This document has been
Rescinded and is located
in our Archive files.

For Active files, visit
http://www.osmre.gov/directiv.htm

	U· S· DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	Subject Number: INF-3 Transmittal Number: 721 Date: 5/14/92

Subject: Freedom of Information Act (FOIA)

Approval: **Title:** Director

1. **Purpose**. The purpose of this document is to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, in accordance with the procedures established in the Department of the Interior regulations contained in 43 CFR Part 2, Subpart B-Requests for Records. It also provides internal guidelines and procedures for routing requests, reviewing documents for FOIA allowed exemptions, and responding to requests made to the Office of Surface Mining Reclamation and Enforcement (OSM) under the FOIA, in keeping with the spirit of the FOIA (43 CFR 2.13(a)(b).)

2. **Summary of Changes**. This directive revises and supersedes Directive INF-3, Title Transmittal Number 497, dated December 8, 1988. The significant revisions are as follows:

a. Section 3 on Definitions has been expanded to include definitions on these topics: The Act, Advanced Fee Payments, Action Office, Agency, Agency Record, Appeals, Commercial Information Notification, Denial of a Document, Denial of a Request, Due Date, Extension of Time, Fees, Fee Waiver, Interim Responses, Transferring of a FOIA Request, and Working Day.

b. Section 4.a. on Responsibility has been revised by combining the paragraph on Assistant Directors' functions with that on the functions of the Field Office Directors.

c. Section 4.b.(1) on Preparation has been revised for clarity, detail, and changes in FOIA policy. The headings added are: Controlling Incoming FOIAs, Due Dates, Coordinating Responses With Other Offices, Requests That Are Not Clear, Willingness to Pay Fees, Transferring a Request, Fee Waivers, 10-Day Extension of Time, Responses Exceeding 20 Days, Notifying Submitters of Commercial or Financial Information, Collecting Responsive Documents, Estimating Fee Charges, Fees Exceeding $250, Format of an Affirmative Response, and Copies of the Final Response.

d. Section 4.b.(2) on Review of Documents for FOIA Exemptions has been added to the Procedures section.

e. The Procedures Checklist of Appendix A has been revised by clarifying text and adding additional steps.

f. Appendix B has been enhanced by adding a FOIA Exemptions Checklist, a page on Comparison of the FOIA and the Privacy Act, and a list of Privacy Protected Information.

g. Appendix C has been enhanced by adding sample letters on: Clarifying a Vague or Overly Broad Request, Referral of a FOIA to Another Agency, Request to Submitter of Commercial (b)(4) Information, Willingness to Pay Fees, Delay of Processing Request, Referral of Records to Another Agency for Review, Records Cannot be Located, and A New Computer Document is Too Costly to Program.

h. Appendix F, a copy of Appendix A of Chapter 2 of 43 CFR regarding fees, has been added.

i. Appendix H, a copy of Executive Order 12600, has been added.

3. Definitions.

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

b. Advance Fee Payments are payments which may be required from a FOIA requester by the action office when it is anticipated that allowable fees are likely to exceed $250 and that the requester does not have a history of prompt payment of FOIA fees. (See Section 4.b.(1)(u) and Appendix C, Illustration 9 of this directive.)

c. Action Office is the office within OSM that has been assigned the lead responsibility for collecting documents, reviewing documents for FOIA exemptions, and preparing the FOIA response. It is the office within OSM which is in possession of the records requested by the FOIA and whose staff can best provide a review of records for FOIA exemptions.

d. Agency is OSM.

e. **Agency Record** is any form (paper, video cassette tapes, or computer data tape, etc.) of information already maintained by the Agency that was created by the Agency or received from other sources in connection with the transaction of public business.

> **Note**: The FOIA does not apply to **Personal Records** of individual employees, as long as these documents are created and maintained primarily for the convenience of the employee not on Agency time, not at the Agency's expense, not concerning Agency business, and not distributed to other employees for Agency purposes.

f. **Appeals** are written notices (see 4.b.(1)(p) of this directive) prepared by the FOIA requester and sent to the Department of Interior, Assistant Secretary for Policy, Management and Budget in cases when:

(1) Records have been withheld in a FOIA response;

(2) A request has been denied because of failure to describe requested records or because of other procedural deficiencies, or when it has been determined that the requested records do not exist or cannot be located;

(3) A fee waiver has been denied; or

(4) A request has not been timely provided within the time limits provided in 43 CFR 2.17.

g. **Commercial Information Notification** is a written notice prepared by the action office that, in accordance with 43 CFR 2.15(d) and EO 12600, allows the submitters of commercial and financial information the opportunity to provide the Agency with a detailed statement of any objection to disclosure of such documents. (See Appendix C, Illustration 4.)

h. **Denial Of A Document** is a written decision prepared by the action office to withhold a requested record. (See Appendix C, Illustration 11, and 4.b.(1)(p) of this directive.

i. **Denial Of A Request** is a determination made by the action office familiar with the files, that a request does not reasonably describe the requested records. A denial of a request includes the same written appeal language as a denial of a document.

j. **Due Date** is the date 10 working days after the date that the initial request has been received by the Agency or a later date, where action is deferred pursuant to paragraph 4.b.(1)(d) of this directive.

k. **Exemptions** are the nine categories of criteria for exempting documents or portions of documents from the Act's statutory disclosure requirements. A list of the exemptions and explanations can be found in 43 CFR 2.13(c)(1) through (c)(9), and Appendix B of this directive .

l. **Extension Of Time** is an additional (one-time) 10-working-day period for providing a FOIA response, pursuant to 43 CFR 2.17(c).

m. **Fees** are the costs OSM may charge for search, review, and reproduction of records according to the appropriate requester category, as indicated in 43 CFR 2.20 (Appendix D of this directive), unless fees are waived pursuant to 43 CFR 2.21. (See sample form for assessing fees, Appendix D, pg. D-5.)

n. **Fee Waiver** is an OSM determination to provide documents without charge or at a reduced amount pursuant to 43 CFR 2.21(a) (Appendix C, Illustration 6, of this directive).

o. **FOIA Request** is a written request for Agency records made by any person that:

(1) States that the request is made under FOIA;

(2) Reasonably describes the records sought, or is sufficient to enable an Agency employee familiar with the subject area to locate the record with a "reasonable amount of effort" (see 43 CFR 2.14(b)); and

(3) States whether they are willing to pay fees and states the maximum amount of fees that they are willing to pay, and the fee category into which they claim to fall; or requests consideration for a fee waiver.

See Section 4.b.(1)(b) for information on treating an incoming as a FOIA request. See Section 4.b.(1)(c) for information on requests not covered under FOIA.

p. **FOIA Response** is the Agency's written notification to the FOIA requester that is prepared by the action office sets forth the Agency's determination whether to grant or deny a FOIA request. Ordinarily the FOIA response will include the following materials:

(1) A list of documents being released, and a list of documents being withheld (if any), with the exemptions for withholding each document (or part a document);

(2) All records responsive to the request in the format most convenient for the Agency to provide;

(3) Records that are already in existence at the time of receipt of the request, not documents created after receipt of the request;

(4) A determination of fee charges or fee waiver.

q. **Interim Response** is a letter provided (usually by the action office) to apprise the requester of the status of his or her request.

For example, an interim letter could be sent to:

(1) Notify the requester of a delayed response exceeding 20 working days including the extension;

(2) Notify a requester that OSM is providing an opportunity for review of possible confidential commercial or financial documents by the submitter of the documents;

(3) Request information to clarify a FOIA request;

(4) Request responses to questions to justify a fee waiver; or

(5) Notify a requester of the estimated charges for preparing a response, and request a commitment to pay the charges or to provide advance payment if fees exceed $250.

r. **Transfer of a FOIA Request** is the action office referral of documents that were prepared or classified by another Federal agency, to that agency for review. The action office should also notify the FOIA requester that the originating agency will be communicating with the requester directly on those documents.

s. **Working Day** is a regular Federal workday (not Saturdays, Sundays or public legal holidays).

4. **Policy/Procedures.**

a. **Responsibility.**

(1) **The Director** oversees compliance with the requirements of the FOIA and institutes a program which ensures impartial administration of FOIA by OSM. The Director also ensures protection of the rights accorded to the public by the Act.

(2) **OSM's Freedom of Information Act Officer** duties are delegated to the Chief, Correspondence and Issues Management Staff (CIMS). The FOIA Officer signs all interim and final responses to FOIAs prepared at Headquarters, and any FOIA prepared within OSM that withholds information under one of the FOIA exemptions; develops policies, guidelines, procedures, standards, and training for the OSM FOIA program; and monitors and evaluates the program's effectiveness. The Chief of CIMS also coordinates all OSM FOIA actions with the Assistant Solicitor, Branch of Regulatory Programs, Division of Surface Mining; coordinates all FOIA requests directed to the Secretary, that involve documents in files maintained by OSM; provides authoritative guidance on which documents can be released or are exempt under the Act; advises the Director on policy matters involving FOIA; and prepares the Annual Report on FOIA activities for the Agency.

(3) **Field Office Directors and Assistant Directors of the Western and Eastern Support Centers** are responsible for signing any interim, or final response to a FOIA request when such a response releases all information requested, but only after review by CIMS and as necessary, the Solicitor's Office. Each Field Office Director (FOD) and Assistant Director (AD) is responsible for designating a FOIA Coordinator, who is trained or will be trained in the area of the FOIA; providing the name and title of the individual designated as FOIA Coordinator to the Chief, CIMS; developing guidelines and operating procedures consistent with this directive; and acting as a responsible official for documents, within the jurisdictions of the FOD or AD in question, which are released or withheld. The FOD or AD is accountable for these responsibilities.

(4) **Field FOIA Coordinators** will assist the action office assigned action in responding to the FOIA request by answering questions concerning the application of the FOIA guidelines and reviewing for FOIA exemptions; providing training, if necessary, concerning the above FOIA guidelines; controlling and tracking FOIA requests as the responses are being prepared; ensuring that the action office responding to the FOIA follows the procedures in this directive (see the FOIA Checklist, Appendix A of this directive); assisting the Headquarters FOIA Coordinator in preparing the Annual Report; and providing review of FOIA responses to ensure their consistency with the FOIA directive prior to sending a response to CIMS. Each Field

FOIA Coordinator is the main contact, with the FOIA Officer and the Headquarters FOIA Coordinator, for his or her office.

(5) **Headquarters FOIA Coordinator** assists the Field Coordinators and Headquarters action offices responding to the FOIA request by answering questions concerning the application of the FOIA guidelines and reviewing for exemptions; developing and providing training to Agency personnel; controlling and tracking the FOIA request as the response is being prepared in Headquarters; and reviewing all Agency FOIA responses, for completeness and decisions to withhold or release documents, before forwarding them to the Assistant Solicitor, Branch of Regulatory Programs, Division of Surface Mining. The Headquarters FOIA Coordinator also maintains records necessary for the preparation of the Annual Report to Congress. The Headquarters FOIA Coordinator is the contact between the Department of the Interior FOIA Officer and OSM for FOIA activities and policies.

b. Procedures.

(1) **Preparation.** As a quick guide for preparing a FOIA response, see the FOIA Checklist, Appendix A of this directive, in addition to the following.

(a) **Controlling Incoming FOIAs.** OSM field or Headquarters offices receiving a FOIA request should immediately date-stamp it, and send a copy of the request to the FOIA Coordinator at Headquarters for correspondence control. CIMS will place a control number and assign a due date on the control sheet for each FOIA request. It will also send the incoming and control sheet to the action office at Headquarters or to the FOIA Coordinator in the field when the field installation has the action, the Field FOIA Coordinator should then copy the action office and track the response to the FOIA when the field installation has action.

When a Headquarters office has action, the Headquarters FOIA Coordinator will copy the action office and track the response.

(b) **Treating A Request As A FOIA Request:** OSM may decide to treat an incoming letter as a FOIA request when:

(1) A third party asks to view Agency documents concerning another party (such as personnel records); or
(2) A request has been made for a specific document which is known to be protected by one of the FOIA exemptions (such as audit files or draft documents).

If an OSM office has decided to treat an incoming as a FOIA, it should copy the OSM FOIA Officer. The letter will then be handled

according to FOIA procedures. The due date will be 10 working days from the date it was decided the letter should be treated as a FOIA.

(c) Not Covered Under FOIA: A request is not covered under FOIA when:

(1) It is from an employee of a Federal agency acting in an official capacity;
(2) It is from a congressional committee or subcommittee;
(3) It is by an individual for records about himself/herself which are subject to the Department's Privacy Act regulations; and
(4) It asks for information that OSM would need to create in response to the request, and not for records that already exist.

In these cases, FOIA procedures and review would not be required.

(d) Due Dates. According to the FOIA and 43 CFR 2.17, a response to a request for records should be made no more than 10 working days after receipt of the request by the Agency.

The running of the 10 working days may be deferred if:

(1) The requester has to be contacted by the action office for information to clarify his/her request;
(2) The requester must agree to pay fees because the request did not state a willingness to pay fees, and no fee waiver has been sought or granted; and
(3) The requester must make advance payment because costs for processing the request exceed $250.

The first 10-day time period will begin when these questions are resolved.

(e) Coordinating Responses With Other Offices. If a field or Headquarters office receives a request for which some responsive documents are located in other OSM offices, the action office should take the lead in coordinating a response with the other offices and should contact the FOIA Coordinator concerning this.

When a FOIA that needs coordination within OSM is received, and more than one office maintains a large number of documents responsive to it, the Headquarters FOIA Coordinator will take the lead in coordinating a response. In either case, it is important that the action office identifies the need for coordination to the FOIA Officer.

(f) **Requests That Are Not Clear.** If the action office determines that the request is so general that a reasonable determination of the nature and location of the requested documents cannot be made, the action office should contact the Headquarters FOIA Coordinator. The action office should then contact the requester by letter or phone to clarify the request. (See Appendix C, Illustration 1.)

(g) **Willingness to Pay Fees.** The initial FOIA request should include the amount of fees the requester is willing to pay, unless he or she requests a fee waiver. (See Appendix C, Illustration 5.) If a willingness to pay fees has not been indicated, then the action office should prepare a letter inquiring whether the FOIA requester is willing to pay fees, and estimating fee charges (based on fee categories explained in Appendix D). Letters should be cleared through the Headquarters FOIA Coordinator.

(h) **Transferring a Request.** If the FOIA request seeks records that were originated or maintained by another Federal agency, the Headquarters FOIA Coordinator should be notified by the action office of the situation. The Coordinator will then prepare a transmittal letter for the FOIA Officer's signature transferring a copy of the request (with the agency documents if applicable) to the appropriate Federal agency, with a request that the agency directly reply to the requester concerning the documents in question. (See Appendix C, Illustration 3).

The procedure does not apply if documents requested were originated by a state agency. The state should however be notified by the action office of the FOIA request for state records.

If OSM has no additional documents that are responsive to the FOIA request, the Headquarters FOIA Coordinator will also notify the requester by letter that action on the request has been transferred to the other agency.

If OSM has other responsive documents, then in its FOIA response, OSM should note the transfer of the specified documents to the other agency, and the FOIA response should state that the other agency will respond directly concerning documents transferred. (See Appendix C, Illustration 2).

(i) **Fee Waivers.** When a fee waiver is requested in the incoming FOIA, the action office should determine if the requester has addressed the statutory requirements identified in 43 CFR 2.21 or in Appendix C, Illustration 6, of this directive. If further information is needed concerning the justification for a fee waiver, the action office should send an interim response to the FOIA requester before the first 10-day due period has expired. The interim response should include

the estimated costs to be paid if the fee waiver is not approved. If a fee waiver is approved, the approval should be noted in the final response. OSM may charge fees for copying and search costs for documents in the administrative record, when they are in a location easily available to the requester.

All correspondence should be cleared through the Headquarters FOIA Officer.

(j) **10-Day Extension of Time.** Under three circumstances FOIA provides for an additional (one-time) 10 working days for sending a FOIA response. The additional 10 days starts on the next working day after the first 10-day period. See Appendix C, Illustration 7 for the cases in which an extension is permitted, and a sample extension notice. The action office should prepare and send the extension notice before the end of the first 10-day period. The Headquarters FOIA Officer should be contacted and copied.

(k) **Responses Exceeding 20 Days.** OSM should send a "delay" letter if OSM can not send the FOIA response within the 10-day time period and the additional 10-day extension period. The requester may deem the request denied and may exercise a right of appeal in accordance with 43 CFR 2.18. (See Appendix C, Illustration 8 for a sample letter.) The action office should prepare the delay letter. The Headquarters FOIA Officer should be contacted and copied.

(l) **Notifying Submitters of Commercial or Financial Information.** Under 43 CFR 2.15(d) and Executive Order 12600 (see Appendix H), if a requester seeks a record containing trade secrets or commercial or financial information that may be confidential and was submitted by a person outside of the Federal Government, the office responsible for processing the request shall provide the outside submitter with a notice of the request and copies of the documents in question. The action office should prepare a notice as indicated in Appendix C, Illustration 4. If the period for the submitter to comment exceeds the time limit for processing the request, the action office will notify the requester of the delay. (See Appendix C, Illustration 8.)

Notifications are not necessary if OSM determines prior to giving notice that the request for the record should be denied, or the information has previously been lawfully published or released, or is readily available to the public from another source.

(m) **Collecting Responsive Documents.** The FOIA only requires that OSM provide those responsive documents which exist, and are in the possession or control of the Agency at the time the Agency receives a request; not those prepared or acquired after

the date of receipt of the request: Such later documents are not responsive to the request. If a document responsive to the request does not exist, the Agency is not required to produce a document that incorporates the requested information.

All responsive documents that have been located then must be identified on either the release list or withheld list. See Appendix C, Illustration 11, for a sample of the required formats for the lists.

(n) Review of Documents for FOIA Exemptions. Under the FOIA, there are nine exemptions on the basis of which a document (or portion of a document) may be withheld from disclosure to the public. OSM will withhold information falling within an exemption category only if (a) release of the information is prohibited by statute or Executive Order (EO 12600 and SMCRA for example) or (b) sound grounds exist for invoking one of the FOIA exemptions.

The program person in the action office should be the first to review and identify documents that may be withheld. The program person and officials identified in the appeal language may be required to explain the rationale for withholding documents if there are questions raised by CIMS; the Staff Attorney, Branch of Regulatory Programs; or upon appeal of the FOIA response by a staff attorney in General Law.

(o) FOIA Exemptions. Appendix B of this directive lists the nine FOIA exemptions and provides a detailed explanation of the exemptions most often used by this Agency.

Please consult with the OSM FOIA Officer, or Headquarters FOIA Coordinator, if you are unclear as to whether or not specific documents fall under any of the exemptions. CIMS will coordinate the review of the final response, including these records, with the Office of the Solicitor, Division of Surface Mining.

> **NOTE:** It is important to note that how documents have been filed and released prior to the receipt of the FOIA may have an effect on the applicability of a FOIA exemption, and in some cases might require release of a document that might otherwise have been withheld.

(p) Withholding (Denying) Documents (or Portions of Documents) A denial of a document includes a reference to the specific FOIA exemption authorizing the withholding (e.g., 5 U.S.C. 552(b)(5)), the sound grounds for withholding the record (e.g., pre-decisional), a listing of the names and titles or positions of each person responsible for the denial, and a statement that the denial may be appealed to the Department of the Interior, Assistant Secretary for

Policy, Management and Budget. (See Appendix C, Illustration 11). Each document being released and each document being withheld should be listed in the appropriate enclosure, as the illustration shows.

If OSM will withhold a portion of a document and release the remainder, on a copy of the document, the words, paragraphs, or numbers to be withheld should be blackened out completely (excised or taped over), to provide an excised copy for release. A document of this type should be listed on both the release and withheld lists. Each document should be reviewed for applicability of one or more FOIA exemptions. If information within a given document does not fall under any of the exemption categories, there is no basis for withholding that document. The FOIA Officer should receive for filing a complete set of documents being released, and a complete set of documents being withheld including copies of both excised and not excised versions of each document being partially withheld.

> **NOTE:** Attorneys in Field Offices of the Solicitor will not be routinely involved in preparation or review of FOIA responses. In the relatively rare instances in which, because of the volume of documents being reviewed, it is appropriate to obtain the assistance of a Field Office attorney on a FOIA response, the referral to a Field Office attorney will be made through the Headquarters Office of the Solicitor.

As indicated in Appendix C, Illustration 11, a denial letter should include:

(1) The FOIA citation for withholding each document on the withheld list item;
(2) Justification of the denial for each withheld list item;
(3) The appeal language in the body of the response; and
(4) The name and title of the person(s) responsible for the denial.

A denial of a request (not being able to locate any responsive records after a reasonable search) includes the same written appeal language as a denial of a document. (See Appendix C, Illustration 12)

(q) Computer Data: It is the Agency's policy to provide computer data (following review for exempt information), unless major reprogramming would be required and the Agency has no use for resulting data that would justify the cost of the reprogramming. (See Appendix C, Illustration 13.) The Agency may provide the information to the requester in whatever format is most convenient to the Agency.

(r) Administrative Records or Public Files: If the requester desires to come into an Agency installation to review and possibly copy documents from the Agency files, he or she may do so if documents have already been deemed releasable because they are required to be released by law -- and so are placed in a public or administrative file -- or because they have already been reviewed for FOIA exemptions. If a fee waiver does not apply and documents need to be reviewed, any search and/or review time for documents will be charged as appropriate for the fee category in Appendix D into which the requester falls. There will be a charge of $ .13/page for copying the documents.

(s) Estimating Fee Charges. Upon receipt of a FOIA request, the action office should identify the fee category into which the requester falls (see Appendix D), and should maintain a log of costs (see D-4 of Appendix D) to substantiate charges. Appendix F also provides information on costs that are allowable under the law. The Agency may charge fees ($ .13/page) for providing copies of requested documents that are in the administrative record when they are at a location easily available to the requester.

Fee Categories:

(a) Commercial use,
(b) Educational and Noncommercial Scientific Institutions,
(c) Representatives of the News Media, and
(d) All Others.

(t) Billing for Collection of Fees.

Once a FOIA response (that charges fees) has been signed, a copy of it should be transmitted via memorandum to: Chief, Programmatic Accounting, P.O. Box 25065, Room D-2025, Denver, Colorado 80225.

Programmatic Accounting will then send the bill for collection to the FOIA requester and provide a copy of the bill to the FOIA Officer. In accordance with 43 CFR 2.20(j), a bill for collection, Form DI-1040, shall be used for collection of fees. Refer to Appendix D of this directive for sample language. If a FOIA request charge has not been paid by the requester after 30 days, Programmatic Accounting should provide that information to the Headquarters FOIA Coordinator, who will record that fact in the requester's file. The Headquarters FOIA Coordinator will notify an Agency office preparing a later FOIA response that the requester had not paid fees.

(u) Fees Exceeding $250. Where it is anticipated that allowable fees are likely to exceed $250 and the requester does not have a history of prompt payment of FOIA fees, the requester will be required to make an advance payment of the entire fee before the Agency processes the request. (43 CFR 2.20(h)(1).) (See Appendix C, Illustration 9.)

Where a requester has previously failed to pay a fee within 30 calendar days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees (43 CFR 2.20(h)(2)). In accordance with the Debt Collection Act of 1982, interest can be assessed after the 31st day following the day on which the bill was sent.

The office of the Chief, Programmatic Accounting should immediately contact the Headquarters FOIA Coordinator when advance payment is received, and the Coordinator will contact the action office regarding the payment.

(v) Format of a Response. (1) Affirmative Responses: After the action office has reviewed the responsive documents for FOIA exemptions, and if all documents are deemed releasable, the action office will prepare a response similar to that in Appendix C, Illustration 14, when fees are less than $15; use the language in Appendix C, Illustration 9, when fees exceed $250; and include fee waiver approval, when answers to fee waiver questions justify the Agency's granting a fee waiver.

The proper listing of documents being released is an important element in the FOIA response; the action office should use the Appendix C illustration format.

(2) Responses denying records: After the action office has reviewed the responsive documents for FOIA exemptions, and if some or parts of documents are withholdable under a FOIA exemption, the action office will prepare a response similar to that in Appendix C, Illustration 11. Enclosure A will list documents being released, as well as the portions of documents being released (those that have excised material). Enclosure B will list documents and portions of documents being withheld with the statutory reason cited.

(w) Copies of the Final Response. In the case where all documents are being released, the action office should send the response in final format to the FOIA Officer for review in CIMS (bcc copies will not have to be provided until after the final review and any revisions have been made). The response should include two copies

of the responsive documents and a copy of the letter and Enclosure A, Release List; as well as a Wordperfect copy of the letter and enclosure. CIMS will send the response and documents for further review to the Solicitor's office as necessary. The second copy of the documents will be maintained in CIMS files by the FOIA Officer.

In the case where the action office determines that part or all of some documents should properly be withheld under applicable FOIA exemptions, the action office should provide to the FOIA Officer a response package which includes: the response letter; Enclosure A, Release List; and Enclosure B, Withheld List; a copy of the letter and enclosures on a Wordperfect file; two complete copies of the documents being released (one for CIMS file); and one set of documents being withheld. If a portion of a document is to be withheld, the complete document should be sent to be reviewed in CIMS and the SOL office.

After the FOIA response has been reviewed and revised as appropriate, the action office should send the following offices, in general, a copy of the response letter with the enclosure list:

bcc:
OSM Subject
OSM Reading
CIMS
CIMS-FOIA Coordinator (Complete Copy)
SOL/DSM/Regulatory Programs
SOL/Field Office
Action Office
FOD or AD

5. **Reporting Requirements**. **Annual Report**. The OSM FOIA Officer will be required to provide by February 1 to the Department of Interior FOIA Officer information as requested by the Department of the Interior FOIA Officer (such as data on requests, affirmative responses and denials). This information is collected by the Department of the Interior to be submitted to Congress.

6. **References**. 43 CFR Part 2, Subpart B; 383 DM 15, Department of the Interior, Freedom of Information Handbook; and 5 USC 552 et seq.

7. **Effect on Other Documents**. Supersedes directive INF-3, Freedom of Information Act, dated 12/08/88.

8. **Effective Date**. Date of issuance.

9. **Contact**. Chief, Correspondence and Issues Management, (202) 208-2562, FTS 268-2562, or FAX at 1-202-219-3107.

10. **Keywords**. Freedom of Information Act (FOIA) and FOIA Exemptions.

11. **Appendices**.

Appendix A - Checklist for Preparing a FOIA Response
Appendix B - FOIA Exemptions
Appendix C - Samples of Letters
Appendix D - Calculating Fee Charges
Appendix E - 43 CFR Part 2: Departmental Guidelines on FOIA
Appendix F - 43 CFR Part 2, Appendix A: Fees
Appendix G - 5 U.S.C. 552: The Freedom of Information Act
Appendix H - Notification Procedures for Commercial Confidential Information

APPENDIX A

CHECKLIST FOR PREPARING A FOIA RESPONSE

(With Cites)

HFC = Headquarters FOIA Coordinator
FC = Field FOIA Coordinator
ACTION OFFICE = Office assigned responsibility for collecting and reviewing documents, and preparing the FOIA response

1. Any OSM office receiving a FOIA should promptly date stamp the letter and send a copy to the **HFC** and/or **FC**. A response is due within 10 days from OSM's receipt of the FOIA.

2. **HFC** in CIMS will control the FOIA and send it to the **ACTION OFFICE.**

3. The **ACTION OFFICE** coordinates response with other Field or Headquarters office(s) if more documents are located in other offices. Notify **HFC** and/or **FC** regarding this.

4. The **ACTION OFFICE** determines what fee category group the requester is in (43 CFR 2.20). The **ACTION OFFICE** and other offices involved with responding should keep track of search time and copying costs for the appropriate fee category. (See Appendix D - Fee Charges.)

5. **INTERIM RESPONSES**

(a). If request is unclear, or too broad to determine what information is responsive, then after consultation with the FOIA coordinator, the **ACTION OFFICE** contacts the requester by letter or phone to clarify request. (See Illustration 1, Appendix C.)

(b). If the FOIA requester asks for a fee waiver, the **ACTION OFFICE** reviews the justification for fee waiver with regard to questions listed in 43 CFR 2.21(a) and Appendix C, Illustration 6, of the FOIA Directive. If a justification is not clear from the information the requester has already provided, then the **ACTION OFFICE** will send a letter requesting necessary information, after consultation with the **HFC** and the **SOL.**

(c). The **ACTION OFFICE** should prepare a letter requesting a 10-day extension, if the first 10-day due date can't be met 43 CFR 2.17(c)). FOD or Assistant Director may sign. (See Illustration 7, Appendix C.)

(d). The **ACTION OFFICE** should identify exempt documents according to Appendix B - FOIA Exemptions, and provide CIMS with reasons for using the exemption. (e.g. the document to be withheld is a draft, the claimant requested confidentiality, or this is not final agency policy.)

(e). The **ACTION OFFICE** contacts by letter the person or organization that provided the Agency with documents which are responsive to the incoming FOIA and which may contain confidential commercial or financial information. The submitter of those documents has 10 days to review the documents in question and provide sufficient reason why the information is confidential. The FOIA requester should be notified by letter that a review by the submitter is being requested. (See 43 CFR 2.15(d) and Illustration 4, Appendix C.)

6. For documents responsive to a FOIA that were originated by another Federal agency, the **ACTION OFFICE** will forward a copy of the FOIA response, together with the other agency's documents, to the other Federal agency for review, and direct response to the requester. (See 43 CFR 2.15(b) and Illustration 10, Appendix C.) If documents are provided by a state agency, the state may be contacted concerning the request as a courtesy but not necessarily for review of their documents.

7. The **ACTION OFFICE** chronologically lists documents (or portions of documents) to be released in Enclosure A. Enclosure B lists chronologically documents (or portions of documents) being withheld under one or more of the FOIA exemptions. All documents should be marked with corresponding identifiers. (See Illustration 1, Appendix C.)

8. The **ACTION OFFICE** prepares response in accordance with the FOIA Directive. (See Appendix C.)

9. The **ACTION OFFICE** sends two copies of the proposed response letter and two sets of enclosures to CIMS with an enclosed diskette on a Wordperfect file, and one set of withheld documents (without deletions) for review. Folowing review by HQ, if there are major changes, retyping will be done by the **ACTION OFFICE**.

10. For FOIAs being responded to in the field, if all documents are being released, the FOIA or Assistant Director for WSC or ESC will sign the response after CIMS and (if necessary) SOL review. All affirmative responses prepared by HQ will be signed

by the Agency Freedom of Information Act Officer. If documents are being withheld, all Agency responses are prepared for the signature of the Freedom of Information Act Officer. Copies of the response denying documents will be sent from CIMS.

11. If a letter is not responded to by 20 working days (which includes the 10-day extension), then the **ACTION OFFICE** sends a letter of delay. (See Illustration 8, Appendix C.)

APPENDIX B TABLE OF CONTENTS

List of FOIA Exemptions	Page B-1
FOIA Exemption Check List	Page B-2
Exemption (b)(2)	Page B-3
Exemption (b)(3)	Page B-3
Exemption (b)(4)	Page B-4 & B-5
Exemption (b)(5)	Page B-6
Exemption (b)(6)	Page B-7
Exemption (b)(7)	Page B-8
Privacy Protected Information under (b)(6)	Page B-9
Comparison of the FOIA and the Privacy Act	Page B-10

FOIA EXEMPTIONS

Under the Freedom of Information Act (5 U.S.C. 552) there are nine exemptions which serve as a basis for withholding information from the public. Records (or portions of records) that meet the following exemption criteria may be withheld from public disclosure, but must be listed on a withheld list that gives the statutory citation and the reason for withholding each item. The nine exemptions are listed below:

(b)(1)	EXEMPTION 1	**CLASSIFIED SECRET MATTERS OF NATIONAL DEFENSE OR FOREIGN POLICY**
(b)(2)	EXEMPTION 2	**INTERNAL PERSONNEL RULES AND PRACTICES**
(b)(3)	EXEMPTION 3	**INFORMATION SPECIFICALLY EXEMPTED BY OTHER STATUTES**
(b)(4)	EXEMPTION 4 **	**TRADE SECRETS, COMMERCIAL OR FINANCIAL INFORMATION** "Trade secrets and commercial or financial information obtained from a person and privileged or confidential."
(b)(5)	EXEMPTION 5 **	**PRIVILEGED INTERAGENCY OR INTRA-AGENCY MEMORANDA OR LETTERS** (Pre-decisional, attorney-client privilege and attorney work-product privilege fall under this exemption.) "Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency."
(b)(6)	EXEMPTION 6 **	**PERSONAL INFORMATION AFFECTING AN INDIVIDUAL'S PRIVACY** "Personnel and medical files and similar files disclosure of which would constitute a clearly unwarranted invasion of personal privacy."
(b)(7)	EXEMPTION 7 **	**INVESTIGATORY RECORDS COMPILED FOR LAW ENFORCEMENT PURPOSES** (See page B-8 for a list of the six criteria for invoking this exemption)
(b)(8)	EXEMPTION 8	**RECORDS OF FINANCIAL INSTITUTIONS**
(b)(9)	EXEMPTION 9	**GEOGRAPHICAL AND GEOPHYSICAL INFORMATION CONCERNING WELLS**

** **Exemptions most often cited by OSM**

See following FOIA checklist for additional guidance on reviewing documents.

FOIA EXEMPTION CHECK LIST

Very often background information on documents that would justify withholding them is not provided when Headquarters receives the draft letter with enclosures. Please provide information to CIMS when documents being reviewed fall under one or more of the categories below.

1. ATTORNEY-CLIENT PRIVILEGED - Was the information provided to the Department's attorney with the intent that it would be held confidential? Has the information been kept confidential within OSM?

2. ATTORNEY WORK-PRODUCT - Was the information prepared by or on behalf of the Department, in anticipation of future litigation? If prepared by OSM staff, was it prepared at the request of the Office of the Solicitor or Department of Justice?

3. COMMERCIAL INFORMATION - Does the information relate to business or trade in which the submitter has a commercial interest?

4. FINANCIAL INFORMATION - Is this information taken directly from the company's ledger? Is this a final audit summary or auditor's working papers?

5. CONFIDENTIAL INFORMATION - Will release of the information cause harm to the competitive position of the company from whom the information was obtained, or impair the Government's ability to obtain similar information in the future?

6. PERSONAL INFORMATION - Would release of the information be an unwarranted invasion of personal privacy? For example is there a social security number, home address or phone number? In documentation of complaints (letters and telephone logs) has the complainant requested confidentiality? If it is not clear whether the complainant has requested confidentiality, the complainant should be asked if he or she objects to their name being released.

7. PHONE CONVERSATION RECORDS - Only information that is otherwise eligible to be withheld under a FOIA exemption may be withheld; e.g., identifiers of confidential complainants, privileged attorney-client communications, etc. Phone conversation records are not per se withheld, if they have been circulated within the Agency, filed in Agency files, or otherwise used for official purposes.

8. PRE-DECISIONAL DOCUMENTS - (1) Has this document ever been released outside OSM to a non-Federal Government entity? If it has, in most cases, it should be released. (2) Is this document or section of document a final policy, or an opinion or recommendation? (3) If this document is not signed or dated, is it a final or draft document?

9. PUBLIC FILES - If a document has been stored in files routinely and readily available to the public, such as reading-room files, in most cases the document should be released.

10. PERSONAL FILES VS AGENCY FILES - Notes created solely for the convenience of the writer that are not required to be made by the writer as an official duty, and are not (a) shared with anyone, (b) kept in Agency files, or (c) used in an adverse action against the employee are not considered Agency records under the FOIA and are not subject to a FOIA response.

DOCUMENTS IN THE FOLLOWING CATEGORIES ARE EXEMPT FROM FOIA DISCLOSURE REQUIREMENTS:

Source: 5 U.S.C 552(b) or 43 CFR 2.13(c).

Note: (FOIA exemptions (1),(8), and (9) are not normally applicable to OSM documents and are not included in this Appendix)

Exemption (b)(2) - (5 U.S.C 552(b)(2))

"...related solely to the internal personnel rules and practices of an agency."

NOTE: The courts have interpreted the exemption to encompass two distinct categories of information:

a. Internal matters of a relatively trivial nature, and in which the public has no vested interest.

b. More substantial internal matters the disclosure of which would allow circumvention of a statute or agency regulation, such as certain administrative manuals, performance ratings and lists of awards.

Exemption (b)(3) - (5 U.S.C 552(b)(3))

"...specifically exempted from disclosure by statute."

Its intent is to allow statutes which required or authorized the withholding of confidential information to remain unaffected by the disclosure mandate of the FOIA.

This exemption applies to items such as:

a. Information on archeological resources on public land and Indian land (pursuant to the Archeological Resources Protection Act of 1979, 16 U.S.C 470).

b. Information protected under sections 508(a)(12) and 508(b) of SMCRA.

c. Federal income tax return information protected under the I.R.S. Code, 26 U.S.C. 6103.

Exemption (b)(4) - (5 U.S.C 552(b)(4))

"...trade secrets and commercial or financial information obtained from a person and privileged or confidential."

This exemption is intended to protect 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.

Executive Order No. 12600 mandates that all agencies notify the submitter of commercial or financial information that may be confidential when their data is requested under FOIA, in order to obtain their position on disclosure. (43 CFR 2.15(d)) (See illustration 4 of Appendix C).

The exemption covers two broad categories of information in Federal agency records:

a. **Trade secrets** which are considered to be: "A secret, commercially valuable plan, formula, process or device that is issued for the making, preparing, compounding or processing of trade commodities that can be said to be the end product of either innovation or substantial effort" (Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983)), and

b. Information which is:

   (1) **Commercial or financial:** (Relating to business or trade, in which the submitter has a commercial interest),

   (2) **Obtained from a person** (not generated by the Federal Government), and

   (3) **Privileged or confidential** (disclosure of the information is likely to have either of the following effects:

      (a) impair the Government's ability to obtain similar information in the future; or

      (b) cause substantial harm to the competitive position of the person from whom the information was obtained).

See Next Page

Some Records That Are Releasable

Best and final offer of the successful bidder (Without the unit costs).

Total prices charged the Government -- What the Government pays for goods and services.

Information already made available outside the Executive Branch of Government. (List of directors and officers of a company)

Some Records That Should Be Withheld Under (b)(4)
(Unless the Submitter Was Previously Informed That Release of the Information Is a Condition of Submitting It)

Work force data

Technical designs

Overhead and operating costs

Information on financial condition

Business sales information

Direct or indirect ledger information

Government contract information of unsuccessful bidders

Exemption (b)(5) - (5 U.S.C. 552(b)(5))

"...inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency"; e.g., pre-decisional, confidential attorney-client communications, or attorney work-product.

This is the exemption most frequently invoked by OSM. The three primary, most frequently invoked privileges which have been held to be incorporated into Exemption (b)(5) are:

a. **The pre-decisional privilege**, also known as the "executive privilege" on documents generated within the Executive Branch. These documents include advice, opinions, or recommendations (not strictly factual data) which are antecedent to the adoption of an official Agency policy.

Pre-decisional documents may include drafts, discussions of proposed policy, requests for analysis, advisory opinions, notes commenting on a pre-decisional document, and consultant reports that interpret technical data and have not been adopted by the Agency.

Documents not generally considered pre-decisional are: (1) A pre-decisional document (or portions of the document) adopted or incorporated verbatim into a final decision, (2) factual portions of otherwise deliberative documents and (3) documents available or previously released outside the Executive Branch.

b. **Attorney work-product privilege** protects documents and other memoranda prepared by an attorney in contemplation of actual litigation; or by staff at the request of an attorney in contemplation of litigation.

c. **Attorney-client privilege** is not limited to the context of litigation as is the work-product privilege. It applies to confidential facts divulged by OSM or the Department as client to Office of the Solicitor or Department of Justice as attorney; and it also encompasses opinions given by the Office of the Solicitor or Department of Justice to OSM for the Department based upon those facts.

NOTE: The D.C. Court of Appeals has held that in order for an attorney-client communication to be withheld from disclosure under FOIA, not only must the advice be sought and given with the expectation that it would be kept confidential, but the agency must thereafter protect its confidentiality by giving it only to those who are authorized to speak or act for the agency with respect to the subject matter. (Coastal States Gas Corporation. v. Department of Energy, 617 F. 2d854 (D.C. Cir. 1980); Mead Data Central, Inc. v. Dept. of Air Force, 566 F.2d242 (D.C. Cir. 1977).

Exemption (b)(6) - (5 U.S.C 552(b)(6))

"...personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

To warrant protection, the information (1) must fall within the category of personnel, medical, and similar files (applies to any file or document which pertains to a specifically identifiable individual and contains information that is personal) ; and (2) must involve a privacy interest. Also to be considered is the degree of public interest involved (vs. the requester's personal interest in the matter). The benefit to the public by revealing information about Government programs and activities must be weighed against the potential harm to the individual about whom information is sought.

A third party request for information on another individual should alert the reviewer to a possible (b)(6) exemption. Exemption (b)(6) information can be released with the prior written consent of the individual (who is the subject of the record).

SEE FOLLOWING PAGES FOR MORE INFORMATION ON PRIVACY PROTECTION AND LISTS OF WITHHELD DOCUMENTS.

Exemption (b)(7) - (5 U.S.C 552(b)(7))

"...investigatory records compiled for law enforcement purposes, but only to the extent that production of such records would..." cause one of the following six harms:

(b)(7)(A) Could reasonably be expected to interfere with enforcement proceedings (Cite 5 U.S.C 552(b)(7)(A)).

(b)(7)(B) Would deprive a person of a right to a fair trial or an impartial adjudication (Cite 5 U.S.C 552(b)(7)(B)).

(b)(7)(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy (Cite 5 U.S.C 552(b)(7)(C)).

(b)(7)(D) Could reasonably be expected to disclose the identity of a confidential source (Cite 5 U.S.C 552(b)(7)(D)).

(b)(7)(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions (Cite 5 U.S.C 552(b)(7)(E)).

(b)(7)(F) Could reasonably be expected to endanger the life or physical safety of any individual (Cite 5 U.S.C 552(b)(7)(F)).

Use the appropriate citation above for whichever situation (or situations) apply.

NOTE: Investigatory documents originated by another agency or Department (for example, the Office of the Inspector General) should be sent to that agency for appropriate review, as well as a copy of the response to the requester, and the FOIA requester should be notified of that action and what office will be contacting him following that review.

PRIVACY PROTECTED INFORMATION

5 U.S.C. 552(b)(6) and 5 U.S.C. 552(b)(7)(C) are the FOIA exemptions most often used to withhold documents for privacy considerations.

THE BALANCING TEST:

- Some privacy interest must be found.
- Determine if there is a qualifying public interest.
  (How does release shed light on the Agency's performance of its statutory duties?)
- Balance the privacy interest against the public interest.
- What adverse effects would there be from release or withholding?
- Was there permission given by the individual to allow another to review his files?

Some Privacy Protected Information

Age
Administrative actions
Allegations of misconduct
Background investigations
Censured employees
Citizen complaints under SMCRA when complainant requests it
Credit card numbers
Educational background (not related to current job position)
Employee complaints against supervisors
Experience not directly related to the position held
Financial statements
Health/insurance benefits
Home addresses & phone numbers
Letters of reprimand and suspensions
Mailing lists of employees
Marital status
Medical files
Payroll info (deductions, etc.)
Performance evaluations
Performance ratings
Personal misconduct (not job related)
Place & date of birth
School grades
Social security number

Information Typically Releasable

Annual salary rates
Award amounts
Factors for ranking job applicants
Federal employees involved in union activities during work hours
FOIA requesters' identities
Names of present and former employees
Performance standards
Position descriptions
Present and past grades
Present and past position titles
Present and past duty stations
Professional awards and honors
Sanitized travel vouchers & invoices ("sanitized" meaning that home addresses, phone numbers and other privacy protected information is removed)
Successful candidates (with sanitized SF 171's)

COMPARISON OF THE FOIA AND PRIVACY ACT

FOIA	Privacy Act
The FOIA is an access statute.	The Privacy Act is a records management statute.
Scope	
Federal records and documents including some information subject to the Privacy Act.	Information about individuals contained in records that are retrieved by personal identifiers from systems of records.
Purpose	
To open most Government records to public scrutiny.	To protect sensitive Government records about individuals from public scrutiny; To enable people to know what information about them exists and to correct it, if in error; To restrict collection and disclosure of personal information; To prevent the existence of secret Government record systems and secret use of Government records about people; To maintain Government records about people in a secure and accurate manner.
Agency Response	
Information is required to be released unless it falls within one of nine discretionary exemptions (see pg. B-1 of directive). To withhold a document in response to a person's request for his own records, both a Privacy Act exemption and a FOIA exemption have to be cited.	Subject individuals have the right to see and amend their own records; some systems are exempt from access by the subject individual; access to medical records may be conditional; disclosure to third parties is prohibited except under 12 exemptions. One is when required under FOIA to be made public.

When a third party submits a FOIA request for information subject to the Privacy Act and the information is not required to be released under the FOIA, the material may not be disclosed without the prior written approval of the individual on whom the record is maintained.

See the Privacy Act directive (ADS-1) for more information on the Privacy Act.

APPENDIX C TABLE OF CONTENTS

SAMPLE	TOPIC	PAGE #
Illustration 1	Clarifying a Vague or Overly Broad Request	C-1
Illustration 2	Referral of a FOIA to Another Agency (Letter to the Requester)	C-2
Illustration 3	Referral of a FOIA to Another Agency (Letter to the Agency)	C-3
Illustration 4	Request to Submitter of Commercial, (b)(4) Information	C-4
Illustration 5	Willingness to Pay Fees	C-5
Illustration 6	Fee Waiver Clarification	C-7
Illustration 7	Extension of 10-Day Time Limit	C-9
Illustration 8	Delay in Processing Request	C-10
Illustration 9	Costs Exceeding $250	C-12
Illustration 10	Referral of Records to Another Agency for Review	C-14
Illustration 11	Denial of All Records (or Denial of Some Records, or Parts of Records)	C-15
Illustration 12	Records Cannot be Located	C-19
Illustration 13	A New Computer Document Too Costly to Program	C-20
Illustration 14	Fees under $15	C-21

APPENDIX C
Illustration 1

SAMPLE LETTER
REQUESTING CLARIFICATION OF A VAGUE OR OVERLY BROAD REQUEST

ADDRESS

Dear _____:

This is in regard to your Freedom of Information Act request of October 5, 1991. You requested information concerning _(subject)_.

Because of the broad and general nature of the description of requested information, we are unable to identify which records are being sought. Under Departmental regulations, 43 CFR 2.14(b)(2), the requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate them with a reasonable amount of effort. Your request does not meet this requirement.

Please be more specific concerning the type of documents you are requesting. In addition, if such information is available, please state the date, title or name, author, recipient, and subject matter of the record. Moreover, the geographical location and time frame for which you are seeking records have not been defined. It is unclear whether your request covers only records in this field installation or other Agency offices.

We will not proceed further with your request until we receive additional clarification from you. If you have any questions, please contact (name & telephone number).

Sincerely,

(NAME)
Freedom of Information
Act Officer

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

(THE 10-DAY RESPONSE PERIOD WILL NOT BEGIN UNTIL OSM RECEIVES THE FOIA REQUESTER'S RESPONSE TO THESE QUESTIONS).

Illustration 2

SAMPLE LETTER
REFERRAL OF A FOIA TO ANOTHER AGENCY OR BUREAU
(Letter to the Requester)

ADDRESS

Dear _____:

This is in regard to your Freedom of Information Act request of __(date)__. You requested documents concerning mineral regulations on public lands.

We have determined that the records described in your letter may be located at the Bureau of Land Management in the Department of the Interior. Therefore, we have forwarded your request to that Bureau, which will provide you with a direct response. If you wish to contact the Bureau, the mailing address is:

Mrs. Jane Smith
FOIA Coordinator
Bureau of Land Management
MS-208, Premier Building
Washington, D.C. 20240
(202) 653-8853

Should you have any further questions please contact me at __(telephone #)__.

Sincerely,

(NAME)
Freedom of Information
Act Officer

Illustration 3

SAMPLE LETTER
REFERRAL OF A FOIA TO ANOTHER AGENCY OR BUREAU
(Letter to the Bureau)

Mrs. Jane Smith
FOIA Coordinator
Bureau of Land Management
MS-208, Premier Building
Washington, D.C. 20240

Dear Ms. Smith:

Enclosed is a Freedom of Information Act request from ___(name)___ that your agency may be able to answer. We have advised ___(name)___ that she will receive a response directly from your office.

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosure

SAMPLE LETTER
REQUEST TO SUBMITTER OF COMMERCIAL [(b)(4)] INFORMATION

Mr. Bernard Skinner
Hurricane Coal Company
P.O. Box 1205
Pikeville, Kentucky 41501

Dear Mr. Skinner:

This is in regard to a Freedom of Information Act (FOIA) request from Mr. Donald Bird dated May 12, 1992, requesting documents concerning a Hurricane Coal Company cessation order (letter enclosed).

To assist us in determining whether data should be released, we request your firm's views on which items if any, are protected from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4). Enclosure A lists the documents which are responsive to Mr. Bird's FOIA request for your review. These documents were submitted to OSM by Hurricane Coal Company. If you recommend that items or portions of items be withheld, please provide us with the following:

(1) The data to be withheld and the basis on which the information is exempt under the FOIA;
(2) A detailed explanation of how disclosure would be competitively harmful to your company; and
(3) A statement that the information is confidential, has not been disclosed to the public by Hurricane Coal Company, and is not routinely available to the public from other sources.

Please provide us with your comments within 10 business days from the date of receipt of this letter. If you have any questions, contact __(name & telephone #)__.

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosures

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

(A LETTER NOTIFYING THE FOIA REQUESTER OF A DELAY BECAUSE OF THE SUBMITTER'S REVIEW SHOULD BE SENT INFORMING THE REQUESTER THAT IN ACCORDANCE WITH 43 CFR 2.15(d), THE COMMERCIAL AND FINANCIAL INFORMATION IS BEING REVIEWED AND THAT THE SUBMITTER WILL BE ALLOWED 10 BUSINESS DAYS TO PROVIDE COMMENTS ON THE MATERIAL).

SAMPLE LETTER
WILLINGNESS TO PAY FEES

ADDRESS

Dear Ms. _____:

This is in regard to your Freedom of Information Act (FOIA) request of March 9, 1992. You requested a "violator's system check" from the Applicant/Violator System (AVS) for 17 coal companies.

The following is an estimate of costs for producing the information you requested in your FOIA:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND APPLICABLE CHARGES)

	Total No. of Units	Unit Charges	Amount
Document Search Time:			
Clerical	4	$ 9.20/hr.	$ 36.80
Professional	20	$18.60/hr.	$334.20
	(The first 2 hrs. are not charged)		
Duplication:	20 pages	$ .13/page	0
	(The first 100 pgs. are not charged)		
		Total	$371.00

In your request, you did not indicate that you were willing to pay fees for providing the information you requested. In accordance with 43 CFR 2.20(g), this letter is to inform you of the estimated costs for producing the information you requested. Once we have been notified by you of your willingness to pay these costs, we will proceed with your request.

In accordance with 43 CFR 2.20(h)(1), where it is anticipated that allowable fees are likely to exceed $250.00 and the requester does not have a history of prompt payment of FOIA fees, we may require the requester to make an advance

payment. Once we have been notified by you that you are willing to pay the costs, and that you authorize OSM to proceed with your request, we will send you a confirming invoice formally billing you for 80 percent of the above estimated costs and indicating where your payment should be forwarded.

Sincerely,

(NAME)
Freedom of Information
Act Officer

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

(THE FIRST 10 DAYS REQUIRED FOR RESPONSE WILL BEGIN ONCE THE FEE ISSUE IS RESOLVED)

SAMPLE LETTER
FEE WAIVER CLARIFICATION

ADDRESS

Dear _____:

This is in response to your Freedom of Information Act request of February 21, 1992. You requested copies of records related to mine blast damage at several Kentucky mine sites.

In your letter you also sought a fee waiver. Before we grant a waiver, we must determine whether your request meets the twofold objectives for fee waivers established by the Department of Justice; that is, whether disclosure of the information is in the public interest because it: (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and (2) Is not primarily in the commercial interest of the requester (43 CFR 2.21(a)).

Before we make a decision on your request for a waiver, we ask that you provide information in response to the following questions so that we can determine if granting the waiver or a reduction in fees is in the public interest: (1) In what way does the record requested concern the operations or activities of the Government? ** (2) Is disclosure likely to contribute to public understanding of these operations and activities, and in what way do you have the knowledge and ability to disseminate the information to the public effectively? (3) Is the requested information already available to the public? ** **[Waiver is inappropriate for information already publicly available]** and (4) Is there a commercial interest that would be furthered if the information were disclosed?

Our initial estimate is that fees for processing your request will be the following:

** **[Typically, OSM already knows the answer to this question and typically does <u>not</u> ask this question.]**

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND APPLICABLE CHARGES)

	Total No. of Units	Unit Charges	Amount
Document Search Time:			
Clerical	10 hrs.	@ $ 9.20 hr.	$ 92.00
Professional or Managerial	12 hrs.	@ $18.60 hr.	186.00
	(The first 2 hrs. are not charged)		
Duplication:	600 pages	@ $ .13/page	65.00
	(The first 100 pgs. are not charged)		
		Total	$343.00

If we determine from your response that a fee waiver is not justifiable, we will request that you prepay 80 percent of the above estimated costs before we continue with your response (43 CFR 2.20(h)), and by separate letter, OSM will send you a confirming invoice formally billing you for the amount and indicating where your payment should be forwarded.

Sincerely,

(NAME)
Freedom of Information
Act Officer

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

THE FIRST 10 DAYS REQUIRED FOR RESPONSE WILL BEGIN ONCE THE FEE WAIVER ISSUE IS RESOLVED

Illustration 7

SAMPLE LETTER
EXTENSION OF 10-DAY TIME LIMIT

ADDRESS

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request dated September 1, 1991. You requested documents concerning mining activities in certain states.

(USE THE FOLLOWING LANGUAGE FOR THE CIRCUMSTANCE THAT APPLIES):

I. "Since we must search for and collect documents from offices other than the office processing the request, we are availing ourselves of the 10 working day extension of response time provided in the Department of the Interior FOIA procedures (43 CFR 2.17(c)(1))."

II. "Since we must search for and collect voluminous documents, we are availing ourselves of the 10 working day extension of response time provided in the Department of the Interior FOIA procedures (43 CFR 2.17(c)(2))."

III. "Since we must coordinate and consult with our Field Office personnel [or Solicitor's Office] [or Agency heads], we are availing ourselves of the 10 working day extension of response time provided in the Department of the Interior FOIA procedures (43 CFR 2.17(c)(3))."

We will send a final reply to you on or before **(10 WORKING DAYS FOLLOWING THE FIRST DUE DATE)**.

Sincerely,

(NAME)
Freedom of Information
Act Officer

- **(OR FIELD OFFICE DIRECTOR OR SUPPORT CENTER AD WILL SIGN IF FIELD OFFICE OR SUPPORT CENTER HAS ACTION)**
- **(THE NEW DUE DATE WILL BE COUNTED FROM THE LAST DAY OF THE FIRST DUE DATE PERIOD)**
- **(ONLY ONE 10-DAY EXTENSION IS ALLOWED UNDER THE FOIA - A DELAY LETTER WILL HAVE TO BE PREPARED IF A RESPONSE CANNOT BE MADE WITHIN 20 DAYS OF THE RECEIPT OF THE FOIA REQUEST)**

SAMPLE LETTER
DELAY IN PROCESSING REQUEST
(When request exceeds the 20-day limit)

ADDRESS:

Dear _____:

This is in regard to your Freedom of Information Act (FOIA) request of __(date of request)__. You requested __(subject of request)__.

(SELECT ONE OF THE APPROPRIATE PARAGRAPH(S) BELOW):

- o Because of the voluminous records that may be responsive to your request, additional time is necessary to enable us to determine which records or portions thereof should be provided. Accordingly, we anticipate a delay in providing you with our final response.

- o The requested documents have been retired to a Federal records center. We have asked that they be returned to us and will advise you when the material becomes available.

- o The records you requested are located at a number of our field offices and at headquarters. The (name of responsible office) will be coordinating the response since that office has jurisdiction over these records. As a result, we will need additional time to search for, collect, and review the material.

- o In accordance with 43 CFR 2.15(d), we are required to notify the submitter of material containing commercial and financial information when we receive a FOIA request for that material. The submitter has taken longer than anticipated to review the material. We expect to hear from them by (estimated date) and our response to your request will be forthcoming.

We expect to complete our response to you by (specify date).

You have the right to treat this delay as a denial of your request. You may appeal this matter by writing to: The Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. A copy of your initial request should accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of

the letter and it must be received no later than 20 workdays after the date of this letter. We hope, however, that you will defer action until a decision has been reached on your initial request.

We regret the delay and appreciate your consideration in this matter. Should you have any additional questions, contact (name and telephone number).

Sincerely,

(NAME)
Freedom of Information
Act Officer

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

SAMPLE LETTER
COSTS EXCEEDING $250

ADDRESS

Dear Mr. _____:

This letter is in response to your Freedom of Information Act (FOIA) request dated April 10, 1992, in which you requested Applicant/Violator System information relating to P & C Bituminous Coal, Inc., Ingram Coal Company and Johns Creek Coal Co.

We estimate that the cost to provide the requested information are as follows:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND CHARGES)

	Total No. of Units	Unit Charge	Total
Mainframe Computer Time:	5 hours	--	$192.38
Search Time:			
Professional	11 hours	$18.60/hr.	167.40
	(The first 2 hrs. of search time are not charged)		
Clerical	3 hours	9.20/hr.	27.60
	(The equivalent of the first 100 pgs. of duplication at $ .13/page, which is $13 is not charged)		- 13.00
		Total	$374.38

Your FOIA did not indicate whether or not you would be willing to pay fees. In accordance with 43 CFR 2.20(g), this letter is to inform you of the estimated costs. Once we have been notified of your willingness to pay fees, we will proceed with your request.

In accordance with 43 CFR 2.20(h)(1), where it is anticipated that allowable fees are likely to exceed $250 and the requester does not have a history of prompt payment of FOIA fees, OSM may require the requester to make an advance payment. Once we have been notified by you that you are willing to pay the

above costs, and that you authorize OSM to proceed with your request, we will send you a confirming invoice formally billing you for 80 percent of the above estimated charges, and indicating where your payment should be forwarded.

Sincerely,

(NAME)
Freedom of Information
Act Officer

cc: Chief, Programmatic Accounting

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

(PROCESSING OF THE REQUEST WILL BEGIN WHEN THE ADVANCED PAYMENT IS MADE)

Illustration 10

SAMPLE LETTER
REFERRAL OF RECORDS TO ANOTHER AGENCY FOR REVIEW

Mrs. Jane Smith
FOIA Coordinator
Bureau of Land Management
MS-208, Premier Building
Washington, D.C. 20240

Dear Ms. Smith:

While processing a Freedom of Information Act (FOIA) request from __(name)__, dated __(date)__ the Office of Surface Mining Reclamation and Enforcement located three documents that originated in your agency. The three documents are: [Describe documents or list on a separate enclosure].

Enclosed are copies of those documents. We have advised __(name)__ that they will receive a direct FOIA response from your office.

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosures

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

(ADVISE THE FOIA REQUESTER IN YOUR RESPONSE WHICH DOCUMENTS HAVE BEEN SENT TO WHAT AGENCY OR DEPARTMENT FOR REVIEW)

SAMPLE LETTER
DENIAL OF ALL RECORDS
(OR DENIAL OF SOME RECORDS, OR PARTS OF RECORDS)

ADDRESS

Dear _____:

Thank you for your Freedom of Information Act request of October 19, 1991. You requested information concerning a valid existing rights determination concerning surface coal mining operations within the Monongahela National Forest.

Enclosure A lists the documents we are releasing in response to your request. Enclosure B lists the documents we are withholding, with the reasons cited.

You may appeal the **[partial denial]** denial of your request to the Assistant Secretary of Interior for Policy, Management and Budget under 43 CFR 2.18 by writing to: Freedom of Information Act Appeals Officer, Office of the Assistant Secretary, PMB, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. Your appeal must be received within 20 days (Saturdays, Sundays, and public legal holidays excepted) of your receipt of this letter. Your appeal letter, with the legend FREEDOM OF INFORMATION APPEAL, must be accompanied by copies of the original request and this initial denial. In order to expedite the appellate process and insure full consideration of your appeal, your appeal letter should contain a brief statement of the reasons why you believe this initial decision to be in error.

The officials responsible for the **[partial denial]** denial of your request are James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement (OSM); Joan F. Shaw, Freedom of Information Act Officer, OSM; and Cheryl Sylvester, Staff Attorney, Branch of Regulatory Programs, Division of Surface Mining.

The fee charges for providing this information are as follows:

(SEE APPENDIX D FOR FEE CATEGORIES OF REQUESTERS, AND CHARGES)

	Total No. of Units	Unit Charges	Amount
Document Search Time:			
Professional	45 min.	$18.60/hr.	0
	(The first 2 hrs. are not charged)		
Duplication:	365 pages	$ .13/pg.	$34.45
	(The first 100 pgs. are not charged)		
		Total	$34.45

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

Sincerely,

(NAME)
Freedom of Information
Act Officer

Enclosures

(THE FOIA OFFICER SIGNS <u>ALL DENIAL</u> AND <u>PARTIAL DENIAL</u> FOIA RESPONSES)

Enclosure A

List of documents being released:

(NOTE - DOCUMENTS SHOULD BE MARKED WITH CORRESPONDING NUMBER OR OTHER IDENTIFIER AND DOCUMENTS SHOULD BE LISTED IN CHRONOLOGICAL ORDER)

	Date	Subject
A-1.	09/14/87	Letter to Seabolt from Workman concerning a determination of VER.
A-2.	06/24/88	Letter to Boyles from Helmick on a request for a permit to mine.
A-3.	07/06/88	Letter to Helmick from Blankenship re permit to mine.
A-4.	09/02/88	Portion of legal documents from Helmick on the deed for the property. (See item B-1 of withheld list)
A-5.	09/30/88	Memo to Goodwin from Blankenship on a VER determination.
A-6.	10/03/88	Letter to Helmick from Blankenship regarding forwarding VER request.
A-7.	02/08/89	Conversation Record - Morton Dean and Boyles on MSHA decision of Seabolt's mine.
A-8.	02/09/89	Portions of a letter to Boyles from Park on a drill log. (See item B-2 of withheld list)
A-9.	02/09/89	Letter to Seabolt from Krese on the roof-control plan.
A-10.	05/26/89	Letter to Helmick from Blankenship on VER determination.

Enclosure B

Below are the documents being withheld for the reasons cited:

(A LEGEND SUCH AS THE ONE FOLLOWING MAY BE USED WHEN A CITATION IS FREQUENTLY USED):

Legend:

(b)(5) = 5 U.S.C 552(b)(5): "Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

	Date	Subject
B-1.	09/02/88	Portion of legal documents from Helmick on the deed for the property. Handwritten description of distribution withheld under (b)(5), as pre-decisional. (See #4 of release list.)
B-2.	02/09/89	Portions of a letter to Boyles from Park on a drill log. Drill log reports exempt under 5 U.S.C 552(b)(4) as commercial or financial information obtained from a person and privileged or confidential." (See #8 of release list.)