they should resubmit these requests at a later time. Note: Although FSA is not required to "reconstruct" records that are no longer available at the time the search to locate records is conducted, because they were properly or accidentally destroyed, this fact is generally not known at the time that FOIA requests are initially received, and for this reason, these requests must generally be accepted for processing. <u>1/</u>
Request for FSA records filed by any party who is allowed, by law, to file a FOIA request.	FOIA requests may be filed by U.S. citizens, including school children and prisoners, foreign citizens, individuals writing on behalf of law firms, partnerships, corporations, associations, nonprofit institutions, and individuals representing foreign, State, local, or tribal Governments. Federal Government agencies and fugitives from justice are not eligible to file FOIA requests. While individual members of Congress are allowed to file FOIA requests, requests made under the authority of a Congressional Committee or Subcommittee on a subject within its jurisdiction are not processed under FOIA. Such requests are generally signed by the Chairperson of the Committee or Subcommittee, and should be referred to OEA. Requests for FSA records from individual members of Congress should be processed in consultation with OEA.
Record referrals from another Federal agency subject to FOIA.	Valid FOIA requests include instances in which FSA records, responsive to a FOIA request that has been filed with a different Federal agency, are found in the other agency's files. In records referral requests, FSA is asked to review the records in question for a release determination, and to provide FSA's recommendations for record release, FSA's recommendation to withhold the records, or for FSA to provide that portion of FSA's records that are releasable, under FOIA, directly to the original FOIA requester. Requests in which FSA is asked only to provide recommendations for releasing FSA's records to another Federal agency are called "consultation requests."

1/ FSA's cut-off date for determining responsive records is the date the search is conducted to locate records. Records created after that date are treated as not responsive to the request.

21 Official FOIA Requests (Continued)

A Validating FOIA Requests (Continued)

Request Requirement	Explanation
Distinguished from other types of information access requests.	• A Privacy Act request is a written request (paper copy with an original signature) made by an individual for information about himself or herself, or access to or copies of FSA records on him or herself, which are contained in a Privacy Act System of Records. Only U.S. citizens and aliens lawfully admitted for permanent residence are authorized to make Privacy Act requests. Privacy Act requests should be processed according to 3-INFO and USDA Privacy Act regulations at 7 CFR Part 1, Subpart G. • FOIA/Privacy Act requests are written requests (paper copy with an original signature) made by an individual for information about himself or herself, or access to or copies of FSA records on him or herself, in which only part of the records requested are contained in a Privacy Act System of Records. That portion of the request involving records contained in a Privacy Act System of Records should be processed according to 3-INFO and USDA Privacy Act regulations at 7 CFR Part 1, Subpart G. That portion of the request involving records not contained in a Privacy Act System of Records should be processed as a FOIA request. FOIA time limits apply to both portions of these requests. • Subpoenas, upon receipt, will be forwarded by FOIA processors to the servicing OGC for review. The responding office will respond to the subpoena as directed by the servicing OGC. In some instances, the office will be directed to process the subpoena as a FOIA request. Although this guidance should be followed on an instance-by-instance basis, subpoenas, in general, do not qualify as valid FOIA requests and should not be logged and processed as such, unless so directed by OGC. See 1-APP, subparagraph 192 F.

21 Official FOIA Requests (Continued)

B Logging FOIA Requests

Upon receiving a valid FOIA request, FOIA processors will do the following.

- Date-stamp the request.
- Enter the request into FOIA-CAP (paragraph 11); FOIA-CAP will assign a unique control number to the request.
- Enter the request into a manual log as a backup when FOIA-CAP is unavailable, if FOIA workload is significant.
- In FOIA-CAP, assign the request, on a preliminary basis, to the simple, normal, or complex processing track; requests in all tracks are processed on a first-in, first-out, basis.

IF it appears the request can be responded to...	THEN assign request to the...
with minimal effort in 5 workdays or less	simple processing track
in more than 5, but less than 20 workdays	normal processing track
in more than 20 workdays, and that you may need to take a 10-workday extension (subparagraph 22 C)	complex processing track

Note: In making processing track assignments, FOIA processors are making a reasonable estimate based on a quick assessment of the request, along with their knowledge of the records requested. FOIA processors are permitted to move requests from 1 track to another, as needed.

21 Official FOIA Requests (Continued)

C Perfecting FOIA Requests

After logging a valid FOIA request into FOIA-CAP, FOIA processors will determine if it can be processed in the form in which it was received. The process of analyzing a FOIA request to determine if it has been received by the proper office, if it reasonably describes the records sought, and if all applicable fee issues have been resolved, is called perfecting the request. There are 3 steps in perfecting a FOIA request. To perfect a FOIA request, FOIA processors will do the following.

- Determine if the request has been sent to the proper office for processing, as follows.

IF FSA office to which the request has been sent...	THEN...
maintains the records requested	the request will be processed by that office, provided that that office has been authorized to process FOIA requests.
maintains a portion of the records requested	FOIA processors will process that portion of the request that pertains to the records maintained in their office, and follow this table for the remainder of the records requested.
does not possess processing authority	FSA office will forward the request to the appropriate FSA office at which the request should have been filed.
does not maintain the records requested	FOIA processors will attempt to determine which FSA office is likely to maintain the records requested. If this determination can be made quickly (within 1 to 2 workdays) and reasonably definitively (for example, that a request filed with a State Office asking for information maintained by a County Office should be processed by the County Office), FOIA processors will route the request to the appropriate FSA office at which the request should be processed, providing the requester with appropriate contact information for the office to which the request was routed.

21 Official FOIA Requests (Continued)

C Perfecting FOIA Requests (Continued)

IF FSA office to which the request has been sent...	THEN...
does not maintain the records requested and it is reasonably certain that the records are maintained at another USDA Agency	FOIA processors will attempt to determine which USDA agency is likely to maintain the records requested. If this determination can be made quickly (within 1 to 2 workdays) and reasonably definitively (for example, that a request filed with FSA asking for information about a named National Forest should be processed by the Forest Service), FOIA processors will route the request to the appropriate USDA agency at which the request should be processed, providing the requester with appropriate contact information for the USDA agency to which the request was routed.
does not maintain the records requested and it is reasonably certain that the records are maintained at another Federal agency	FOIA processors will attempt to determine which Federal agency is likely to maintain the records requested. If this determination can be made quickly (within 1 to 2 workdays) and reasonably definitively (for example, that a request filed with FSA asking for information about a named National Park should be processed by the National Park Service within the Department of Interior), FOIA processors will inform the requester that he/she must file the request with that agency, providing the appropriate contact information if at all possible.
does not maintain the records requested and it is not reasonably possible to determine where the records may be located	FOIA processors will inform the requester that he/she seeks records not maintained by FSA and that FSA is unable to identify where the requested records might be located.

Notes: If the request seeks records within FSA databases, FOIA processors will route the request to KC FOIA Office, providing the requester with appropriate contact information for KC FOIA (subparagraph E).

If a request seeks records maintained by another USDA Agency, FOIA processors in State and County Offices will send the request, by e-mail, to the Washington, DC, FOIA office for routing to the appropriate USDA Agency.

21 Official FOIA Requests (Continued)

C Perfecting FOIA Requests (Continued)

- Determine if the request reasonably describes the records being requested. A request **must** describe the records sought in sufficient detail to enable an employee familiar with the subject area of the request to locate the records with a reasonable amount of effort. A reasonably described request is a request that includes enough detailed/specific explanatory information; that is, data definition, programs of interest, dates, titles, names of individuals, names of offices, and names of agencies or other organizations, for the responding office to fully understand and identify the records sought (Exhibit 10).

IF...	THEN...
a request reasonably describes the records sought	the request can continue to be processed.
a request reasonably describes the records sought, but also substantially duplicates a recent request previously filed by the same requester	the request should not be processed further. Advise the requester that USDA regulations allow FSA to treat a second request for the same or substantially the same records from the same requester as moot, and close the request.
any portion of a request does not reasonably describe the records being requested	FOIA processors will advise the requester that the request does not reasonably describe the records being requested, in the acknowledgement letter (Exhibit 11), and provide the opportunity to clarify the request.

Note: There are 14 types of letters used in the FOIA and/or FOIA/Privacy Act process, with varying additions, modifications, and omissions, depending on the situation. See Exhibits 11 through 23 for example letters.

21 Official FOIA Requests (Continued)

C Perfecting FOIA Requests (Continued)

Note: When asking a requester to submit additional written clarification of that portion of his/her request that is unclear, FOIA processors will advise the requester that if he/she does **not** respond to FSA's request for clarification within 20 workdays of the date of the letter asking for clarification, that FSA will assume that the requester is no longer interested in pursuing his/her request, and will close its files on the request.

IF the requester...	THEN...
responds to a request for clarification at a later date, providing an adequate description of the records sought	• process clarification as a new request • advise the requester of the request's new control number and date on which the revised description of records requested was received • continue processing the request.
does not respond to a request for clarification within 20 workdays of the date of the letter asking for clarification	close the request.

21 Official FOIA Requests (Continued)

C Perfecting FOIA Requests (Continued)

- Determine if all FOIA fee issues have been resolved. When determining if any FOIA fee issues remain to be resolved, FOIA processors should remember the following:
 - they are making a preliminary determination that can be revised anytime in the request's processing; frequently it is **not** possible to determine the full cost of search services required to process a FOIA request until the search for responsive records has been completed
 - all FOIA fee estimates are **estimates**
 - the requester **cannot** owe any previously applicable FOIA fees (subparagraph 52 C)
 - **before** the request can be processed, FOIA processors should review Part 4.

Note: The following summary of the 4 steps required to determine if all FOIA fee issues have been resolved are based on FOIA processors knowing Part 4 procedure and policy (Exhibit 29).

Step	Action
1	Is the request a FOIA request, a FOIA/Privacy Act request, or a records referral request? The answer to this question will determine if FOIA processor needs to consider FOIA fees for search services, review services, and/or copying of records requested. Fees are charged as follows: • records referral requests generally only incur copying fees • Privacy Act requesters are only charged copying fees so that portion of a FOIA/Privacy Act request that asks for Privacy Act records only incurs copying fees • FOIA requests may incur all 3 types of fees.

21 Official FOIA Requests (Continued)

C Perfecting FOIA Requests (Continued)

Step	Action
2	What is FOIA fee category of the requester? The answer to this question will determine precisely which FOIA fees may be incurred by this particular requester for this request. There are 4 specific categories of FOIA requesters for fee purposes: commercial-use, educational/scientific institution-use, media-use, and other-use. Each can be charged for certain services, and most have certain entitlements that allow them to receive a certain number of hours of search time or pages of copying before chargeable fees are incurred.
3	Is it likely, given what the requester is seeking, that FOIA fees will be charged? The answer to this question will determine whether, given the records requested and the type of fees that might be incurred, it is likely that fees will actually be charged. Determine if what the requester is asking for can be satisfied within their entitlements, or if their chargeable FOIA fees will be greater than these entitlements by an amount that exceeds \$25. In making this determination, FOIA processors may need to check with the office or individual who maintains the records to obtain an estimate of the level and extent of search services (and review services, if applicable) required to process the request.
4	Has the requester agreed to pay FOIA fees, and if so, how much? The answer to this question will determine if the requester has agreed to pay for the full, chargeable cost of processing his/her request. If the requester has agreed to pay FOIA fees, and the amount agreed upon is greater than the amount of FOIA fees likely to be charged, then all issues related to FOIA fees have adequately been resolved and the request can continue to be processed. If the requester has not agreed to pay FOIA fees, or the amount agreed upon is less than the amount of FOIA fees likely to be charged, then the requester must be asked to confirm, in writing, that he/she is willing to pay the full, chargeable FOIA fees likely to be incurred in processing his/her request, and to be provided with an opportunity to revise the scope of the request to reduce the applicable FOIA fees. Note: If fees exceed \$250, the requester must be asked to pay 50 percent of the amount estimated in advance of processing his/her request (subparagraph 51 C).

21 Official FOIA Requests (Continued)

C Perfecting FOIA Requests (Continued)

Note: When asking a requester to confirm, in writing, that he/she is willing to pay the full, chargeable FOIA fees likely to be incurred in processing his/her request, or to provide advance payment of FOIA fees, FOIA processors will advise the requester that if he/she does **not** respond to FSA's request for written fee payment assurance within 20 workdays of the date of the letter, or advance payment of FOIA fees, that FSA will assume that the requester is no longer interested in pursuing his/her request and will close its files on the request.

IF the requester...	THEN...
responds to a request for fee assurance, provides advance payment, or provides fee category information at a later date	• process the response as a new request • advise the requester of the request's new control number and date on which the fee assurance letter, advance payment, or fee category information was received • continue processing the request.
does not respond to a request for fee assurance, provide advance payment of FOIA fees, as applicable, within 20 workdays of the date of the letter asking for such assurance or payment	close the request.
has asked for a FOIA fee waiver, and has provided a sound justification for a waiver of all FOIA processing fees	a decision on whether to grant or deny this request for a fee waiver should be made. If FSA decides to grant the fee waiver, there are, by definition, no fee issues related to processing the request regardless of the answers to questions in this table.

If/when all FOIA fee issues have been resolved, consider the request to have been perfected on the date on which any issues needing to be resolved were resolved, send a perfection letter (Exhibit 16), and continue processing the request.

22 FOIA Request Processing Timeline

A Initial Determinations

Under FOIA, FSA has 20 workdays to respond to a FOIA request (Exhibit 5). The 20-workday time limit begins the day after a valid request has been perfected.

Note: The day the request is perfected is counted as workday 0; FSA is expected to respond to the request **on or before** workday 20.

FSA **must** notify the requester, within 20 workdays, whether the requested records will be granted, granted in-part, or denied. As long as the requester has been informed of FSA's decision, with respect to releasing or **not** releasing requested records, FOIA does **not** require that all of the requested records that are being released to be released by workday 20. However, if the records requested are **not** provided in FSA's final response letter, FSA's final response letter should provide the requester with the date on which the requested records will be made available.

B Definitions of Denied, Granted In-Part, and Granted

Denied means FSA decided the records were **not** to be released in response to a FOIA request because all the information in the requested records was determined by FSA to be exempt under 1 or more FOIA exemptions or because of a procedural reason; such as no responsive records were located.

Granted means FSA decided the records were to be released in-full in response to a FOIA request.

Granted in-part means FSA decided the records were to be withheld in-part in response to a FOIA request.

22 FOIA Request Processing Timeline (Continued)

C Perfecting Requests Delays

While many FOIA requests can be perfected on the date on which they are received by FSA, there are circumstances that may delay valid FOIA request perfection, including the following:

- requester has **not** reasonably described the records requested
- requester has **not** provided written assurance of his/her intention to pay FOIA fees as high as are likely to be incurred in processing the request
- requester has **not** provided advance payment for processing the request, when required
- requester has **not** supplied sufficient information for his/her fee category to be determined (subparagraph 49 A).

Because some requesters may fail to respond to FSA requests for scope clarification, fee assurance, or fee advance payment, some valid FOIA requests will never become perfected. This is **not** a problem. The fact that some FOIA requesters may choose to effectively withdraw their requests by failing to respond to FSA requests for clarification, fee assurance, or advance payment does **not** reflect unfavorably upon FSA's FOIA program or its processors.

D Time Extensions

FOIA processors may extend the 20 workday limit by an additional 10 workdays by taking a time extension. Time extensions may be taken **only** in the following unusual or exceptional circumstances:

- need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request
- need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request
- need for consultation, which will be conducted with all practicable speed with another Department or agency with substantial subject-matter interest in the request.

USDA regulations specify that consultation about policy or legal issues between an agency and OGC, the Chief FOIA Officer, or DOJ is **not** an allowable basis for taking a time extension.

22 FOIA Request Processing Timeline (Continued)

D Time Extensions (Continued)

To take a time extension, FOIA processors **must** notify the requester, in writing, **before** the 20 workday time limit expires (Exhibit 5), of the following:

- FSA is taking a 10 workday time extension to properly process the request in question
- particular circumstance that justifies the time extension.

Note: Time extension communications **must**:

- reference 1 of the 3 legal reasons bulleted in this subparagraph
- use the example letter wording in this subparagraph when taking a 10 workday time extension, when a time extension has **not** been communicated to the requester in other agency correspondence
- provide the requester with the new, later date (workday 30) by which they plan to complete processing the request.

Time extensions are generally taken after a FOIA request has been acknowledged, and the process of locating and examining responsive records has begun; however, there are times when it is apparent, from the point at which a request is perfected, that 1 of the 3 bulleted circumstances in this subparagraph applies. A requester may ask for a voluminous amount of records or for records that are maintained in an office, within FSA, that is separate from the office processing the request.

When a FOIA processor knows, from the point of perfection, that 1 of the 3 bulleted circumstances in this subparagraph applies to a particular request, a time extension may be taken in the same letter that acknowledges the request.

22 FOIA Request Processing Timeline (Continued)

D Time Extensions (Continued)

When it is known, from the start, that a time extension will be needed, add the following paragraphs to acknowledgement letters (Exhibit 11).

Additionally, please be advised that we are taking a time extension in order to properly process your request, because of: *[choose 1:*

- a. 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.*
- b. the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request.*
- c. the need for consultation, which will be conducted with all practicable speed, with another Department or agency with substantial subject-matter interest in the request.]*

We hope to be able to respond to you on or before *[month, day, year of new due date]*

Because of amendments to FOIA included in the Open Government Act of 2007, if a FOIA request is **not** processed within 20 workdays from the date it was perfected, and a time extension was **not** taken, **no** fees for searching for responsive records or for duplicating the records may be charged. If a time extension was taken, extending the processing period to 30 workdays from date of perfection, applicable search and duplication fees may be billed.

Because the Open Government Act of 2007 does **not** prohibit FSA from billing requesters for search and duplication fees in instances when a time extension was taken, when any of the 3 bulleted circumstances in this subparagraph applies, FOIA processors are advised to interpret applying the 3 bulleted circumstances as liberally as is reasonably possible. FOIA processors should take a time extension whenever a time extension can be justified and they believe that they may **not** be able to meet the 20 workday processing limit.

22 FOIA Request Processing Timeline (Continued)

D Time Extensions (Continued)

The following is an example time extension letter.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, Zip Code]

Dear [Mr./Ms. Requester]:

This is in reference to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

We are writing to notify you that we are taking a time extension in order to properly process your request, because of [choose 1:

- a. *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.*
- b. *the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request.*
- c. *the need for consultation, which will be conducted with all practicable speed, with another Department or agency with substantial subject-matter interest in the request.]*

We hope to be able to respond to you on or before [month, day, year of new due date]

_____.

In the interim, if you have any questions about the status of your request, you may contact _____ at ____-____-____, by e-mail to _____, or by mail to _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

22 FOIA Request Processing Timeline (Continued)

E When FSA Is Unable to Meet Time Limits

If FSA is unable to respond to a FOIA request within the statutory time limits of 20 or 30 workdays, as applicable, FOIA processors should do the following:

- notify the requester, in writing, of the date by which they anticipate that FSA will be able to issue its response and provide an opportunity to limit the scope of the request to allow FSA to process the request within the extended time limit (7 CFR 1.16 (a)(1))
- process the request as quickly as is feasible
- negotiate, with the requester, an informal (non-statutorily authorized) extension of the time required to process the request; negotiated agreements should:
 - be confirmed in writing
 - specify clearly the total time agreed upon.

Note: Completing the request within the negotiated timeframe will **not** qualify as timely, under FOIA, with respect to FOIA's statutory time limits; however, the negotiated agreement may prevent an administrative appeal based on lack of timely response.

22 FOIA Request Processing Timeline (Continued)

F Expedited Processing

Under FOIA, requesters may seek expedited processing of their FOIA requests.

Expedited processing means giving FOIA requests priority, and processing them ahead of other non-expedited, pending requests when the requester has shown a compelling need for specific records. A compelling need is a threat to life or physical safety of an individual or, in the case of the media, urgency to inform the public about actual or alleged Federal Government activity.

A valid request for expedited processing **must**:

- be submitted, in writing, with the initial FOIA request
- include a written statement that explains, in detail, the compelling need and basis for requesting expedited processing that the requester certifies to be true and correct to the best of the requester's knowledge.

Note: FSA will **not** consider a request for expedited processing to have been received without the request being accompanied by both this written statement and by words attesting to the fact that the statement is true and correct to the best of the requester's knowledge.

Example: A statement asking FSA to "please expedite the processing of my FOIA request", that is not accompanied by details about the compelling need would not be treated as a formal request for expedited processing.

FSA will grant a valid request for expedited processing whenever the responding FOIA processor determines that the requester has met either of the following criteria:

- circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual
- an urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information.

22 FOIA Request Processing Timeline (Continued)

F Expedited Processing (Continued)

Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information. Other requesters; however, **must** demonstrate that their primary activity involves publishing or otherwise disseminating information to the public as a whole, and **not** just a particular segment or group. Urgency indicates that the information has a particular value that will be lost if **not** disseminated quickly. Ordinarily this means a breaking news story of general, wide-spread, public interest. The following do **not** qualify as being urgent:

- information of historical interest only
- information sought for litigation or commercial activities
- a news media publication or broadcast deadline unrelated to the news breaking nature of the information
- information clearly needed by the requester for their own personal use or gain.

FOIA provides that FOIA requests for expedited processing will be responded to in 10 calendar days from receipt date. This means that FSA will advise the requester if the request for expedited processing is being granted or denied within 10 calendar days. It does **not** mean that FSA must issue its final response to the request within 10 calendar days. FSA should issue its final response to an expedited request as soon as reasonably possible, processing this request ahead of all others in the queue.

However, FSA will **not** make a determination on a request for expedited processing until FOIA request has been perfected.

Note: Only the office that possesses the records requested can make an expedited processing decision.

Until it is reasonably clear what records are being requested, and all fee issues associated with processing the request have been resolved, it is **not** possible to determine if FSA will be able to process FOIA request in **any** timeframe.

22 FOIA Request Processing Timeline (Continued)

F Expedited Processing (Continued)

IF valid, expedited FOIA request...	THEN FOIA processors will advise the requester...
may be processed without additional scope clarification, fee assurance, or advance payment	of FSA's decision in response to a request for expedited processing in FSA's acknowledgement letter (Exhibit 14).
has not been perfected before issuing the acknowledgement letter	that his/her request for expedited processing will not be decided until all matters about reasonableness, scope clarification, and fees associated with processing the request have been resolved.

Note: In all instances, an expedited processing decision should be provided as soon as the request is perfected, **without** further delay. However, if the request does **not** become perfected, FSA is **not** required to make an expedited processing decision.

When responding to expedited processing requests, FSA will issue decisions as follows.

IF...	THEN FOIA processors will...
granting the request for expedited processing	move the request to the FOIA-CAP expedited processing track and process the request ahead of other non-expedited, pending requests. Note: Granting expedited processing does not compel FSA to complete request processing within 10 calendar days. Once a determination to grant expedited processing has been made, FOIA processors will process the request as soon as practicable.
denying the request for expedited processing	identify the name and title or position of FSA official responsible for determining that the request did not qualify for expedited processing, the reason for denial that addresses what constitutes valid expedited processing as detailed in this subparagraph, and provide the requester with his/her appeal rights. Following the guidance provided in subparagraph 24 H, advise the requester that all appeals must be in writing, filed within 45 calendar days of the date of the denial letter, and mailed to the following address: ADMINISTRATOR, FARM SERVICE AGENCY ATTN: APPEALS AND LITIGATION STAFF 1400 INDEPENDENCE AVE SW RM 5971-S STOP 0570 WASHINGTON DC 20250-0570. Note: Write "FOIA APPEAL" on the letter and envelope to ensure prompt handling. See 1-APP, Exhibit 58 for mandatory language to insert in adverse FOIA response letters.

22 FOIA Request Processing Timeline (Continued)

G Expedited Processing Date Reporting Requirement

Because the date on which expedited processing decisions are made is part of the information **required** by DOJ in the annual FOIA report, if the date on which the expedited processing decision was made is **not** readily apparent from other written documentation in FOIA case file, a note should be added to the case file at the time that the expedited processing decision is made.

Note: If a valid request for expedited processing is received by an office that has no other pending FOIA requests being processed, and the request can be processed within 10 workdays, there is no need to provide a separate response letter, either granting or denying expedited processing. The issue is moot. However, if it is determined in the course of processing this request that a final response cannot be issued within 10 workdays of the date of receipt of the request, then the office must issue a formal written determination on the request for expedited processing.

23 Acknowledging FOIA Requests

A Acknowledgement Letters

FOIA processors will send FOIA requesters acknowledgement letters (Exhibit 11) for all valid FOIA (and FOIA/Privacy) requests. Whenever feasible, acknowledgement letters should be:

- issued within 3 workdays of receiving a valid FOIA request
- written in clear, plain language that can be understood by the requester, with the following information:
 - description of the records requested, as worded in the letter, e-mail communication, etc., or a copy of the request should be included as an attachment to the letter
 - date the records were requested, as found on the letter, e-mail communication, etc.
 - date that the request was received by the FSA office currently processing the request
 - control number assigned to the request
 - assigned processing track into which the request was placed; that is complex, expedited, normal, or simple
 - date request was perfected, if could be perfected without additional clarification, etc.
 - date the requester might expect to receive FSA's response; such as a date "on or before" (20 workdays from the date of perfection)

23 Acknowledging FOIA Requests (Continued)

A Acknowledgment Letters (Continued)

- name, telephone number, FAX number, and e-mail address, as appropriate, of FSA contact to who questions about the status of the request should be addressed.

Note: When appropriate, the acknowledgement letter should direct the requester to the office or agency to which the request should have directed, if the requester filed the request with an office other than the office which is likely to have possession of the records requested, in which case the items in subparagraph C do **not** apply.

B Acknowledgment Letters With Time Extension Notification

When it is known, from the start, that a time extension will be needed, add the following to the acknowledgement letter.

Additionally, please be advised that we are taking a time extension to properly process your request, because of: *[choose 1:*

- 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.*
- the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request.*
- the need for consultation, which will be conducted with all practicable speed, with another Department or agency with substantial subject-matter interest in the request.]*

We hope to be able to respond to you on or before *[month, day, year of new due date]*

_____.

23 Acknowledging FOIA Requests (Continued)**C Acknowledgment Letters Requesting Additional Information**

When requests do **not** contain all information needed to complete the request, acknowledgement letters should contain information in subparagraph A, plus the following information:

- request for clarification or limitation of the scope of the request, when records are deemed **not** to be reasonably described
- request for fee assurance, including the following, as applicable:
 - estimated fee amount, including the computations for each service that is determined chargeable
 - notification to the requester that he/she may reduce the scope of the request to reduce the applicable fees
 - request for advance payment of FOIA fees
- request for fee category clarification or additional information to support the fee category claimed
- FSA response to a request for expedited processing, if the request has been perfected (subparagraph 21 C)
- FSA response to a request for a waiver of all FOIA processing fees.

23 Acknowledging FOIA Requests (Continued)

D Acknowledgment Letters as FSA's Final Response

In the following circumstances, where **no** further processing of a FOIA request is required, acknowledgement letters may function as FSA's final response letter. The following are the most common instances, for a more complete list see subparagraph 26 J.

Notes: USDA regulations allow FSA to regard a FOIA request that substantially duplicates a recent FOIA request previously filed by the same requester as a duplicate. When acknowledging a duplicate request, FOIA processors will inform the requester of USDA's policy with respect to substantially duplicate requests in the acknowledgement letter and close the request.

Many FSA records are already in the public domain and accessible to the public through FSA's public web site at **www.fsa.usda.gov** (paragraph 5).

IF...	THEN FOIA processors will...
request is for FSA records that are known to be publicly accessible on FSA's public web site	inform the requester how to locate the requested records on the web site in the acknowledgement letter and close the request.
it is not initially apparent, when perfecting the request, that the records requested are accessible on FSA's public web site	continue to process FOIA request.
request is for FSA records that are known to be in the public domain; such as when they have been published in FR or are available from GPO	inform the requester how to obtain the records requested from the applicable source in the acknowledgement letter and close the request. When records are available for purchase from GPO, requesters will be advised to order them by any of the following: • e-mail to http://bookstore.gpo.gov/ • FAX to 202-512-2104 • mail to: U.S. GOVERNMENT PRINTING OFFICE PO BOX 979050 SAINT LOUIS MO 63197-9000.

Note: Public domain records may be provided if they are readily available in the FSA office and **not** so lengthy that their copying would subject the requester to billable fees.

23 Acknowledging FOIA Requests (Continued)**D Acknowledgment Letters as FSA's Final Response (Continued)**

Additional written communications with the requester may be required before a request can be processed. Frequently, it will **not** be possible to determine if all fee issues associated with processing a FOIA request have been resolved, if it is **not** clear what records are actually being sought from the initial description of the records requested. FOIA processors will respond to subsequent communications with a requester, in response to requests for clarification or limitation of the scope of the request or requests for written fee payment assurance or advance payment of fees as soon as practicable, with the following:

- date the request was perfected
- date by which FSA's response might be expected as soon as the request is perfected.

24 Obtaining Records Requested

A Locating Records

After a valid FOIA request has been perfected and acknowledged, FOIA processors will locate all the records that **must** be evaluated to properly respond to FOIA request. When requesting records from other FSA offices or staff, FOIA processors will:

- **not** delay issuing the request for records even if prior, pending FOIA requests in the same track have yet to be completed, based on the first-in, first-out principle

Note: FOIA processors **must** expect to have FOIA requests in all stages of processing at any given time. Requesting records from other FSA offices or staff is a task that can be accomplished relatively quickly. While records are being located and copied, work can proceed on the review for releasing records responsive to prior, pending FOIA requests in the same processing track.

- make requests in writing; e-mail communications are often the most effective method of requesting records from program offices, a copy of the request should be included as an attachment
- provide offices or staff with a reasonably complete description of the records sought, along with the date on which they are to be provided to FOIA processing office; **unless** the request is for a voluminous amount of records, allowing 1 calendar week for production of the records should be adequate
- ask offices or staff for **copies** of all responsive records; the originals of records requested under FOIA should remain in FSA files

Note: Copies provided should:

- be clearly legible
- be 1-sided, **not** back-to-back
- have no redactions
- be clipped or banded in sets, **not** stapled.

24 Obtaining Records Requested (Continued)**A Locating Records (Continued)**

- provide offices or staff with any guidance necessary applicable to conducting FOIA searches, as detailed in subparagraph B; in particular, as applicable, alert offices or staff to the threshold for FOIA fees beyond which offices or staff should suspend their search for responsive records (subparagraph C), to allow FOIA processor time to contact the requester to obtain written assurance for payment of additional FOIA fees
- ask offices or staff conducting the search to document their efforts, according to the guidance provided in subparagraph D
- ask offices or staff conducting the search for any recommendations that they might have as to which records should be withheld from release when the individuals involved are knowledgeable about both the responsive records and FOIA exemptions
- retain a copy of the request for records in the request's official case file, and follow up with the office or staff if records are **not** provided by the effective due date for the search
- retain a copy of documentation about file searches conducted in the request's official case file.

24 Obtaining Records Requested (Continued)

B Searching for Records

FOIA requires that FSA make a reasonable search for all records responsive to a valid, perfected FOIA request. This means that:

- FSA will:
 - undertake a search that is reasonably calculated to uncover all responsive documents; the reasonableness of FSA's search depends, in-part, on how the search was conducted in light of the scope of the request, and of the description of the records sought, particularly if the description of the records sought includes specific details about the circumstances surrounding the creation or maintenance of the records
 - search for records in all offices that are reasonably likely to have responsive records
 - search for records in all formats in which responsive records might reasonably be presumed to be maintained; such as paper, electronic, microfilm, etc.
 - search for all unique records responsive to FOIA requests, remembering that, under FOIA, a copy of a memo, for example, containing hand notes made by FSA employee, is considered a different document from the memo as originally issued, as is a copy of that same memo transmitted by FAX, containing FAX transmission notations; **only** records that are **exact** duplicates, with respect to every marking on every page, can be regarded as duplicate records under FOIA

Note: FSA is **required** to provide only 1 copy of every responsive record in its possession to requesters, regardless of how many copies of that same record FSA maintains in its files.

- search for all responsive documents that were in existence **as of the date the search was initiated by the office or staff conducting the search**; FSA will consider any records created after the date the search began as **not** responsive to the request
- recall responsive records in FSA's possession that have been transferred to FRC for temporary storage, or arrange for them to be copied

Note: When custody of responsive records has been transferred to NARA, FOIA processors will advise the requester, in writing, to request them from NARA directly, providing a name, address, and telephone number of a contact person at NARA. If records transferred permanently to NARA constitute the only records responsive to the request, this communication constitutes FSA's final response letter to the requester with respect to this request.

24 Obtaining Records Requested (Continued)

B Searching for Records (Continued)

- while FSA **must** make every effort to uncover all relevant documents, a reasonable search is **not** equivalent to a perfect search

Note: DOJ advises that, “an agency’s inability to locate every single responsive record does **not** undermine an otherwise reasonable search”.

- while FSA **must** generally conduct a search for responsive documents in response to every valid FOIA request, there are some uncommon instances in which it is possible to determine from a description of the records requested, alone, without conducting a file search, that FSA could **not** reasonably be presumed to have responsive records in its files; such as a request for “all records related to alleged terrorist xxxxxx”, **unless** the alleged terrorist had some identifiable connection with a USDA mission.

Note: Federal agencies receive this type of request when individuals seeking records file FOIA requests with Federal agencies without regard for their specific delegated missions.

24 Obtaining Records Requested (Continued)

C Suspending Record Searches for Fee Considerations

When FOIA fees are applicable, FSA offices or staff searching for responsive records should be made aware of the threshold at which their search for responsive records should be suspended if the actual search time required to locate responsive records greatly exceeds the original estimate. Generally, this can be accomplished by asking FSA offices or staff to suspend their search for responsive records after “x” number of hours, based on the number of hours that were originally calculated when the initial estimate of FOIA fees was calculated (subparagraph 21 C). FSA offices or staff searching for responsive records should be asked to suspend the search for responsive records at this point, compile a new estimate of the total time required to complete the search, and provide this information to the office processing the FOIA request. With this information in hand, FOIA processors shall contact the requester to ask for written assurance of additional fee payment and provide the opportunity to limit his/her search to the records already located.

The requester does **not** have a right to modify the request to reduce the cost of the request, if the modification would require spending additional search time.

Example: A requester asks for category I, II, III, and IV information, and agrees to pay for up to 4 hours of search time. He/she **cannot** limit the request to only category I and II **after** 4 hours of search time, if offices or staff have already exhausted the initial 4 hours of search time locating all records responsive to categories III and IV.

Unless a requester prioritizes the records requested, either in the initial request letter or in subsequent communications received in the course of perfecting the request, he/she has no control over the order in which the requested records are searched for in FSA files. If the requester does **not** provide additional written fee payment assurance, the search should formally be stopped and the records located reviewed for release.

24 Obtaining Records Requested (Continued)

D Documenting Record Searches

Offices and staff conducting FOIA record searches will document their efforts using the format in subparagraph E, by providing the following information to the office processing FOIA request:

- number of hours of search time required to locate responsive records, itemized by the hourly salary of the employees conducting the search, or by indicating the number of hours of clerical search time expended and the number of non-clerical search time expended

Note: Search time will be accounted for in 1/4 hour segments. The minimum search time reportable is 1/4 hour.

- which files or records systems were searched, identified by name or number as applicable, and where responsive records were located
- date on which the file search was begun
- statement attesting either of the following:
 - no responsive records were located
 - a copy of all responsive records located are being provided to the office processing FOIA request
- name and contact information of FSA official responsible for the file search
- a signed, dated statement from FSA official responsible for the file search stating, "I certify that I am responsible for the search of records conducted in my office encompassed by this request, and the attached records were the only documents located in response to this request."

If an appeal for adequacy of search or FOIA lawsuit is filed, the FSA official responsible for the file search will be required to explain how the search was conducted or to execute a declaration demonstrating the reasonableness of the search to the court. The information collected in this subparagraph will provide the basis for these statements.

24 Obtaining Records Requested (Continued)

E Example Letter to Other Office Requesting FOIA File Search

The following is an example letter to be used when requesting FOIA file searches.

TO: [Staff Member maintaining requested records]
 FROM: [FOIA Officer/Coordinator]
 SUBJECT: Request for Freedom of Information Act (FOIA) File Search:
 Control Number: [Insert number]
 DATE: [Date]

We have received a FOIA request asking for records under your control. A copy of the request is attached. This requester has ___ or has not___ agreed to pay FOIA fees.

- Please read this request carefully and conduct a thorough search for all of the records that the requester is seeking. If you have any questions – or if there is any doubt in your mind -- as to what this requester is seeking, please contact me before beginning your search. Do **not** contact the requester for clarification.
- Please furnish me with a copy of all responsive documents located. When copying documents, please **DO NOT STAPLE** them together. Clip or band them together as appropriate.
- Please keep track of the amount of time required to conduct your search for responsive records, and note this on the attached memo to be returned to me with copies of the responsive documents. If you anticipate that it will take more than 2 hours to complete your search, please contact me before beginning it. If you discover that it takes more than 2 hours to complete your search, after you have started it, please contact me before continuing it (unless the requester has agreed to pay sufficient FOIA fees to cover the cost of processing his/her request. See above.)
- Please keep track of where you searched for responsive records, and note this on the attached memo. In the event of an appeal or litigation concerning this request, you will be asked to explain where you searched for responsive records and why you searched these files, rather than other files.
- Please complete your search for responsive records by [insert date].

Thank you for your prompt assistance with this request.

24 Obtaining Records Requested (Continued)

F Example Response Letter From Office Providing FOIA File Search

The following is an example response to be used by office providing FOIA file searches when replying to FOIA file search requests.

TO: [FOIA Officer/Coordinator]
 FROM: [Staff Member maintaining requested records]
 SUBJECT: Report of FOIA File Search: Control #[Insert number]

_____ No responsive documents were located relevant to this request.

_____ Attached are all responsive documents/information located in response to this request. (Records attached.)

_____ I spent _____ hours of [grade _____, step _____, or circle 1: clerical / professional] search time looking for responsive records (in quarter hour increments. Minimum time reportable = ¼ hour.).

_____ The records system(s) by number/name searched were:

System	Results	
	Positive	Negative
_____	/	_____
_____	/	_____
_____	/	_____
_____	/	_____

I certify that I am responsible for this records search conducted in response to this FOIA request and that the attached records were the only responsive documents located.

Signature: _____ Date: _____

Printed/Typed Name: _____

Title: _____

Telephone #: _____

E-Mail Address: _____

24 Obtaining Records Requested (Continued)

G Actions To Be Taken as a Result of File Searches

When:

- no records are located, as FSA's final response to the requester with respect to this request, FOIA processors will inform the requester that there are no records responsive to the request and provide the requester with his/her appeal rights, according to subparagraph H, advising the requester that all appeals **must** be:
 - in writing
 - filed within 45 calendar days of the date of the denial
 - mailed to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
 ATTN: APPEALS AND LITIGATION STAFF
 1400 INDEPENDENCE AVE SW RM 5971-S
 STOP 0570
 WASHINGTON DC 20250-0570

Notes: Write "FOIA APPEAL" on the letter and envelope to ensure prompt handling.

See 1-APP, Exhibit 58 for mandatory language to insert in adverse FOIA response letters.

- FSA records are located, FOIA processors will review the records for release, under FOIA (paragraph 25)
- records originating with other USDA or Federal agencies subject to FOIA are located, FOIA processors will refer the records to the applicable agencies for a release determination and direct response to the requester.

Note: FOIA processors will inform the requester, in writing, of the referral indicating the number of pages of responsive documents that are being referred, and providing a name, address, and telephone number of a contact person at the applicable agency. If records originating with other agencies constitute the only records responsive to this request, this response is FSA's final response letter to the requester with respect to this request.

25 Reviewing Records for Release

A FSA Disclosure Policy

In response to a FOIA request, FSA will make all non-exempt records available to the public consistent with the letter and spirit of FOIA. FOIA processors will **not** withhold otherwise non-exempt records because of the following:

- records might reveal an FSA administrative or operational inefficiency
- records might embarrass FSA officials
- identity of the requester
- requester's purpose for seeking the records, if known.

B Reviewing Records

FOIA processors will review **all** responsive records, on a page-by-page basis, to determine if any portions of the pages are protected from release by any of the 9 FOIA exemptions. Making a determination that specific documents, or portions of documents, are protected from release requires an understanding of FOIA exemptions. FOIA exemptions are covered in depth in Part 5; see Exhibit 24 for a quick-start guide.

- Reviewing (and redacting, as needed) responsive records is the most time-consuming aspect of processing FOIA requests. It is important; therefore, that this process be conducted as efficiently and effectively as feasible. Although the procedures discussed herein are described as if they are performed in a linear fashion; that is, first, all records are reviewed for release, second, all records requiring redaction are redacted, etc., in practice, so long as FOIA processors have a thorough understanding of FOIA exemptions, review and redaction of FOIA documents can and should be performed more or less simultaneously.
- Unless it is reasonably certain that most of the documents responsive to a particular request will be releasable, under FOIA, it is a useful practice to begin the review process by making a second copy of all responsive documents. This is because official FOIA case files **must** contain **both** of the following:
 - copies of all documents **as released** to the requester
 - copies of all documents in their **original** form.

Note: If FOIA processors redact the copy of the responsive documents that they receive from other offices, they will no longer have a copy of the unredacted documents in their possession. Unredacted documents **must** be produced if an appeal or litigation is filed.

25 **Reviewing Records for Release (Continued)****B Reviewing Records (Continued)**

- When performing the page-by-page review of responsive documents, it is a useful practice, if using manual methods of redaction, to mark (with brackets or other indications) passages or portions of the page being reviewed in pencil, to indicate the extent of the page's content that needs to be withheld; to annotate the page, in pencil, with the exemption authorizing the withholding and to note the exemption cited on FOIA case file's exemption log (subparagraph F).
- If there is no reasonable doubt that the passages or portions of the page being reviewed are protected by the specific exemptions indicated on the page, redaction can take place immediately, before reviewing the next page. Occasionally, given the content of particular documents, it is useful to mark an entire document before redacting any of the passages deemed to require redaction, to ensure that similar passages are being treated consistently, etc.
- Once the review and redaction process has been completed, in all cases in which redactions have been made, and in all cases in which there were substantive questions as to the releasability of particular passages or portions of documents, a second, final review of the documents, comparing the originals with the documents in the form proposed for release to the requester should be made **before** copying them for inclusion with FSA's response. Ideally, this review should be performed by another FOIA processor who is knowledgeable about the exemptions. In instances where this is **not** possible, it is a useful practice to set the finished set of documents aside for a short while, so as to be able to return to them "with fresh eyes."
- Once review, redaction, and final review, of all responsive documents has been completed, a copy of all releasable documents containing all documents releasable without redactions and all redacted documents should be made for the requester.
- Copies of releasable documents **must** be clearly legible. When reproducing documents that are, themselves, barely legible, care **must** be taken to generate as legible a copy as is technically feasible, given the standard office equipment available in FSA offices. When releasing records with limited visibility, because of the condition of the documents received from the FSA office that maintains them, records should be stamped or annotated with the words, "Best Available Copy".

25 **Reviewing Records for Release (Continued)****C Segregating Records**

FSA will **not** withhold responsive records in their entirety simply because the requested records contain some exempt material.

- FOIA processors will conduct a line-by-line review of each page of each responsive document, to determine what information needs to be withheld.
- When any page of any record contains both exempt and nonexempt material, FOIA processors will generally segregate any portions of the records that can be released under FOIA, and make these available to the requester.

Note: The reasonably segregable portions **must** be released to the requester when it can realistically be believed that a skillful and knowledgeable requester could **not** reconstruct the redacted information.

- If the non-exempt information is so intertwined with the exempt material that disclosing the non-exempt information would leave only meaningless words and phrases, the entire portion may be withheld.
- Whenever possible, even when nearly all of the information contained in a document is exempt from release, release enough information; such as at the heading of the page or e-mail message, etc., for the requester to identify which document is being withheld, **unless** releasing even this information would allow the requester to access information that **must** be protected under FOIA. Consistently using this practice enables requesters to better understand why the information was redacted, and eliminates the need for compiling a documents list (subparagraph D).

Example: Three pages of hand-written notes taken at FSA meeting and shared with meeting attendees, entitled: “FSA Stakeholders’ Meeting, January 9, 2006,” containing impressions, conclusions, and recommendations for action of mid-level managers attending the meeting.

Solution: Redact the entire document, except for the heading, with annotation: “b.5 (this page + 2 pages)”.

Note: When noting exemption references on documents, instead of writing the whole reference; such as, “5 U.S.C. 552(b)(5)” for Exemption 5, FOIA processors may use the abbreviated, “b.5”.

25 **Reviewing Records for Release (Continued)****C Segregating Records (Continued)**

Occasionally a small amount of responsive information is “buried” within an otherwise wholly non-responsive document.

Example: Responsive information includes 1 item in FSA’s “Weekly Activity Report;” all other information in the Report is non-responsive.

IF the remainder of the document...	THEN release the...
is non-exempt	entire document.
contains some data that might be exempt	1 paragraph of responsive material on whatever page of the document it appears. Remove all non-responsive information, except for the heading on page 1 of the document, including the “FROM” and “DATE” information identifying the document. Add annotation, “all other data non-responsive.” Removing non-responsive data does not constitute a denial under FOIA. The requester has not asked for non-responsive data. Do not provide appeal rights when only non-responsive material has been removed from documents released.

D Document Lists and Vaughn Indices

USDA regulations provide that requesters have no legal right to receive the following:

- an index of documents denied
- a “Vaughn index” with FSA’s initial response to their request.

Note: A Vaughn index is a detailed affidavit that identifies each document withheld, states the exemption claimed, and explains how disclosure would damage the interested protected by the claimed exemption. Vaughn indices are:

- frequently prepared when FOIA requests are litigated
- generally prepared by OGC with the assistance of FSA FOIA appellant staff.

There may be times when FOIA processors want to create a document list to accompany an FSA response. Document lists may be appropriate in instances when a significant number of responsive documents are being withheld, according to 1 or more exemptions. In such cases, document lists may be prepared as a substitute for the required description of the records withheld and their extent (paragraph 26). Document lists should identify the documents withheld, **without** releasing any exempt content, extent of documents being withheld in pages or other suitable form of enumeration, and exemptions that justify withholding the individual documents being withheld.

25 Reviewing Records for Release (Continued)

E Tracking Time to Review Records

If reviewing, redacting, and otherwise preparing responsive records for a commercial-use request, record the time spent performing this task. The total cost of review services required to process records responsive to a commercial-use request is generally chargeable to the requester, and **must** be added to the final calculation of fees incurred in processing the request regardless of whether or **not** the requester will be billed for this amount. For all other categories of requests, this time need **not** be tracked.

F Redacting Exempt Material

FOIA processors will ensure that all documents, or portions of documents that are exempt from release because of the applicability of 1 or more of FOIA exemptions are isolated and redacted from responsive records **before** these records are provided to the requester. If information is exempt from release because of the applicability of more than 1 FOIA exemption, all FOIA exemptions that apply will be indicated on **both** the applicable page and in the final response letter.

FOIA processors may employ any of the following redaction methods that ensure all exempt material is adequately withheld from disclosure.

Method	Description
1	For paper records, manual redaction may be achieved by covering exempt material with white redaction/correction/cover-up tape and indicating its removal by bracketing the material removed, or by heavily blackening exempt material using wide black marking pens. The resulting pages should be photocopied to ensure that no exempt material is visible on the portions of the page disclosed. Note: When using black marking pens, it may be necessary to photocopy pages twice; that is to copy the redacted page and to copy the copied page, to ensure that no exempt material is visible when the page to be disclosed is held in front of a bright light.
2	For paper records, electronic redaction may be achieved by scanning the paper records and employing electronic software designed to cut-out portions of the page, and printing out the resulting, redacted pages. It is critical, when using electronic redaction software, to ensure that if redacted records are being provided to requesters in electronic format; such as CD ROM disks, that the software employed does not use a masking method of redaction that would allow requesters to remove the electronic mask and view the exempt material. FOIA processors who want to use electronic redaction of paper records should contact the FSA FOIA Officer for recommendations about FOIA redaction software.

25 **Reviewing Records for Release (Continued)****F Redacting Exempt Material (Continued)**

Method	Description
3	For electronic records, if technically feasible, redactions shall be indicated at the place in the records where such redaction was made. This may be achieved by use of any identifiable technique that will clearly show the extent of the redacted material. If not technically feasible, redactions made; such as specific categories of information or data not released, will be explained in the final response letter.

When redacting portions of pages, FOIA processors will indicate on the released portions of the records the extent of the information deleted, unless this is evident from the document itself, and the appropriate exemption under which each redaction was made, unless doing so would harm an interest protected by the exemption used to withhold the information. This can be indicated by noting the exemption justifying the withholding near the redaction; such as, “b.5” or “b.6”.

Notes: When noting exemption references on documents, instead of writing the whole reference; such as, “5 U.S.C. 552(b)(5)” for Exemption 5, FOIA processors may use the abbreviated, “b.5”.

Software designed to support paper record electronic redaction allows FOIA processors to make these annotations using “electronic rubber stamps.”

When reviewing and redacting a significant number of responsive documents, FOIA processors may want to maintain a redaction log to assist them in keeping track of which exemptions were applied to which documents, how many pages were released in-full or in-part, and how many pages were withheld in-full. By keeping track of this information as each document is reviewed and redacted, a second detailed count of pages granted in-full, granted in-part, and denied in-full, and a second accounting of exemptions used, will **not** be required. If a redaction log is maintained during the review process, it should be retained in the request’s official case file as a part of the administrative record.

25 **Reviewing Records for Release (Continued)****F Providing Records in Format Requested**

FOIA provides that FSA **must** provide the records sought in the form or format requested by the requester if the office responding to the request can readily reproduce the records in that form or format with reasonable efforts. However, if the process of providing the information would damage or destroy an original document; such as in the case of a very old and brittle paper document, FSA may **not** be able to honor the requester's format request. In this situation, FOIA processors should contact the requester to see if an alternative format would suffice. FOIA stipulates that FSA **must** make reasonable efforts to maintain their records in forms or formats that are reproducible.

If the requested records can be converted to the format requested, FSA can charge the requester the direct costs involved in converting the information to the requested format, if it does **not** maintain the information in that format. These costs should be included in the fee estimate provided to the requester when the request is first perfected (subparagraph 21 C).

26 Issuing FOIA Request Response Letters

A Response Letters

FOIA processors will issue a written response to all valid FOIA requests. Response letters should be written in clear, plain language that can be understood by the requester. Response letters will advise the requester of FSA's determination about the releasability of the records requested.

B Granting Access

When FOIA processors determine, after a review of all records responsive to the request, that all records are fully releasable; that is none of the record, in whole or in-part, is exempt from disclosure according to any of the 9 FOIA exemptions, they will issue a response letter granting access to all responsive records. The letter will advise the requester of the following:

- FSA is granting the request for access to the records requested; such as, "The FSA FOIA Office has determined that your request will be granted in-full."
- extent of the records being released
- date on which the responsive records are to be provided, if they are **not** included with the response letter.

26 Issuing FOIA Request Response Letters (Continued)

C Granting Partial Access

When FOIA processors determine, after a review of all records responsive to the request, that a portion of the requested records are exempt from disclosure according to 1 or more of the 9 FOIA exemptions, they will issue a response letter granting access in-part to the requested records. The letter will advise the requester of the following:

- FSA is granting the request for access to the records requested in-part; such as, “The FSA FOIA Office has determined that your request will be granted in-part.”
- extent of the records being released in-full, the extent of the records being released in-part; that is with redactions, and/or the extent of any records being withheld in-full
- exemptions that justify withholdings
- name and title or position of FSA official responsible for the determination that a portion of the records requested are exempt from disclosure under FOIA
- requester’s right to appeal withholding that portion of the records that are being withheld, following the guidance provided in subparagraph 24 H, advising the requester that all appeals **must** be in writing, filed within 45 calendar days of the date of the denial letter, mailed to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
 ATTN: APPEALS AND LITIGATION STAFF
 1400 INDEPENDENCE AVE SW RM 5971-S
 STOP 0570
 WASHINGTON DC 20250-0570

Notes: Write “FOIA APPEAL” on the letter and envelope to ensure prompt handling.

See 1-APP, Exhibit 58 for mandatory language to insert in adverse FOIA response letters.

- date on which that portion of the responsive records that are being released will be provided, if they are **not** included with the response letter.

26 Issuing FOIA Request Response Letters (Continued)

D Denying Access

When FOIA processors determine, after a review of all records responsive to the request, that all of the requested records are exempt from disclosure according to 1 or more of the 9 FOIA exemptions, they will issue a response letter denying access to the requested records. The letter will advise the requester of the following:

- FSA is denying the request for access to the records requested; such as, “The FSA FOIA Office has determined that your request will be denied.”
- extent of the records being denied in-full
- exemptions that justify withholdings
- name and title or position of FSA official responsible for the determination that all of the records requested are exempt from disclosure under FOIA.
- requester’s right to appeal withholding all of the requested records, following the guidance provided in subparagraph 24 H, advising the requester that all appeals **must** be in writing, filed within 45 calendar days of the date of the denial letter, mailed to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570

Notes: Write “FOIA APPEAL” on the letter and envelope to ensure prompt handling.

See 1-APP, Exhibit 58 for mandatory language to insert in adverse FOIA response letters.

26 Issuing FOIA Request Response Letters (Continued)

E Discretionary Releases

USDA regulations permit FSA to make discretionary releases of records otherwise exempt from disclosure according to 1 of the 9 FOIA exemptions when a release is **not** otherwise specifically prohibited by Executive Order, statute, common law, or regulation (paragraph 62). If an FSA office determines that making a discretionary release is appropriate and is consistent with FSA and USDA policy, FOIA processors will:

- understand that under FOIA, when making a discretionary release, “a release to 1 is a release to all,” meaning that records exempt from disclosure according to FOIA released to 1 requester, on a discretionary basis, **must** be released to all other requesters seeking access to these same records

Note: The decision to make a discretionary release constitutes a decision to release certain, specific records that would otherwise be protected by FOIA, **not** a decision to release records that would otherwise be protected by FOIA to a certain, specific requester.

- advise the requester that the requested information is exempt from disclosure under FOIA, but that FSA has decided to exercise its discretion and is releasing the information
- document, in writing, the rationale for making the discretionary release, including a statement identifying the FSA official responsible for the discretionary release, and a signed and dated statement from the FSA official certifying that the release is **not** prohibited by Executive Order, statute, common law, or regulation
- retain the discretionary release statement, as described in this subparagraph, in the official case file for the request.

26 Issuing FOIA Request Response Letters (Continued)

F Interim Response Letters

When responding to a request for a voluminous number of records, all of which **must** be reviewed and redacted, if applicable, for release, FOIA processors may issue interim response letters, providing the requester with FSA's determination on the releasability of a given portion of the requested records; rather than issuing 1 response letter covering all requested records, to provide a requester with some of the requested records by an earlier date, as follows:

- when issuing interim response letters, each letter should advise the requester as to whether that portion of the records was granted in-full, granted in-part, or denied, and should include all of the information required for each type of response, as described in subparagraph B, C, and D, along with the fact that this response letter constitutes a partial response, rather than the final response, to the request

Note: Do **not** provide appeal rights in interim response letters. Provide appeal rights for any records withheld in-full or in-part, 1-time **only**, in the final response letter.

- if at all possible, interim response letters should provide the date on which FSA intends to issue either the next interim response letter or final response to the request

Note: The final response letter should advise the requester that it is FSA's final response to the request and should contain a summary of all prior interim response letters.

- the overall disposition of a FOIA request, for which interim response letters have been issued, when interim response letters contain differing release decisions; such as 1 interim response letter granting total access, and 1 interim response letter granted access in-part or denying records altogether, will be determined to have been granted in-part.

26 Issuing FOIA Request Response Letters (Continued)

G Other Information To Be Included in Response Letters

In addition to information relating to releasability of records requested under FOIA, response letters will contain the following information, as applicable:

- description of records requested, if a copy of the request is unavailable to be included as an attachment to the letter
- date the records were requested
- date the request was received and perfected by FSA
- control number assigned to the request
- any modifications to the scope of the request agreed upon, in writing, between the requester and FSA
- other information pertinent to processing the request; such as information about releasing records requested under the Privacy Act for a FOIA/Privacy request, information about reproducibility of the records in the format requested by the requester, etc.
- FOIA fees statement, identifying the actual fees assessed for searching for responsive documents, reviewing and redacting the responsive documents, as applicable, duplicating the responsive documents being released, and any other category of applicable fees

Note: This statement is required even when the requester is **not** being asked to pay FOIA fees.

26 Issuing FOIA Request Response Letters (Continued)**G Other Information To Be Included in Response Letters (Continued)**

- statement identifying the amount of FOIA fees that the requester is being asked to pay, with a statement advising the requester to make payment by check, draft, or money order made payable to “Treasurer of the United States,” and the address to which payment should be made; generally the address of the responding FOIA Office
- statement, when FOIA fees are being assessed, that the requester has 30 calendar days after receiving FSA’s final response letter to pay the amount charged, that the amount owed is subject 31 U.S.C. 3701 and 3711 through 3720A provisions, and that interest charges on unpaid FOIA assessments will accrue at the rate prescribed in 31 U.S.C. 3717, beginning on the 31st day after the date of the response letter
- name, telephone number, FAX number, and e-mail address, as appropriate, of a contact at the FSA office to which questions about FSA’s response to the request shall be addressed.

26 Issuing FOIA Request Response Letters (Continued)

H Other FOIA Responses

Although most FOIA requests are responded to by a letter providing an FSA determination granting access in-full to all responsive documents, granting access in-part to all responsive documents, or denying access in-full to all responsive documents, there are occasions, as discussed in the following table, when these types of responses are **not** appropriate.

Response Type	Description
Glomar	If a FOIA request is worded in a way that even an acknowledging existence or non-existence of records in FSA files would reveal information that a FOIA exemption seeks to protect, FOIA processors will issue a “Glomar response.” • Courts have upheld that a Glomar response may be appropriate in a national security or law enforcement context; such as in response to a FOIA request seeking access to law enforcement records about whether or not an individual has been investigated, because simply revealing that an individual has been investigated for criminal activity is likely to constitute an invasion of personal privacy. • In a Glomar response, FSA asserts that it “can neither confirm nor deny existence of responsive records”, see Exhibit 18. • A Glomar response does not constitute a formal denial of records. Therefore, when issuing a Glomar response, appeal rights for the appropriateness of FSA’s response to the request should be provided following the guidance provided in subparagraph 24 H, advising the requester that all appeals must be in writing, filed within 45 calendar days of the denial letter, and mailed to the following address: ADMINISTRATOR, FARM SERVICE AGENCY ATTN: APPEALS AND LITIGATION STAFF 1400 INDEPENDENCE AVE SW RM 5971-S STOP 0570 WASHINGTON DC 20250-0570 Notes: Write “FOIA APPEAL” on the letter and envelope to ensure prompt handling. See 1-APP, Exhibit 58 for mandatory language to insert in adverse FOIA response letters.

26 Issuing FOIA Request Response Letters (Continued)

H Other FOIA Responses (Continued)

Response Type	Description
Glomar (Continued)	• A Glomar response is only effective when it is given consistently for a distinct category of requests. If it were to become known that FSA provides a Glomar response only when records do exist, and gave a “no records” response otherwise, then the purpose of this unique approach would be defeated.. • In situations where a Glomar response is appropriate, FOIA processors should still conduct a search for responsive records and retain in the administrative file. When in doubt, FOIA processors should contact the FSA FOIA Officer for guidance in determining if a Glomar response is an appropriate response to a particular FOIA or FOIA/Privacy request.
No Records	When no records responsive to a request are located, following a reasonable search of FSA files, FOIA processors will provide the requester with a “no records response,” according to subparagraph 24 D. When notifying requesters that no records responsive to a request were located in FSA files, FOIA processors will also notify the requester of their right to appeal the determination, following the guidance provided in subparagraph 24 H, advising the requester that all appeals must be in writing, filed within 45 calendar days of the date of the denial letter, mailed to the following address: ADMINISTRATOR, FARM SERVICE AGENCY ATTN: APPEALS AND LITIGATION STAFF 1400 INDEPENDENCE AVE SW RM 5971-S STOP 0570 WASHINGTON DC 20250-0570 Notes: Write “FOIA APPEAL” on the letter and envelope to ensure prompt handling. See 1-APP, Exhibit 58 for mandatory language to insert in adverse FOIA response letters Note: If FOIA requesters file an administrative appeal of the determination, the issue that they will be contesting is the adequacy of FSA’s file search.

26 Issuing FOIA Request Response Letters (Continued)

I Circumstances When Acknowledgement Letters Are Response Letters - Requests Never Perfected

When a valid FOIA request is never formally perfected, because of the following, the acknowledgement letter in which FSA asks the requester to clarify or limit the request, or agree either to pay FOIA fees or provide advance payment of FOIA fees, will constitute the final response letter, as follows:

- FSA office receiving the request does **not** maintain the records requested (subparagraph 21 C)
- requester has **not** reasonably described the records requested (subparagraph 21 C)
- requester has **not** provided written assurance of his/her intention to pay FOIA fees as high as are likely to be incurred in processing the request (subparagraph 21 C)
- requester has **not** provided advance payment for processing the request, when required (subparagraph 21 C).

26 Issuing FOIA Request Response Letters (Continued)

J Circumstances When Acknowledgement Letters Are Response Letters - Perfected Requests

When a valid FOIA request is perfected, but FSA determines that no further processing of the request is required because of the following, the acknowledgement letter in which FSA advises the requester why FSA **cannot** respond to the request, where the requested documents are available, or that FSA could **not** reasonably be presumed to have responsive records, will constitute the final response letter, as follows:

- request duplicates a recent FOIA request previously filed by the same requester (subparagraph 23 D)
- requested records are known to be publicly accessible on FSA’s public web site (subparagraph 23 D)
- requested records are known to be in the public domain and are available from another source, such as the Superintendent of Documents (subparagraph 23 D)
- requester is officially delinquent with respect to FOIA fees charged by FSA, USDA, or any other Federal agency subject to FOIA; therefore, is **not** eligible to file a FOIA request until the amount charged has been paid (paragraph 50)
- it was possible to determine from a description of the records requested, without conducting a file search, that FSA could **not** reasonably be presumed to have responsive records in its files; such as a request for “all records related to alleged terrorist xxxxxx” (subparagraph 24 B).

Note: FSA’s response to such a request constitutes a “no records response” (subparagraph H).

27 Closing FOIA Requests

A Providing Records When Not Included With Response

Preparing to close completed FOIA requests begins after the final response has been issued. If responsive records to be released were **not** released with the final response letter, FSA processors will exercise all due diligence to provide the responsive records by the target delivery date provided in the response letter. Include a copy of the final response letter, stamped, "Copy", with the responsive records to identify the records as responsive to that particular request, and coming from your office.

Note: Many FOIA requesters file multiple FOIA requests for similar records at multiple FSA offices. If FOIA processors do **not** let the requester know that FOIA processor's office has responded fully to his/her request, when the requester receives the responsive records, the requester may **not** credit FOIA processor's office with responding and may file a no-response appeal.

B Fee Issue Followup

Before the FOIA case file for the request can be closed completely, **all** matters associated with collecting chargeable FOIA fees **must** be resolved.

C Receiving Fees

As required by applicable financial management regulations, as follows, FOIA processors will confirm fee payment receipt. Fee payment information is needed to account for and report all FOIA fees collected according to the established policy.

IF located in...	THEN see...
State and County, Caribbean Area, Receivable Management, or APFO	3-FI.
FMD	43-FI.
Washington, DC, office, except FMD	established office policy.

27 Closing FOIA Requests (Continued)

D Overdue Fees

In instances where FOIA fees are assessed, and requesters have **not** provided payment within 30 calendar days of the date of the bill, FSA offices may begin levying interest charges on an unpaid bill starting on calendar day 31.

- Interest will be at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.
- FOIA processors will monitor requests for which FOIA fees are assessed, and notify requesters, in writing, on or shortly after calendar day 31, that applicable FOIA fees have **not** been paid, that interest on the fees chargeable may accrue, and that FSA is **not** required to respond to any future FOIA requests filed by delinquent requesters until payment for all applicable FOIA fees has been received.

27 Closing FOIA Requests (Continued)**E Delinquent Requester List**

FOIA processors will notify the FSA FOIA Officer, in writing preferably by e-mail, when a FOIA requester is deemed to be seriously delinquent in FOIA fee payment.

- FOIA requester is deemed to be seriously delinquent in the payment of FOIA fees on calendar day 91 following FSA's final response.
- FSA offices reporting seriously delinquent requesters are responsible for notifying the FSA FOIA Officer upon receiving payment of the overdue amount.
- Seriously delinquent requester notifications sent to the FSA FOIA Officer will provide the following information:
 - name of requester
 - organization with which requester is affiliated, if applicable
 - amount due FSA
 - date amount due (30 calendar days after date of final response)
 - FOIA control number of the request for which the amount is due
 - name of office issuing request for payment
 - contact employee's name, telephone number, FAX number, and e-mail address for office issuing request for payment.

27 Closing FOIA Requests (Continued)

F Closing FOIA-CAP Records

Before FOIA case file may be closed completely, the FOIA-CAP record for the request **must** be completed, as follows.

- FOIA processors may complete the FOIA-CAP record before receiving fee payment. Complete this record as soon after the final response has been issued and all responsive records have been provided to the requester, because details relating to processing the request will be fresh, and the case file will **not** need to be reviewed before data entry can take place.
- If fee payment has **not** been received when the FOIA-CAP record is completed, it will be necessary to return to the FOIA-CAP record if/when payment occurs.
- If fee payment has not been received by the date at which the FOIA-CAP FY is closed to new entries, it cannot be added to the record in the new FY. In this instance, no further actions are required to document payment of FOIA fees within FOIA-CAP.

Note: The paper administrative file should contain evidence of fees paid.

27 Closing FOIA Requests (Continued)

G Completing the Official FOIA Case File

Because it is possible that payment for FOIA fees may **never** be received by FSA, it is **not** necessary to delay FOIA case file completion until fee payment has been received (subparagraph 12 B), as follows:

- ensure that all documents required to be retained are included in the official FOIA case file
- make notes in the file as needed to enable an FSA official **not** familiar with processing the request to understand the decisions made in processing the request, particularly for decisions made to release or deny responsive documents, from the case file alone

Note: If an appeal or litigation is filed, a copy of the complete case file may need to be provided to OGC.

- unless another arrangement of the case file contents is clearly appropriate to the contents of this particular request, arrange the contents of the case file in reverse chronological order, with the earliest (by date) documents on the bottom of the folder, and each later document on top of each earlier document; this will result in a folder that has the final FSA response letter on top, followed by a copy of any check, draft or money order received in payment, as applicable
- ensure that it is easily possible to determine which records were released, and which were **not**, as applicable
- annotate the FOIA request case file with its retention date, according to 25-AS, Exhibit 45
- if the case file is sufficiently large that multiple folders (or other appropriate document containers) are required to house the case file, ensure that each separate folder (or document container) is labeled with the control number of the request, name of the requester, expiration date of FOIA request case file, an indication of how many separate folders (or document containers) were required to contain the request, and the order of each, in the file; such as 1 of 3, 2 of 3, 3 of 3
- file the case file in the office's completed FOIA files cabinet.

27 Closing FOIA Requests (Continued)

H Record Retirement

Expired FOIA case files shall be forwarded to FRC, or destroyed as appropriate, on a regular basis. Depending on the amount of available storage space in FOIA Office, and the number of FOIA and FOIA/Privacy requests received in the course of a FY, the frequency of record retirement and/or destruction will vary from office to office. Depending on the number of FOIA requests or filing space available, forward/destroy FOIA case files on a quarterly, semi-annual, or annual basis. Because the expiration date of each FOIA request case file should be clearly labeled on each separate document container comprising the request's official case file, pulling all case files that have passed their expiration date should be relatively simple. If an office has a regular, established time for performing record retirement for records maintained in the office, expired FOIA records may be retired at that same time.

Note: If there is a freeze on records destruction, FOIA records may **not** be destroyed. They may; however, be retired to FRC.

28 Processing FOIA Requests Seeking Information Submitted From a Business Source**A Receiving Requests Containing Commercial or Financial Information**

If FSA receives a FOIA request for records containing commercial or financial information submitted by a person or entity outside the Federal Government (the submitter), under Executive Order 12,600, or superseding Executive Order, FSA is **required** to consult with the submitter **before** releasing the information requested.

Notes: Requests for records containing commercial or financial information generally seek records relating to FSA contracts for goods or services, leases on real property, etc. However, **all** requests for commercial or financial information submitted by persons or entities outside the Federal Government **must** be reviewed based the consultation required by Executive Order 12,600, or superseding Executive Order.

While some information submitted by agricultural producers to participate in USDA programs might otherwise qualify as confidential commercial or financial information submitted by a person or entity outside the Federal Government, FSA is **not** required to consult with these parties, upon receiving a FOIA request for their records, because this information may **not** be released to the public according to exemption 3 (paragraph 64) and Food, Conservation, and Energy Act of 2008, Section 1619.

Because FSA is required to consult with the submitter, upon receiving such requests, responding to such requests within the statutory 20 workday deadlines is a major challenge. It is very important that every step in the process is performed as promptly and as efficiently as possible.

28 Processing FOIA Requests Seeking Information Submitted From a Business Source (Continued)

A Receiving Requests Containing Commercial or Financial Information (Continued)

Immediately upon receiving any FOIA request for records containing commercial or financial information submitted by a person or entity outside the Federal Government (the submitter), FOIA processor shall:

- acknowledge the request, advising the requester that FSA is giving the submitter an opportunity to review and comment on the material requested (use the example letter in Exhibit 23, subparagraph C)
- if possible, take a time extension for processing the request **in the initial acknowledgement letter** (Exhibit 23, subparagraph C) includes time extension language)

Note: Consultation with a submitter of commercial or financial information is **not** 1 of the 3 valid reasons, under FOIA, for taking a time extension. However, searching and collecting the requested records from an office that is separate from the office processing the request, **is** a valid reason for taking a time extension. Taking a formal time extension adds an additional 10 workdays to the statutory time limits for processing the request, and allows FSA to charge the requester for the cost of processing the request even if the statutory time limits are not met, according to the Open Government Act of 2007.

- request a file search from the office that maintains the records, if applicable.

28 Processing FOIA Requests Seeking Information Submitted From a Business Source (Continued)

B Locating Requested Records

Immediately upon locating the requested records:

- issue a written notice to the submitter, advising the submitter of the procedures for objecting to releasing the requested information and specifying the date any objections it might propose **must** be received by FSA to be considered in FSA's response to the FOIA request; provide a copy of the FOIA request in question and copies of the requested records in the submitter notice package using the first example letter in Exhibit 23, subparagraph A)

Note: Issuing the written notice by e-mail is recommended **if** FOIA processor can obtain both the e-mail address of the party to whom the notice is to be sent and his/her consent to receiving the responsive records by e-mail. Because these documents may contain information that the submitter wants to protect from public release, it is important that they be transmitted **only** to secure e-mail addresses. Since none of these documents should contain PII, they may be transmitted by e-mail or FAX, to confirmed addresses.

- keep track of the date on which the submitter received the letter; in the event of "reverse FOIA" litigation, FSA **must** be able to document when the submitter received the notice

Note: To keeping track of the date on which the submitter received the letter, if sending by:

- e-mail, request affirmative confirmation of receiving the e-mail
- FAX, save the transmission confirmation page
- USPS, send letter by certified, return-receipt-requested delivery.
- if FOIA processor does **not** receive a response from the submitter within 10 workdays, after proof of receipt, contact the requester by phone or e-mail to request the status of the submitter's response; communicate to the submitter the need for prompt action by submitter, given FSA's obligation to respond to the requester within 20 or 30 workdays, as applicable in this instance, and remind the submitter that if FSA does **not** hear from the submitter within a reasonable time period according to 7 CFR 1.12(a), the requested records will be released to the requester **without redactions**.

28 Processing FOIA Requests Seeking Information Submitted From a Business Source (Continued)

C Receiving Submitter's Comments

Immediately upon receiving the submitter's comments, review the requested records for release under FOIA, as follows.

- Review and redact the records in light of the submitter's comments, remembering that it is the Government that makes the final decision as to what may be withheld, under exemption 4, and what **must** be released to the public.
- Remember that the mere possibility of employee raiding does **not** constitute an adequate justification for the withholding, under exemption 4, of the names of submitter employees and subcontractors (see *National Air Traffic Controllers Association v. Federal Aviation Administration*, (D.C. Cir 2007)).

D Issuing FSA's Response to the Request

Remember that whenever a decision is made to accept the submitter's objections, and to redact all of the information proposed for withholding under exemption 4, **no** further communication with the submitter is required, unless the requester files suit in District Court to compel releasing information withheld.

If a decision is made to release any of the information proposed for withholding under exemption 4 by the submitter, then FOIA processor must:

- notify the submitter of the release within 10 workdays of the scheduled date of release

Note: Whenever a decision is made to release any portion of the information that the submitter has asked to be withheld, FOIA processor is required to inform the submitter of the decision, in writing, 10 workdays **before** releasing the records using the example letter in Exhibit 23, subparagraph C. Ensure that FSA can document the date that the submitter received the notification of intent-to-release by sending the letter by certified, return-receipt-requested delivery.

- issue FSA's response to the request on workday 11, after issuing the intent-to-release notification, if the submitter does not file suit to block release of the information proposed for release, over its objections, by FSA.

29 Initial FOIA Request Appeal and Litigation (Continued)

A FOIA Appeal Rights

FOIA requesters have the right to administratively appeal any adverse determination made by FSA, with respect to their requests. This includes, but is **not** limited to, the following actions:

- denying record release, in-full or in-part, based on at least 1 of the 9 FOIA exemptions
- denying a request for expedited processing
- denying a request for a fee waiver
- issuing a no-records response to a request; they may appeal adequacy of FSA's search
- issuing a Glomar response to a request; they may appeal appropriateness of FSA's approach
- failing to respond to an initial request.

Note: See 1-APP, Part 7 for additional appeal and litigation information.

FSA is **required** to inform requesters of their right to file an administrative appeal whenever advising requesters of any adverse determination with respect to their initial request.

To assist the FSA appeals officer in processing appeals, ask FOIA requesters, when advising them of their appeal rights, to do the following:

- provide FSA with any additional information that they might have that has a bearing on the issue under appeal

Example: When advising requesters of their right to appeal a determination that FSA has no records responsive to a particular request, it is helpful to ask requesters to provide us with the location of any responsive records, if it is known to them.

- enclose a copy of their initial request letter in the appeal package.

Note: Example letters provided in Exhibits 11 through 23 contain examples of appeal rights notifications adapted to the circumstances of the letter.

29 Initial FOIA Request Appeal and Litigation (Continued)**A FOIA Appeal Rights (Continued)**

If **any** portion of the records were found and provided or accounted for in the final response letter, appeal rights should **not** be provided.

FSA is **not** required to inform requesters of their right to file an administrative appeal when informing requesters of the following:

- only a portion of the documents requested were located
- fewer documents than expected were located
- request was closed, administratively, because a requester failed to clarify an unclear request when clarification was asked for, or failed to provide written fee payment assurance or advance fee payment, when asked, within 20 workdays.

Note: Except when a request for expedited processing and/or a request for a fee waiver are being denied, appeal rights should **never** be provided for requests that have **not** yet been perfected.

29 Initial FOIA Request Appeal and Litigation (Continued)**B Requests Remanded After Appeal**

DOJ **requires** agencies to keep track of the time spend on any FOIA request that is remanded for further processing after administrative appeal. For this reason, FSA offices processing remanded FOIA requests **must**:

- create new records for remanded requests in FOIA-CAP
- notify requesters, in writing, of the new control numbers under which their requests are being processed after administrative remand
- receive an additional 20 workdays to process requests, unless the requests qualify for and receive formal time extensions, in which case the time limit shall be extended an additional 10 workdays.

FSA offices process remanded FOIA requests must also:

- process remanded FOIA requests according to guidance provided by the Appeals and Litigation Staff
- add appropriate notes to the administrative files of the case files containing the request, as initially processed and as processed after remand, to link the 2 case files
- communicate to the requester, if needed as appropriate, to resolve any fee issues associated with the search for responsive records
- forward a copy of the final response letter to the Appeals and Litigation Staff, referencing the appeal number under which the request was remanded for further processing.

29 Initial FOIA Request Appeal and Litigation (Continued)

C Preventing Appeals

FOIA appeals **must** be expected, because FOIA requires FSA to withhold information protected by 1 or more of the 9 exemptions and; therefore, it is **not** always possible to satisfy requesters by releasing all of the requested records. However, there are steps that can be taken to minimize the number of FOIA appeals filed. These include the following:

- segregating and releasing non-exempt information in documents in which a portion of the information is **exempt**; failure to do this consistently is the single most common ground for the filing of avoidable FOIA appeals in FSA
- providing a brief explanation of the file search conducted when advising that **no** responsive records were located; such as informing the requester of which offices or files were searched in response to the request; often, when a requester understands the lengths that FSA went to in attempting to locate responsive records, he or she is less likely to file an appeal alleging inadequacy of search
- keeping the requester advised of FSA's progress in processing a complex request, when delays are encountered in obtaining responsive records, or in completing the review of responsive records
- issuing partial responses when processing a request involving a voluminous number of responsive records; generally, when a requester receives a portion of the responsive records at regular intervals, he or she is less likely to file an appeal complaining that the initial request has **not** yet been completely satisfied.

If a FOIA appeal is filed, the FSA appeals officer will notify the office that processed the initial request of the appeal and will request a copy of FOIA case file. Towards that end, FOIA processors **must** ensure that FOIA case files are properly compiled and contain all documents required to adjudicate an appeal, including a copy of all records released in-full or in-part **without the information withheld blacked out or redacted**, and any notes necessary to provide an adequate understanding of how the request was processed.

When FSA issues its final determination on the appeal, the Appeals and Litigation Staff will notify both the requester, and the office that processed the request, of its decision. Under certain circumstances; such as when granting an appeal based on adequacy of search, the Appeals and Litigation Staff may direct the office processing the request to take further action with respect to the request.

29 Initial FOIA Request Appeal and Litigation (Continued)**C Preventing Appeals (Continued)**

If FOIA litigation occurs, the office that processed the initial request will be notified of the litigation and of any action that it is required to take to assist OGC and DOJ in responding to the lawsuit.

Offices processing FOIA requests should be aware that, with the passage of the Open Government Act of 2007, FSA may be required to pay attorney fees and other litigation costs when the court decides that FOIA plaintiff substantially prevailed. Formerly, these costs, when awarded to plaintiffs by the court, were paid by the U.S. Treasury Claims and Judgment Fund. With the passage of the Open Government Act of 2007, attorney fees and costs, when awarded by the court, are to be paid by the agency processing the request using its appropriated funds.

Offices processing FOIA requests should be aware that the Open Government Act of 2007 contains provisions providing that, “when the court orders producing any agency records improperly withheld... and assesses against the United States reasonable attorney fees and other litigation costs, and... 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.”

30 Preventing Processing Backlogs

A Definition of Backlog

According to DOJ, a backlog means all records whose processing has **not** been completed within the statutory time limits. Backlogs are **unacceptable**.

B Preventing FOIA Request Backlogs

Most FOIA requests take only minutes to complete when they are done immediately. During several FOIA request processing steps, FOIA processors are waiting for others to take action; such as waiting for a program specialist to locate the responsive records. Because in FSA, processing FOIA requests is primarily a collateral duty, making responding to FOIA requests more of a priority is the best way to ensure that FOIA requests do **not** slide into backlog status.

C Statutory Time Limits and FOIA Response Clock

Statutory time limits for processing FOIA requests do **not** begin until a FOIA request has been received at the FSA office that has jurisdiction over the records and all issues relating to clarity of scope and FOIA fees have been satisfied.

Note: This means that FSA should route FOIA requests for records managed by other FSA offices immediately. The Open Government Act of 2007 mandates that FOIA requests arrive at the office that has jurisdiction over the records sought within 10 workdays of receiving the request **anywhere** in FSA.

The FOIA clock does **not** start until requests are perfected.

Do **not** start the clock too soon upon receiving a FOIA request. Ensure the following **before** starting the response clock:

- FOIA processor understands what the requester is seeking or requests clarification
- there are **no** fee issues that need to be resolved.

Note: If requester is **unwilling** to pay for the cost of processing the request, when FOIA charges are assumed to be applicable, do **not** waste time searching for responsive records.

30 Preventing Processing Backlogs (Continued)

C Statutory Time Limits and FOIA Response Clock (Continued)

Do **not** assign a due date to the request until the request is perfected. Too many requests end up in FSA backlogs because they were perfected before **all** the information needed to process the request was received.

If, at anytime in request processing, FOIA processor learns that the cost of processing will be greater the amount the requester was originally asked to pay, stop the clock and unperfect the request while FOIA processor notifies requester of the new estimated cost of processing the request.

D Closing Requests in 20 Workdays When Clarification or Fee Assurance is Not Received

Under FOIA, FSA is **not** required to:

- search for records responsive to FOIA requests in instances where the scope of the request is **not** reasonably described, or where there are outstanding FOIA fee issues
- leave requests open, unperfected indefinitely, after notifying requesters about the scope of the request or FOIA fees
- contact requestor repeatedly if they fail to respond to our request for clarification or fee assurance in a timely manner.

Within FSA, timely manner means 20 workdays. When we notify requesters that we will close their requests after 20 workdays if they do **not** respond to our requests within this timeframe, we may close the request **without** writing a second letter notifying them that we closed the request.

Note: Although this procedure is **not** yet in our current FSA FOIA regulations, it is permissible because the requester suffers **no** adverse impact by this procedure. If FSA receives a clarification or fee assurance letter on workday 22, after it has closed the request in question, a new control number is assigned and the request is processed upon receipt.

Closing unperfected requests promptly eliminates the burden of issuing followup letters, freeing employees to spend time on other pending requests.

30 Preventing Processing Backlogs (Continued)**E Taking Time Extensions Whenever Warranted**

Taking a time extension increases FSA's allowable processing time by 50 percent, adding another 10 workdays to the statutory time limits for processing FOIA requests. **Always** take a time extension, when it is warranted, if FOIA processor is unable to complete request processing within 20 workdays (see subparagraph 22 C for more information about how to take a time extension).

FOIA processors are authorized to take time extensions **only** in the following 3 situations:

- to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request
- to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request
- to consult with another Department or agency with substantial subject-matter interest in the request, which will be conducted with all practicable speed.

FOIA processors should interpret the 3 situations liberally, if it is at all reasonable, and take time extensions as needed.

Example: Take a time extension when the requested records are maintained in an office that is separate from the office that is processing the request, as when a State FOIA coordinator is processing a request for records that are maintained by a County Office.

In certain circumstances; such as when processing requests for commercial or financial information (confidential business information), if FOIA processor does **not** take a time extension, it is nearly impossible to process the request within 20 workdays because FOIA processors are required to allow the submitter of the information sought a reasonable period of time to respond to the request for his/her position as to the releasability of the data (paragraph 28).

30 Preventing Processing Backlogs (Continued)**F Ensuring That the 10 Oldest FOIA Requests Are Completed Each Year**

When offices are making every reasonable effort to respond to FOIA requests within the statutory time limits, and find they still have FOIA requests in backlog status, DOJ recommends that offices ensure that, at a **minimum**, they complete the 10 oldest FOIA requests that were outstanding at the end of the previous FY by the end of the next FY.

G Educating Employees About the Need For Timely Searches

When offices are making every reasonable effort to respond to FOIA requests within the statutory time limits, and find that the reason that they are unable to complete requests within 20 workdays is because the offices that possess the requested records do **not** complete their file searches promptly, it may be necessary to provide the employees with further FOIA training. The employees charged with conducting FOIA searches may **not** realize that:

- FOIA requests have deadlines
- their failure to conduct a timely file search has a potentially adverse impact on FSA.

Note: Failure to conduct a timely file search may:

- subject FSA to a FOIA appeal or lawsuit based on nonresponse
- cause FSA to lose the ability to charge FOIA fees
- cause FSA to be assessed attorney's fees and other court costs.

If FOIA processors do **not** request searches for records when requests have **not** been properly clarified, or fee issues resolved, record custodians will have more time to provide records for requests that are perfected and for which fees have been arranged. FOIA processors might need to provide training, on a formal or informal basis, with parties responsible for conducting FOIA searches. Adding FOIA as an agenda item to scheduled meetings of program specialists can improve the speed at which responsive records are produced.

30 Preventing Processing Backlogs (Continued)

H Automating Responsive Record Redaction and Release

Using automation to redact records according to subparagraph F, Method 2, and providing responsive records electronically may help reduce the time and cost of providing them to requesters. When records are scanned and redacted by electronic means, providing them on CD ROM disk is both quick and inexpensive.

Before providing records in electronic format, confirm with the requester that he or she is willing to accept them in electronic format, if this is **not** clear from the initial request letter.

I Monitoring FOIA Workload/Staffing Ratio

Help prevent FOIA request backlogs by monitoring FOIA workload. Know how many FOIA requests FOIA processor's office receives every year, on the average, and what portion of a full-time equivalent (or how many FTE full-time equivalents, as the case may be) is required to process FOIA requests. When either the number of FOIA requests received increases significantly, or the complexity of the requests increases significantly, unless FOIA processor increases the human resources allocated to FOIA program, FOIA processor's office may build a FOIA backlog.

DOJ **requires** that FSA track the number of personnel required to process FOIA requests received on an annual basis, and report the number of personnel required to process FOIA requests in their annual FOIA Report to Congress (subparagraph J). By monitoring FOIA workload/staffing ratio, FOIA processors will **not** only be prepared to provide FSA with the information required for its annual report, but be in position to seek additional assistance, from management, when workload demands exceed available human resources.

31-40 (Reserved)

Part 4 FOIA Fees and Fee Waivers**41 General Provisions****A Fee Policy**

Unless waived or reduced, FSA is authorized to charge fees for processing FOIA requests that involve activities; such as record searches (both manual and electronic records), record duplication, and, when applicable, review and redaction of records. Fees may also be charged in situations when requesters ask for special services; such as certifying that records released in response to requests are true copies of the original documents, or sending records by special methods; such as express mail. Fees may **not** be charged for customary postage costs or time spent by FOIA processors resolving legal or policy issues, or in monitoring a requester's inspection of FSA records, when this type of access to FSA records is appropriate. For a more detailed discussion of the types of services for which fees may be charged, and their charges, see paragraph 42. No higher fees or charges in addition to those provided for in this handbook may currently be assessed for services under FOIA.

B Unsuccessful Search or Exempt Document Fees

Charges for unsuccessful searches, searches that fail to locate records responsive to a FOIA request, or searches that locate records that are exempt from disclosure, shall be assessed at the same fee rate as searches that result in releasable records. In agreeing to pay fees for processing their FOIA requests, requesters are agreeing to pay for search services regardless of whether or **not** these searches result in disclosing the requested records.

41 General Provisions (Continued)

C Waived Fees

FOIA provides that certain categories of requesters will only be charged certain types of FOIA fees. This means that certain categories of requesters are entitled to a waiver of certain types of FOIA fees (paragraph 49). Additionally, under FOIA, requesters may also request a complete or partial waiver of all FOIA processing fees (paragraph 50). FSA will automatically waive fees incurred in processing FOIA requests when:

- the cost of collecting fees exceeds the total amount that would otherwise be collected; for USDA, this amount is \$25 or less; when waiving fees of \$25 or less, requesters will be advised that FSA is waiving the applicable fee because, “the cost of collecting the fee is equal to or greater than the amount of the fee itself” (7 CFR, Subtitle A, Subpart A, Appendix A, Subsection 3(b))
- requesters provide their own copy paper and copying equipment, in which case duplication fees will **not** be charged (although search and review fees may be assessed, if applicable)
- FSA fails to respond to any FOIA request in 20 workdays from the date of perfection, provided that a time extension to extend the processing period to 30 workdays was **not** taken; that is provided that no unusual or exceptional circumstances apply to processing the request; for any such request, all search and/or duplication fees that would otherwise be charged will be **waived**; when waiving fees, in this instance, requesters will be advised that FSA is waiving the applicable fee because “according to the Open Government Act of 2007, search fees and duplication fees may **not** be assessed if the agency fails to comply with any time limit” (see subparagraph 22 C for further guidance).

D Aggregating Requests For Fee Purposes

When there is a reasonable basis to conclude that a requester or group of requesters has divided a request into a series of requests on a single subject or related subjects to avoid fees, the requests may be aggregated, or treated as a single request, for fee purposes. Multiple requests involving unrelated matters will **not** be aggregated.

- FOIA processors may presume that multiple requests that are made within a 30 calendar day period have been made to avoid fees.
- Where requests are separated by a longer period, FOIA processors will aggregate requests for fee purposes **only** when there is a solid basis for determining that aggregation is warranted under all the circumstances involved.

42 Search Services**A What is Covered**

Charges for search services cover the costs incurred by FSA personnel (clerical or professional) used to locate and retrieve FSA records and information responsive to a FOIA request. Search services include the following:

- both manual and electronic searches
- time spent examining records for information that is within the scope of the request
- transporting personnel to places of record storage, or records to the location of personnel, for record search, if such services are reasonably necessary; such as costs incurred in retrieving records stored at FRC for conducting a search for responsive documents.

Note: Charges for search services may be assessed, when applicable, regardless of whether or **not** they result in releasing responsive records (subparagraph 41 B).

42 Search Services (Continued)

B Schedule of Charges

Fees for personnel time spent conducting either manual or computer searches will be assessed in 1 of the 3 following manners in the given order.

IF...	THEN the search shall be assessed at the salary rate of...
1 employee is involved in a search	the employee conducting the search, plus 16 percent of the employee's salary.
a mixed class of personnel is involved in a search	each employee conducting the search, plus 16 percent of the employee's salary. Note: A mixed class of personnel for manual search purposes, and where more than 1 employee is involved, is a group of employees of unlike rank, grade, pay, or position.
an identical class of personnel is used exclusively	\$10 per hour for clerical time and \$20 per hour for supervisory or professional time. Note: An identical class of personnel for manual search purposes, and where more than 1 employee is involved, is a group of employees of like rank, grade, pay or position.

Notes: Fees should be computed to the nearest 1/4 hour (15 minute increment).

Fees for computer searches and services shall be charged as follows:

- mainframe computer searches and services shall be charged for at the rates established in the user's manual or handbook published by the computer center at which the work will be performed; where the rate has **not** been established, the rate shall be \$44.50 per minute and computed to the nearest 1 second
- computer searches on other than mainframes shall be charged for at the manual/computer search rate. Fees should be computed to the nearest 1 second when possible, to the nearest minute when to the second computation is **not** possible.

All other costs incurred will be assessed at the actual cost to FSA (Exhibit 29).

43 Review Services

A What is Covered

Only commercial-use requesters can be charged for review services. Charges for review services cover the services of FSA personnel (clerical or professional) used in examining records, both paper and electronic, located in response to a request to determine whether any portion of any record located is exempt from mandatory disclosure. Review services include processing any records for disclosure; such as doing all that is necessary to redact exempt portions and otherwise prepare records for release. Review services do **not** include the time spent resolving general legal or policy issues about the application of FOIA exemptions.

B Schedule of Charges

Fees for personnel time spent conducting either manual or computer searches will be assessed in 1 of the 3 following manners in the given order.

IF...	THEN the search shall be assessed at the salary rate of...
1 employee is involved in a search	the employee conducting the search, plus 16 percent of the employee's salary.
a mixed class of personnel is involved in a search	each employee conducting the search, plus 16 percent of the employee's salary. Note: A mixed class of personnel for manual search purposes, and where more than 1 employee is involved, is a group of employees of unlike rank, grade, pay, or position.
an identical class of personnel is used exclusively	\$10 per hour for clerical time and \$20 per hour for supervisory or professional time. Note: An identical class of personnel for manual search purposes, and where more than 1 employee is involved, is a group of employees of like rank, grade, pay or position.

Note: Fees should be computed to the nearest quarter hour (15 minute increment).

When appropriate, electronic data services relied on to ensure that large quantities of data have been purged of data protected by 1 of the 9 FOIA exemptions; such as a computer program written to ensure that FSA purchase card data has been purged of PII protected by exemption 6, will be assessed at the actual cost to FSA (Exhibit 29).

44 Duplication Services**A What is Covered**

Charges for duplication services cover the costs incurred in making a copy of a record, or the information contained in the record, to respond to a FOIA request. Copies can take the form of paper, microform, photographs, audiovisual materials, or electronic records; such as magnetic tape or disk.

B Schedule of Charges

Photocopying fees for:

- 8 1/2"×14" or smaller shall be \$0.20 per page (per **each** sheet **side**)
- larger than 8 1/2"×14" shall be \$0.50 per page linear foot of the longest side of the copy.

The fee for other forms of duplicated records; such as microform, audio-visual materials, or machine-readable documentation; that is, magnetic tape or disk, shall be the actual direct cost of producing the records (Exhibit 29).

45 Certification and Authentication Services

A What is Covered

Charges for:

- certification services are the amounts charged by FSA for certifying that copies provided are true copies of the original documents located in FSA files
- authentication services are the amounts charged by FSA for authenticating documents under Departmental Seal, including aerial photographs.

B Schedule of Charges

Certifications fees shall be \$5 per page.

Authentications fees under Departmental Seal shall be \$10 per page (Exhibit 29).

46 Shipping Services

A What is Covered

Shipping service charges include costs incurred by FSA for the following:

- shipping copies of records from the FSA office that maintains the records to the FSA office responding to FOIA request
- shipping copies of records when sending records to requesters by special methods; such as express mail or overnight delivery, when asked by the requester to supply them by this means, etc.
- costs of special shipping containers required to mail copies of records in special formats; such as audio-visual materials, to requesters.

B Schedule of Charges

Charges for shipping services will be assessed at the actual cost to FSA.

Note: Shipping charges will **not** be assessed for records shipped in standard formats to requesters by USPS mail (Exhibit 29).

47 All Other Services or Materials**A Covered Services or Materials**

Any other materials or services required by FSA to locate, duplicate, or, as applicable, review and redact records requested under FOIA. Examples of other materials or services include transcription services, for converting audio tapes to paper format when requested under FOIA and required to be redacted, or charges incurred by contractors maintaining records on behalf of FSA where, by contractual arrangement, FSA must pay a contractor higher fees for searching databases than are allowable under this schedule.

B Charge Schedule

Charges for all other applicable services will be assessed at the actual cost to FSA (Exhibit 29).

48 Charging Fees

A Table of Chargeable Fees for FOIA Services

The following table summarizes the chargeable fees for routine FOIA services categories.

Category	Unit Cost		Unit Description
	Clerical Time	Professional Time	
Search Services	\$10 per hour <u>1</u> /	\$20 per hour <u>1</u> /	Charged in 1/4 hour increments.
Review Services			
Duplication	\$0.20 per page (per each sheet side)		Single-sided copy, 8 ½” x 14” or smaller.
	\$0.50 per page linear foot of the longest side of the copy		Single-sided copy, larger than 8 ½” x 14”.
Certification	\$5 per page		FSA certification that copies are true copies.
Authentication	\$10 per page		Authentication of copies under Departmental Seal.
Other Services	Actual charges as established or incurred by FSA		

1/ Whenever feasible, charge at hourly rate of actual salary plus 16 percent of salary. Otherwise, charge at this standard USDA hourly rate (Exhibit 29).

48 Charging Fees (Continued)

B Summary of Instances When Fees Will Not be Assessed

The following list provides instances in which FOIA fees will **not** be assessed. This checklist may be used by FOIA processors who may be required to respond to requests:

- for FSA records that qualify as valid FOIA requests
- that do **not** qualify as valid FOIA requests that are processed under other guidance.

Note: Items in bold are **not** valid FOIA requests.

Item	Instance
1	The cost of collecting a fee would be equal to or greater than the fee itself. For USDA, this figure has been calculated to be \$25 (subparagraph 41 C).
2	When requesters provide their own copying equipment, materials, and services, no copying fee will be assessed; however, fees for researching the request, locating and compiling the records, and reviewing and redacting the records may still be assessed, if applicable (subparagraph 41 C).
3	For search or duplication fees, when FSA fails to comply with any FOIA time limit, and no unusual or exceptional circumstances apply to processing the request that lead FOIA processors to take a time extension (subparagraph 22 D).
4	For time spent by FSA employee to resolve legal or policy issues raised while processing a FOIA request (subparagraph 41 A).
5	For time spent monitoring a requester's inspection/copying of FSA records (subparagraph 41 A).
6	For postage costs when the responding FSA FOIA Office uses the normal postage method; normal postage costs when replying or delivering responsive records to the requester shall be absorbed by FSA (subparagraph 41 A).
7	Filling requests from other Federal Departments or Government agencies for official use, provided quantities requested are reasonable in number.
8	For specific types of fees, when they are not applicable to specific categories of fee requesters (paragraph 49).
9	Fee waivers or reductions of otherwise applicable FOIA fees are requested, in writing, and granted by FSA (paragraph 50).
10	When providing records requested by the Chairperson of a Congressional Committee or Subcommittee (subparagraph 21 A).
12	Copying is performed for the convenience of the Government, not required for processing the request.
13	For search and review services when responding to a second request for the same set of records from a different requester, when responsive records have already been located, reviewed for release, and redacted, if required. Note: When previous work performed is used as the basis for filling a current FOIA request, fees shall be assessed only for the direct additional costs associated with fulfilling the current FOIA request.

49 Requester Categories for Fee Assessment

A Determining Fee Category

There are 4 categories of requesters for fee assessment purposes. When submitting a FOIA request, a requester should specify what fee category he/she is in, in the request letter. If he/she specifies a fee category, or he/she does not qualify for the specified category, when perfecting a valid FOIA request, FOIA processors will make an FSA decision about requester fee category.

IF a requester...	THEN...
is submitting a FOIA request on behalf of another person or organization; that is, if a requester is an attorney submitting a request on behalf of a client (individual or organization)	it is the underlying requester's (the client's) identity and intended use that determines the fee category of that request. Based on the information provided by the requester, FOIA processors will determine their fee category. Note: If an attorney chooses not to identify the party on whose behalf the request is being filed, FOIA processors should not contact the attorney to ask him/her to identify the underlying client, but should class the attorney as a commercial-use requester, unless the attorney provides sufficient documentation to justify his/her being classed as an other-use requester.
does not provide sufficient information to justify that he/she is in the fee category claimed; such as an individual claims to be a free-lance journalist, but does not provide sufficient documentation to support the claim	FOIA processors may request additional documentation from requesters to enable the FOIA processor to determine if this claim is valid. Alternatively, FOIA processors may, at their discretion, assign requesters the most favorable fee category that can be justified, given the information provided in the request letter. Example: If it is reasonable to presume, from the information provided, that the individual claiming to be a free-lance journalist has no commercial interest in the records requested, he or she may be classed as an other-use requester, if there is insufficient documentation to support this claim.

49 Requester Categories for Fee Assessment (Continued)

A Determining Fee Category (Continued)

IF a requester...	THEN...
fee category cannot be determined from the information provided by the requester in the initial request letter	the requestor is deemed not to be perfected, for fee reasons. FOIA processers will ask requesters, in writing in the acknowledgement letter, to provide additional information sufficient to enable FSA to make the fee category decision. When asking a requester to provide additional information, FOIA processers will advise the requester that if he/she does not respond to the FSA's request for additional information within 20 workdays of the date of the letter, FSA will make a fee category determination based solely on the information provided in the initial request. If the requester does not respond within 20 workdays of the date of the letter, then make the most reasonable determination possible, given the information available.

Note: Without additional information, FOIA processers will presume that requesters asking for copies of inherently commercial documents are commercial-use requesters.

49 Requester Categories for Fee Assessment (Continued)

B Requester Categories for Fee Purposes

There are 4 requester categories for FOIA fee assessment purposes, as follows.

Category	Description
Commercial-Use	Commercial-use requesters are individuals who seek information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester falls into this category, FSA will consider the identity of the requester and the intended use of the records in addition to any other available information about the requester. Note: For commercial-use requesters, FSA will assess fees that recover the full direct costs of researching the request, locating and obtaining the records, compiling and preparing the records, redacting exempt information, reviewing and approving the records for release, and duplicating the records. Commercial-use requesters are not entitled to free search time, free review time, or duplication without charge. FSA may recover the full direct costs of work performed for commercial-use requesters, even if there are ultimately no disclosed records.

49 Requester Categories for Fee Assessment (Continued)

B Requester Categories for Fee Purposes (Continued)

Category	Description
Educational-Use and Scientific-Use	This category is formally referred to as covering “educational institution and noncommercial scientific institution” requesters. Educational- and scientific-use requesters are individuals who are either formally affiliated with an educational institution or formally affiliated with a noncommercial scientific institution, as follows: - educational-use requesters are formally affiliated with a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research; to be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research Note: Students, including candidates for graduate degrees, seeking documents to write a paper or further their own research, should not be classified as educational-use requesters, because they are seeking documents to further their own careers. They should be classified as other-use requesters. - scientific-use requesters are formally affiliated with an institution that is not operated for commerce, trade, or profit, and that is operated solely for conducting scientific research purposes, the results of which are not intended to promote any particular product or industry; to be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scientific research. Note: For educational- and scientific-use requesters, FSA will only assess fees for duplication services in excess of 100, 8 1/2” x 14” or smaller, single-side pages of paper copies, or the equivalent cost if records are provided in some other form; therefore, educational- and scientific-use requesters shall not to be charged for either search time or review times, and shall receive the first 100, 8 1/2” x 14” or smaller, single-side pages of duplication free of charge.

49 Requester Categories for Fee Assessment (Continued)

B Requester Categories for Fee Purposes (Continued)

Category	Description
Media-Use	Media-use requesters include the following: - persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public; such as representatives of the news media Note: <u>News</u> means information that is about current events or that is, or would be, of current interest to the public. Examples: News media includes, but is not limited to, newspapers, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. - individuals employed by entities who deliver news through alternative media; such as publishers of electronic newspapers - free-lance journalists that are representatives of the news media who are able to demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by a news organization; a publication contract, past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication. To be in the media-use category, a requester must not be seeking the records for a commercial use. Note: For media-use requesters, FSA will only assess fees for duplication services in excess of 100, 8 1/2" x 14" or smaller, single-side pages of paper copies, or the equivalent cost if records are provided in some other form; therefore, media-use requesters shall not be charged for either search time or review times, and shall receive the first 100, 8 1/2" x 14" or smaller, single-side pages of duplication free of charge.

49 Requester Categories for Fee Assessment (Continued)

B Requester Categories for Fee Purposes (Continued)

Category	Description
Other-Use	Other-use requesters, who cannot be classed as commercial-use, educational-use, scientific-use, or media-use requesters, are individuals who are permitted, by law, to file FOIA requests. Note: For other-use requesters, FSA will only assess fees for search fees in excess of 2 hours and duplication services in excess of 100, 8 1/2" x 14" or smaller, single-side pages of paper copies, or the equivalent cost if records are provided in some other form; therefore, other-use requesters shall not be charged for either the first 2 hours of search time, for review time, and shall receive the first 100, 8 1/2" x 14" or smaller, single-side pages of duplication without being charged.

C Table of Chargeable Fees for Each Fee Category

The following table summarizes the chargeable fees for each category of requester.

Category	Search Fees	Review Fees	Duplication Fees
Commercial Use	Yes	Yes	Yes
Educational Use	No	No	Yes; first 100, 8 1/2" x 14" or smaller, single-side pages are free.
Scientific Use	No		
Media Use	No		
Other Use	Yes, first 2 hours free.		

Notes: Privacy Act requesters are charged **only** for the cost of duplicating responsive records (Exhibit 29).

Requesters are **not** charged FOIA fees if the total amount of the chargeable fee is equal to or less than \$25, because the cost of collecting the fee would exceed the amount collected, according to 7 CFR, Subtitle A, Subpart A, Appendix A, Subsection 3(b).

50 Fee Waivers and/or Reductions

A Fee Waiver Policy

Under FOIA, a requester has the right to seek a waiver of all FOIA fees. FSA will waive or reduce fees, if disclosing the requested records is **both** of the following:

- deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the Government
- **not** primarily in the requester's commercial interest.

B Requester Rights and Responsibilities

Under FOIA, a requester has the right to seek a statutory waiver of all FOIA fees. If a requester is seeking a fee waiver, it is his/her responsibility to provide detailed information sufficient to support the waiver. This information **must** be submitted with the FOIA request.

A requester should explain how releasing the records requested will contribute significantly to the public's understanding of the Government's operations and activities. The burden is on the requester to justify his/her entitlements to a fee waiver.

FSA will consider each request for a fee waiver on its own merits. The fact that a specific requester has received a fee waiver in the past from FSA, or from any other Federal agency, does **not** mean that the requester is automatically entitled to a fee waiver for every request that he or she may submit, because the essential element of any fee waiver determination is whether releasing the particular documents sought will likely contribute significantly to public understanding of the operations or activities of the Government.

If the information provided by the requester is **not** sufficient for FSA to make a definitive determination on the request for a fee waiver, FOIA processors may, at their discretion in the acknowledgement letter, ask a requester for additional information to support his/her request.

Note: FOIA processors are **not** required to provide requesters with a second opportunity to justify requests for a fee waiver. Most requests should be decided on the basis of the information provided with the request. If the information provided with the request does **not** justify granting a fee waiver, the request for a fee waiver should be denied.

50 Fee Waivers and/or Reductions (Continued)

B Requester Rights and Responsibilities (Continued)

Whenever a request for a fee waiver **cannot** be decided solely on the basis of the information provided in the request letter and the requester has **not** agreed to pay the full amount of FOIA fees likely to be charged to processing the request if the request is denied, and chargeable fees are likely to exceed \$25, the request will be regarded as **not** yet perfected. In such instances, FOIA processors will:

- ask the requester for additional information to support the fee waiver and, in the same letter (generally the acknowledgement letter), advise the requester that if he/she still wants FSA to process the request if the fee waiver is denied, that he/she **must** agree to pay the estimated cost of processing the request
- advise the requester that if he/she does **not** respond to the FSA's request for additional information to support the request for a fee waiver and fee payment assurance if the request for a fee waiver is denied, within 20 workdays of the date of the letter asking for such information, that FSA will assume that the requester is no longer interested in pursuing his/her request, and will close its files on the request.

IF a requester...	THEN...
does not respond to a request both for additional fee waiver information and written fee payment assurance within 20 workdays of the date of the letter	close the request.
responds to a request for additional information to support the fee waiver request at a later date, and this information is sufficient to grant the request for a fee waiver	process the request as a new request and advise the requester, in writing, of the request's new control number, date on which the additional information was received, date on which FSA's fee waiver decision was made, outcome of FSA's decision; such as the waiver was granted, and continue processing the request.

50 Fee Waivers and/or Reductions (Continued)

B Requester Rights and Responsibilities (Continued)

IF a requester...	THEN...	
responds to a request for additional information to support the fee waiver request at a later date, this information is not sufficient to grant the request for a fee waiver, and the requester does not provide written fee payment assurance	process this request as a new request and advise the requester, in writing, of the request's new control number and the date on which the additional information was received. Deny the request for a fee waiver, in the acknowledgement letter, and advise the requester if he/she does not respond to the FSA's request for fee payment assurance within (another) 20 workdays of the date of the letter asking for such information, that FSA will assume that the requester is no longer interested in pursuing his/her request, and will close its files on the request.	
	IF the requester...	THEN...
	responds to this request within the required time period	continue processing the request.
	does not respond to this request within the required time period, agreeing to pay the cost of processing his/her request	close the request.

50 Fee Waivers and/or Reductions (Continued)

C FSA 4-Part Fee Waiver Evaluation Process

FSA has established a 4-part fee waiver test against which requests for fee waivers from FOIA requesters should be evaluated. This process consists of a series of questions that, if answered, should simplify the process of making a fee waiver request determination. In reviewing a fee waiver justification, FOIA processors should ask each of the following questions with respect to the specific records requested by the individual requesting them.

To qualify for a fee waiver, the answer to each of the following questions, in the order listed, **must** be “yes.” If the answer to **any** 1 of these questions is “no,” stop the evaluation process. The request does **not** qualify for a fee waiver.

Example: If the records requested do **not** concern the operations or activities of the Government, but are about the requester, then there is no need to proceed further with the analysis to determine if the records disclosure will be likely to contribute to public understanding of the operations or activities of the Government.

Part	Questions
1	Do the requested records concern the operations or activities of the Government? If so, how?

50 Fee Waivers and/or Reductions (Continued)

C FSA 4-Part Fee Waiver Evaluation Process (Continued)

Part	Questions
2	If the requested records concern the operations or activities of the Government, will disclosure be likely to contribute to public understanding of these operations and activities? • How are the contents of the records the requester is seeking meaningfully informative on FSA's activities? Is there a logical connection between the content of the records and the operations or activities to which the requester is interested? • Other than enhancing the requester's knowledge, how will disclosing the requested records contribute to the understanding of the public at large or a reasonably broad audience of persons interested in the subject? Note: The requester's identity, vocation, qualifications, and expertise about the requested information (whether the requester is affiliated with a newspaper, college or university, has previously published articles, books, etc.) may be relevant factors. However, the requester merely stating that he/she is planning to write a book, research a particular subject, or perform doctoral dissertation work, is insufficient, without demonstrating how the requester plans to disclose the information in a manner which will be informative to a reasonably broad audience of persons interested in the subject. • Does the requester have the ability and intention to disseminate the information to the general public or a reasonably broad audience of persons interested in the subject? • How and to whom does the requester intend to disseminate the information? • How does the requester plan to use the information to contribute to public understanding of the Government's operations or activities?

50 Fee Waivers and/or Reductions (Continued)

C FSA 4-Part Fee Waiver Evaluation Process (Continued)

Part	Questions
3	If there is likely to be a contribution to public understanding, will releasing the requested records contribute significantly to public understanding? • Is the information being disclosed new? Does the information being disclosed confirm or clarify data that has been previously released? • How will disclosure increase the existing level of public understanding of the operations or activities of FSA or USDA? • Is the information already publicly available? If the Government has previously published the information that the requester is seeking, through the Internet, or as part of the administrative record for a particular issue, it is less likely that there will be a significant contribution from release by this requester at this time.
4	Would disclosing the requested records be primarily in the requester's commercial interest? • Does the requester have a commercial interest that would be furthered by disclosure? <u>Commercial interest</u> means an interest that furthers a commercial, trade, or profit interest as those terms are commonly understood. The requester's status as "profit-making" or "nonprofit making" is not the deciding factor. Not only profit-making entities, but other organizations or individuals may have a commercial interest to be served by disclosure, depending on the circumstances involved. • If the requester does have a commercial interest that would be furthered by disclosure, would disclosure be primarily in that interest? Would the public interest in disclosure be greater than any commercial interest the requester or the requester's organization may have in the documents? If so, how would it be greater? Note: The requester's identity, vocation, and the circumstances surrounding the request are all factors to be considered in determining whether disclosure would be primarily in the requester's commercial interest. Example: If the requester is a representative of a: • news media organization seeking information as part of the news gathering process, FSA will presume that the public interest outweighs the requester's commercial interest • commercial business, corporation, association, or the requester is an attorney representing such an organization, FSA will presume that the requester's commercial interest outweighs the public interest unless the requester demonstrates otherwise.

50 Fee Waivers and/or Reductions (Continued)

D Fee Waiver Determinations

FOIA processors will respond to requests for FOIA fee waivers as a part of the process in which FOIA requests are perfected. Although some requesters may state in their request letters that they are willing to pay FOIA fees up to a certain specified dollar amount if their request for a fee waiver be denied, many requesters will **not** provide written assurance of their willingness to pay applicable FOIA fees if their request for a fee waiver be denied.

IF requesters...	THEN...	
provide written assurance of their willingness to pay FOIA fees if their request for a fee waiver be denied	processing their requests can continue, without delay, if FSA denies their request for a fee waiver, provided the amount that they agreed to pay is sufficient to cover the full cost of FOIA fees likely to be charged, unless advance payment of a portion of this amount is required; if advance payment is required, see subparagraph 21 C.	
do not provide written assurance of their willingness to pay FOIA fees if their request for a fee waiver be denied, and chargeable fees are likely to exceed \$25	FOIA processors will advise the requester of the outcome of the fee waiver decision; such as it was denied, with the estimated cost of processing the request, and that if he/she does not respond to FSA's request for fee payment assurance within 20 workdays of the date of the letter asking for fee payment assurance information, that FSA will assume that the requester is no longer interested in pursuing his/her request, and will close its files on the request.	
	IF requester...	THEN...
	does not respond to a request for written fee payment assurance within 20 workdays of the date of the letter	close the request.
	responds to a request for written fee payment assurance at a later date	process this as a new request. Advise the requester, in writing, of the request's new control number, the date on which fee assurance was received, and continue processing the request.

50 Fee Waivers and/or Reductions (Continued)

D Fee Waiver Determinations (Continued)

FOIA processers will:

- consider only the releasable portions of the responsive records when evaluating requests for fee waivers, because exempt portions of documents will **not** contribute to public understanding of the operations and activities of the Government
- **not** make fee waiver determinations based primarily on the general importance of the underlying subject matter of FOIA request.

The general importance or sensitivity of the underlying subject matter of a FOIA request should **not** override the analysis of whether disclosing the releasable portions of the particular documents being requested, in the request for which a fee waiver is being requested, will itself contribute significantly to public understanding of the operations and activities of the Government.

Fee waiver decisions will be issued promptly, whenever possible, and communicated, in writing, to the requester. If at all possible, they should be communicated in the acknowledgement letter. Because the date on which fee waiver decisions are made is part of the information required by DOJ in the annual FOIA report, if the date on which this decision was made is **not** readily apparent from other written documentation in FOIA case file, a note of the date should be added to the file at the time that this decision is made.

- When advising requesters that their request for a fee waiver has been granted, FOIA processers may simply state that, “FSA has granted your request for a fee waiver.” They are **not** required to provide the requester with a written summary of their analysis; such as, “the 4-step fee waiver evaluation process” (described in subparagraph D). If the process was complex; however, FOIA processor should retain any notes made in the process in the request’s official case file. If on appeal or litigation, FOIA processers **must** be able to demonstrate that the process relied on in their office for deciding fee waivers is both according to FSA guidelines and applied equitably, across all requests seeking fee waivers.

50 Fee Waivers and/or Reductions (Continued)

D Fee Waiver Determinations (Continued)

- When advising requesters that their request for a fee waiver was denied, FOIA processors will advise requesters of the following:
 - FSA's policy about when fee waivers will be granted; such as, "FSA will waive or reduce fees if disclosing the requested records is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the Government, and it is **not** primarily in the requester's commercial interest", according to subparagraph A
 - FSA denied the request for a fee waiver because it did **not** qualify for a fee waiver
 - reasons why the request did **not** qualify for a fee waiver by addressing the 4 questions in the "4-step fee waiver evaluation process" described subparagraph D.

Note: The explanation does **not** need to address any additional questions beyond the question for which the answer was "no". When, for example, records requested do **not** concern the operations or activities of the Government, but are about the requester, it is sufficient to state, "FSA has determined that because the records you requested do **not** concern the operations or activities of the Government, your request for a fee waiver has been denied"; provide the name and title or position of FSA official responsible for the fee waiver decision; and their appeal rights, following the guidance provided in subparagraph 24 H, advising the requester that all appeals **must** be in writing, filed within 45 calendar days of the date of the denial letter, mailed to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

Notes: Write "FOIA APPEAL" on the letter and envelope to ensure prompt handling.

See 1-APP, Exhibit 58 for mandatory language to insert in adverse FOIA response letters.

50 Fee Waivers and/or Reductions (Continued)

E Partial Fee Waivers, Discretionary Fee Waivers, and Fee Reductions

FOIA fees may be waived in-part when:

- it is determined that only some of the requested records would be likely to contribute significantly to public understanding of the operations and activities of the Government
- disclosure would **not** be primarily in the commercial interest of the requester.

The criteria for waiving fees in-part are the same as those for a total fee waiver. Fees waived in-part would be prorated on the percentage of records that meet the fee waiver criteria. Where the documents may be segregated, FSA should calculate the exact cost of processing records that do **not** qualify for a fee waiver.

FSA may waive or reduce fees under the following circumstances:

- at its discretion, regardless of whether or **not** a request for a fee waiver has been requested by the requester, if FSA determines that disclosure will primarily benefit the general public
- when furnishing records or a service, without charge or at a reduced rate, is an appropriate courtesy to a foreign country or international organization, or where comparable fees are set on a reciprocal basis with a foreign country or an international organization
- requester is engaged in a non-profit activity designed for the public safety, health, or welfare
- requester is engaged in a non-profit activity at the behest or on the behalf of USDA and/or the individuals or entities USDA is chartered to serve
- it is determined that payment of the full fee by a State or local Government or non-profit group would **not** be in the interest of the FOIA program.

Note: FSA would typically consider receiving the full fee **not** to be in the interest of the FOIA program when the State or local Government or non-profit group is engaged in an activity that will directly benefit the individuals or entities USDA is chartered to serve. When determining whether or **not** a discretionary fee waiver is appropriate, FOIA processors may ask that the State or local Government or non-profit group demonstrate how the activity would directly benefit the individuals or entities USDA is chartered to serve.

50 Fee Waivers and/or Reductions (Continued)**E Partial Fee Waivers, Discretionary Fee Waivers, and Fee Reductions (Continued)**

When granting partial fee waivers, discretionary fee waivers, or fee reductions, FOIA processors will notify requesters of this decision in the response letter. When granting:

- partial fee waivers, FOIA processors will advise requesters, in the response letter, which records qualified for FOIA fee waiver, and which did **not**, following the guidance provided in subparagraph E
- discretionary fee waivers, or fee reductions, FOIA processors will advise requesters, in the response letter, why otherwise applicable FOIA fees are being waived or reduced, at the discretion of the Government, “FSA is granting a discretionary fee reduction, in this instance, because it has determined that payment of the full fee would **not** be in the interest of the FOIA program”.

51 Fee Estimates

A Developing Fee Estimates

Upon receiving a valid FOIA request that reasonably describes the records sought, FOIA processors will determine if it is necessary to develop a FOIA fee estimate. Unless a requester has been granted a fee waiver, has previously agreed to pay the full amount of fees likely to be charged, or it is anticipated that chargeable fees will be \$25 or less, FOIA processors will need to estimate the amount of FOIA fees that would be charged if the request were to be processed completely.

Note: This estimate should take into account the fact that certain categories of FOIA requesters, for fee purposes, are entitled to not be charged for searches or reviews, and/or are entitled to receive 2 hours of search time and/or 100 pages of duplication without charge before incurring chargeable fees (subparagraph 49 C).

Example: Processing an other-use requester's FOIA request is estimated to take 1 hour of search time and result in 75 pages of responsive records. No chargeable fee is like to be incurred in processing this request.

In developing this estimate, FOIA processors will consider the following.

Item	Description
Fee Category of Requester	What services can this requester be charged? What entitlements, if any, does this requester have that accrue from his/her fee category?
Records Being Requested	Are they paper or electronic? Where are they currently being maintained? In FSA files, FRC, or other off-site storage facility? What skill level (clerical or professional) is required to locate them in FSA files? How long will it take FSA personnel to search for them?
FSA FOIA Fee Schedules	Given the level of personnel required to search for responsive records, and the anticipated number of hours required locating them, how much is it likely to cost FSA to search for the requested records? To review responsive records for release and to redact them, if required? To duplicate them? How much, if any, can the requester be charged for each of these services? The full amount? That portion of the total cost after subtraction of his/her entitlements?
Other Considerations That Might Affect Fees	Has the requester asked for the records in a format in which they are not customarily maintained, but into which FSA can convert them at cost? Has the requester asked that the records be shipped by overnight delivery? Has the requester asked that the records be certified or authenticated?

51 Fee Estimates (Continued)

B Fee Estimates Are Guesses

Fee estimates are always informed guesses. Even under the best of circumstances, fee estimates are based on the responding office's understanding of the work expected to be involved in processing the request, and **cannot** be expected to match, dollar for dollar, the exact cost of processing the request when/if it is actually completed. While it may be reasonable, at times, to perform a sample search, when developing a fee estimate for searching a significant number of files that are organized in a similar manner, FOIA processors should **not** perform what, in effect, would constitute a complete, or nearly complete, file search merely to develop a more accurate estimate of FOIA fees. Staff time expended in developing FOIA fee estimates is **not** chargeable, even to commercial-use requesters.

Fee estimates should be qualified. Because most FOIA fee estimates **are** estimates, FOIA processors should advise requesters, in acknowledgement letters, the estimated cost of processing their requests that:

“the actual fees may vary from the amount estimated, and that if it appears that the actual cost to process your request will be below this cost, you will be charged only the actual costs incurred in processing your request. If it appears that the actual cost to process your request will exceed the estimated cost to process your request, we will contact you as soon as possible to discuss the options available to you.”

51 Fee Estimates (Continued)

C When Fee Estimates Differ From Actual Costs

Actual costs **will** differ from estimated costs for processing FOIA requests. At any time during the file search, when it is determined or discovered that actual costs are likely to be lower than estimated costs by any amount, or it is determined that actual costs are likely to be higher than estimated costs, but within the lower limit agreed upon by the requester when he/she provided written fee payment assurance, it is **not** necessary to notify requesters of differences between actual costs and estimated costs between the time the initial estimate is provided and the final statement of actual costs is issued in the response letter.

However, if it is determined or discovered that actual costs are likely to be higher than estimated costs and higher than the amount agreed-upon by the requester, when he/she provided written fee payment assurance, at any time during the file search, FOIA processors should stop processing the request and contact the requester to discuss the available options. Options include the following:

- obtaining the requester's written agreement to pay the additional fees
- limiting the scope of the request to the work already performed, or reducing the scope of the request in other ways, to reduce the total fees charged.

Because FOIA processors **cannot** be billed for amounts higher than they have agreed to pay, it is important to ensure that FSA does **not** incur unnecessary costs in performing file searches for which the Government will **not** be paid.

52 Fee Payment

A FOIA Fee Notifications

FOIA fee statements, identifying actual fees assessed for searching for responsive documents, reviewing and redacting the responsive documents, duplicating responsive documents, and any other category of applicable fees will be provided in the response letter for every FOIA request for which fees were incurred by FSA during processing, as discussed in subparagraph 26 G. This statement will be provided even when the requester is **not** being asked to pay FOIA fees for any reason, including when a statutory or discretionary fee waiver has been granted or fees incurred have been waived because they do **not** exceed \$25.

Note: This statement is required because DOJ requires FSA to track costs incurred in processing requests.

The FOIA fee statement amount that the requester is being asked to pay, a statement advising the requester to make payment by check, draft, or money order made payable to, “Treasurer of the United States,” and the address to which payment should be made (generally the address of the responding FOIA Office) will be provided in the response letter for every FOIA request for which requesters are charged fees, as discussed in subparagraph 26 F.

FOIA processors will include, in the final response letter whenever fees are being charged, statements advising requesters that:

- they have 30 calendar days after receiving FSA’s final response letter to pay the amount charged, as discussed in subparagraph 26 F
- the amount owed is subject to 31 U.S.C. 3701 and 3711 through 3720A provisions, and that interest charges on unpaid FOIA assessments will accrue at the rate prescribed in 31 U.S.C. 3717, beginning on the 31st day after the date of the response letter.

Note: This statement requirement does **not** apply if the requester is a State, local, or Tribal Government.

52 Fee Payment (Continued)

B Collecting FOIA Fees

When FOIA fee payment is received by check, draft, or money order, FOIA processors shall file a copy of the check, draft, or money order in the request's case file to record requester payment. FOIA processors shall follow this table for processing payments.

IF located in...	THEN...	AND...	ACCORDING to...
State and County, Caribbean Area, Receivable Management, APFO, or Kansas City FOIA Office	confirm receiving fee payments Note: This information is needed to account for and report all FOIA fees collected.	ensure that the check, draft, or money order is delivered or sent to the party or office responsible for handling funds collected by the office	3-FI.
FMD			43-FI.
Washington, DC, office, except FMD			established office policy.

C Advance Fees

When the estimated fees for processing a FOIA request exceed \$250, FSA will require the requester to pay 50 percent of the total estimated amount in advance before beginning the process of the request. FOIA processors will advise the requester that if he/she does not respond to FSA's request for advance payment of 50 percent of the total estimated amount of billable FOIA fees within 20 workdays of the date of the notification-of-estimate letter, FSA will assume that the requester is no longer interest in pursuing his/her request, and will close its files on the request (subparagraph 21 C).

52 Fee Payment (Continued)

D Overdue or Delinquent Fees

When a requester has delinquent FOIA fees, because of nonpayment, FSA will **require** the requester to pay the delinquent fee in-full, plus any applicable interest, **before** FSA begins to process a new or subsequent request.

When FOIA fees are assessed, and requesters have **not** provided payment within 30 calendar days of receiving FSA's final response letter, FSA office may begin levying interest charges on unpaid fees starting on calendar day 31, if the office can verify the date the letter in which payment was requested was received (subparagraph 26 K), as follows:

- interest will be assessed at the rate provided in 31 U.S.C. 3717
- interest will accrue from the 31st calendar day **after** the final response letter was received
- FOIA processors will monitor requests for which FOIA fees are assessed and notify requesters, in writing, on or shortly after calendar day 31, that applicable FOIA fees have **not** been paid, that interest on the fees chargeable may accrue, and that FSA is **not** required to respond to any future FOIA requests filed by delinquent requesters until payment for all applicable FOIA fees has been received.

When attempting to collect fees levied under FOIA, FSA will abide by 31 U.S.C. 3701 and 3711 through 3720A provisions in disclosing information to consumer reporting agencies and in using collection agencies, where appropriate, to encourage payment.

52 Fee Payment (Continued)**D Overdue or Delinquent Fees (Continued)**

FOIA processors will notify the FSA FOIA Officer, in writing, preferably by e-mail to **fsa.foia@wdc.usda.gov**, when a FOIA requester is deemed to be seriously delinquent in the payment of FOIA fees.

- FOIA requester is deemed to be seriously delinquent in FOIA fee payment on calendar day 91 after receiving FSA's final response.
- FSA offices that have reported seriously delinquent requesters are responsible for notifying the FSA FOIA Officer when the overdue amount is paid.
- Include the following information when notifying the FSA FOIA Officer of seriously delinquent requesters:
 - name of requester
 - organization with which requester is affiliated, if applicable
 - amount due FSA
 - date amount due; 30 calendar days after receiving final response
 - FOIA control number of the request for which the amount is due
 - name, telephone number, FAX number, and e-mail address of office issuing request for payment.

53-60 (Reserved)

Part 5 FOIA Exemptions

61 General Provisions

A The 9 FOIA Exemptions

Under FOIA, there are 9 exemptions and 3 law enforcement exclusions that serve as the basis for withholding information from the public. The 9 exemptions are discussed at length in this part.

Note: The law enforcement exclusions are discussed in DOJ FOIA Guide available at www.usdoj.gov/oip/foia_guide07.htm and mentioned briefly in subparagraph 68 H. These exclusions **rarely** apply to FSA records.

Exemption	Title
1	Matters of National Defense or Foreign Policy (paragraph 62)
2	Internal Personnel Rules and Practices (paragraph 63)
3	Information Exempted by Other Statutes (paragraph 64)
4	Trade Secrets and Commercial or Financial Information (Confidential Business Information) (paragraph 65)
5	Privileged Interagency or Intra-Agency Memoranda or Letters (paragraph 66)
6	Personal Information Affecting an Individual's Privacy (paragraph 67)
7	Records Compiled for Law Enforcement Purposes (paragraph 68)
8	Records of Financial Institutions (paragraph 69)
9	Geological and Geophysical Information Concerning Wells (paragraph 70)

B FSA Disclosure Policy

In response to a FOIA request, FSA will make all non-exempt records available to the public consistent with FOIA. FSA will withhold records (or portions of records), data, and information **only** if it is protected from release by 1 of the exemptions listed in subparagraph A, or in rare cases, 1 of the law enforcement exclusions, as applicable. FOIA processors will **not** withhold otherwise non-exempt records because of **any** of the following:

- records might reveal an FSA administrative or operational inefficiency
- records might embarrass FSA officials
- identity of the requester
- requester's purpose for seeking the records, if known.

61 General Provisions (Continued)**C Multiple Exemptions Applicability**

The exemptions may apply singly or in combination to a record or document. When multiple exemptions apply to a record, all applicable exemptions will be cited. If information does **not** fall under any of the exemptions, there is no basis for withholding. Any reasonably segregable non-exempt portions of a document **must** be released after deleting the exempt portion (subparagraph 25 C).

D Examples of Withheld Information

Examples of information withheld under each exemption are included in paragraphs 62 through 70). These examples are **not** intended to be all inclusive or to apply in every situation. All records **must** be reviewed on a case-by-case basis.

E Discretionary Releasing Certain Protected Information

Depending on how current the information is, whether an action is pending or has been completed, and other related circumstances, releasing a record may be appropriate on a discretionary basis even if it is otherwise protected by an exemption (paragraph 72).

F When In Doubt, Consult

When in doubt as to whether specific records or documents fall under any of the 9 exemptions, FOIA processors should consult with the FOIA coordinator in their State Office, staff in the National FOIA Offices, KC FOIA Officer, FSA FOIA Officer, or OGC, as appropriate. FOIA processors **must** ensure that whenever a record is withheld under FOIA, there is a reasonable legal basis according to 1 or more of the 9 exemptions.

62 Exemption 1 - Matters of National Defense or Foreign Policy [5 U.S.C. 552(b)(1)]**A When Exemption 1 Applies**

Exemption 1 allows FSA to withhold information about the national defense or foreign policy providing that the information has been properly classified under Executive Order 12,958, Classified National Security Information (dated October 14, 1995), or superseding Executive Order.

B Examples of Information Withheld

While FSA would **not** typically have access to classified national defense or foreign policy records, possible protected records could include material classified as top secret, secret, or confidential.

Example: A foreign trade document prepared for the Secretary, USDA, which is formally classified as confidential because of the document's foreign policy impact.

63 Exemption 2 - Internal Personnel Rules and Practices [5 U.S.C. 552(b)(2)]**A When Exemption 2 Applies**

Exemption 2 protects records that are related solely to the internal personnel rules and practices of FSA. Exemption 2:

- protects relatively trivial records about internal matters for which there is **no** legitimate public interest or benefit under ordinary or routine circumstances; such as information related to using parking facilities, lunch hours, sick and annual leave rules, etc.
- covers records that FSA normally creates and maintains for its own use, rather than for dissemination to the public
- applies when processing and releasing the requested records would cause FSA an administrative burden.

B Considerations in Applying Exemption 2

Information responsive to a FOIA request that qualifies for protection under exemption 2 should not automatically be withheld. Before withholding information under exemption 2, the information must be reviewed to determine if:

- it qualifies for a discretionary release (paragraph 72)
- its release would cause foreseeable harm to FSA.

Note: Information or records qualifying for protection under exemption 2 may only be withheld when their release would cause FSA an administrative burden. Such a burden could entail extensive time and/or expense in reproducing responsive records in formats that they are not customarily maintained, such as scanning large quantities of documents electronically that are normally maintained in paper.

64 Exemption 3 - Information Exempted by Other Statutes [5 U.S.C. 552(b)(3)]**A When Exemption 3 Applies**

Exemption 3 allows FSA to withhold records that are specifically exempt from disclosure by other Federal statutes. Information may be withheld **only** if the statute:

- requires that the matters be withheld from the public in such a manner as to leave **no** discretion on the issue
- establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Information protected by exemption 3 varies with the specific statute prohibiting the information disclosure. Exemption 3 statutes that apply to FSA are listed in subparagraph B, in decreasing applicability order, with statutes most likely to apply listed first.

64 Exemption 3 - Information Exempted by Other Statutes [5 U.S.C. 552(b)(3)] (Continued)

B Exemption 3 Statutes Applicable to FSA

The following 2 statutes apply to FSA.

- The Food, Conservation, and Energy Act of 2008, Title I, Subtitle F, Section 1619, 7 U.S.C. 8791:
 - does **not** permit disclosing information provided by an agricultural producer or owner of agricultural land about the agricultural operation, farming or conservation practices, or the land itself, to participate in programs of the Department, and geospatial information otherwise maintained by the Secretary about agricultural land or operations for which the previously described information is provided, without the consent of the producer or owner
 - **permits** disclosing the following:
 - payment information, including names and addresses of farm program payment recipients
 - statistical or aggregate data if the information prohibited from disclosure has been transformed into a statistical or aggregate form **without** naming the individuals or identifying the specific data-gathering site.
- Federal Property and Administrative Services Act, 41 U.S.C. 253b, as amended by the National Defense Authorization Act for 1997, Pub. L. 104-201 protects names and contract proposals of unsuccessful bidders or vendors, and the proposals of successful bidders or vendors when these proposals have **not** been incorporated by reference in a contract between FSA and the contractor that submitted the proposal.

64 Exemption 3 - Information Exempted by Other Statutes [5 U.S.C. 552(b)(3)] (Continued)**C Statutes That Are Not Exemption 3 Statutes**

The following 2 statutes are **not** exemption 3 statutes.

- The Privacy Act of 1974. Privacy-protected information should be considered under FOIA exemptions 6 and 7(c).
- Trade Secrets Act. Information obtained from sources outside the Government involving commercial and financial interests should be considered under FOIA exemption 4.

65 **Exemption 4 - Trade Secrets and Commercial or Financial Information (Confidential Business Information) [5 U.S.C. 552(b)(4)]**

A When Exemption 4 Applies

Exemption 4:

- protects trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential
- protects both the interests of commercial entities that submit proprietary information to the Government and the interests of the Government in receiving continued access to such data
- is **not** applicable if the information is generally available to the public; such as if the information is published in the company's annual report, available through the Securities and Exchange Commission, or would be made available if requested from the submitter.

B Applicability Criteria

The following criteria will be used to determine whether exemption 4 is applicable.

- Trade secret records **must** contain information about a trade secret.

Note: Trade secret means a secret, commercially valuable plan, formula, process, or device used to make, prepare, compound, or process a commodity, and that can be said to be the end product of either innovation or substantial effort. This definition **requires** that there be a direct relationship between the trade secret and the productive process.

65 **Exemption 4 - Trade Secrets and Commercial or Financial Information (Confidential Business Information) [5 U.S.C. 552(b)(4)] (Continued)**

B Applicability Criteria (Continued)

- Commercial or financial information records **must** contain commercial or financial information. Information is commercial if a person has a commercial interest in the information. The information **must** be:

- obtained from a person

Notes: A person may be a corporation, association, a State or local Government, or any public or private corporation, including an Indian tribe. FSA and other Federal Government agencies would **not** be persons for the purposes of this provision.

Government commercial or financial information may be protected by the Government commercial information privilege of exemption 5 (paragraph 66).

- privileged or confidential.

65 **Exemption 4 - Trade Secrets and Commercial or Financial Information (Confidential Business Information) [5 U.S.C. 552(b)(4)] (Continued)**

B Applicability Criteria (Continued)

Note: The test for whether commercial or financial information is confidential depends, in-part, on whether the information was voluntarily or involuntarily submitted to the Government, as follows.

IF...	THEN...
a submitter of information voluntarily provides information to the Government	the information will be considered to be confidential for the purposes of exemption 4 if “it is of a kind that would not customarily be released to the public by the person from whom it was obtained.”
the Government requires the submitter to provide information	commercial or financial information is “confidential” for the purposes of exemption 4 if disclosure is likely to have any of the following effects: • impair the Government’s ability to obtain necessary information in the future; FSA must be able to demonstrate that the submitter would not have provided the information if he/she believed it would be subject to disclosure or that the reliability or quality of the information it receives from the submitter in the future would be diminished • cause substantial competitive harm to the person/business from whom the information was obtained; if no competition exists; that is the company is the sole producer of a given product, then the information cannot be withheld under the premise that release would cause competitive harm • harm an identifiable private or Governmental interest; such as impair the effectiveness of a Government program or FSA compliance.

65 **Exemption 4 - Trade Secrets and Commercial or Financial Information (Confidential Business Information) [5 U.S.C. 552(b)(4)] (Continued)**

C Required Versus Voluntary

A submitter's voluntary participation in an activity; such as seeking a Government contract or applying for a grant or loan, does **not** govern whether any submissions made in connection with that activity are likewise voluntary. FSA should focus on whether the Government required submitters who chose to participate in a given activity or process to submit the information at issue. Information is considered required if **any** legal authority compels submission as a condition of doing business with the Government.

D Disclosure

Government documents may be protected under exemption 4 to the extent that they contain summaries or reformulations of information otherwise protected by exemption 4 supplied by an outside source.

According to Executive Order 12,600, Predisclosure Notification Procedures for Confidential Commercial Information, June 23, 1987, or superseding Executive Order, FSA will notify submitters when their data is requested under FOIA to determine if the material is confidential and exempt from disclosure. See paragraph 28 for a step-by-step analysis of the process required when handling information submitted by business sources, when this information is requested under FOIA, and it is potentially protected by exemption 4.

Note: Under USDA regulations, FSA **must** allow the submitter a reasonable period in which to object to disclosing any specific portion of the information requested under FOIA (generally, 10 workdays should be considered reasonable). Given that FSA has only 20 workdays to respond to the request, FOIA processors **must** process requests for this type of information with all due diligence, taking a time extension whenever justified by unusual or exceptional circumstances (subparagraph 22 C).

FSA **must** maintain adequate records in the case file of any request for commercial or financial information submitted from an outside source potentially protectable by exemption 4 to support its decision to disclose the commercial or financial information requested in case a lawsuit is filed by the submitter. Lawsuits filed by submitters are commonly referred to as a "reverse FOIA" litigation wherein a submitter files suit in District Court to prevent the Government from releasing commercial or financial information requested under FOIA.

65 Exemption 4 - Trade Secrets and Commercial or Financial Information (Confidential Business Information) [5 U.S.C. 552(b)(4)] (Continued)**E Examples of Information Withheld**

Examples of general commercial or financial information the courts have found to be properly withheld under exemption 4 include the following:

- commercial or financial information received in confidence in connection with bids, contracts, or proposals, including the following:
 - assets, income, profits, losses, and expenditures
 - names of consultant, subcontractors, and suppliers; performance, cost, and equipment information
 - labor costs, profit margins, and competitive vulnerability
 - business sales statistics, research data, and technical designs
 - financial statements and balance sheets
 - price negotiation memos
 - names of customers and amount and discounts offered to them
 - resumes and other employee-related information such as what the company pays its employees
 - a company's internal organization chart
 - letters of reference from private sector clients
 - approach and methodology for accomplishing work set forth in the solicitation
 - plant facility reports
- scientific and manufacturing processes or developments containing technical or scientific data submitted with an application or report while research is in progress.

65 Exemption 4 - Trade Secrets and Commercial or Financial Information (Confidential Business Information) [5 U.S.C. 552(b)(4)] (Continued)**F Examples of Information Possibly Covered**

The following are examples of FSA commercial and financial information that might generally be covered by exemption 4:

- maximum and minimum price guidelines established for guiding purchasing officers and merchandisers of CCC-owned commodities or commodities under loan to CCC before the awarding of a contract
- information provided in confidence to help FSA or CCC formulate and operate programs involving groups such as warehousemen, dealers, and producer associations
- personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged
- financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the local area.

66 **Exemption 5 - Privileged Interagency or Intra-Agency Memoranda or Letters**
[5 U.S.C. 552(b)(5)]

A When Exemption 5 Applies

Exemption 5 is designed to protect interagency and intra-agency memoranda or letters, which would **not** be available, by law, to a party in litigation with FSA; such as records that normally would **not** be made available through the discovery process, the means by which the parties involved in a lawsuit exchange information before a hearing or trial.

Note: Exemption 5 **cannot** be used to withhold material merely because it is embarrassing, purely factual material, or final decisions. When using exemption 5 to withhold records or documents, FOIA processors should document for the request's case file, which of the 4 privileges discussed in subparagraph B each of the documents being withheld under exemption 5 is protected. This information should be communicated to the requester in the final response letter; that is which documents are protected by which privileges, and be placed in the request's case file.

Exemption 5 applies to interagency or intra-agency records, records that are transmitted within or among FSA components, or between or among Federal agencies. In some circumstances, it may apply to documents generated outside FSA. Documents prepared by outside consultants, at FSA's request, can be protected if those documents played a role in FSA's deliberative process.

66 **Exemption 5 - Privileged Interagency or Intra-Agency Memoranda or Letters**
[5 U.S.C. 552(b)(5)] (Continued)

B Common Privileges

The 4 exemption 5 privileges most commonly invoked are as follows.

Privilege	Description
Deliberative Process	Designed to protect the quality of FSA's decision-making process, to: • encourage candid and frank discussions among FSA officials • protect against prematurely disclosing proposed policies before they are adopted • avoid public confusion that might be caused by disclosing reasons and rationales that were not ultimately the basis for FSA's action. To fall within the deliberative process privilege, the material must be both pre-decisional and deliberative; that is part of the decision-making process, in that it includes opinions, recommendations, or deliberations on legal or policy matters. Generally, protected information is analytical and subjective rather than factual. In determining whether a document is pre-decisional and deliberative, the following should be considered: • document's language and place in the decision-making process; pre-decisional, deliberative documents are written before FSA's final decision and usually contain recommendations, opinions, or represent FSA's tentative position on an issue, and typically discuss the pros and cons of adopting 1 viewpoint over another • decision-making authority of the person issuing the document; such as whether the person who issues the document has the authority to speak finally and officially for FSA; if the author lacks the authority to make the final decision for FSA, the document is more likely to be pre-decisional • direction in which the document flows in the decision-making chain; documents written by a subordinate and transmitted to a superior are more likely to be pre-decisional than documents written by a person who is in a position to make the final decision for FSA.

66 Exemption 5 - Privileged Interagency or Intra-Agency Memoranda or Letters
[5 U.S.C. 552(b)(5)] (Continued)

B Common Privileges (Continued)

Privilege	Description
Deliberative Process (Continued)	The deliberative process privilege generally may not be used to withhold purely factual material or the factual portions of deliberative documents. The factual portions must be released where they can be segregated from the deliberative portions of the document. However, if the manner of selecting or presenting facts would reveal the deliberative process or if the facts are inextricably intertwined with the decision-making process, the facts may be withheld. FSA may withhold factual material where the facts are such a negligible part of the document that releasing them would be meaningless. Drafts of documents are exempt under the deliberative process privilege. They must be part of the decision-making chain and prepared before adopting a final FSA position. Drafts reflect the give and take of the review process that leads to a decision. FSA officials must be able to talk and discuss issues freely. However, labeling a document, “Draft” does not in itself protect the document. The deliberative process privilege may be used to protect a draft regardless of whether it differs from the final version provided that FSA is able to show that the draft is part of the decision-making process and describes the role that the documents plays in that process. An exception to withholding a draft document is when FSA cites the draft document as binding precedent, adopts it as working FSA law, or incorporates it by reference in a final FSA decision. If several recommendations are presented in a draft and only 1 is adopted, the unadopted recommendations may be withheld under the exemption 5 deliberative process privilege. Final documents that represent the final FSA action on an issue, and generally post-decisional documents that discuss, analyze, or explain established policies, may not be withheld under this privilege. Under certain circumstances, a post-decisional document may be withheld if it contains pre-decisional information; such as guidance for decisions of similar cases arising in the future or information that reflects FSA’s decision-making process or the author’s own recommendations.

66 Exemption 5 - Privileged Interagency or Intra-Agency Memoranda or Letters
[5 U.S.C. 552(b)(5)] (Continued)

B Common Privileges (Continued)

Privilege	Description
Attorney-Work Product	Protects documents and other memoranda prepared by FSA attorney during or in anticipation of litigation, including administrative proceedings. It covers litigation-related documents prepared by an attorney or under his/her direction that reveal the attorney's mental impressions, theories of the case, legal strategies; such as reports prepared by a consultant or a program employee, which were prepared under the direction of any attorney in anticipation of litigation. Litigation need not have started, but it must be reasonably contemplated; that is a specific claim must exist that is likely to lead to litigation. The privilege applies after a case has ended, or even if it never was begun, as long as it was reasonably contemplated. Attorney-work product documents may be withheld in their entirety because, unlike the deliberative process privilege, the attorney-work product privilege protects facts.
Attorney-Client	Applies to confidential communications between FSA attorney and his/her client (here the client is FSA, which acts through its employees), about a legal matter for which the client has sought professional advice. The privilege is designed to protect the client so only the client can waive this privilege. Unlike the attorney-work product privilege, using the attorney-client privilege is not limited to instances where litigation is expected. However, to withhold information under this privilege, the documents must meet all the following 4 criteria: • nonlawyer must have been or sought to be a client of the lawyer • lawyer must have acted in his/her capacity as a lawyer • document must relate to facts communicated confidentially to secure a legal opinion • client must not have waived the privilege. If a document is shared outside the attorney-client relationship, exemption 5 may no longer be used to protect the information. However, information circulated within FSA to employees involved in the matter for which advice is sought does not breach confidentiality. Factual information may only be withheld under this privilege if it is part of the confidential communication. If the facts are not covered by the 4 criteria governing the attorney-client privilege, they must be segregated and released.

66 **Exemption 5 - Privileged Interagency or Intra-Agency Memoranda or Letters**
[5 U.S.C. 552(b)(5)] (Continued)

B Common Privileges (Continued)

Privilege	Description
Government Commercial Information	Available to the Government for information that it generates in the course of its business dealings; such as the process leading up to the award of a contract, or for some appraisal information associated with the acquisition of real property. The premise is that prematurely releasing the information would put the Government at a competitive disadvantage or would endanger the consummation of a contract. However, once the contract has been awarded, property acquired, or the offer withdrawn, the privilege expires . The privilege applies to trade secrets or other confidential research, development, or commercial information generated by the Government. Factual information in the documents, that would not compromise the Government's position, must be segregated and released.

C Examples of Information Withheld

Examples of information that may be withheld under exemption 5 include the following:

- advisory opinions, recommendations, and deliberations that are part of the decision-making process (deliberative process privilege)
- draft documents regardless of whether they differ from the final version (deliberative process privilege)
- nonfactual portions of pre-decisional staff papers, containing staff evaluations, advice, opinions, or suggestions (deliberative process privilege)
- recommendations contained in official reports of inspection, audits, investigations, or surveys about safety, security, or the internal management, administration, or operation of 1 of FSA's offices or programs (deliberative process privilege)
- ratings given to job applicants by panel members and panel member names; ratings may be released if they **cannot** be linked to the panel members who gave them; panel member names may be released if the release will **not** reveal the rating they gave (deliberative process privilege)
- in some instances, advisory material prepared on behalf of FSA by consultants (deliberative process privilege)

**66 Exemption 5 - Privileged Interagency or Intra-Agency Memoranda or Letters
[5 U.S.C. 552(b)(5)] (Continued)**

C Examples of Information Withheld (Continued)

- information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to a private entity in its dealing with the Government, or would impede FSA activities (deliberative process privilege/commercial information privilege)
- financial formulas used to determine the financial capability of a contractor (deliberative process privilege/commercial information privilege)
- certain information in an appraisal generated by the Government or on its behalf, especially in anticipation of litigation (commercial information privilege/attorney work-product privilege)
- cost estimates, technical ratings and evaluations, and recommendations for award prepared by the Government (deliberative process privilege/commercial information privilege)
- facts divulged by a client to his/her attorney in confidence and opinions given by an attorney to his/her clients based on those facts (attorney-client privilege)
- information gathered by FSA investigators under the direction of FSA attorneys (attorney work-product privilege)
- memoranda prepared by FSA attorney that advises FSA of the types of legal challenges it may face in light of a proposed program, potential defenses available to FSA, and the likely outcome (attorney work-product privilege)
- records prepared by FSA attorney about his/her legal strategy in a case that are exchanged among FSA personnel or with other agencies in preparing for litigation or an administrative proceeding (attorney work-product privilege).

66 **Exemption 5 - Privileged Interagency or Intra-Agency Memoranda or Letters**
[5 U.S.C. 552(b)(5)] (Continued)

D Examples of Information Possibly Covered

Examples of FSA information that might be covered by exemption 5 include the following:

- internal FSA documents/memorandums of a deliberative nature **before** a final decision, memorandum on pending action by management, minutes of management meetings containing recommendations, opinions, etc., budget estimates with supporting data, or reports containing recommendations, opinions, or advice FSA uses in its decision-making process (deliberative process privilege)
- communication between a superior and subordinate about a discussion of preliminary matters (deliberative process privilege)
- COC or STC meetings in Executive Session (deliberative process privilege)
- identity of NAP independent assessor and/or the documents of a pre-decisional nature provided by the NAP independent assessor (deliberative process privilege)

Note: The exemption **only** applies until STC approves COC recommendation at which time the pre-decisional nature ceases. Requests asking for NAP independent assessment information will be forwarded to the appropriate FSA State Office for response.

- Disaster Damage Assessment Reports and Flash Situation Reports (deliberative process privilege); requests asking for Disaster Damage Assessment Reports and Flash Situation Reports will be forwarded to the appropriate FSA State Office for response
- non-factual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions (deliberative process privilege)

**66 Exemption 5 - Privileged Interagency or Intra-Agency Memoranda or Letters
[5 U.S.C. 552(b)(5)] (Continued)**

D Examples of Information Possibly Covered (Continued)

- advice, suggestions, or evaluations prepared on behalf of FSA by individual consultants, boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations (deliberative process privilege)
- nonfactual portions of evaluations by FSA personnel of contractors and their products (deliberative process privilege)
- planning, programming, and budgetary information that is involved in FSA planning and resource allocation process (deliberative process privilege).

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]****A When Exemption 6 Applies**

Exemption 6 permits withholding information about individuals in personnel, medical, or similar files because disclosing the information would constitute a clearly unwarranted invasion of personal privacy. Although documents containing personal and personnel-related information **must** be reviewed on a case-by-case basis, FSA maintains that an individual has a personal privacy interest in the information listed in subparagraph E.

Note: Similar files means any files or documents about a specifically identifiable individual that contains information that can be identified as applying to that person.

Examples of similar files may include the following:

- files containing reports, records, and other material about personnel matters in which administrative action, including disciplinary action that may be or has been taken, that are identified to a specific individual
- personal injury report files
- files related to permits, applications, and licenses
- certain information in reports of investigation.

Records about a business or association generally may **not** be withheld under exemption 6; such as business addresses and telephone numbers. However, in certain circumstances, especially within FSA where a business or farm is owned and operated by an individual and the records of the business or farm are in essence the records of the individual, exemption 6 may apply.

Exemption 6 may **not** be used where the privacy interest to be protected is the requester's. Therefore, exemption 6 should **not** be used to withhold information from a requester that he/she would be entitled to under the Privacy Act.

67 Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)] (Continued)

B Exemption 6 “Balancing Test”

When making decisions about applying exemptions 6 and 7(C), determine whether or **not** a privacy interest applies; there **must** be a privacy interest in the requested information for any further consideration of privacy-exemption protection to be considered.

To qualify, the information **must** concern the privacy interest of an identifiable, living person; see subparagraph C for when exemption 6 may be used to protect the family of the deceased. A privacy interest exists if disclosing the information to the public would violate the privacy of the subject individual, and/or could cause injury or embarrassment to the individual.

Note: If a personal privacy interest does **not** exist, then exemptions 6 and 7(C) do **not** apply.

Exemption 6 material that is covered by the Privacy Act may be released with the prior written consent of the person who is the subject of the record. However, there is **no** requirement for prior written consent for exemption 6 information that is **not** covered by the Privacy Act. Whether information should be released is determined by the balancing test. If there is a privacy interest, determine whether there also is a public interest, as follows.

- Would disclosing the information shed light on FSA's performance of its statutory duties? Information that reveals little or nothing about the operations or activities of the Government does **not** meet the public interest standard and should be withheld.
- Consider how disclosure would benefit the general public in light of the content and context of the requested document.
- The requester's particular purpose, circumstances, and proposed use should **not** be taken into account, **except** to the extent that it may coincide with an identifiable public interest.

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]
(Continued)**

B Exemption 6 "Balancing Test" (Continued)

Balance the personal privacy interest against the public interest.

IF...	THEN...
FSA determines that a public interest is present	that interest should be balanced against the personal privacy interest. The benefit to the public must be weighed against the potential harm to an individual's personal privacy.
the privacy interest is greater	the information should be withheld.
the public interest is greater	the material should be released. Notes: A privacy interest may still exist even though personal information has been made available to the general public at some place and point in time; this is referred to as the practical obscurity standard. The fact that disclosing certain information about a particular individual to the media might be interesting to the public does not in and of itself create a public interest that is recognized by FOIA. Disclosure must reveal something about the operations or activities of FSA to be considered as public interest in the balancing test.

A requester's particular knowledge of, or relationship to, the information in question should **not** be considered in deciding FOIA requests.

Example: FSA should **not** disclose information to the spouse or relative of the subject individual that they would withhold from any member of the general public.

67 Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)] (Continued)

B Exemption 6 "Balancing Test" (Continued)

The identity of a FOIA requester **cannot** be taken into consideration in considering what should be released. An exception to this rule is that FSA may **not** invoke exemption 6 or 7(C) where the only privacy interest to be protected is the requester's.

Example: If a requester asks for a copy of a record **not** covered by the Privacy Act, and it contains his or her home address, FSA **cannot** withhold the home address from him or her.

Exemptions 6 or 7(C) **cannot** be used to withhold information from a requester that he/she would be entitled to under the Privacy Act; that is information about him/her.

After privacy-protected, PII has been redacted, all reasonably segregable, non-exempt portions of the documents **must** be released.

C Protecting the Family of the Deceased

Exemptions 6 and 7(C) generally may be used only to protect the privacy of living individuals, **not** deceased persons. However, in some cases, exemptions 6 and 7(C) may be invoked to protect the family of the deceased. Particularly sensitive, often graphic, personal details about the circumstances surrounding an individual's death may be withheld when necessary to protect the privacy interests of surviving family members.

Examples: The audiotape of the Challenger astronauts recorded immediately before their deaths was withheld to protect the family members from the pain of hearing the final words of their loved ones.

In a case involving the National Park Service, the autopsy and death photographs of an individual were withheld to protect the family members from the pain of seeing them.

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]
(Continued)**

D When Exemption 6 May Not Apply

Generally, when the following information is requested under FOIA, it can be released and is **not** protected under exemption 6. **Review items carefully**; there may be protected information that **must** be redacted mixed with releasable information:

Note: See subparagraph E for protected information.

- appreciation and commendation letters from professional associates
- awards and honors received in an individual's professional capacity, including justification for all awards and honors, with all protected material redacted; such as narrative material contained in a performance appraisal
- bargaining unit member names
- citizenship
- deceased persons' information, with all exempt material redacted (including SSN's)
- educational information related to an employee's or successful applicant's profession; such as information (name of school, year of graduation) about high school, college, graduate school, technical school, etc.
- FOIA requester names, **except** when they are making first party requests
- job applications for the successful candidate or the incumbent, with all exempt material redacted
- military service and veteran preference information; such as the fact that an individual served, military service number, dates and branch for all active military service, rank, medals, badges or awards received, fact of veteran preference

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]
(Continued)**

D When Exemption 6 May Not Apply (Continued)

- names of employees involved in union activities during working hours, selecting officials, and individuals who applied for and received the buyout and have separated from FSA
- names of present and past employees, positions titles, occupational series, annual salary rates, grades, and amounts received for performance awards or bonuses, incentive awards, merit pay amounts, awards for distinguished performance at all levels, merit pay, and allowances and differentials

Note: Normally, the name of the individual, position, type of award, and the dollar amount are releasable; however, generally the justification of the award is **not** releasable, particularly when it is linked to FSA's performance evaluation.

- organization and professional group membership when related to an employee's profession
- panel ratings and scores of the successful job candidate, with names of raters redacted
- past employment in State or Federal Government positions and in the private sector when it is related to the position held by the employee
- position descriptions, job element identification, and performance standards or work expectations, but not actual performance appraisals, if releasing will not interfere with law enforcement programs or severely inhibit FSA effectiveness

Note: Performance elements, standards, or work expectations may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

- present and past duty stations, including official mailing and e-mail addresses of FSA employees, and telephone number as they appear in the public FSA telephone directories

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]
(Continued)**

D When Exemption 6 May Not Apply (Continued)

- promotion, reassignment, or appointment recommendations, etc., after action occurs, **except** for information protected under exemption 6, such as information that would disclose an individual's performance appraisal
- ranking factors used for job applicants; not to be confused with a crediting plan cited in subparagraph F
- resumes and applications for Federal employment for the successful candidate **only**, with all exempt material redacted
- service computation date and information related to tenure
- sex
- SF-50, with all exempt material redacted
- SF-52, with all exempt material redacted
- special skills, accomplishments, and awards related to the employee's or successful applicant's profession and/or position
- standard payroll forms, with all exempt material redacted
- type of job for which applicant is applying
- total number of hours worked, including overtime.

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]
(Continued)**

E Examples of FSA Employee and General Information Withheld

The following information is eligible for protection under exemption 6 if:

- there is no public interest qualifying under the standard set forth in *DOJ v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) and *Department of Defense v. Federal labor Relations Authority*, 62 U.S.L.W. 4143 (February 23, 1994)

Note: To qualify as a public interest, releasing the information itself would have to shed light on FSA's performance of its statutory duties.

- there is a public interest under exemption 6 **and** the public interest in disclosure does **not** outweigh the potential harm to an individual's personal privacy when the required balancing test (subparagraph B) is performed.

Examples of FSA employee and general information that may be withheld under exemption 6 include, but are not limited to the following:

- personal identifying information such as the following:
 - age, place, and date of birth
 - allegations of misconduct or arrests
 - background information that is **not** work-related
 - beeper number
 - driver's license number
- e-mail and home address, including personal P.O. Box number
- home FAX number

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]
(Continued)**

E Examples of FSA Employee and General Information Withheld (Continued)

- home telephone and personal cell number, except if the individual is operating a business from home and/or uses the cell phone number for business
- information about an individual that could be considered derogatory to the individual
- information about or provided by relatives and references
- marital status
- military service number
- mother's maiden name and /or other personal information supplied by an individual as an indentify code for system access
- names of individuals filing first-party Privacy Act or FOIA/Privacy Act requests
- name, when linked to other personal information protected by exemption 6 and not otherwise releasable, as the names of past and present employees
- other names used
- PIN
- political party or union affiliation
- racial and/or ethnic background
- SSN (including the last 4-digits when **only** last 4-digits are present)
- technical education (**not** directly related to the position held by employee or successful applicant) (subparagraph D)
- whether an employer may be contacted about the employee's work record
- work experience (**not** directly related to the qualifications for the position held by employee or successful applicant) (subparagraph D)

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]**
(Continued)

E Examples of FSA Employee and General Information Withheld

- personal medical and financial information, such as the following:
 - bank account number/information
 - medical condition or history records
 - health or drug test results
 - personal credit/debit card numbers and statements
 - personal credit worthiness scores, reports
 - OGE Form 450
- payroll information such as the following; however, **not** total amounts of compensation, as discussed in subparagraph D:
 - fringe benefit payments
 - hourly rate of pay, not valid for Wage Grade employees
 - information about wage garnishment according to alimony orders and child support orders, **except** when requested by State and local Government officials authorized to issue compulsory requests for information
 - medical, dental , life, and long-term care insurance information
 - net wages (gross salary is releasable)
 - number of deductions and amounts of deductions
 - number of withholding exemptions
 - tax information
 - time and attendance records (the amount of accrued sick or annual leave, leave without pay, sick or annual leave used, absent without leave, and other personal information)

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]
(Continued)**

E Examples of FSA Employee and General Information Withheld (Continued)

- personnel-related information, such as the following:
 - amount of veteran's preference (5 or 10 points)
 - availability for employment
 - award justifications based on employee performance (linked to evaluations)
 - employee conduct investigation records and results

Note: Where wrongdoing by high-level Government officials is shown, the result may be different. There may be a public interest that out-weighs the personal privacy interest.

- employee grievance and FSA's response to the grievance; arbitration decision on the grievance (where a particular employee's decision is requested)
- employee EEO complaint and FSA response to complaint; EEO investigative case files

Note: Exemptions 5 and 7(A) may also apply to EEO case files.

- information about whether an individual received an honorable or dishonorable discharge from military service
- job termination reasons and resignation letters
- letters of reprimand and suspension notices
- mailing lists that contain personal information (names, home addresses, and telephone numbers of individuals as opposed to businesses and other organizations) where the release would not shed light on the operations or activities of the Government
- membership in organizations other than organizations related to an employee's profession
- names of dues-paying members of the bargaining unit

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]
(Continued)**

E Examples of FSA Employee and General Information Withheld (Continued)

- performance appraisals, including narrative statements or materials
- personnel hearing information
- personnel matter information about which administrative/disciplinary action may be or was taken
- religious preference; information related to exercising employee's religion, such as religious holiday leave applications
- referral lists of qualified candidates and the roster of applicants for a particular position, **except** for the successful candidate
- results of a complaint by an employee against his/her supervisor (where wrongdoing is shown, the result may be different)
- supervisory evaluation of a candidate for a particular position
- supervisor's notes on an employee's performance
- unsuccessful job applicant identities, qualifications, knowledge, skills, abilities, and personal characteristics
- security and law enforcement official information, such as the following:
 - names of law enforcement personnel, including the Secretary's security detail

Note: Names of senior Government officials, especially senior Government officials that appear in official directories, are generally released.

 - work-related cell and pager numbers of law enforcement personnel.

67 Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)] (Continued)

F Examples of FSA Program Information Withheld

The following information is eligible for protection under exception 6 if:

- there is no public interest qualifying under the standard set forth in *DOJ v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) and *Department of Defense v. Federal Labor Relations Authority*, 62 U.S.L.W. 4143 (February 23, 1994)

Note: To qualify as a public interest, releasing the information itself would have to shed light on FSA's performance of its statutory duties.

- there is a public interest under exemption 6 **and** the public interest in disclosure does **not** outweigh the potential harm to an individual's personal privacy when the required balancing test (subparagraph B) is performed.

Examples of FSA program information that may be withheld under exemption 6 include, but are not limited to the following:

- direct and guaranteed loan/loan application information, including but **not** limited to, the following:
 - details of the loans when connected to the farm loan borrowers

Note: The total amount of the loans, when connected to the names of farm loan borrowers, must be released.
- delinquent loan installments
- farm-stored commodity loans denied because of previous difficulty settling farm-stored loans with a producer
- individual borrower segregated, selective, or discriminate lists that include categorization based on such factors as borrowers having delinquent loans, borrowers receiving servicing letters, borrowers whose names have been submitted to collection agencies, and borrowers facing foreclosure, bankruptcy, or similar proceedings

67 **Exemption 6 - Personal Information Affecting an Individual's Privacy [5 U.S.C. 552(b)(6)]
(Continued)**

F Examples of FSA Program Information Withheld (Continued)

- real estate appraisals prepared for farm loan applicants, borrowers, or for foreclosure proceeding purposes

Note: First party FOIA/Privacy Act requests for real estate appraisals prepared for foreclosure proceeding purposes may **not** be withheld under exemption 6. They should be withheld under the Privacy Act (5 U.S.C. 552a(d)(5)), and FOIA exemption 5, the attorney work-product privilege.

- personal identifying information including, but **not** limited to:
 - all types of personal identifying information listed in subparagraph E about employees and other individuals
 - all types of personal medical and financial information listed in subparagraph E about employees and other individuals, including other types of information more like about agricultural landowners and producers, such as the following:
 - bankruptcy information
 - collection, debt, deposit, and disbursement registers, bank deposit slips, bank statements, canceled and duplicate checks, bank reconciliation statements
 - direct deposit form and/or name of the lending institution where benefits are directly deposited
 - financial transaction history
 - information about an individual or their business operations that could be considered unduly derogatory to the individual
 - tax information

68 Exemption 7 - Records Compiled for Law Enforcement Purposes [5 U.S.C. 552(b)(7(A), 7(B), 7(C), 7(D), 7(E), 7(F))]

A When Exemption 7 Applies

Exemption 7 protects records or information compiled for law enforcement purposes, but **only** to the extent that producing law enforcement records or information could cause 1 of the harms specified in subparagraphs B through H.

To invoke exemption 7, FSA **must** demonstrate that the requested records were compiled for a law enforcement purpose. The law to be enforced within the meaning of the term law enforcement purposes includes civil; for example, there are other civil law enforcement purposes, EEO statutes, as well as statutes authorizing administrative and regulatory proceedings. The records do **not** have to be initially compiled for law enforcement purposes, so long as they are being used for that purpose at the time the response to FOIA request is made.

B Exemption 7(A)

Exemption 7(A) allows withholding law enforcement records or information if producing the law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

Law enforcement proceeding include civil and criminal proceedings. To qualify for exemption 7(A) protection, FSA **must** show that a law enforcement proceeding is pending or prospective and that disclosing the documents could reasonably be expected to cause harm; that is disrupt, impede, delay, or otherwise harm the enforcement proceedings; such as destroy or alter the evidence or intimidate a witness.

Generally, FSA may invoke exemption 7(A) as long as the law enforcement proceeding remains pending or prospective. Once the proceeding is closed, the information can be withheld only if another exemption applies.

FSA may make categorical withholding of documents under exemption 7(A) if FSA can show that releasing particular kinds of documents would generally interfere with enforcement proceedings. If documents do **not** fall under 1 of the categories, then they **must** be released.

Examples: Example categories of information that may be withheld under exemption 7(A) include reports of investigation, witness statements, lab reports, evidence logs, and audit reports where an investigation is involved.

68 **Exemption 7 - Records Compiled for Law Enforcement Purposes [5 U.S.C. 552(b)(7(A), 7(B), 7(C), 7(D), 7(E), 7(F))] (Continued)**

C Exemption 7(B)

Exemption 7(B):

- allows withholding law enforcement records or information if producing the law enforcement records or information would deprive a person of a right to a fair or an impartial adjudication
- is aimed at preventing prejudicial pretrial publicity that could impair court proceedings.

Although exemption 7(B) is rarely used, it could be used when a trial or adjudication is pending or imminent, and when it is more probable than **not** that disclosing the material sought would seriously interfere with court proceeding fairness.

Note: Exemption 7(B) has been used to withhold privileged documents under the discovery rules.

68 Exemption 7 - Records Compiled for Law Enforcement Purposes [5 U.S.C. 552(b)(7(A), 7(B), 7(C), 7(D), 7(E), 7(F))] (Continued)**D Exemption 7(C)**

Exemption 7(C) allows withholding law enforcement records or information if producing the law enforcement records or information could be expected to constitute an unwarranted invasion of personal privacy.

As with exemption 6, exemption 7(C) requires identifying and balancing the relevant privacy and public interests to determine whether disclosing certain law enforcement information could cause an unwarranted invasion of personal privacy (subparagraph 67 B). Under exemption 7(C), FSA may determine that a certain type of information may be protected always (a categorical withholding) regardless of the individual circumstances.

Under exemption 7(C), the names and addresses of private individuals appearing in law enforcement files may be categorically withheld unless access is necessary to confirm or reject evidence that FSA is involved in an illegal activity.

Individuals involved in a criminal investigation, including suspects, witnesses, interviewees, middle and low-ranking law enforcement officers investigators, and other individuals named in investigatory files possess privacy interests under exemption 7(C), in **not** having their names revealed in connection with an investigation because disclosure may result in embarrassment or harassment. The names of supervisory law enforcement officers are normally released.

FSA may continue to invoke exemption 7(C) even if the information is compiled into a nonlaw enforcement file at a later date if the non-law enforcement file essentially reproduces and is substantially the equivalent of all or part of an earlier record made for law enforcement purposes.

Examples: Examples of information that may be withheld under exemption 7(C) include names of low to mid-level special agents and law enforcement personnel, informants, witnesses, interviewees, and suspects.

Note: Names of low to mid-level special agents and law enforcement personnel, informants, witnesses, interviewees, and suspects may also be withheld under exemption 6.

68 **Exemption 7 - Records Compiled for Law Enforcement Purposes [5 U.S.C. 552(b)(7(A), 7(B), 7(C), 7(D), 7(E), 7(F))] (Continued)**

E Exemption 7(D)

Exemption 7(D) allows withholding law enforcement records or information if producing the law enforcement records or information could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, any private institution that 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 FSA conducting a lawful national security intelligence investigation, information furnished by a confidential source.

The identity of a source is protected whenever he/she has provided information under either an express promise of confidentiality or circumstances where such assurance could reasonably be implied. In considering whether to invoke exemption 7(D), consider whether the information was furnished by a confidential source during the course of a legitimate law enforcement investigation.

Not all sources furnishing information in the course of criminal investigations are entitled to a “presumption of confidentiality.” Source confidentiality **must** be determined on a case-by-case basis. Two factors should be applied in deciding whether implied confidentiality exists; the nature of the crime and the source’s relation to the crime. A key consideration is the potential for retaliation, reprisal, or harassment against the source that provided the information.

Under exemption 7(D), there is **no** balancing. If the source was confidential, the exemption may be invoked regardless of the public interest in disclosure. The nature of the information is **not** considered. The question is **not** whether the requested document is of the type that FSA usually treats as confidential, but whether the source spoke under an express or implied promise that the communication would remain confidential.

Exemption 7(D) may be used regardless of the fact that an investigation has been closed. The source’s protection **cannot** be lost through the passage of time or the death of the source.

Examples: Examples of information withheld under exemption 7(D) include any information that might identify a confidential source, such as interviews, affidavits, or another witness’ reference to the source.

68 **Exemption 7 - Records Compiled for Law Enforcement Purposes [5 U.S.C. 552(b)(7(A), 7(B), 7(C), 7(D), 7(E), 7(F))] (Continued)**

F Exemption 7(E)

Exemption 7(E) allows withholding law enforcement records or information if producing the law enforcement records or information would disclose either of the following.

Clause	Description
1	Techniques and procedures for law enforcement investigations or prosecutions. Under exemption 7(E)'s first clause, FSA does not have to show that a particular harm would be caused by releasing the information. Information may receive categorical protection. Note: Techniques and procedures may be withheld even if they are known to the public, if disclosure could lessen their effectiveness.
2	Guidelines for law enforcement investigations or prosecutions, if disclosing the guidelines could reasonably be expected to risk circumvention of the law. Under exemption 7(E)'s second clause, FSA has to show that harm would be caused by releasing the information. FSA can only withhold guideline portions that would cause harm.

Examples: Examples of materials the courts have found to be properly withheld under exemption 7(E) include certain portions of manuals maintained by FSA Inspector General, information on interviewing techniques, and conducting surveillances and investigations.

68 Exemption 7 - Records Compiled for Law Enforcement Purposes [5 U.S.C. 552(b)(7(A), 7(B), 7(C), 7(D), 7(E), 7(F))] (Continued)

G Exemption 7(F)

Exemption 7(F) allows withholding law enforcement records or information if producing the law enforcement records or information could reasonably be expected to endanger the life or physical safety of any individual.

To withhold the names of individuals in law enforcement files or other information under exemption 7(F), FSA **must** show that there is a concern for the safety of people; that is releasing the information could result in physical attacks, threats, risks to physical safety, or harassment.

Exemption 7(F) is applicable even after a law enforcement officer has retired or after an individual has testified at trial.

FSA is **not** required to balance the public/s interest in disclosure against the individual's personal privacy interest like exemptions 6 and 7(C).

Examples: Examples of material covered under exemption 7(F) include names and other identifying information about law enforcement personnel, including the Secretary's security detail, names of private security contractors operating in concert with U.S. military forces in Iraq, and critical infrastructure/sensitive information related to America's Homeland Security; such as inundation maps, if disclosure could reasonably be expected to jeopardize national security or endanger the life or physical safety of citizens.

68 Exemption 7 - Records Compiled for Law Enforcement Purposes [5 U.S.C. 552(b)(7(A), 7(B), 7(C), 7(D), 7(E), 7(F))] (Continued)**H Law Enforcement Exclusions**

Under certain circumstances, records about pending investigations and informants may be considered to be outside the FOIA scope. There are 3 law enforcement exclusions that expressly authorize Federal law enforcement agencies to treat the records as **not** subject to the requirements of FOIA. These exclusions were designed to address exceptionally sensitive situations in which even providing a Glomar response would be inadequate to the task. A more detailed explanation of when these exclusions apply can be found in DOJ FOIA Guide available at www.usdoj.gov/oip/foia_guide07.htm. FSA should consult the Office of Special Counsel **before** considering relying on 1 of the 2 law enforcement exclusions available to agencies, other than FBI, to treat records as **not** subject to FOIA.

Note: The third exclusion applies expressly to records maintained by FBI.

69 Exemption 8 - Records of Financial Institutions [5 U.S.C. 552(b)(8)]**A When Exemption 8 Applies**

Exemption 8 covers matters that are 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, such as the Federal Reserve Boards or the Office of the Comptroller of the Currency. It generally does **not** apply to records in FSA's possession.

B Examples of Information Withheld

Exemption 8 has been invoked to protect bank examination reports; such as reports evaluating a bank's stability, financial condition, operations, and reports examining a bank's compliance with consumer laws and regulations.

70 Exemption 9 - Geological and Geophysical Information Concerning Wells
[5 U.S.C. 552(b)(9)]

A When Exemption 9 Applies

Exemption 9 pertains to geological and geophysical information and data, including maps, concerning wells.

B Examples of Information Withheld

Exemption 9 applies to wells, broadly, including oil, natural gas, and water wells. It has been invoked to withhold well logs and maps, seismic reports, and other exploratory oil company findings. Although it has rarely been invoked by FSA, it is reasonable to assume that it may be invoked to protect water and irrigation wells in compelling circumstances; such as when exemption 9 protection is necessary to guard against a Homeland Security attack on pooled natural resources intended to cause harm to the public.

71 When FSA May Lose the Right to Invoke an Exemption**A Right to Invoke Exemptions**

Depending on release circumstances, FSA may lose the right to invoke an exemption even when it is otherwise warranted, if the information has been disclosed previously; that is, shared with parties outside the Federal Government.

B Right Not Waived

However, FSA has **not** waived its right to invoke an otherwise applicable exemption in the following circumstances:

- when records are circulated within FSA, between FSA and another Federal agency, or when material is disclosed to Congress
- depending on the facts, when FSA **must** release a document under limited and controlled conditions; such as releasing documents under a protective order in an administrative proceeding
- where prior disclosure was unauthorized or unlawful; that is a leak
- where disclosure is in furtherance of a legitimate Government purpose.

72 Discretionary Releases

A Permitted Discretionary Releases

USDA regulations permit FSA to make discretionary releases of records otherwise exempt from disclosure, according to 1 of the 9 FOIA exemptions, when the discretionary release is **not** otherwise specifically prohibited by Executive Order, statute, common law, or regulation.

Notes: Disclosing information that is protected under exemptions 1, 3, 4, 6, 8, and 9 will in most instances be **restricted** from discretionary release by a statute or Executive Order. Such documents are **not** subject to discretionary release.

Documents covered by exemptions 2 and 5 (deliberative process privilege) may be considered for discretionary releases. Discretionary releases of materials protected by these exemptions may be made without consulting FSA FOIA Officer.

Legally, it is possible to consider documents covered by exemption 5 (attorney-client privilege, attorney work-product privilege, and Government commercial information privilege), 7(A), 7(B), 7(C), 7(D), 7(E), and 7(F) for discretionary releases. However, only in extremely rare cases should such information ever be subject to discretionary release. FOIA processors considering discretionarily releasing such information should obtain FSA FOIA Officer concurrence before making discretionary releases of information protect by these exemptions.

B FOIA Processor Action

If an FSA office determines that making a discretionary release is appropriate and is consistent with FSA and USDA policy, FOIA processors will follow the guidance in subparagraph 26 E that includes the following:

- notifying the requester, in writing, the requested information is exempt from disclosure, under FOIA, but that FSA decided to exercise its discretion to release the information
- documenting, in writing, the rationale for making the discretionary release, and including in this document, a statement identifying the FSA official responsible for the discretionary release, and a signed and dated statement from this official, certifying that such a release is **not** prohibited by Executive Order, statute, common law, or regulation, and retain the discretionary release statement, as described in subparagraph 26 E, in the official case file for the request.

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

This table lists the required reports in this handbook.

Report Control Number	Title	Reporting Period	Submission Date	Negative Report	Reference
FSA-538 (RPT I 00 INFO 09-1)	Annual Freedom of Information Act Report	Annually	Counties by October 15; State and National Offices, APFO, KCCO, and KCFO by October 30	Yes	6
	FOIA Report to Congress	Annually	December 31	Yes	6

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
FSA-538	Annual Freedom of Information Act Report		6, 11
OGE Form 450	Confidential Financial Disclosure Report		67
SF-50	Notification of Personnel Action		67
SF-52	Request for Personnel Action		67

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
FOIA-CAP	FOIA Capture System	6, 11, 21, 22, 27, 29, Ex. 2
KC	Kansas City	3, 21, 27, 61
NARA	National Archives and Records Administration	12, 24
OGE	Office of Government Ethics	67
PIN	personal identification number	67
SORN	System of Records Notice	4, Ex. 2

Redelegations of Authority

None.

Definitions of Terms Used in This Handbook

Acknowledgement Letters

Acknowledgement letters mean written communications acknowledging receiving valid FOIA requests. Acknowledgement letters generally constitute FSA's first formal communications with FOIA requesters. As appropriate, acknowledgement letters will include requests for FOIA request scope clarification, written FOIA fee payment assurance, FOIA fee advance payment, and responses to requests for expedited processing and FOIA fee waivers. Whenever possible, acknowledgement letters should be issued within 3 workdays of receiving a valid FOIA request.

Appeal

Appeal means a written challenge by a FOIA requester to FOIA response sufficiency when permissible; such as when:

- records or parts of records have been withheld
- FSA informs the requester that it does not possess responsive records, and the requester questions the adequacy of FSA's search
- a request for a FOIA fee waiver has been denied
- a request for expedited processing has been denied or not responded to on time
- a decision was not made on a request within the statutory time limits and FSA's processing of the request has not been completed
- a requester believes that there is a procedural deficiency about the processing of his/her request; such as fees are improperly calculated.

Definitions of Terms Used in This Handbook (Continued)

Commercial Interest

Commercial interest means an interest that furthers a commercial, trade, or profit interest as those terms are commonly understood.

Commercial-Use Request

Commercial-use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester falls into this category, FSA will consider the identity of the requester and the record's intended use in addition to any other available information about the requester.

Complex Request

Complex request means a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of the records requested. Within FSA, records that **cannot** be processed within 20 workdays are placed in the complex track.

Consultation Request

Consultation request means a record referral request in which FSA is asked only to provide recommendations for releasing FSA's records to another Federal agency, rather than providing copies of any releasable records directly to the requester.

Definitions of Terms Used in This Handbook (Continued)

Delinquent FOIA Requester

Delinquent FOIA requester means a FOIA requester who has not paid FOIA fees for which he/she has been charged, and whose payment is officially overdue by at least 30 calendar days.

Denied

Denied means FSA decided the records were not to be released in response to a FOIA request because all the information in the requested records was determined by FSA to be exempt under 1 or more FOIA exemptions or because of a procedural reason; such as no responsive records were located.

Duplication

Duplication means making a copy of a record, or the information contained in it, to respond to a FOIA request. Copies can be paper, microform, photographs, audiovisual materials, or electronic records; such as magnetic tape or disk.

Educational Institution

Educational institution means a preschool, public or private elementary or secondary school, an undergraduate higher education institution, graduate higher education institution, professional education institution, or vocational education institution that operates a scholarly research program. To be in this category, a requester **must** show that the request is authorized by, and is made under, the auspices of a qualifying institution and that the records are not sought for a commercial-use, but are sought to further scholarly research.

Expedited Processing

Expedited processing means giving FOIA requests priority, and processing them ahead of other non-expedited, pending requests when the requester has shown a compelling need for specific records. A compelling need is a threat to life or physical safety of an individual or, in the case of the media, urgency to inform the public about actual or alleged Federal Government activity.

Definitions of Terms Used in This Handbook (Continued)**First-In, First-Out**

First-in, first-out means that, within each separate processing track, FSA will respond to FOIA requests in the order in which they are received. This does not mean that no work will commence on a later request before the earlier request has been processed in its entirety. All requests should be validated and logged on the date on which they are received, and acknowledged within 3 workdays of receipt, if at all possible. It does mean that if substantive work remains to be done and can be done on an earlier request in the same processing track, it shall be done before substantive work is done on a later request in that same track.

FOIA-CAP

FOIA-CAP means the electronic system used to log and track FOIA requests received by FSA's State and County Offices, and to generate the annual FOIA report to Congress.

FOIA Processors

FOIA processors mean FOIA Officers and staff in National FOIA Offices, State FOIA/Privacy Act coordinators, and designated FOIA coordinators along with their CED's and FLM's in County Offices.

FOIA Request

FOIA request means any written request, including requests filed by FAX, e-mail, and electronic web site, made by any member of the public for FSA records on any subject. FSA does not accept verbal requests for FSA records received over the telephone or in person; such as a requester walking into an FSA County Office. Individuals making verbal requests for FSA records should be asked to document the requests in writing.

Free-Lance Journalist

Free-lance journalist means a representative of the news media who is able to demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by the news organization. A publication contract, past publication record, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

Frequently Requested Document

Frequently requested document means documents as follows:

- that have been requested at least 3 times under FOIA
- that FSA anticipates would likely be the subject of 3 or more requests.

Definitions of Terms Used in This Handbook (Continued)**Glomar Response**

Glomar response means a final FSA response to a FOIA or FOIA/Privacy request indicating that FSA will neither confirm nor deny responsive record existence. Glomar response is generally used in national security and law enforcement contexts when a request is worded in such a way that even acknowledging the existence or non-existence of records in FSA files would reveal information that a FOIA exemption seeks to protect.

Granted

Granted means FSA decided the records were to be released in-full in response to a FOIA request.

Granted In-Part

Granted in-part means FSA decided the records were to be withheld in-part in response to a FOIA request.

Multi-Track Processing

Multi-track processing means placing simple requests, requiring relatively minimal effort to respond, in 1 processing track and more voluminous and complex requests in another track. FSA uses a 4-track system: expedited, simple, normal, and complex. Requests in each track are processed on a first-in, first-out, basis.

Definitions of Terms Used in This Handbook (Continued)**News**

News means information that is about current events or that is, or would be, of current interest to the public.

Noncommercial Scientific Institution

Noncommercial scientific institution means an institution that is not operated for commerce, trade, or profit, and that is operated solely for conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in the educational/scientific institution-use category, requesters **must** show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial-use, but are sought to further scientific research.

Nonpublic Records

Nonpublic record means any record that **cannot** be released to the public in-part or in-full because the record is protected by 1 or more of the 9 exemptions.

Normal Request

Normal request means a FOIA request that is neither especially simple nor especially complex. Within FSA, records that can be processed within 5-20 workdays are placed in the normal track.

Definitions of Terms Used in This Handbook (Continued)

Partial Grant

Partial grant means FSA's decision to disclose part of a record in response to a FOIA request, deleting information determined **exempt** under 1 or more FOIA exemptions, or a decision to disclose some records in their entirety, but withhold others in whole or in-part.

Perfected Request

Perfected request means a FOIA request for records that has been received by FSA's FOIA Office that possesses the records, adequately describes the records sought, and for which there is no remaining question about the payment of applicable FOIA fees.

Public Record

Public record means any record that can be released to the public because the record is not protected by 1 or more of the 9 exemptions, including redacted records.

Privacy Act Request

Privacy Act request means a written request with an original signature made by an individual for information about him or herself that is contained in a Privacy Act System of Records. Only U.S. citizens, and aliens lawfully admitted for permanent residence, are authorized to make Privacy Act requests.

Note: Third-party requests for information on individuals contained in a Privacy Act System of Records that can be granted because the individuals to whom the information pertains have granted consent to the specific disclosures are not Privacy Act requests. They are FOIA requests.

Producer

Producer, for the purposes of FOIA, means an FSA program participant according to FSA's master name and address file.

Note: Producers include individuals and non-individuals (entities), and can be the farm operator, landowner, or other producer on a farm.

Definitions of Terms Used in This Handbook (Continued)

Reading Room Materials

Reading room materials mean records in any format that are **required** to be made available to the public under 5 U.S.C.(a)(2)m and other records that FSA, at its discretion, makes available to the public for inspection and copying **without** requiring a FOIA request filing.

Referring FOIA Requests

Referring FOIA requests means formally assigning FOIA requests for FSA records to another Federal agency for processing. Because referring FOIA requests for processing to another Federal agency for processing may obligate FSA to ensure that the agency to which the request was referred does, in fact, process the request that was referred, FSA will not formally refer FOIA requests either to other Federal agencies, for response. **Instead**, as appropriate, FSA will advise requesters, when it is reasonable to believe that the records requested are maintained by another Federal agency, where the requester might write to request these records from the agency believed to be maintaining them; providing the requester with appropriate contact information for this agency whenever possible.

Representative of the News Media

Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public (see definition of news).

Examples: Examples of news media entities include, but are not limited to, newspapers, television or radio stations broadcasting to the public at large, and publishers of periodicals, but only in instances when representative of the news media can qualify as disseminators of “news”, who make their products available for purchase or subscription by the general public. To be in this category, a requester **must** not be seeking the records for a commercial-use.

Requester

Requester means any individual who has asked, in writing, to see or receive a copy of FSA records, including foreign citizens, partnerships, corporations, associations, and foreign, State, local, or tribal Governments. Federal Government agencies and fugitives from justice are not eligible to file FOIA requests.

Retention Date of a FOIA Request Case File

Retention date of a FOIA request case file means the date when the official FSA Federal records within the file may be destroyed, under the Federal Records Act.

Definitions of Terms Used in This Handbook (Continued)

Review Services

Review services mean the services of FSA personnel (clerical or professional) used in examining records, both paper and electronic, located in response to a request to determine whether any portion of any record located is **exempt** from mandatory disclosure. Review services include processing responsive records for disclosure; such as doing all that is necessary to redact **exempt** portions and otherwise prepare records for release. Review services do not include the time spent resolving general legal or policy issues about applying FOIA exemptions. **Only** commercial-use requesters are charged for review services.

Routing FOIA Requests

Routing FOIA requests means sending within 1 or 2 workdays of receipt, preferably by e-mail or by the most expeditious manner possible, a FOIA request received at 1 FSA office asking for copies of FSA records maintained at another FSA office or USDA agency, for processing and response.

Notes: Whenever FOIA requests are routed to another FSA office or USDA agency for processing and response, the receiving FSA office will notify the requester that the request has been routed to the proper office for processing, and provide the requester with appropriate contact information for this office.

FOIA requests should **only** be routed to another FSA office or USDA agency when it is reasonably certain of the following:

- for FSA offices authorized to process FOIA requests, that the office to which the request has been forwarded maintains the requested records
- for USDA agencies authorized to process FOIA requests, that the agency to which the request has been forwarded maintains the requested records.

Definitions of Terms Used in This Handbook (Continued)

Search Services

Search services mean the services of FSA personnel (clerical or professional) used in locating and retrieving FSA records and information responsive to a FOIA request. Search services include both manual and electronic searches, time spent examining records to find information that is within the scope of the request, and services to transport personnel to record storage locations or records to personnel locations to search records, if such services are reasonably necessary.

Simple Request

Simple request means a FOIA request that FSA places in a faster track based on the volume and/or complexity of the records requested. Within FSA, records that can be processed within 5 workdays or less are placed in the simple track.

SSN

SSN means a 9-digit number issued to citizens, permanent residents, and temporary (working) residents under Social Security Act, section 205(c)(2), codified as 42 U.S.C. 405(c)(2). SSN is issued to an individual by the Social Security Administration. SSN's purpose is to track individuals for taxation purposes. In recent years SSN has become a *de facto* national identification number. SSN is classified as "core PII" in FSA. FSA recognizes **no** difference in the need to protect the full 9-digit SSN from inappropriate release to parties not authorized access, and the abbreviated, 4-digit version (last 4-digits of SSN) now used on some forms to identify individuals. Any and **all** portions of SSN **must** be redacted whenever they appear on documents released to third parties pursuant to exemption 6, or to individuals within FSA without a "need to know".

Submitter

Submitter means any person or entity outside the Federal Government from whom FSA directly or indirectly obtains commercial or financial information. Submitter includes, but is not limited to, individuals, corporations, and State, local, tribal, and foreign Governments. Submitter does not include the Federal Government.

System of Records Notice (SORN)

SORN means a grouping of records containing personal information about individuals, under FSA control, from which information is retrieved by the name of the individual or by some other identifying particular assigned to the individual for which a notice has been published in FR. A copy of all notices for FSA SORN's is included in 3-INFO.

Definitions of Terms Used in This Handbook (Continued)**Timely Manner**

Timely manner means 20 workdays.

Trade Secret

Trade secret means a secret, commercially valuable plan, formula, process, or device used to make, prepare, compound, or process a commodity, and that can be said to be the end product of either innovation or substantial effort. The definition of trade secret **requires** that there be a direct relationship between the trade secret and the productive process.

Vaughn Index

Vaughn index means a detailed affidavit that identifies each document withheld in a Partial Grant or total Denial, providing the exemption claimed and explaining how disclosure would damage the interest protected by the claimed exemption. FOIA requesters have **no** right to expect to receive either a Vaughn index or a document list, detailing documents withheld, when a FOIA request is processed (subparagraph 25 D).

Workday

Workday means a regular Federal workday. It does not include Saturdays, Sundays, Federal legal holidays, or any days on which FSA offices are closed because of weather conditions, natural disasters, or other emergency situations.

Summary Table of Time Limits for Processing FOIA Requests—Basic Process

The following table provides actions, time limits, and statutory or FSA deadlines as a reference **only**.

Action	Time Limit	Statutory or FSA Deadline
Log receiving request.	Workday 0	FSA
Acknowledge request.	Workday 3	FSA
Respond to request for expedited processing.	Calendar Day 10	Statutory
Forward request to proper FSA office for response.	Workday Day 10	Statutory
Last day to take time extension.	Workday 20	Statutory
Respond to request without time extension.	Workday 20	Statutory
Close request if fee assurance or scope clarification not received.	Workday 21 following letter requesting fee assurance or scope clarification	FSA
Provide responsive records if not provided with response letter.	As soon as practicable after date of final response letter.	FSA
Respond to request with time extension.	Workday 30	Statutory
Interest on unpaid FOIA fees begins to accrue.	Calendar Day 31	FSA Note: USDA fee regulations in effect.

The following table provides additional time limits for processing FOIA requests for confidential commercial and financial information potentially protected by exemption 4.

Action	Timeframe	DOJ Requirement or FSA Deadline
Provide submitter of information opportunity to provide views on information protected by exemption 4.	10 Workdays	FSA
Provide submitter of information an opportunity to file suit in District Court before releasing the information over its objections (“notification”).	10 Workdays	DOJ
Release requested records over submitter’s objections if not blocked by “reverse FOIA” lawsuit.	Workday 11 after “notification” receipt.	DOJ
Provide submitter notice that the requester has filed suit in District Court to compel release of the records withheld under exemption 4.	10 Workdays	DOJ

Summary of Steps for FOIA Request Responses

The following table is a summary of steps to be taken when responding to FOIA requests that shall be used as a reference **only**.

Step	Action
1	Know FSA's FOIA policies, procedures, and regulations and apply them fairly.
2	Read the request. • Is it a request for records? Questions can be considered a request for records when FSA possesses records that contain answers to these questions. • Disregard labels; such as "Under the provisions of the Privacy Act, I want a copy of John Doe's records". Don't be misled about which act applies. A third party request for an individual's record should be processed under FOIA, taking into account the Privacy Act.
3	Read the request again. • Does it ask for records that are under the control of the FOIA processor's office; records that another FSA office maintains; or another USDA or Federal agency maintains? Should the FOIA processor process it here, or forward it to another FSA office; or notify the requester that another USDA or Federal agency is likely to be in possession of any records on this topic? • Does it reasonably describe the records sought; that is, does the FOIA processor know what the requester wants? Does the FOIA processor know who to contact to obtain the records? • How broadly or narrowly should the FOIA processor interpret the request? • Would discussion with the requester help to define, clarify, or narrow the scope of the request?

Summary of Steps for FOIA Request Responses (Continued)

Step	Action
4	Resolve questions about fees with the requester. Fee issues should be resolved before the FOIA processor starts searching for responsive records. - Has the requester indicated a willingness to pay the cost of searching for, reviewing (this applies only to commercial-use requesters), and copying the records? If not, advise the requester of the estimate fees associated with processing the request (itemize the estimated costs). Notify the requester that the time limits for processing the request will not begin until written fee assurance is received. - Has the requester asked for a fee waiver? Does he/she qualify for a fee waiver? Is it likely that the cost of processing the request in question will necessitate making a formal decision on the request for a fee waiver, or will the requester's entitlements under his/her fee category, combined with the fact that FSA does not charge requesters when chargeable FOIA fees do not exceed \$25 render the need to make this decision moot? If a fee waiver decision must be made, and the fee waiver request is denied, notify the requester of the procedures and time limits for appealing this decision, and advise him/her of the estimated cost of processing the request and that the time limits for processing the request will not begin until written assurance of fee payment is received. - Are the chargeable fees to process the request likely to be less than or equal to \$25? FSA does not charge the requester when FOIA fees do not exceed \$25.
5	Decide whether expedited processing is appropriate, if requested. Has the requester asked for expedited processing of his/her request and provided adequate justification (including the required certification statement) to qualify for it? If expedited processing is denied, notify the requester of the basis for the denial and the procedures and time limits for appealing the denial of expedited processing.
6	Acknowledge the request, if the FOIA processor has not already acknowledged the request. The FOIA processor may include a request for clarification of the scope of the request and a request for written assurance of fee payment in the acknowledgement letter. The FOIA processor may also address a request for expedited processing in the acknowledgement letter. However, the FOIA processor should not provide a FOIA fee estimate for a request whose scope is not yet sufficiently clear in this letter; if the FOIA processor cannot determine which records are being sought, how can the FOIA processor estimate the cost of locating the records?

Summary of Steps for FOIA Request Responses (Continued)

Step	Action
7	Identify and locate the records requested. • Do the records exist? Are they personal or FSA records? • Are the records in FSA's possession and control? • Should another agency be consulted in their review for release? • Was our search for the records adequate and sufficient to ensure that all records within the scope of the request were identified and located?
8	Decide whether a 10-workday time extension is appropriate to properly process the request. If so, take it.
9	Review the records for release to the requester. • Duplicate the records so that the FOIA processor has a working copy in the file. • Are there exempt records or portions of records? • Does the FOIA processor want to make a discretionary release of exempt information where such a release is allowed? Has the FOIA processor carefully considered the institutional (the Government), commercial (business entities) and personal privacy (individuals) interests that might be impacted by disclosure?
10	Prepare the records for disclosure/non-disclosure, segregating exempt records or portions of records from non-exempt records or portions of records. • Redact (delete) any exempt information. Indicate in the area of the deletion the exemption used to withhold the information or if all deletions on a document are covered by 1 or more exemptions, annotate them on the document. • Duplicate the documents. Make 1 readable redacted copy to be released and 1 readable unredacted copy with brackets showing where redacted portions begin and end to be retained for file purposes in case of appeal or litigation.

Summary of Steps for FOIA Request Responses (Continued)

Step	Action
11	Prepare the response letter to the requester. • Enclose the records, or notify the requester when and where the records will be available for inspection or release. • Include the total number of pages located, released in-full, released in-part, or withheld in-full, explaining the reasons for the denial and citing the applicable exemptions authorizing their withholding, if applicable. • Provide the procedures and time limits for appealing the denial of any portions of the records withheld. • Include a FOIA fees statement, itemizing the cost of processing the request within FSA, and indicating the fee chargeable to the requester for the processing of the request. Provide instructions for payment.
12	Issue the response, enclosing the records to be disclosed, if appropriate. • Maintain 1 copy of the response, including a complete copy of the records released, in the request's case file. • Maintain a copy of the withheld records in the request's case file in the event of an appeal or litigation. • Process payment received, as appropriate, according to local instructions as to how such payments should be handled. State and County Offices shall follow 3-FI.
13	Close and file the case file for the request.

Note: Always, when working on a FOIA request, assume that it may result in litigation. Keep good records, including a telephone or written log of all communications not otherwise documented in writing. Communicate with the requester; keep him/her advised of the status of the request.

Example Acknowledgement Letters

A Perfected Request Letter

Use the following basic acknowledgement letter, if the request was perfected when received. Add, as attachments, a copy of the request letter and Exhibit 29.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, to the United States Department of Agriculture (USDA), Farm Service Agency (FSA). FSA received a copy of your request on [month, day, year] _____ and assigned it control number _____. Please reference this number in any future communication with our office about your request.

FSA processes FOIA/PA requests on "first-in, first-out" basis. The actual processing time will depend on the complexity of the request and whether or not it involves sensitive or voluminous records, or extensive searches and/or consultations. FSA also processes FOIA/PA requests on a multi-track basis. This means that simple requests, requiring minimal efforts to respond (1-5 workdays), are processed in one track, normal requests requiring more time to respond (6-20 workdays) are processed in another track, and complex requests involving voluminous records, extensive searches or consultations (requiring more than 20 workdays to respond) are processed in yet another track. We have placed your request in the [choose 1: simple / normal / complex] track.

We have classified your request as a [choose 1: commercial-use / media-use / educational non-commercial scientific-use / other-use] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees.

If you have any questions about the status of your request, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachments

Example Acknowledgement Letters (Continued)

B When Requester Has Not Agreed to Pay FOIA Fees for \$250 or Less

Use the basic acknowledgement letter in subparagraph A, adding the following text after the standard fee paragraph, when requester has not agreed to pay FOIA fees, it is likely that they will be charged given the scope of the request, and the estimated cost of processing the request is \$250 or less. Estimate the full chargeable cost of processing the request and insert the amount in the following additional paragraph **after** the standard fee paragraph.

We have classified your request as a [*choose 1: commercial-use / media-use / educational non-commercial scientific-use / other-use*] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees.

Our best estimate of the cost of processing your request is _____. This estimate is based on [*choose 1, as applicable: search service calculations, duplication, review service calculation*]. In your request letter, you do not provide us with written assurance of your willingness to pay this amount. Consequently, we are not able to begin processing your request at this time. If you are still interested in having us process your request, please send us written confirmation of your willingness to pay this amount. Alternatively, you may reduce the amount of your FOIA fee by reducing the scope of your request. Please note that if we do not hear from you within 20 workdays from the date of this letter, we will assume that you are no longer interested in pursuing your request, and we will close our files on the request.

Example Acknowledgement Letters (Continued)

C When Requester Has Not Agreed to Pay FOIA Fees for \$250 or Less, Has Requested A Waiver, But Does Not Qualify

Use the basic acknowledgement letter in subparagraph A, adding the following text after the standard fee paragraph, when requester has not agreed to pay FOIA fees, it is likely that they will be charged given the scope of the request, and the estimated cost of processing the request is \$250 or less, but the requester has asked for a waiver of **all** applicable FOIA fees and he/she does not qualify for such a waiver. Estimate the full chargeable cost of processing the request, insert the amount in the following paragraph, and the FOIA fee waiver denial analysis in Exhibit 15.

We have classified your request as a [choose 1: *commercial-use / media-use / educational non-commercial scientific-use / other-use*] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees.

Our best estimate of the cost of processing your request is _____. This estimate is based on [choose 1, as applicable: *search service calculations, duplication, review service calculation*]. In your request letter, you do not provide us with written assurance of your willingness to pay this amount. Instead, you ask that we waive all applicable FOIA fees.

U.S. Department of Agriculture regulations state that “[a]gencies shall waive or reduce fees if disclosing the requested records is deemed to be in the public interest. A request is in the public interest if it is likely to contribute significantly to public understanding of the operations and activities of the Government, and it is not primarily in the commercial interest of the requester”. (7 CFR, Appendix A, to Subpart A, (a)). However, your request does not contain sufficient evidence to support these criteria.

FSA considers the following factors when determining if disclosing information is likely to contribute significantly to public understanding of the operations or activities of the Government:

- a) Does the record concern the operations or activities of the Government?
- b) 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? Is the focus of the requester on contribution to public understanding of the operations or activities of the Government?
- c) 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 public oversight of FSA operations, including the quality of FSA activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of FSA.
- (d) Is disclosing the responsive records primarily in the commercial interest of the requester?

You state that you are requesting a waiver of all FOIA processing fees because [provide reason as stated by requester] _____

_____.

Example Acknowledgement Letters (Continued)

C When Requester Has Not Agreed to Pay FOIA Fees, Has Requested A Waiver, But Does Not Qualify (Continued)

However, an analysis of the above four (4) factors does not support your position. With respect to these:

[List each question, in turn, and provide an analysis of whether or not the request meets each of the applicable factors, in turn. Generally, you can stop the analysis at the point where the request fails to meet a factor, stating; for example, when the analysis fails to meet factor b.]: Because you have not demonstrated, to our satisfaction, that your focus in asking for copies of these records is in making a contribution to the understanding of the general public, there is no further need to determine if this contribution would be significant, or if the public interest in disclosure is greater than any commercial interest you might have in the documents. *[If an analysis of all 4 factors is much stronger than an analysis of only the first factor that was not met, and the requester is likely to appeal the fee waiver denial decision, it is preferable to perform the entire analysis.]*

Therefore, your request for a fee waiver is denied.

If you believe the determination to deny your request for a fee waiver is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of how disclosure of the information to you is likely to contribute significantly to public understanding of the operations or activities of the Government and the reason disclosure would not be primarily in your commercial interest. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal". Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

Under the circumstances, we are not able to begin processing your request at this time. If you are still interested in having us process your request, please send us written confirmation of your willingness to pay the estimated cost of processing your request. Alternatively, you may reduce the amount of your FOIA fee by reducing the scope of your request. Please note that if we do not hear from you within 20 workdays from the date of this letter, we will assume that you are no longer interested in pursuing your request, and we will close our files on the request.

Example Acknowledgement Letters (Continued)

D When Requester Has Not Agreed to Pay FOIA Fees for More Than \$250

Use the basic acknowledgement letter in subparagraph A, adding the following text after the standard fee paragraph, when requester has not agreed to pay FOIA fees, it is likely that they will be charged given the scope of the request, and the estimated cost of processing the request is more than \$250. Estimate the full chargeable cost of processing the request, insert the amount in the following first data blank, and 50 percent of the amount in the second data blank.

We have classified your request as a [choose 1: commercial-use / media-use / educational non-commercial scientific-use / other-use] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees.

Our best estimate of the cost of processing your request is _____. This estimate is based on [choose 1, as applicable: search service calculations, duplication, review service calculation]. In your request letter, you do not provide us with written assurance of your willingness to pay this amount. Additionally, because this amount exceeds \$250, we must receive advance payment of at least 50% of the cost of processing your request before we are authorized to begin its processing, as per 7 CFR, Appendix A, to Subpart A, 8(c). Consequently, if you are still interested in having us process your request, please send us a check, draft or money order payable to the **Treasury of the United States** for [50% of the estimated cost of processing the request] _____. Alternatively, you may reduce the amount of your FOIA fee by reducing the scope of your request. Please note that if we do not hear from you within 20 workdays from the date of this letter, we will assume that you are no longer interested in pursuing your request, and we will close our files on the request.

E When Requester Has Outstanding FOIA Fees

Use the basic acknowledgement letter in subparagraph A, adding the following text after the standard fee paragraph, when requester has outstanding FOIA fees from a previous request that have not been paid in the time required, insert the control number of the prior request in the following first data blank, and the name of the applicable FSA office in the second data blank.

We have classified your request as a [choose 1: commercial-use / media-use / educational non-commercial scientific-use / other-use] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees.

However, according to our records, you have not yet paid FOIA fees incurred in processing your previous request: [insert control number] _____, filed with [insert name of applicable FSA office] _____. Under our regulations at 7 CFR, Appendix A, to Subpart A, 8(d), we are not authorized to begin processing your present request until you pay the full amount owed, plus any applicable interest charges. Therefore, until such time as you can provide us with written confirmation that you have satisfied this prior obligation, we are not able to process this or any subsequent FOIA request.

Example Clarification Letters

A When Requester Was Not Perfected

Use the following Clarification and Acknowledgement Letter if the request was not perfected when received because of issues of scope; such as the fact that the records requested were not reasonably described.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated _____, to the United States Department of Agriculture (USDA), Farm Service Agency (FSA). FSA received a copy of your request on _____ and assigned it control number _____. Please reference this number in any future communication with our office about your request.

We are unable to begin processing your request at this time because we cannot determine precisely which records you are seeking. In your letter, you state that you are requesting *[insert statement from request letter as to which records are being sought.]* However, *[insert brief explanation, from FSA's perspective, as to what additional information is needed to clarify or limit the request, or, alternatively, why the scope of the requester is not sufficiently clear for FSA to begin searching for the requested records.]*

We cannot proceed further with your request until we receive additional written clarification from you. Please note that if we do not hear from you within 20 workdays from the date of this letter, we will assume that you are no longer interested in pursuing your request, and we will close our files on the request.

If you have any questions about any of the issues discussed in this letter, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Clarification Letters (Continued)

B When Scope is Unclear or Overly Broad

Use the following Later Clarification of Scope Required Letter if, after consulting with the office/staff that maintains the records requested, it is now apparent that the scope of the request as initially described by the requester is either unclear or overly broad.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

We are writing to advise you that, after consulting with FSA program specialists familiar with the subject of your request, we have determined that the scope of your request is not sufficiently clear to enable us to begin its processing. In your letter, you state that you are requesting *[insert statement from request letter as to which records are being sought.]* However, *[insert brief explanation, from FSA's perspective, as to what additional information is needed to clarify or limit the request, or, alternatively, why the scope of the requester is not sufficiently clear for FSA to begin searching for the requested records.]*

We cannot proceed further with your request until we receive additional written clarification from you. Please note that if we do not hear from you within 20 workdays from the date of this letter, we will assume that you are no longer interested in pursuing your request, and we will close our files on the request.

If you have any questions about any of the issues discussed in this letter, you may contact _____ at _____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Routing Letters

A Routing to Another FSA Office or USDA Agency and Acknowledgement Letter

Use the following Routing to Another FSA Office or USDA Agency and Acknowledgement Letter when the request was not perfected when received because the records requested are maintained at another FSA office or USDA Agency.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated _____, to the United States Department of Agriculture (USDA), Farm Service Agency (FSA). FSA received a copy of your request on _____ and assigned it control number _____. Please reference this number in any future communication with our office about your request.

We have determined that the records you are seeking may be maintained in another [choose 1: FSA office or USDA agency]. Therefore, we are routing your request to this office for direct response.

You may expect to hear from this office shortly. If you do not, you may write or call:

[Name of FSA office or USDA agency]

[Contact person at office]

[Mailing address]

[City, State, ZIP Code]

[Telephone Number]

[FAX Number]

[E-mail address]

If you have any questions about any of the issues discussed in this letter, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Routing Letters (Continued)

B Notifying Requester of Proper Non-USDA Office to Respond Letter

Use the following Notifying Requester of Proper Non-USDA Office to Respond Letter when the request was not perfected when received because the records requested are maintained at another Federal Agency.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated _____, to the United States Department of Agriculture (USDA), Farm Service Agency (FSA). FSA received a copy of your request on _____ and assigned it control number _____. Please reference this number in any future communication with our office about your request.

We have determined that the records you are seeking would not be maintained in USDA files. We believe that they may be maintained in files maintained by [specify name of other Federal department] _____.

If you are still interested in pursuing your request, we suggest that you contact this department directly, using the contact information provided below:

[Name of department]

[Contact person]

[Mailing address]

[City, State, ZIP Code]

[Telephone Number]

[FAX Number]

[E-mail address, if known]

If you have any questions about any of the issues discussed in this letter, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Routing Letters (Continued)

C Later Forwarding/Notification Letter

Use the following Later Forwarding/Notification Letter if, after consulting with the office/staff that maintains the records requested, it is now apparent that the records requested are maintained at either another FSA office or at another USDA Agency or another Federal Agency.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

We are writing to advise you that, after consulting with FSA program specialists, we have determined [Choose either of the following, as applicable]

[when forwarding to another FSA office/USDA agency] that the records you are seeking may be maintained in another [choose 1: FSA office or USDA agency]; therefore, we are forwarding your request to this [office/agency] for direct response.

You may expect to hear from this office shortly. If you do not, you may write or call:

[Name of FSA office or USDA agency]

[Contact person at office]

[Mailing address]

[City, State, ZIP Code]

[Telephone Number]

[FAX Number]

[E-mail address]

Example Routing Letters (Continued)

C Later Forwarding/Notification Letter (Continued)

[when notifying of the need to send to another agency] The records you are seeking would not be maintained in USDA files. We believe that they may be maintained in files maintained by [specify name of other Federal department] _____.

If you are still interested in pursuing your request, we suggest that you contact this department directly, using the contact information provided below:

[Name of department]

[Contact person]

[Mailing address]

[City, State, ZIP Code]

[Telephone Number]

[FAX Number]

[E-mail address, if known]

If you have any questions about any of the issues discussed in this letter, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Routing Letters (Continued)

D Acknowledgement Following Routing/Records Referral Letter

Use the following Acknowledgement Following Routing/Records Referral Letter when acknowledging receiving a request that has been routed from another FSA office or USDA Agency or receiving a referral of FSA records (found in the course of a file search) from another Agency.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, to the [choose 1, as applicable:]

[when acknowledging a request referred from another FSA office or USDA agency] [insert name of office or agency to which request was originally filed]. Your request was forwarded to our office for processing and direct response on [month, day, year] _____ and assigned control number _____. Please reference this number in any future communication with our office about your request.

FSA processes FOIA/PA requests on "first-in, first-out" basis. The actual processing time will depend upon the complexity of the request and whether or not it involves sensitive or voluminous records, or extensive searches and/or consultations. FSA also processes FOIA/PA requests on a multi-track basis. This means that simple requests, requiring minimal efforts to respond (1-5 workdays), are processed in one track, normal requests requiring more time to respond (6-20 workdays) are processed in another track, and complex requests involving voluminous records, extensive searches or consultations (requiring more than 20 workdays to respond) are processed in yet another track. We have placed your request in the [choose 1: simple / normal / complex] track.

We have classified your request as a [choose 1: commercial-use / media-use / educational non-commercial scientific-use / other-use] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees.

Example Routing Letters (Continued)

D Acknowledgement Following Routing/Records Referral Letter (Continued)

[when acknowledging a records referral request] [insert name of agency to which request was originally filed]. Records originating with FSA and responsive to your request, found by this [choose 1: office/agency] in the course of its file search, were forwarded to FSA for a release decision and direct response. We received these records on [month, day, year] _____ and assigned them control number _____. Please reference this number in any future communication with our office about their processing.

FSA processes FOIA/PA requests on “first-in, first-out” basis. The actual processing time will depend upon the complexity of the request and whether or not it involves sensitive or voluminous records, or extensive searches and/or consultations. FSA also processes FOIA/PA requests on a multi-track basis. This means that simple requests, requiring minimal efforts to respond (1-5 workdays), are processed in one track, normal requests requiring more time to respond (6-20 workdays) are processed in another track, and complex requests involving voluminous records, extensive searches or consultations (requiring more than 20 workdays to respond) are processed in yet another track. We have placed your request in the [choose 1: simple / normal / complex] track.

We have classified your request as a [choose 1: commercial-use / media-use / educational non-commercial scientific-use / other-use] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees for the duplication of any records released to you in response to this referral.

If you have any questions about the status of your request, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachments

Example Expedited Processing Decision Letters

A Expedited Processing Denial Letter

Use the following Expedited Processing **Denial** Letter when denying a request for expedited processing, when the denial was not communicated in the acknowledgement letter.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

In your letter you also requested expedited processing of your request. According to USDA regulations at Title 7, CFR 1.9(b), it is the policy of FSA to grant a request for expedited processing whenever the requester demonstrates that the request involves:

- a. circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or
- b. an urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information.

You state that you are requesting expedited processing of your request because [provide reason as stated by requester] _____.

However, your letter did not provide an adequate justification to support your argument [provide analysis of why reason is not adequate]. Therefore, we are processing your request on a "first-in, first-out" basis in the [choose 1: simple / normal / complex] track.

Example Expedited Processing Decision Letters (Continued)

A Expedited Processing Denial Letter (Continued)

If you believe the determination to deny your request for a fee waiver is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of how disclosure of the information to you is likely to contribute significantly to public understanding of the operations or activities of the Government and the reason disclosure would not be primarily in your commercial interest. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal". Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

If you have any questions about any of the issues discussed in this letter, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Expedited Processing Decision Letters (Continued)

B Expedited Processing Grant Letter

Use the following Expedited Processing **Grant** Letter when granting a request for expedited processing, when the grant decision was not communicated in the acknowledgement letter.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

In your letter you also requested expedited processing of your request. According to USDA regulations at Title 7, CFR 1.9(b), it is the policy of FSA to grant a request for expedited processing whenever the requester demonstrates that the request involves

- a. Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or
- b. An urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information.

Please be advised that we have granted your request for expedited processing. Therefore, we are processing it on a "first-in, first-out" basis in the expedited track. We hope to respond to it shortly.

In the interim, if you have any questions about the status of your request, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Expedited Processing Decision Letters (Continued)

C Expedited Processing Denial Language

Add the following expedited processing **denial** language to the acknowledgement or perfection letter when responding to a request for expedited processing and the expedited processing request was not addressed in a separate letter.

In your letter you also requested expedited processing of your request. According to USDA regulations at Title 7, CFR 1.9(b), it is the policy of FSA to grant a request for expedited processing whenever the requester demonstrates that the request involves

- a. Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or
- b. An urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information.

You state that you are requesting expedited processing of your request because *[provide reason as stated by requester]* _____.

However, your letter did not provide an adequate justification to support your argument *[provide analysis of why reason is not adequate]*. Therefore, we are processing your request on a “first-in, first-out” basis in the *[choose 1: simple / normal / complex]* track.

[Note: *When adding this to an acknowledgement letter, omit the statement in the acknowledgement letter that places the request in the simple or complex track. Reserve that for here.*]

If you believe the determination to deny your request for a fee waiver is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of how disclosure of the information to you is likely to contribute significantly to public understanding of the operations or activities of the Government and the reason disclosure would not be primarily in your commercial interest. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words “Freedom of Information Act Appeal”. Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

Example Expedited Processing Decision Letters (Continued)

D Expedited Processing Grant Language

Add the following expedited processing **grant** language to the acknowledgement or perfection letter when responding to a request for expedited processing and the expedited processing request was not addressed in a separate letter.

In your letter you also requested expedited processing of your request. According to USDA regulations at Title 7, CFR 1.9(b), it is the policy of FSA to grant a request for expedited processing whenever the requester demonstrates that the request involves

- a. Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or
- b. An urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information.

Please be advised that we have granted your request for expedited processing. Therefore, we are processing it on a “first-in, first-out” basis in the expedited track.

[Note: When adding this to an acknowledgement letter, omit the statement in the acknowledgement letter that places the request in the simple or complex track. Reserve that for here.]

We hope to respond to it shortly.

Example Fee Waiver Decision Letters

A Fee Waiver Denial Letter

Use the following Fee Waiver **Denial** Letter when denying a request for a waiver of all FOIA processing fees, when this decision was not communicated in other agency correspondence with the requester.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

In your letter you also requested a waiver of all FOIA processing fees. U.S. Department of Agriculture regulations state that “[a]gencies shall waive or reduce fees if disclosing the requested records is deemed to be in the public interest. A request is in the public interest if it is likely to contribute significantly to public understanding of the operations and activities of the Government, and it is not primarily in the commercial interest of the requester”. (7 CFR, Appendix A, to Subpart A, (a)). However, your request does not contain sufficient evidence to support these criteria.

FSA considers the following factors when determining if disclosing information is likely to contribute significantly to public understanding of the operations or activities of the Government:

- a) Does the record concern the operations or activities of the Government?
- b) 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? Is the focus of the requester on contribution to public understanding of the operations or activities of the Government?
- c) 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 public oversight of FSA operations, including the quality of FSA activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of FSA.
- (d) Is disclosing the responsive records primarily in the commercial interest of the requester?

Example Fee Waiver Decision Letters (Continued)

A Fee Waiver Denial Letter (Continued)

You state that you are requesting a waiver of all FOIA processing fees because *[provide reason as stated by requester]* _____.

However, an analysis of the above four (4) factors does not support your position. With respect to these:

[List each question, in turn, and provide an analysis of whether or not the request meets each of the applicable factors, in turn. Generally, you can stop the analysis at the point where the request fails to meet a factor, stating, as for example, “when the analysis fails to meet factor b”.] Because you have not demonstrated, to our satisfaction, that your focus in asking for copies of these records is in making a contribution to the understanding of the general public, there is no further need to determine if this contribution would be significant, or if the public interest in disclosure is greater than any commercial interest you might have in the documents. [If, an analysis of all 4 factors is much stronger than an analysis of only the first factor that was not met, and the requester is likely to appeal the fee waiver denial decision, it is preferable to perform the entire analysis.]

Therefore, your request for a fee waiver is denied.

If you believe the determination to deny your request for a fee waiver is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of how disclosure of the information to you is likely to contribute significantly to public understanding of the operations or activities of the Government and the reason disclosure would not be primarily in your commercial interest. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words “Freedom of Information Act Appeal”. Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

Example Fee Waiver Decision Letters (Continued)

A Fee Waiver Denial Letter (Continued)

Under the circumstances, you will be charged for that portion of FOIA processing fees that are applicable to your FOIA fee category. *[If the requester has not agreed to pay all applicable FOIA fees and the fee waiver request was denied, add 1 of the following paragraphs, as applicable:*

Our best estimate of the cost of processing your request is _____. This estimate is based on *[choose 1, as applicable: search service calculations, duplication, review service calculation]*. In your request letter, you do not provide us with written assurance of your willingness to pay this amount. Consequently, we are not able to begin processing your request at this time. If you are still interested in having us process your request, please send us written confirmation of your willingness to pay this amount. Alternatively, you may reduce the amount of your FOIA fee by reducing the scope of your request. Please note that if we do not hear from you within 20 workdays from the date of this letter, we will assume that you are no longer interested in pursuing your request, and we will close our files on the request.

Our best estimate of the cost of processing your request is _____. This estimate is based on *[choose 1, as applicable: search service calculations, duplication, review service calculation]*. In your request letter, you do not provide us with written assurance of your willingness to pay this amount. Additionally, because this amount exceeds \$250, we must receive advance payment of at least 50% of the cost of processing your request before we are authorized to begin its processing, as per 7 CFR, Appendix A, to Subpart A, 8(c). Consequently, if you are still interested in having us process your request, please send us a check, draft or money order payable to the **Treasury of the United States** for *[50% of the estimated cost of processing the request]* _____. Alternatively, you may reduce the amount of your FOIA fee by reducing the scope of your request. Please note that if we do not hear from you within 20 workdays from the date of this letter, we will assume that you are no longer interested in pursuing your request, and we will close our files on the request.]

If you have any questions about any of the issues discussed in this letter, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Fee Waiver Decision Letters (Continued)

B Fee Waiver Grant Letter

Use the following Fee Waiver **Grant** Letter when granting a request for a waiver of all FOIA processing fees, when the grant was not communicated in other agency correspondence with the requester.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

In your letter you also requested a waiver of all FOIA processing fees. U.S. Department of Agriculture regulations state that “[a]gencies shall waive or reduce fees if disclosing the requested records is deemed to be in the public interest. A request is in the public interest if it is likely to contribute significantly to public understanding of the operations and activities of the Government, and it is not primarily in the commercial interest of the requester”. (7 CFR, Appendix A, to Subpart A, (a)).

Please be advised that your request for a fee waiver has been granted. Therefore, you will not be charged for any portion of FOIA processing fees that would otherwise be applicable in the processing of this request.

If you have any questions about any of the issues discussed in this letter, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Fee Waiver Decision Letters (Continued)

C Fee Waiver Denial Language

Add the following fee waiver **denial** language to the acknowledgement or perfection letter when notifying a requester that a request for a fee waiver is being denied in this same letter.

In your letter you also requested a waiver of all FOIA processing fees. U.S. Department of Agriculture regulations state that “[a]gencies shall waive or reduce fees if disclosing the requested records is deemed to be in the public interest. A request is in the public interest if it is likely to contribute significantly to public understanding of the operations and activities of the Government, and it is not primarily in the commercial interest of the requester”. (7 CFR, Appendix A, to Subpart A, (a)). However, your request does not contain sufficient evidence to support these criteria.

FSA considers the following factors when determining if disclosing information is likely to contribute significantly to public understanding of the operations or activities of the Government:

- a) Does the record concern the operations or activities of the Government?
- b) 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? Is the focus of the requester on contribution to public understanding of the operations or activities of the Government?
- c) 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 public oversight of FSA operations, including the quality of FSA activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of FSA.
- (d) Is disclosing the responsive records primarily in the commercial interest of the requester?

You state that you are requesting a waiver of all FOIA processing fees because [provide reason as stated by requester] _____.

However, an analysis of the above four (4) factors does not support your position. With respect to these:

[List each question, in turn, and provide an analysis of whether or not the request meets each of the applicable factors, in turn. Generally, you can stop the analysis at the point where the request fails to meet a factor, stating, as for example, “when the analysis fails to meet factor b”.] Because you have not demonstrated, to our satisfaction, that your focus in asking for copies of these records is in making a contribution to the understanding of the general public, there is no further need to determine if this contribution would be significant, or if the public interest in disclosure is greater than any commercial interest you might have in the documents. [If, an analysis of all 4 factors is much stronger than an analysis of only the first factor that was not met, and the requester is likely to appeal the fee waiver denial decision, it is preferable to perform the entire analysis.]

Example Fee Waiver Decision Letters (Continued)

C Fee Waiver Denial Language (Continued)

Therefore, your request for a fee waiver is denied.

If you believe the determination to deny your request for a fee waiver is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of how disclosure of the information to you is likely to contribute significantly to public understanding of the operations or activities of the Government and the reason disclosure would not be primarily in your commercial interest. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal". Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

Under the circumstances, you will be charged for that portion of FOIA processing fees that are applicable to your FOIA fee category. *[If the requester has not agreed to pay all applicable FOIA fees and the fee waiver request was denied, add 1 of the following paragraphs, as applicable:]*

Our best estimate of the cost of processing your request is _____. This estimate is based on *[choose 1, as applicable: search service calculations, duplication, review service calculation]*. In your request letter, you do not provide us with written assurance of your willingness to pay this amount. Consequently, we are not able to begin processing your request at this time. If you are still interested in having us process your request, please send us written confirmation of your willingness to pay this amount. Alternatively, you may reduce the amount of your FOIA fee by reducing the scope of your request. Please note that if we do not hear from you within 20 workdays from the date of this letter, we will assume that you are no longer interested in pursuing your request, and we will close our files on the request.

Our best estimate of the cost of processing your request is _____. This estimate is based on *[choose 1, as applicable: search service calculations, duplication, review service calculation]*. In your request letter, you do not provide us with written assurance of your willingness to pay this amount. Additionally, because this amount exceeds \$250, we must receive advance payment of at least 50% of the cost of processing your request before we are authorized to begin its processing, as per 7 CFR, Appendix A, to Subpart A, 8(c). Consequently, if you are still interested in having us process your request, please send us a check, draft or money order payable to the **Treasury of the United States** for *[50% of the estimated cost of processing the request]* _____. Alternatively, you may reduce the amount of your FOIA fee by reducing the scope of your request. Please note that if we do not hear from you within 20 workdays from the date of this letter, we will assume that you are no longer interested in pursuing your request, and we will close our files on the request.]

Example Fee Waiver Decision Letters (Continued)

D Fee Waiver Grant Language

Add the following fee waiver **grant** language to the acknowledgement or perfection letter when notifying a requester that a request for a fee waiver is being granted in this same letter.

In your letter you also requested a waiver of all FOIA processing fees. U.S. Department of Agriculture regulations state that “[a]gencies shall waive or reduce fees if disclosing the requested records is deemed to be in the public interest. A request is in the public interest if it is likely to contribute significantly to public understanding of the operations and activities of the Government, and it is not primarily in the commercial interest of the requester”. (7 CFR, Appendix A, to Subpart A, (a)).

Please be advised that your request for a fee waiver has been granted. Therefore, you will not be charged for any portion of FOIA processing fees that would otherwise be applicable in the processing of this request.

Example Perfection Letter

Use the following Perfection Letter to inform requesters that their request is now able to be processed, because scope or FOIA fees issues that prevented processing have been resolved.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year]_____, control number _____.

We are writing, today, to advise you that we are now able to begin processing your request. We received your communication, [choose all that apply: clarifying your request / agreeing to pay the full amount of applicable FOIA fees / providing advance payment for a portion of the applicable FOIA fees] on [month, day, year] _____.

[Use this language only if you have not included it before.] With respect to your request, please be advised that FSA processes FOIA/PA requests on "first-in, first-out" basis. The actual processing time will depend upon the complexity of the request and whether or not it involves sensitive or voluminous records, or extensive searches and/or consultations. FSA also processes FOIA/PA requests on a multi-track basis. This means that simple requests, requiring minimal efforts to respond (1-5 workdays), are processed in one track, normal requests requiring more time to respond (6-20 workdays) are processed in another track, and complex requests involving voluminous records, extensive searches or consultations (requiring more than 20 workdays to respond) are processed in yet another track. We have placed your request in the [choose 1: simple / normal / complex] track.

[Use this language only if you have not included it before.] We have classified your request as a [choose 1: commercial-use / media-use / educational non-commercial scientific-use / other-use] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees.

If you have any questions about our response to your request, you may contact _____ at _____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example No Records Final Response Letters

A No Records Final Response Letter

Use the following No Records Final Response Letter, **with** search, to respond to requests when, **after** a search for responsive records, **no** records could be located in FSA files.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This responds to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

We have completed our search for responsive records in [insert name of office(s) in which file search was conducted or use default: Farm Service Agency (FSA) files]. Files included in the search pertained to [insert names or category of files included in the search]. No responsive documents were located.

[As appropriate, add any additional information provided by the office conducting the file search as to why there are no responsive records. **Note:** Adding this information can often prevent an appeal for adequacy of search.]

If you believe that there are, in fact, records responsive to your request in files maintained by FSA, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal the location of the responsive records, if it is known to you, and the reason why you believe that there are records responsive to your request in FSA files. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal". Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

Example No Records Final Response Letters (Continued)

A No Records Final Response Letter (Continued)

The cost of processing your request is \$_____, calculated as follows:

[Insert the appropriate Final Response Letter fee language for applicable requester (from the subparagraph B through G) here.]

If you have any questions about our response to your request, you may contact _____ at _____ - _____ - _____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example No Records Final Response Letters (Continued)

B Commercial-Use Requester No Responsive Records Located Fee Language

Add the following fee language into **all** letters in this exhibit, adapted as appropriate, for **commercial-use fee** requesters, when a search for responsive records was conducted and no responsive records were located.

Note: When using the standard FOIA/Privacy Act fee chart (Exhibit 29), include **only** the categories that apply to the particular request.

Example: For a request for which only clerical search time and professional search time were expended in processing the request, include only clerical search time and professional search time in the cost/fee accounting provided in the final response letter. Add any other categories of services or materials applicable to request being processed.

___ Hours of Clerical Review Time @ \$ 2.50 per 1/4 hour.
___ Hours of Professional search Time @ \$ 5.00 per 1/4 hour.

[Note: Use standard charges for Clerical and Professional Time for **all** requester categories **only** when actual costs (hourly salary rate + 16%) are not available.]

[Choose either of the following:

However, because the cost of processing your request is equal to or less than \$25.00, your fee has been waived because the cost of collecting this amount would be greater than the amount collected, pursuant to USDA regulations at Title 7, CFR, Appendix A, to Subpart A, 6(a)(4).

OR

*Please submit a check, draft or money order payable to the Treasury of the United States for [insert total cost of processing request] \$_____, to the following address [insert mailing address of responding office] _____.
Please be advised that payment is due within thirty (30) calendar days of the date of this letter. Interest charges may be assessed at the rate prescribed in 31 U.S.C. 3717.]*

Example No Records Final Response Letters (Continued)

C Educational-Use, Non-Commercial Scientific-Use, or Media Use Requester No Responsive Records Located Fee Language

Add the following fee language into **all** letters in this exhibit, adapted as appropriate, for **educational-use, non-commercial scientific-use, or media-use** requesters, when a search for responsive records was conducted and no responsive records were located.

Note: When using the standard FOIA/Privacy Act fee chart (Exhibit 29), include **only** the categories that apply to the particular request.

Example: For a request for which only clerical search time and professional search time were expended in processing the request, include only clerical search time and professional search time in the cost/fee accounting provided in the final response letter. Add any other categories of services or materials applicable to request being processed.

___ Hours of Clerical Search Time @ \$ 2.50 per 1/4 hour.
___ Hours of Professional Search Time @ \$ 5.00 per 1/4 hour.

[Note: Use standard charges for Clerical and Professional Time for **all** requester categories **only** when actual costs (hourly salary rate + 16%) are not available.]

[Choose either of the following:

However, because we have granted your request for a fee waiver, there is no chargeable fee for the processing of your request.

OR

However, because we have classified your request as [choose 1: an educational non-commercial scientific-use request OR a media-use request], you are entitled not to be charged for the cost of searching for responsive documents, and to receive the first 100 pages of duplication without charge. Therefore, your fee for the processing of this request is [insert actual billable cost] \$____.]

[Choose either of the following:

Because this amount is equal to or less than \$25.00, your fee has been waived because the cost of collecting this amount would be greater than the amount collected, pursuant to USDA regulations at Title 7, CFR, Appendix A, to Subpart A, 6(a)(4).

OR

Please submit a check, draft or money order payable to the Treasury of the United States for [insert total cost of processing request] \$_____, to the following address [insert mailing address of responding office] _____. Please be advised that payment is due within thirty (30) calendar days of the date of this letter. Interest charges may be assessed at the rate prescribed in 31 U.S.C. 3717.]

Example No Records Final Response Letters (Continued)

D Other-Use FOIA Requester No Responsive Records Located Fee Language

Add the following fee language into **all** letters in this exhibit, adapted as appropriate, for **other-use FOIA** requesters, when a search for responsive records was conducted and no responsive records were located.

Notes: When using the standard FOIA/Privacy Act fee chart (Exhibit 29), include **only** the categories that apply to the particular request.

Example: For a request for which only clerical search time and professional search time were expended in processing the request, include only clerical search time and professional search time in the cost/fee accounting provided in the final response letter. Add any other categories of services or materials applicable to request being processed.

For **other-use FOIA/Privacy Act** requesters, calculate fees applicable to the FOIA portion and the Privacy Act portion separately, but combine them in the Final Response Letter (Exhibit 18 through 22, as applicable) using the following fee language.

___ Hours of Clerical Search Time @ \$ 2.50 per 1/4 hour.
___ Hours of Professional Search Time @ \$ 5.00 per 1/4 hour.

[Note: Use standard charges for Clerical and Professional Time for **all** requester categories **only** when actual costs (hourly salary rate + 16%) are not available.]

[Choose either of the following:

However, because we have granted your request for a fee waiver, there is no chargeable fee for the processing of your request.

OR

However, because we have classified your request as an other-use request, you are entitled to receive the first two (2) hours of search time and the first 100 pages of duplication without charge. Therefore, your fee for the processing of this request is [insert actual billable cost] \$_____.]

[Choose either of the following:

[Because this amount is equal to or less than \$25.00, your fee has been waived because the cost of collecting this amount would be greater than the amount collected, pursuant to USDA regulations at Title 7, CFR, Appendix A, to Subpart A, 6(a)(4).

OR

Please submit a check, draft or money order payable to the Treasury of the United States for [insert total cost of processing request] \$_____, to the following address [insert mailing address of responding office] _____. Please be advised that payment is due within thirty (30) calendar days of the date of this letter. Interest charges may be assessed at the rate prescribed in 31 U.S.C. 3717.]

Example No Records Final Response Letters (Continued)

E No Records Final Response Letter With No Search

Use the following No Records Final Response Letter to respond to requests when it is reasonable to believe that FSA has **no** records responsive to a FOIA request, and the determination was made **without** conducting a file search.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This responds to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

We have determined that it is reasonable to believe that there are no records responsive to your request on file within FSA. FSA administers and manages farm commodity, credit, conservation, and disaster and loan programs as laid out by Congress through a network of Federal, State and County Offices. The records you have requested [As appropriate, add any information supporting your believe that it is not reasonable to believe that responsive records would be maintained anywhere in FSA'S files. **Note:** Adding this information can often prevent an appeal for adequacy of search.]

If you believe the determination to deny your request for a fee waiver is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of how disclosure of the information to you is likely to contribute significantly to public understanding of the operations or activities of the Government and the reason disclosure would not be primarily in your commercial interest. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal". Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

Example No Records Final Response Letters (Continued)

E No Records Final Response Letter With No Search (Continued)

If you have any questions about our response to your request, you may contact _____ at
____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example No Records Final Response Letters (Continued)

F Duplicate Request Final Response Letter With No Search

Use the following Duplicate Request Final Response Letter, **without** search, when processing a request that substantially duplicates a recent request filed by the same requester.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, to the United States Department of Agriculture (USDA), Farm Service Agency (FSA). FSA received a copy of your request on [month, day, year] _____ and assigned it control number _____. Please reference this number in any future communication with our office about your request.

We have determined that your present request substantially duplicates a recent request that you have filed with our office. This request [choose 1: was responded to on [month, day, year] _____; OR is currently still in process]. [If FSA responded to the earlier request, provide the response as an attachment and insert the following: A copy of the [month, day, year] response is attached for information.] Accordingly, we are closing our file on your present request.

If you have any questions about our actions with respect to this request, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachments

Example No Records Final Response Letters (Continued)

G No Records Final Response Letter With No Search and No Specification

Use the following No Records Final Response Letter, **without** search, to respond to a requester who asks for “all records on himself/herself” **without** specifying his/her FSA connection.

Note: This letter functions like Exhibit 12 letters, but does **not** require a 20 workday wait for clarification before close-out.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, to the United States Department of Agriculture (USDA), Farm Service Agency (FSA). FSA received a copy of your request on [month, day, year] _____ and assigned it control number _____. Please reference this number in any future communication with our office about your request.

In your letter, you ask for all information/records on you maintained by FSA. However, you do not specify what connection you have had with FSA. FSA maintains records on individuals employed by FSA and on individuals who do business with USDA, e.g., agricultural producers or landowners who receive benefits from FSA, or individuals, under contract to FSA, who provide goods or services to it. Unless you fall into one of these categories, and can describe, in detail, what dealings you have had with FSA, (e.g. you were employed by a specific FSA office in certain years, or you applied for a particular benefit at a particular FSA county office in certain years), we have no reason to believe that we would have records related to you in files anywhere in FSA. In your letter, you provided us with no information to suggest that this might be the case.

Additionally, FSA maintains its records in a decentralized environment. This means that it does not have a large, single, computerized database that contains all of its information. Each individual county and state office within FSA maintains its own files, often in manual (paper) form. And since all of these individual documents are located, physically, in hundreds of different locations scattered across the United States, our files, too, are equally scattered. For this reason, it is not possible for us to conduct a single automated search of all our files for records related to you in a manner similar to the way in which you might conduct a search on the Internet for information on a subject of interest to you. Because of this, we do not undertake a search of any of our files for information on a particular individual unless there is definite, substantive information that would lead us to believe that it is likely that a particular file would contain information on that particular individual. (To do otherwise might cost you hundred of dollars in search fees for a search that would result in a finding of “no responsive records”).

Example No Records Final Response Letters (Continued)

G No Records Final Response Letter With No Search and No Specification (Continued)

In short, because we have no reason to believe that we have information on you, we believe that we have no records responsive to your request.

If you believe that there are, in fact, records responsive to your request in files maintained by FSA, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal the location of the responsive records, if it is known to you, and the reason why you believe that there are records responsive to your request in FSA files. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal". Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

If you have any questions about our response to your request, you may contact _____ at _____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Glomar Final Response Letter

Use the Glomar Final Response Letter to respond to a FOIA request when it is appropriate neither to confirm nor deny the existence of responsive records.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This responds to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

Please be advised that we can neither confirm nor deny that FSA has any records responsive to your request.

You have the right to challenge FSA's response to your request for records. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of why you believe that FSA's responsive is not appropriate. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal". Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

If you have any questions about our response to your request, you may contact _____ at _____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment [Copy of Request]

Example Final Response Grant Letters

A Final Response Grant Letter With Release In-Full

Use the following Final Response Grant Letter to respond to a FOIA request in which **all** responsive records are being released in-full.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This responds to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, control number _____.

In response to your request, we located and are releasing, in full, _____ documents, comprising _____ pages.

The cost of processing your request is \$_____, calculated as follows:

[Insert appropriate Final Response Letter additional fee language for applicable type requester, from subparagraph B, C, or D, here.]

If you have any questions about our response to your request, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Final Response Grant Letter (Continued)

B Commercial-Use Requester Final Response Fee Language

Add the following fee language into **all** letters in this exhibit, adapted as appropriate, for **commercial-use fee** requesters.

Note: When using the standard FOIA/Privacy Act fee chart (Exhibit 29), include **only** the categories that apply to the particular request.

Example: For a request for which only clerical search time and professional search time were expended in processing the request, include only clerical search time and professional search time in the cost/fee accounting provided in the final response letter. Add any other categories of services or materials applicable to request being processed.

___ Hours of Clerical Review Time @ \$ 2.50 per 1/4 hour.
___ Hours of Professional search Time @ \$ 5.00 per 1/4 hour.

[Note: Use standard charges for Clerical and Professional Time for **all** requester categories **only** when actual costs (hourly salary rate + 16%) are not available.]

[Choose either of the following:

However, because the cost of processing your request is equal to or less than \$25.00, your fee has been waived because the cost of collecting this amount would be greater than the amount collected, pursuant to USDA regulations at Title 7, CFR, Appendix A, to Subpart A, 6(a)(4).

OR

Please submit a check, draft or money order payable to the Treasury of the United States for [insert total cost of processing request] \$_____, to the following address [insert mailing address of responding office] _____. Please be advised that payment is due within thirty (30) calendar days of the date of this letter. Interest charges may be assessed at the rate prescribed in 31 U.S.C. 3717.]

Example Final Response Grant Letter (Continued)

C Educational-Use, Non Commercial Scientific-Use, Or Media-Use Requester Final Response Fee Language

Add the following fee language into **all** letters in this exhibit, adapted as appropriate, for **educational-use, non-commercial scientific-use, or media-use** requesters, when a search for responsive records was conducted and no responsive records were located

Note: When using the standard FOIA/Privacy Act fee chart (Exhibit 29), include **only** the categories that apply to the particular request.

Example: For a request for which only clerical search time and professional search time were expended in processing the request, include only clerical search time and professional search time in the cost/fee accounting provided in the final response letter. Add any other categories of services or materials applicable to request being processed.

___ Hours of Clerical Search Time @ \$ 2.50 per 1/4 hour.
___ Hours of Professional Search Time @ \$ 5.00 per 1/4 hour.

[Note: Use standard charges for Clerical and Professional Time for **all** requester categories **only** when actual costs (hourly salary rate + 16%) are not available.]

[Choose either of the following:

However, because we have granted your request for a fee waiver, there is no chargeable fee for the processing of your request.

OR

However, because we have classified your request as [choose 1: an educational non-commercial scientific-use request OR a media-use request], you are entitled not to be charged for the cost of searching for responsive documents. Therefore, your fee for the processing of this request is [insert actual billable cost] \$____.]

[Choose either of the following:

Because this amount is equal to or less than \$25.00, your fee has been waived because the cost of collecting this amount would be greater than the amount collected, pursuant to USDA regulations at Title 7, CFR, Appendix A, to Subpart A, 6(a)(4).

OR

Please submit a check, draft or money order payable to the Treasury of the United States for [insert total cost of processing request] \$_____, to the following address [insert mailing address of responding office] _____. Please be advised that payment is due within thirty (30) calendar days of the date of this letter. Interest charges may be assessed at the rate prescribed in 31 U.S.C. 3717.]

Example Final Response Grant Letter (Continued)

D Other-Use FOIA Requester Final Response Fee Language

Add the following fee language into **all** letters in this exhibit, adapted as appropriate, for **other-use FOIA** requesters, when a search for responsive records was conducted and no responsive records were located.

Notes: When using the standard FOIA/Privacy Act fee chart (Exhibit 29), include **only** the categories that apply to the particular request.

Example: For a request for which only clerical search time and professional search time were expended in processing the request, include only clerical search time and professional search time in the cost/fee accounting provided in the final response letter. Add any other categories of services or materials applicable to request being processed.

___ Hours of Clerical Search Time @ \$ 2.50 per 1/4 hour.
___ Hours of Professional Search Time @ \$ 5.00 per 1/4 hour.

[Note: Use standard charges for Clerical and Professional Time for **all** requester categories **only** when actual costs (hourly salary rate + 16%) are not available.]

[Choose either of the following:

However, because we have granted your request for a fee waiver, there is no chargeable fee for the processing of your request.

OR

However, because we have classified your request as an other-use request, you are entitled to receive the first two (2) hours of search time without charge. Therefore, your fee for the processing of this request is [insert actual billable cost] \$_____.]

[Choose either of the following:

[Because this amount is equal to or less than \$25.00, your fee has been waived because the cost of collecting this amount would be greater than the amount collected, pursuant to USDA regulations at Title 7, CFR, Appendix A, to Subpart A, 6(a)(4).

OR

Please submit a check, draft or money order payable to the Treasury of the United States for [insert total cost of processing request] \$_____, to the following address [insert mailing address of responding office] _____. Please be advised that payment is due within thirty (30) calendar days of the date of this letter. Interest charges may be assessed at the rate prescribed in 31 U.S.C. 3717.]

Example Final Response Partial Grant Letter

Use the following Final Response Partial Grant Letter to respond to a FOIA request in which some responsive records are being redacted, in-part.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This responds to your Freedom of Information Act (FOIA) request (copy attached) dated [month, day, year] _____, control number _____.

In response to your request, we located _____ documents, comprising _____ pages. *[Adapt this next sentence to the particulars of this request.]* With respect to these pages, we are releasing _____ pages in full and releasing _____ pages in part. We are withholding _____ pages in full and _____ pages in-part, pursuant to 5 U.S.C. 552 (b)() of FOIA. *[Insert appropriate citation for each FOIA exemption applicable to the pages or partial pages being withheld in response to this request; such as "(b)(3), (b)(5), and (b)(6)" of FOIA.]*

[Insert appropriate exemption language from Exhibit 22 here.]

If you believe our decision to withhold this information is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of why you believe this decision is in error. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal". Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

The cost of processing your request is \$_____, calculated as follows:

[Insert appropriate Final Response Letter additional fee language for applicable type requester, from Exhibit 19, subparagraphs B, C, and D, here.]

If you have any questions about our response to your request, you may contact _____ at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Final Response Denial Letter

Use the following Final Response Denial Letter to respond to a FOIA request in which all responsive records are being denied.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This responds to your Freedom of Information Act (FOIA) request (copy attached) dated [month, day, year] _____, control number _____.

In response to your request, we located _____ documents, comprising ____ pages. With respect to these pages, we are withholding [insert total number of pages located] ____ pages in full, pursuant to 5 U.S.C. 552 (b)([#]) of FOIA. [Insert appropriate citation for **each** FOIA exemption applicable to the pages or partial pages being withheld in response to this request; such as "(b)(3), (b)(5), and (b)(6)" of FOIA.]

[Insert appropriate exemption language from subparagraph M here.]

If you believe our decision to withhold this information is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of why you believe this decision is in error. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal". Mail your appeal package to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTN: APPEALS AND LITIGATION STAFF
1400 INDEPENDENCE AVE SW RM 5971-S
STOP 0570
WASHINGTON DC 20250-0570.

The cost of processing your request is \$_____, calculated as follows:

[Insert appropriate Final Response Letter additional fee language for applicable type requester, from Exhibit 19, subparagraphs B, C, and D, here.]

If you have any questions about our response to your request, you may contact _____ at _____ - _____ - _____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment

Example Final Response Partial Grant and Denial Exemption Letters

A Overview

Add the following subparagraph contents, as appropriate, to each exemption cited in the Final Response Letter.

Note: Add the paragraphs in numerical order; that is exemption 3, exemption 5, and then exemption 6. Modify the paragraphs, where instructed, to reflect the specific records responsive to FOIA request. When asked to select from alternative passages, do not include the information in *italic* type. In **all** instances, specify the categories of information withheld under **each** exemption, and the number of pages withheld (either in-part or in-full) under each. When specifying information withheld, do not reveal information that exists that the applicable exemptions are designed to protect.

B Exemption 1

Exemption 1 [5 U.S.C. 552 (b)(1)] protects matters of national defense or foreign policy.

[adapt the following to the request]

Pursuant to exemption 1, ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 1 protects information about the national defense or foreign policy properly classified under Executive Order 12,958, Classified National Security Information (dated October 14, 1995), or superseding Executive Order. The records withheld under exemption 1 include *[specify the categories of information withheld under this exemption for this request]*.

Example Final Response Partial Grant and Denial Exemption Letters (Continued)

C Exemption 2

Exemption 2 [5 U.S.C. 552 (b)(2)] protects from public disclosure, records that are related to the internal personnel rules and practices of an agency.

[adapt the following to the request]

Pursuant to exemption 2, ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 2 protects records dealing with internal matters of a relatively trivial nature for which there is no legitimate public interest or benefit, when releasing and processing the requested records would impose an administrative burden on FSA. The records withheld under exemption 2 include *[specify the categories of information withheld under this exemption for this request]*.

D Exemption 3

Exemption 3 [5 U.S.C. 552 (b)(3)] protects information included in FSA's records specifically exempted from disclosure by another Federal statute; select either of the following statute appropriate exemption 3 language; only 1 statute ordinarily applies:

- Food, Conservation and Energy Act of 2008, Section 1619(b)

[adapt the following to the request]

Pursuant to exemption 3, ____ pages have been withheld in full and ____ pages in part. In this instance, Section 1619(b) of the Food, Conservation and Energy Act of 2008 prohibits disclosing the information requested.

The records you have requested include information that FSA has obtained from agricultural producers or landowners that concerns their *[select all that apply based on the specific records requested]* farming or agricultural operation, including production and marketing of agricultural commodities and livestock, farming practices, conservation practices, or the land itself. The type of information withheld includes *[describe type of information specific to the requested records]*. This information is required to be provided to FSA for the agricultural producers and/or landowners shown on these records to participate in FSA's farm programs.

Example Final Response Partial Grant and Denial Exemption Letters (Continued)

D Exemption 3 (Continued)

- National Defense Authorization Act for Fiscal Year 1997

The National Defense Authorization Act for Fiscal Year 1997, Subsection 821(b)(m), which contains a provision which amends the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 253b], prohibits disclosing the information requested.

The records you requested include [*select all that apply based on the specific records requested*] proposals of unsuccessful bidders on contracts, lists of unsuccessful submitters, and information in contract proposals that was not set forth or incorporated by reference in a contract between FSA and the contractor that submitted the proposal. In *Hornbostel v. Department of the Interior*, 305 F. Supp.2d 21 (D.D.C. 2003), the District Court for the District of Columbia held that this type of confidential business information is properly withheld under exemption 3.

E Exemption 4

Exemption 4 [5 U.S.C. 552 (b)(4)] protects trade secrets and commercial or financial information (confidential business information)

[*adapt the following to the request*]

Pursuant to exemption 4, ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 4 protects trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential. Exemption 4 protects both the interests of commercial entities that submit proprietary information to the Government and the interests of the Government in receiving continued access to such data. The records withheld under exemption 4 include [*specify the categories of information withheld under this exemption for this request*].

Example Final Response Partial Grant and Denial Exemption Letters (Continued)

F Exemption 5

Exemption 5 [5 U.S.C. 552 (b)(5)] protects privileged interagency or intra-agency memoranda or letters, as follows:

[adapt the following to the request]

Pursuant to exemption 5, ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 5 allows FSA to withhold, “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with an agency”. As such, the privilege “exempts those documents... normally privileged in the civil discovery context”. National Labor Relations Bd. v. Sears Roebuck & Co., 421 U.S. 132 (1975). Exemption 5 incorporates several of these privileges from discovery in litigation, including the deliberative process privilege, the attorney work-product privilege, the attorney-client privilege, and the Government commercial information privilege

Note: From the following, select the language appropriate to **all** privileges that apply to the information withheld under exemption 5; more than 1 privilege may apply to a single document.

- Deliberative Process Privilege

The Deliberative Process Privilege protects the decision-making process of Government agencies and encourages the frank discussion of legal and policy issues by ensuring that agencies are not forced to operate in a fish bowl. The deliberative process privilege protects materials that are both predecisional and deliberative. A predecisional document is a document prepared to assist an FSA decision-maker in arriving at his/her decision, and may include recommendations, draft documents, proposals, suggestions, and other subjective documents that reflect the personal opinions of the writer rather than FSA policy. The records withheld under this privilege include *[specify the categories of information withheld under this privilege for this request]*.

Example Final Response Partial Grant and Denial Exemption Letters (Continued)

F Exemption 5 (Continued)

- Attorney-Client Privilege

The Attorney-Client Privilege protects confidential communications between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. Although this privilege fundamentally applies to facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon those facts, as well as communications between attorneys that reflect client-supplied information. In other words, it applies whenever FSA attorneys are discussing the legal implications of action FSA may or may not pursue. The records withheld under this privilege include *[specify the categories of information withheld under this privilege for this request]*.

- Attorney-Work Product Privilege

The Attorney-Work Product Privilege protects documents and other memoranda prepared by FSA attorneys during or in anticipation of litigation, including administrative proceedings. The Attorney-Work Product Privilege covers litigation-related documents prepared by an attorney or under his/her direction that reveal the attorney's mental impressions, theories of the case, legal strategies, such as reports prepared by a consultant or a program employee which were prepared under the direction of any attorney in anticipation of litigation. The records withheld under this privilege include *[specify the categories of information withheld under this privilege for this request]*.

- Government Commercial Information Privilege

The Government Commercial Information Privilege protects information generated by the Government in the course of its business dealings, such as the process leading up to the award of a contract, or for some appraisal information associated with the acquisition of real property. The Government Commercial Information Privilege's premise is that premature release of such information would put the Government at a competitive disadvantage or would endanger the consummation of a contract. The records withheld under this privilege include *[specify the categories of information withheld under this privilege for this request]*.

Example Final Response Partial Grant and Denial Exemption Letters (Continued)

G Exemption 6

Exemption 6 [5 U.S.C. 552 (b)(6)] protects personal information affecting an individual's privacy.

[adapt the following to the request]

Pursuant to exemption 6, ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 6 protects personnel, medical, and similar files, the disclosing which would constitute a clearly unwarranted invasion of personal privacy. The courts have held that the phrase "similar files" involves all information that applies to a particular person. When disclosing information about particular individuals is requested, the courts have decided that it is necessary for FSA to determine whether release of the information would constitute a clearly "unwarranted" invasion of the individuals' privacy. To make this determination, FSA is required to perform a "balancing test". This means that FSA must weigh the individual's right to privacy against the public's right to disclosure. In this instance, FSA has determined that disclosing this information would shed little or no light on the performance of FSA's statutory duties and that, on balance; the public interest to be served by its disclosure does not outweigh the privacy interest of the individuals in question, in withholding it. The records withheld under this exemption include *[specify the categories of information withheld under this exemption for this request]*.

H Exemption 7A

Exemption 7A [5 U.S.C. 552 (b)(7)(A)] protects records compiled for law enforcement purposes, but **only** to the extent that disclosing this information could reasonably be expected to interfere with law enforcement proceedings.

[adapt the following to the request]

Pursuant to exemption 7(A), ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 7(A) protects records that were compiled for either criminal or civil; such as EEO statutes, as well as statutes authorizing administrative and regulatory proceedings) law enforcement purposes. Disclosing these documents could reasonably be expected to cause harm to these proceedings; such as disrupt, impede, delay, or otherwise harm the enforcement proceedings; such as destroy or alter the evidence or intimidate a witness). The records withheld under this exemption include *[specify the categories of information withheld under this exemption for this request]*.

Example Final Response Partial Grant and Denial Exemption Letters (Continued)

I Exemption 7B

Exemption 7B [5 U.S.C. 552 (b)(7)(B)] protects records compiled for law enforcement purposes, but **only** to the extent that disclosing this information would deprive a person of a right to a fair or an impartial adjudication.

[adapt the following to the request]

Pursuant to exemption 7(B), ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 7(B) protects records whose disclosure could impair a court proceeding by prejudicial pretrial publicity. The records withheld under this exemption include [specify the categories of information withheld under this exemption for this request].

J Exemption 7C

Exemption 7C [5 U.S.C. 552 (b)(7)(C)] protects records compiled for law enforcement purposes, but **only** to the extent that disclosing this information could be expected to constitute an unwarranted invasion of personal privacy

[adapt the following to the request]

Pursuant to exemption 7(C), ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 7(C) protects personnel in law enforcement files whose disclosure could constitute an unwarranted invasion of personal privacy. To make this determination, FSA is required to perform a “balancing test”. This means that FSA must weigh the individual’s right to privacy against the public’s right to disclosure. In this instance, FSA has determined that disclosing this information would shed little or no light on the performance of FSA’s statutory duties and that, on balance; the public interest to be served by its disclosure does not outweigh the privacy interest of the individuals in question, in withholding it. The records withheld under this exemption include [*specify the categories of information withheld under this exemption for this request*].

Example Final Response Partial Grant and Denial Exemption Letters (Continued)

K Exemption 7D

Exemption 7D [5 U.S.C. 552 (b)(7)(D)] protects records compiled for law enforcement purposes, but **only** to the extent that disclosing this information could disclose the identity of a confidential source.

[adapt the following to the request]

Pursuant to exemption 7(D), ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 7(D) protects identity of a source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, to a criminal law enforcement authority in the course of a criminal investigation, or to an agency conducting a lawful national security intelligence investigation, whenever he/she has provided information under either an express promise of confidentiality or under circumstances where such assurance could reasonably be implied. The records withheld under this exemption include *[specify the categories of information withheld under this exemption for this request]*.

L Exemption 7E

Exemption 7E [5 U.S.C. 552 (b)(7)(E)] protects records compiled for law enforcement purposes, but **only** to the extent that disclosing this information would disclose techniques, procedures, and/or guidelines for law enforcement investigations or prosecutions.

[adapt the following to the request]

Pursuant to exemption 7(E), ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 7(E) protects records; such as portions of law enforcement manuals, which, if disclosed, could lessen the effectiveness of the pertinent law enforcement techniques, procedures, and/or guidelines; such as those pertaining to the interception of wire, oral and electronic communications, techniques of undercover work, analyses of security procedures, and response to terrorist attacks. The records withheld under this exemption include *[specify the categories of information withheld under this exemption for this request]*.

Example Final Response Partial Grant and Denial Exemption Letters (Continued)

M Exemption 7F

Exemption 7F [5 U.S.C. 552 (b)(7)(F)] protects records compiled for law enforcement purposes, but **only** to the extent that disclosing this information could reasonably be expected to endanger the life or physical safety of any individual.

[adapt the following to the request]

Pursuant to exemption 7(F), ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 7(F) protects names and other identifying information pertaining to law enforcement personnel, including the Secretary's security detail, names of private security contractors operating in concert with U.S. military forces in Iraq, and critical infrastructure/sensitive information related to America's Homeland Security; such as inundation maps, if disclosure could reasonably be expected to jeopardize national security or endanger the life or physical safety of citizens. The records withheld under this exemption include *[specify the categories of information withheld under this exemption for this request]*.

N Exemption 8

Exemption 8 [5 U.S.C. 552 (b)(8)] protects records of financial institutions.

[adapt the following to the request]

Pursuant to exemption 8, ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 8 protects matters that are contained in or related to information or reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; such as the Federal Reserve Boards or the Office of the Comptroller of the Currency. The records withheld under this exemption include *[specify the categories of information withheld under this exemption for this request]*.

Example Final Response Partial Grant and Denial Exemption Letters (Continued)

O Exemption 9

Exemption 9 [5 U.S.C. 552 (b)(1)] protects geological and geophysical information about wells.

[adapt the following to the request]

Pursuant to exemption 9, ____ pages have been withheld in full and ____ pages in part.

Specifically, exemption 9 protects geological and geophysical information and data (including maps) concerning oil wells, natural gas wells, and water wells, as when withholding of the data is necessary to guard against a (homeland security) attack upon pooled natural resources intended to cause harm to the public. The records withheld under this exemption include *[specify the categories of information withheld under this exemption for this request]*.

Example Exemption 4 [5 U.S.C. 552 (b)(4)] Submitter Letters

A Submitter Letter To Seek Commercial and Financial Information

Use the following Submitter Letter to seek the views of the submitter of commercial and financial information that may be exempt according to exemption 4.

[Control Number]

[Mr./Ms. Submitter-Representative Name]

[Business Title]

[Submitter Business Name]

[Business Address]

[City, State, ZIP Code]

Dear Mr./Ms. [Submitter-Representative]:

We have received a Freedom of Information Act (FOIA) request seeking information in FSA files submitted by [insert Submitter Business Name] _____ (your firm). A copy of this FOIA request is attached. Also attached are copies of all records responsive to this request submitted by your firm.

To assist us in determining whether the information responsive to this request should be released to this requester, we need your firm's views on which items, if any, are protected from disclosure by FOIA exemption 4 (5 U.S.C. 552(b)(4)). If you recommend that information be withheld, please provide us with the following:

1. The data to be withheld and the basis on which the information is exempt, under FOIA. With respect to exemption 4, please provide a specific and detailed discussion of:
 - a. Whether the Government required the information to be submitted, and if so, how substantial competitive or other business harm to your firm would likely result from its release;
 - b. Whether your firm provided the information voluntarily and, if so, how the information in question fits into a category of information that it customarily does not release to the public; and
 - c. A certification that the information is confidential and was not disclosed to the public by your firm and is not routinely available to the public from other sources.
2. A name, telephone number, FAX number and e-mail address where your firm may be contacted during normal business hours, in the event that we wish to consult with you further regarding this matter.

Please review the attached documents and submit any recommendations you may have concerning disclosing this information within 20 workdays from the date of your receiving these materials. While we will review and consider all objections to release that are received within the specified time limit, it is the Government that will make the final decision regarding whether the information should be released or withheld. Only if we decide to release a portion of the responsive records, over your objections, will we notify you of our intent to do so, ten (10) workdays before release. Additionally, please be advised that the mere possibility of employee raiding does not constitute an adequate justification for the withholding, under exemption 4, of the names of your firm's employees and subcontractors. [See *National Air Traffic Controllers Association v. Federal Aviation Administration*, (D.C. Cir 2007).]

Example Exemption 4 [5 U.S.C. 552 (b)(4)] Submitter Letters (Continued)

A Submitter Letter To Seek Commercial and Financial Information (Continued)

Please note also that while we would prefer hearing from you directly, if you have no objections to disclosing the information in question, if we do not hear from you within this time period, we will presume that you have no objection to disclosing this information.

If you have any questions regarding what we are asking you to provide, or any of the issues discussed in this letter, you may contact _____ at ____-____-____, by FAX at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachments

Example Exemption 4 [5 U.S.C. 552 (b)(4)] Submitter Letters (Continued)

B Notification to Submitter of Release Over Objections Letter

Use the following Notification to Submitter of Release Over Objections Letter to notify a submitter of FSA's decision to release portions of records responsive to a FOIA request to a requester over its objections.

[Control Number]

[Mr./Ms. Submitter-Representative Name]

[Business Title]

[Submitter Business Name]

[Business Address]

[City, State, ZIP Code]

Dear Mr./Ms. [Submitter-Representative]:

Thank you for your letter, dated [month, day, year], in which you objected to the Farm Service Agency's (FSA) disclosing your firm's [specify documents at issue; such as contract proposal and related correspondence for contract #_____].

After considering your comments and thoroughly reviewing the documents at issue, we plan on releasing the following information for the reasons discussed below. [Explain what information is being released and why it is being released; see following **examples**:

1. *Total contract award amount. The total amount of the contract awarded to your firm is a matter of public record and thus releasable under FOIA. The public has a right to know the cost of doing business with the Government.*
2. *Name of the President/CEO of your firm. Your firm is a publicly-owned company. Therefore, this information is published in your firm's annual report. Because it is already a matter of public record, the information is releasable under FOIA.*
3. *Names of key personnel. The mere possibility of employee raiding does not constitute an adequate justification for the withholding, under exemption 4, of FOIA. See National Air Traffic Controllers Association v. Federal Aviation Administration, (D.C. Cir 2007).]*

We do not believe that release of this information will reveal confidential commercial or finance information or cause your firm substantial competitive harm. FSA plans to release this information (copies enclosed) to the requester ten (10) workdays from the date of your receiving this letter.

If you have any questions regarding this matter, you may contact _____ at ____-____-____, by FAX at ____-____-____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachment(s)

Example Exemption 4 [5 U.S.C. 552 (b)(4)] Submitter Letters (Continued)

C Acknowledgement With Notice About Submitter Consultation Letter

Use the following Acknowledgement With Notice About Submitter Consultation Letter to acknowledge FOIA requests seeking records containing commercial or financial information submitted by a person or entity outside of the Federal Government; such as requests for FSA contracts for goods or services, leases on real property, etc.

[Control Number]

[Mr./Ms. Requester's Name]

[Requester Address]

[City, State, ZIP Code]

Dear [Mr./Ms. Requester]:

This is in response to your [choose 1: Freedom of Information Act (FOIA) / Privacy Act (PA) / Freedom of Information Act/Privacy Act (FOIA/PA)] request (copy attached) dated [month, day, year] _____, to the United States Department of Agriculture (USDA), Farm Service Agency (FSA). FSA received a copy of your request on [month, day, year] _____ and assigned it control number _____. Please reference this number in any future communication with our office about your request.

FSA processes FOIA/PA requests on "first-in, first-out" basis. The actual processing time will depend upon the complexity of the request and whether or not it involves sensitive or voluminous records, or extensive searches and/or consultations. FSA also processes FOIA/PA requests on a multi-track basis. This means that simple requests, requiring minimal efforts to respond (1-5 workdays), are processed in one track, normal requests requiring more time to respond (6-20 workdays) are processed in another track, and complex requests involving voluminous records, extensive searches or consultations (requiring more than 20 workdays to respond) are processed in yet another track. We have placed your request in the [choose 1: simple / normal / complex] track.

We have classified your request as a [choose 1: commercial-use / media-use / educational non-commercial scientific-use / other-use] request. Please consult the attached schedule of FOIA/PA fees for an explanation of what this means with respect to your obligation to pay FOIA/PA fees.

Please note that because you have asked for records containing commercial or financial information submitted by persons outside of the Federal Government, we are required to consult with them before releasing the requested records.

Additionally, please be advised that we are taking a time extension To properly process your request, because of 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. This means that we hope to be able to respond to you on or before [insert date 30 workdays after the date of this letter: month, day, year] _____.

In the interim, if you have any questions about the status of your request, you may contact _____ at _____-____-_____, by e-mail at _____, or by mail at _____.

Sincerely,

[Name]

[Title]

FSA [National/State/County] Office

Attachments

Quick-Start Guide for Reviewing Records for Release

Each responsive document **must** be reviewed to determine what portions of it, if any, are releasable to the public. Document releasability decisions may be quite different if the document in question was:

- included in communications between an FSA attorney and FSA client
- shared with parties outside FSA
- compiled for law enforcement purposes.

Therefore, the same document retrieved from different files within FSA could be treated **differently** when requested under FOIA.

The key to reviewing records for release is to know more about the document under review. The following steps are to assist FOIA processors in organizing record reviews. The following table is a quick-start guide that may be used as a reference **only**.

Step	Action
1	Where did FOIA processor find the document? Knowing where (being able to identify the specific files) from which the document in question was retrieved in the file search conducted for responsive records is the first step in performing our analysis. FSA's uniform filing guide for records in State and County Offices, 25-AS, is a valuable resource in determining the status of a document with respect to whether or not it is covered by the Privacy Act. Some of our files, including many of our program files, are organized for access by personal identifiers (name, SSN, farm number, etc.) and are covered by the Privacy Act. Other files, like COC Minutes, are organized for access by other access terms; such as date of meeting. When FSA can identify the specific FSA file from which a particular document was retrieved, FSA is in a position to know if the Privacy Act will be a factor in FSA's determination to release a particular document to the individual who requested it. FSA is able to determine if the document has acquired an additional "layer" of FOIA protection by coming under "the wing of a protected species" by being added to this file, as; for example, by being added to a formal investigative file, being included in attorney-client communications, etc. These are determinations that often cannot be made from a review of content alone that are critical in FSA's determination of the document's releasability.

Quick-Start Guide for Reviewing Records for Release (Continued)

Step	Action
2	Who created this document? And for what purpose? Was this document created by FSA personnel, on FSA time, with FSA materials, at FSA expense? To what extent was it created to facilitate FSA business? Documents created by FSA personnel solely for an individual's personal convenience, even if on FSA's time, with FSA materials, and at FSA's expense may be personal documents and not subject to FOIA. However, personal records placed in official FSA files, even by mistake, are subject to FOIA once a FOIA request for these records is received. Or was the document created by parties outside the Federal Government? Documents created by FSA personnel to facilitate FSA business may potentially be protected by exemption 5. Documents about FSA business created by parties outside the Federal Government are generally not protected by exemption 5.
3	With whom has it been shared? Just as documents created by parties outside the Federal Government found in FSA files are generally not protected by exemption 5, documents shared with parties outside the Federal Government are generally not protected by exemption 5. In much the same way, personal records created for an individual employee's convenience when shared with other FSA employees become FSA records once a FOIA request for these records is received; such as supervisor's notes about an individual employee's conduct or performance shared with FSA personnel specialists are subject to FOIA.
4	Does the document contain personal information? Once the "provenance," history, and "Privacy Act status" of the document in question is well understood and their implications translated into appropriate redactions, etc., the remaining content of the document in question is ready to be reviewed in light of the 9 FOIA exemptions. In so doing, remember that even if a particular document was retrieved from a Privacy Act System of Records, it must also be reviewed for release under FOIA. The Privacy Act does not protect information that FOIA requires to be released. The first question that must be asked is if the remaining content of the document contains personal information attributable to an individual. If so, depending on the identity of the requester, and the identity of the individual to whom this information pertains, this portion of the content may be protected under FOIA exemption 6.

Quick-Start Guide for Reviewing Records for Release (Continued)

Step	Action
5	Does the document contain information provided by a producer to participate in USDA programs? The next question that must be asked is if the remaining content of the document contains information provided by an agricultural producer or owner of agricultural land to participate in USDA programs. If so, depending on the identity of the requester and the identity of the individual to whom this information pertains, this portion of the content may be protected under FOIA exemption 3. If the FOIA processor is uncertain as to whether specific items of information should be protected under FOIA exemption 3, you may need to ask the following additional questions: • “Where did the information come from?” • “Why did USDA ask for it or need it or put it in its files?” • “What did USDA do with the information? Record it? Transform it?”. If the FOIA processor doesn’t know the answers to these questions, the program specialists in the FOIA processor local office, State Office, or Washington, D.C. should know. There is no substitute, when reviewing records for release, for knowing FSA’s records, inside and out. When the FOIA processors have the answers to these questions, they answer to whether or not the information under review should be redacted under FOIA exemption 3.
6	Does the document contain confidential business or financial information submitted by a party outside the Federal Government? The next question that must be asked is if the remaining content of the document contains confidential business or financial information submitted by a party outside the Federal Government. If so, this portion of the content may be protected under FOIA exemption 4.
7	Does the document contain FSA recommendations, opinions or deliberations on FSA policies or procedures by FSA or USDA employees, or COC or STC members? If so, that content may be protected under FOIA exemption 5.
8	Does the document contain anything else that might be protected under another exemption?
9	Does the remaining content of the document contain anything else that might be protected by another FOIA exemption?

The bottom line: Reviewing records for release under FOIA is a process of systematically subjecting a document to cross-examination. Once FOIA processors have redacted everything that **must** be protected according to an applicable exemption, what remains is what **must** be released in response to a FOIA request.

Summary FOIA/Privacy Act Fee Tables

A Standard FOIA/Privacy Act Fees

The following table summarizes chargeable fees for routine FOIA services categories. Fees for electronic searches and other special services are charged according to prevailing rates on a per minute basis.

Category	Unit Cost		Unit Description
	Clerical Time	Professional Time	
Search Services	\$10 per hour <u>1/</u>	\$20 per hour <u>1/</u>	Charged in 1/4 hour increments.
Review Services			
Duplication	\$0.20 per page (per each sheet side)		Single-sided copy, 8 ½" x 14" or smaller.
	\$0.50 per page linear foot of the longest side of the copy		Single-sided copy, larger than 8 ½" x 14".
Certification	\$5 per page		FSA certification that copies are "true copies".
Authentication	\$10 per page		Authentication of copies under Departmental Seal.
Other Services	Actual charges as established or incurred by FSA		

1/ Whenever feasible, charge at hourly rate of actual salary plus 16 percent of basic pay. Otherwise, charge at this standard USDA hourly rate.

Note: Requesters are not charged fees if the total amount of chargeable fees is equal to or less than \$25, because the cost of collecting the fee would exceed the amount collected, according to 7 CFR, Appendix A, to Subpart A, 3(b).

Summary FOIA/Privacy Act Fee Tables (Continued)

B FOIA Processing Fees

The following table summarizes the chargeable fees for each category of requester.

Note: Requesters are not charged fees if the total amount of chargeable fees is equal to or less than \$25, because the cost of collecting the fee would exceed the amount collected, according to 7 CFR, Appendix A, to Subpart A, 3(b).

Category	Search Fees	Review Fees	Duplication Fees
Commercial Use	Yes	Yes	Yes
Educational Use	No	No	Yes, first 100, 8 1/2" x 14" or smaller, single-side pages are free.
Scientific Use	No		
Media Use	No		
Other Use	Yes, first 2 hours free.		

C Privacy Act Processing Fees

Privacy Act requesters are charged **only** for the cost of duplicating responsive records. However, they are not entitled to 100 pages free.

Note: Requesters are not charged fees if the total amount of chargeable fees is equal to or less than \$25, because the cost of collecting the fee would exceed the amount collected, according to 7 CFR, Subtitle A, Subpart A, Appendix A, Subsection 3(b).