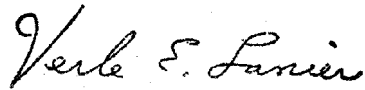


For: State and County Offices

**Clarifying Freedom of Information Act (FOIA) and  
Privacy Act for Work Measurement and Workload Reporting**

Approved by: Acting Administrator



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**1 Overview**

**A  
Background**

BUD and the FOIA and Privacy Act Specialist are reviewing increased questions from Field Offices concerning the proper way to account for FOIA and Privacy Act requests. It is important for FSA that:

- County Office workload reports be as accurate as possible
- all offices report in a similar manner
- Field Office employees have:
  - a thorough understanding of the differences between FOIA and the Privacy Act
  - an ability to determine when to charge a fee.

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**B  
Purpose**

This notice informs State and County Offices of how:

- FOIA and Privacy Act requests are defined in 5 U.S.C. 552 and 552a
- those requests should be captured in the work measurement and workload reports.

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<b>Disposal Date</b>  October 1, 2003	<b>Distribution</b>  State Offices; State Offices relay to County Offices
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## Notice INFO-22

### 1 Overview (Continued)

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#### C

##### Contact

If there are questions concerning:

- FOIA or Privacy Act requests, contact Diane Flores Korwin at 202-720-5534
  - reporting FOIA or the Privacy Act in workload, contact Vicki Larson at 202-720-2501.
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### 2 Determining Fee and Monitoring Requests

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#### A

##### Charging FOIA Fees

Fees under FOIA must be charged according to 7 CFR Part 1, except as specified in subparagraphs B and C. FOIA requests where fees are charged are reported in work item 201, Office Type Services Furnished to All Entities for Which Funds Are Deposited.

**Note:** The query for work item 201 will be modified to begin capturing only FOIA requests in FY 2003. The FY 2002 query will be used for workload reporting, but is currently capturing both the FOIA requests and the administrative fees associated with providing information coded "AIRPHOTO".

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#### B

##### Waiving or No FOIA Fee

There are several instances in which fees will not be charged.

- Except for requests seeking records for a commercial use, no charge shall be made for either of the following:
    - the first 100 pages of duplicated records (8½" x 14" or smaller-size paper)
    - the first 2 hours of manual search time or the equivalent value of computer search time.
  - No charge shall be made, even to commercial use requesters, if 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.**
  - Fees may not be charged for time spent by an FSA employee in resolving legal or policy issues, or in monitoring a requester's inspection of FSA records. No charge shall be made for normal postage costs.
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**2 Determining Fee and Monitoring Requests (Continued)**

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**B  
Waiving or No  
FOIA Fee  
(Continued)**

- **Records shall also be provided without charge under the following conditions:**
    - when filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number
    - when members of the public provide their own copying equipment, in which case no copying fee will be charged (although search and review fees may still be assessed)
    - when any notices, decisions, orders, or other materials are required by law to be served on a party in any proceeding or matter before any Department agency.
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**C  
Fee Waivers**

Under USDA FOIA regulations, there are only certain instances where a fee would be waived. Agencies shall waive or reduce fees on request for records if disclosure of the information in the 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 or activities of the government, and is not primarily in the commercial interest of the requester.

- In determining when fees shall be waived or reduced, agencies should consider the following factors:
    - the subject of the request; that is, whether the subject of the requested records concerns “the operations or activities of the government”
    - the informative value of the information to be disclosed; that is, whether the disclosure is “likely to contribute” to an understanding of government operations or activities
    - the contribution to an understanding of the subject by the general public likely to result from disclosure; that is, whether disclosure of the requested information will contribute to “public understanding”
    - the significance of the contribution to public understanding; that is, whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities
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## Notice INFO-22

### 2 Determining Fee and Monitoring Requests (Continued)

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#### C

#### Fee Waivers (Continued)

- the existence and magnitude of a commercial interest; that is, whether the requester has a commercial interest that would be furthered by the requested disclosure
- the primary interest in disclosure; that is, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, and that disclosure is “primarily in the commercial interest of the requester.”
- FSA may, in its discretion, waive or reduce fees associated with a request for disclosure, regardless of whether a waiver or reduction has been requested, if FSA determines that disclosure will primarily benefit the general public.
- Agencies may also waive or reduce fees under the following conditions:
  - where the furnishings of 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
  - where the requester is engaged in a nonprofit activity designed for the public safety, health, or welfare
  - where it is determined that payment of the full fee by a State or local government or nonprofit group would not be in the interest of the program involved.
- Fees shall be waived, however, without discretion in all circumstances where the amount of the fee is \$25 or less.

FOIA requests where fees are waived should be reported in work measurement and workload as instructed in subparagraph 3 B.

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#### D

#### Revised FSA-534

FSA-534 has been revised to be noted if a request for information is a FOIA or Privacy Act request. Also, columns for partial denials and Privacy Act exemptions (d)(5) and (k)(2) have been added. Although both FOIA and Privacy Act requests are recorded on FSA-534, **only** FOIA requests shall be counted as a unit in workload.

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## Notice INFO-22

### 3 Clarification

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#### A

#### FOIA Requests

A FOIA request can be made for any **FSA record**. Under FOIA, a request can be made by “any person,” a broad term that encompasses individuals (including foreign citizens), partnerships, corporations, associations, and foreign or domestic governments. Requests may also be made through an attorney or other representative on behalf of “any person.”

**Examples:** A producer wants to know how much another producer is getting in FSA subsidies.

A seed seller wants a list of FSA participating producers who receive subsidies for a mass mailing.

A Congressman wants a list of FSA participating producers who receive subsidies to mail out flyers concerning the new Agriculture legislation information.

**Note: Do not consider telephone calls transferred to another agency or referred to another organization as FOIA requests.**

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#### B

#### Reporting FOIA in Work Measurement and Workload

FOIA requests, as defined in subparagraph A, are captured as a unit count in work item 112, FOIA Requests Where Fees Are Waived. **Count 1 unit for each request, not each photocopy provided.** Count 1 unit per request whether approved or denied. County Offices are reminded that FSA-533 shall be used when approving or denying a request.

Several work items have been created for workload that are FOIA requests, but because the information is needed separately for other purposes, it is not captured in work item 112. These work items are:

- 117, Assisting With BWEP
- 118, Providing Information for Reinsured Companies
- 1207, Phase II Tobacco Settlement
- 2159, Civil Rights Activity.

**Note:** Include all requests for copies of information for Consent Decree.

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## Notice INFO-22

### 3 Clarification (Continued)

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#### B

#### Reporting FOIA in Work Measurement and Workload (Continued)

County Offices with activity in these work items may want to keep a separate FSA-534 for this activity since the request does get reported in the annual FOIA report, but is captured in its own work item rather than work item 112 for work measurement and workload. County Offices with activity in any of these programs are reminded that the annual FOIA report and work item 112 do not need to match.

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#### C

#### Privacy Act Requests

Privacy Act requests are more limited and can be made only by U.S. citizens or aliens:

- lawfully admitted for permanent U.S. residence
- who are seeking information about themselves.

Under the Privacy Act, subsection (d)(1), an individual has right of access to his or her record if it is indexed and retrieved by his or her name or personal identifier.

A Privacy Act request is a request by an individual for his or her own records in 1 of FSA's Privacy Act system of records; that is, the Farm Records File or Applicant Borrower File.

**Examples:** A producer requests a copy of his or her farm file.

An attorney is representing a producer in litigation, and has signed consent from the producer to get a copy of the farm file.

A person has a power of attorney for an individual who is incapacitated or deemed incompetent to handle his or her finances.

A third party requests copies of producer records, with signed consent from the producer, because the producer was unable to provide copies of previously provided records. This would apply in these cases as a State-mandated conservation program requiring AD-1026A and producer maps. The person representing the producer requests the records from an FSA office rather than the producer to obtain them more timely.

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3 Clarification (Continued)

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**D**  
**Reporting**  
**Privacy Act**  
**in Work**  
**Measurement**  
**and Workload**

Privacy Act requests described in subparagraph C are captured by work measurement County Offices as an operation included for the applicable program area.

**Example:** Providing a copy of CRP-1 to a producer is an operation included for work item 526, Conservation Reserve Program Contract.

Time for providing copies of documents that do not relate to any specific program are captured in work item 120, General Program Administration.

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**E**  
**Photocopies**  
**of Aerial**  
**Photography**

Providing copies of aerial photography **is not** considered to be a FOIA request since the information provided on aerial photography is not covered by FOIA. Information on maps given to producers on general public may disclose:

- farm and tract number
- cropland acres
- land use determinations, such as HELC and WC **only**.

**Do not release maps with CRP or EQIP information included. To do so is an invasion of personal privacy under FOIA.**

Time for assisting the general public with aerial photography or providing anyone other than a producer with photocopies of aerial photography shall be recorded in work item 120. Providing producers with photocopies of their own maps is recorded in the applicable program area by the work measurement County Offices.

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## Notice INFO-22

### 4 Action

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#### A County Office Action

County Offices shall:

- review FSA-534's to ensure that FY 2002 information has been accurately recorded
  - make appropriate adjustments according to the clarifications provided in this notice
  - ensure that FOIA requests are properly reported on the FY 2002 yearend workload report.
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#### B State Office Action

State Offices shall:

- immediately distribute this notice to FSA Service Centers
  - ensure that FSA-534's are properly completed with separation of FOIA and Privacy Act requests notated.
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