

For: FSA Employees

**Freedom of Information and Privacy Act (FOIA/PA) Procedure
for Forest Guardians and Similar Requests**

Approved by: Acting Administrator



1 Overview

A

Background

Some of the Field Offices have asked for specific guidance concerning the handling of the FOIA/PA requests for Forest Guardians and similar requests.

B

Purpose

This notice:

- reminds all FSA employees that, under the FOIA/PA, a request must be responded to within 20 workdays, minus holidays and weekends
- strongly suggests that, if a request is pending for more than 4 workdays, provide an acknowledgment letter to the requester stating the following:
 - date received by the person assigned to handle FOIA/PA requests
 - fees that may be charged
 - request for additional information, if needed, or clarification needed to enable "a person familiar with the subject of the request" to locate responsive documents
 - if requested, address the request for expedited treatment (within 10 workdays)
 - if requested, address the request for a fee waiver (request justification).

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| Disposal Date October 1, 2002 | Distribution All FSA employees; State Offices relay to Service Centers |
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2 FOIA Action

A

Sample Paragraphs

Subparagraphs B through D are samples to use when addressing FOIA/PA issues.

B

Fee Paragraph

To notify the requester of fees that may be involved in the processing of a request:

Additionally, we must advise you that, in accordance with Department of Agriculture regulations Title 7 CFR, Appendix A to Subpart A, § 4, your request is deemed to constitute an agreement to pay any fees that may be chargeable up to \$25. Fees may be charged for searching for records sought at the respective clerical, professional, and/or managerial rates of \$2.50/\$5.00 per quarter hour, and for duplication of copies at the rate of 20 cents per copy. The first 100 copies and 2 hours of search time are not charged, and the remaining combined charges for search and duplication must exceed \$25 before we will charge you any fees.

C

Clarification Paragraph

If you need further clarification from the requester:

Your request was concerning “subject of the request.” Unfortunately, we will need clarification of the information you have requested. The FOIA requires that the records sought be “reasonably described.” If we do not hear from you by the close of business or “2 weeks from date of this letter,” we will regard your request as withdrawn.

D

Fee Waiver Paragraphs

If a fee waiver is asked for, the requester must meet all 6 factors to qualify for a fee waiver and be given a cutoff date in which to respond. If **no** response is received by the cutoff date, the request may be administratively closed out as failure to respond.

In accordance with Code of Federal Regulations (CFR), Title 7, § 6, (a)(1), an agency should consider, in determining when fees will be waived or reduced, the following 6 factors:

1. The subject of the request, i.e., whether the subject of the requested records concerns "the operations or activities of the government;"
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2 FOIA Action (Continued)

D

Fee Waiver Paragraphs (Continued)

2. The informative value of the information to be disclosed, i.e., whether the disclosure is "likely to contribute" to an understanding of Government operations or activities;
 3. The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to "public understanding;"
 4. The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities;
 5. The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and,
 6. The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."
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3 Instructions

A

Search for Records

Once a FOIA/PA request is received in an FSA office, the office must:

- conduct a thorough search for all records physically located in, as well as within the functional purview of, their office that would respond to this request
- document the details of their search.

In the event of an appeal and/or litigation concerning this request, the office will be required to execute a declaration demonstrating the reasonableness of the search to the court.

Do not transfer the request to KCAO or to the FSA National Office without first contacting and checking with those offices. You may suggest to the requester that the information may be more easily and quickly obtained from KCAO, but it must be the requester's choice. FSA must provide a uniform response to the requester.

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3 Instructions (Continued)

B

Final Response

Each item requested must be responded to point by point. If no records exist, the response must state, "After a thorough search of our Agency indices, we find no responsive Farm Service Agency documents to your request." Please do not cite an exemption if "no records" exist. The only time exemptions should be used is if you are withholding responsive documents, and appeal rights should be provided in both cases.

C

**State Office
Action**

State Offices shall immediately distribute this notice to Service Centers.

D

**FSA National
Office FOIA
Contact**

If there are questions about this notice, contact Diane Flores Korwin, 202-720-5534.
