

For: FSA Offices

**Searching for Records in Response to FOIA Requests  
and Documenting Search Efforts and Results**

Approved by: Acting Administrator



**1 Overview**

**A Background**

Recently, the Appeals and Litigation Staff (ALS) has received FOIA appeals where it was determined that:

- a search to locate the requested records was **not** performed before responding to the request
- the requester is notified that responsive records were **not** found, and yet, while processing the appeal, records are located
- the request is denied based on a FOIA exemption; however, no records are available
- a search was conducted but the details of the search efforts were **not** documented and maintained in the individual FOIA request file.

**B Purpose**

This notice provides:

- a reminder to all FSA offices of the obligation under FOIA to search for records that may be responsive to a proper FOIA request before responding to the request and providing appeal rights
- the type of information that shall be maintained in individual FOIA request files that document the search efforts and the results of the search
- steps used when processing FOIA appeals, including conducting another search and obtaining certifications of the search efforts from key FSA personnel, when applicable.

Disposal Date	Distribution
August 1, 2010	All FSA Offices; State Offices relay to County Offices

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### 1 Overview (Continued)

#### C National FOIA Contacts

For questions about conducting searches and the type of information that must be included in individual FOIA request files, contact Sue Ellen Sloca, OEA, by either of the following:

- e-mail at [sueellen.sloca@wdc.usda.gov](mailto:sueellen.sloca@wdc.usda.gov)
- telephone at 202-720-1598.

For questions about FOIA appeals, contact Robin Wieland, ALS, by either of the following:

- e-mail at [robin.wieland@wdc.usda.gov](mailto:robin.wieland@wdc.usda.gov)
- telephone at 202-690-2814.

### 2 Processing Initial FOIA Request

#### A Requirement to Search for Responsive Records

Once FSA determines that a requester has submitted a proper FOIA request for FSA records, regulations require each office where the records would reasonably be expected to be found to conduct a search to locate records that may include the type of information the requester is seeking.

#### B Documenting Search Efforts

Notate the individual FOIA request file with the following information about the initial search:

- name and location of each FSA office that was included in the search
- reasons certain FSA offices were or were **not** included in the search, if applicable
- date search was conducted

**Note:** If the search took more than 1 day, document the date the search began and date it ended. Notate the search dates for each office that conducted a search.

- name and title for each employee who participated in the search or supervised the search efforts, and the FSA office to which each employee is assigned

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### 2 Processing Initial FOIA Request (Continued)

#### B Documenting Search Efforts (Continued)

- description of the files, by subject, included in the search

**Examples:** “2009 CRP file”, “2004 annual acreage report file”, “2007 travel claims for the CED”, etc.

- reason certain files were or were **not** searched, if applicable.

These items are **not** all-inclusive. Notate the details of any particular circumstances involving the initial search efforts, as necessary, to establish that the search was adequate.

#### C Documenting the Results of the Search

If requested records are located, document the following for each FSA office where records are found:

- total number of pages located
- type of records located.

**Note:** See 1-APP, subparagraph 153 A for the types of materials that must be included in individual FOIA request files.

#### D Responding to Requests When Records Are Not Located

There may be times when, after conducting a search, responsive records are **not** found. When FSA is **not** able to locate responsive records, the requester shall be notified, in writing, that a search was conducted, records could **not** be located, and provided appeal rights to the Administrator.

**Note:** See 1-APP, Exhibit 58 for mandatory language that shall be included in a “no records” response to a request for records.

### 3 Processing FOIA Appeals

#### A Issue on Appeal

When no records are found, the search method used by the record holding FSA office is the issue on appeal. However, there may be times when the requester challenges the search efforts even when all available records are located. This will be the case when the requester has reason to believe that additional records exist. Often, the inability to locate records may be the only issue the requester raises.

#### B Conducting a Second Search

The administrative appeals process under FOIA provides FSA the opportunity to fully review and reconsider the initial processing of the request, the initial search efforts, and the decision to withhold records.

When the adequacy of the search is the issue, a second complete search shall be conducted in response to the appeal. FSA has the latitude to expand the second search to add locations and files that were **not** included in the first search.

**Note:** The individual FOIA request file, as well as the FOIA appeal file, will document the search efforts and the results of the second search, according to subparagraphs 2 B and C.

#### C Certification of the Search for Records

FSA has the burden to demonstrate that the search was performed in good faith and the methods used would have reasonably been expected to produce all responsive records that are available.

Signed statements attesting to the search efforts and the results of the search are used to meet FSA's burden on appeal.

These certifications can be provided by employees who performed the search or officials responsible for supervising or coordinating the search efforts.

ALS will assist the State FOIA Coordinator to prepare statements to document the searches conducted in State and County FSA offices. For searches conducted in the Kansas City Offices and the National Office, ALS will work directly with the employees who performed or supervised the searches. Documentation of the search efforts and the results of the search is used to prepare statements obtained during the appeals process.

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### 3 Processing FOIA Appeals (Continued)

#### D Requests Remanded for Additional Processing

On a case-by-case basis, if the initial review by ALS reveals that a search was **not** conducted for records that the record holding office knows may exist in its files, ALS may remand the FOIA request to the record holding office for additional processing, including a search to locate records, and a more complete response. If an FSA County Office is the record holding office, the request will be remanded through the State Office.

ALS will close its files on the appeal and notify the requester that the request is being referred to the record holding office for further processing and response. If the request is denied in part or in whole, the requester will again be provided appeal rights to the Administrator.

### 4 Action

#### A FSA Office Action

Employees in FSA offices who respond to FOIA requests shall follow the instructions in this notice.

#### B State Office Action

State FOIA Coordinators shall ensure that all FSA offices in their respective States follow the instructions in this notice.