

DEPARTMENTAL DIRECTIVE

OCIO:1-102 Page 1 of 19 (07/07/2004)

Distribution: All Department of Education Employees
Approved by: _____/s/_____
William J. Leiding
Assistant Secretary for Management

Freedom of Information Act (FOIA) Policies and Procedures: Release or Denial Of Department of Education Records Responsive to FOIA Requests

Table of Contents

| | |
|-----------------------------|----------|
| <u>I. Purpose</u> | <u>2</u> |
| <u>II. Policy</u> | <u>2</u> |
| <u>III. Authorization</u> | <u>2</u> |
| <u>IV. Applicability</u> | <u>2</u> |
| <u>V. Definitions</u> | <u>2</u> |
| <u>VI. Responsibilities</u> | <u>4</u> |
| <u>VII. FOIA Procedures</u> | <u>8</u> |

For technical questions concerning information found in this ACS document, please contact Angela Arrington on (202) 245-6409 or via [e-mail](#).

OCIO: 1-102 Page 1 of 19 (07/07/2004)

I. Purpose

This directive sets forth the Department of Education's (ED) policies and procedures for implementing the Freedom of Information Act (FOIA), including the requirements of the E-FOIA Amendments of 1996. This directive provides ED employees with the policies, procedures, and guidance necessary to respond to FOIA requests in a timely and efficient manner that promotes public understanding of ED operations and activities.

II. Policy

As an agency of the Executive Branch, ED's policy is to observe both the letter and the spirit of the FOIA. ED's policy is designed to provide for the fullest possible disclosure, limited only by the obligations of confidentiality and administrative necessity codified in the nine (9) exemptions and three (3) exclusions of the FOIA. When records are not subject to one or more FOIA exemptions, ED's staff will make records available upon request from the public in a timely manner. In any instance where only part of a requested record is exempt from disclosure under the FOIA, ED staff will separate and release portions of the record not exempt from disclosure under the FOIA.

III. Authorization

The Freedom of Information Act (FOIA) (5 U.S.C. § 552, as amended) sets forth the legal obligations of all Executive Branch agencies in responding to public requests for access to agency records. The FOIA is available at <http://www.usdoj.gov/04foia/foiastat.htm>.

IV. Applicability

This directive applies to all ED employees.

V. Definitions

A. *Exempt Records.* Documentary materials or portions thereof, including information in electronic form, that fall within one or more of the nine (9) exemptions or three (3) exclusions of the Freedom of Information Act (FOIA).

B. *FOIA Appeals Coordinator.* The person appointed by the FOIA Appeals Officer to

assist him/her in reviewing appeals, and in working with the Principal Office (PO) FOIA Coordinators and Action Offices to ensure that all issues raised in an appeal are evaluated.

OCIO: 1-102 Page 1 of 19 (07/07/2004)

C. *FOIA Appeals Officer.* The person designated by the Chief Information Officer to be responsible for decisions on appeals from an initial denial or partial denial of FOIA requests for access to ED records and requests for fee waivers. (Currently, the Chief Information Officer serves as the Departmental FOIA Appeals Officer.)

D. *FOIA Coordinators.* Person(s) designated by the Assistant Secretary in each PO (or equivalent), in Headquarters and in the Regional Offices, to manage and coordinate the 's responses to FOIA requests. Such person(s) are responsible for releasing non-exempt records, and for providing guidance to the Freedom of Information Officer and the Regional FOIA Review Officers concerning records to be withheld in whole or in part, 1) ensuring adequate search for responsive records; and 2) initially raising the potential applicability of exemptions.

Denial Officers. The FOIA Officers, the Secretary's Regional Representatives, or officials designated by them (Regional FOIA Review Officers), and the Office of Inspector General (OIG) who are authorized to withhold records, in whole or in part, that fall within one (1) or more of the nine (9) exemptions or three (3) exclusions of the FOIA.

F. *FOIA Office.* Located within ED's Office of the Chief Information Officer (OCIO) Regulatory Information Management Group (RIMG). This office is responsible for overseeing ED's administration of the FOIA.

G. *FOIA Officers.* Freedom of Information Act Officers are designated by the Chief Information Officer to oversee ED's administration of the FOIA. FOIA Officers are located in OCIO/RIMG. These persons coordinate ED's responses for requests where more than one is involved or when the request is complex. They are also responsible for all initial Headquarters denials and partial denials (except with respect to requests for records maintained by OIG) and initial determinations on all requests for fee waivers associated with FOIA requests throughout ED. See Section VII (D) of this Directive for more information regarding fee waivers.

H. *FOIA Reading Rooms.* The FOIA requires that ED maintain a public reading room in which certain kinds of documents and information are made available for inspection and copying. This Reading Room is located in the National Library of Education's (NLE) facilities. In addition, the Department has established an "electronic reading room" as an integral part of its FOIA Web site at <http://www.ed.gov/policy/gen/leg/foia/foiatoc.html>. This "electronic reading room" was developed in accordance with the requirements of the E-FOIA Amendments of 1996.

OCIO: 1-102 Page 1 of 19 (07/07/2004)

- I. *FOIA Working Group.* Comprised of ED's FOIA Officers and FOIA Coordinators whose function is to review any new FOIA changes or procedures and assist with the implementation of such.
- J. *Non-exempt Records.* Documentary materials, including information in electronic form, that do not fall within one or more of the nine (9) exemptions or (3) three exclusions of the FOIA and that must be disclosed upon request.
- K. *Action Office.* Office(s) within each that maintains and is responsible for the safekeeping of a record requested under the FOIA.
- L. *Quarterly Index of Records.* An index of records, opinions, and administrative staff or program manuals concerning ED's programs and activities which affect members of the public. This index and associated records are to be available for public review in ED's FOIA Reading Room during regular business hours. ED's FOIA Web site (referenced in V.I. above) provides an electronic search capability to assist users in locating particular records or information of interest to them.
- M. *Records.* Documentary materials regardless of physical form or characteristics, including information in electronic form, made or received by ED pursuant to Federal law or in connection with the transaction of public business and under ED's control at the time a FOIA request is received.
- N. *Regional FOIA Review Officers.* The person designated by the Chief Information Officer in each Region to be responsible for all denials of access made regarding records maintained in that region. (The Secretary's Regional Representatives, or officials designated by them, currently serve in this capacity.)
- O. *Responsive Records.* Those records under control of the Department that in whole or in part pertain to the requested information in a FOIA request.

VI. Responsibilities

- A. The Chief Information Officer has delegated authority for administration of the FOIA to the Regulatory Information Management Group (RIMG).
- B. The Freedom of Information Officers, within RIMG, shall manage ED's FOIA Program. In this capacity, they shall:
 - 1. Provide Department-wide oversight for the management and implementation of the

OCIO: 1-102 Page 1 of 19 (07/07/2004)

FOIA;

- 2. Develop (in collaboration with other appropriate staff) ED policies, directives, regulations and guidance materials for use by all ED employees in processing FOIA requests;
- 3. Provide technical advice, training, and related assistance to all FOIA Coordinators, FOIA Review Officers, and others having responsibility for FOIA-related matters;
- 4. Facilitate the resolution of differences of opinion on FOIA issues between and among requestors, ED POs, grantees and contractors, and the Office of the General Counsel (OGC);
- 5. Serve as the deciding official in ED Headquarters for all initial denials, and partial denials, and "no records", and non-responsive determinations, except for determinations that have been delegated to the Office of Inspector General and the Regional FOIA Review Officers;
- 6. Issue to the requestor a written acknowledgment (via letter, postcard, or email) of each FOIA request prior to assigning to a for response;
- 7. Coordinate requests that are assigned to multiple PO's to include clarifying information as needed, conducting data entry activities into the tracking system, coordinating receipt of documents from PO's, sending out responses on behalf of ED, and maintaining files for those requests;
- 8. Coordinate all requests that require coordination or interface with another Federal

Agency, either to transfer the request or to request records;

9. Review all fee waiver requests and determine whether to grant or deny such requests;
10. Identify the functional systems and technology support requirements necessary for the management and daily operation of ED's FOIA Program, and take a lead role in ensuring that the needs of the Department's FOIA Coordinators and staff are met by these support systems;
11. Guide, coordinate, and assess the computation of FOIA fees in order to ensure such calculations are accurate and consistent with the FOIA statutes and ED's policies and published fee schedules;

OCIO: 1-102 Page 1 of 19 (07/07/2004)

12. Maintain a central reporting and tracking system for FOIA requests and for all funds collected in ED's administration of the FOIA, which must include a list of requestors with a history of prompt payment, a history of nonpayment, and who currently owe fees for any requests, and notify FOIA Coordinators, where appropriate, of requestors with a history of nonpayment so that fees can be collected in advance;
 13. Chair periodic meetings of the Department's FOIA Working Group;
 14. Manage, review, and continuously update the content of ED's FOIA Web site, and oversee ED's FOIA Reading Room and E-FOIA Reading Room activities;
 15. Serve as ED's liaison with other Federal agencies in matters of FOIA administration; and
 16. Prepare ED's *FOIA Annual Report* for transmittal to the Department of Justice (including collecting, reviewing, and submitting the data for the report on behalf of the Department) and oversee the preparation of the *Quarterly Index of Records*.
- C. The FOIA Coordinators shall ensure that the following tasks are conducted as described below by either doing the tasks directly or assigning them to staff and overseeing their progress:

1. Issue to the requestor a written acknowledgment (via letter, postcard or e-mail) of each FOIA request within two business days of receipt (applicable to OIG and Regions only); all others receiving FOIA requests directly should forward them to the OCIO/RIMG FOIA Office for central intake and processing;
2. In the event that the request requires clarification of any kind, immediate contact with the requestor should be initiated for this purpose; if the contact is in the form of a telephone call, thorough documentation must be made and a written confirmation sent to the requestor;
3. Coordinate ED's processing of FOIA requests to ensure that determinations regarding whether records will be released or denied (in whole or in part) are made within twenty (20) business days of receipt;
4. Oversee the status of FOIA requests into the FOIA Tracking and Reporting System; and ensure that the system is kept up-to-date;

OCIO: 1-102 Page 1 of 19 (07/07/2004)

5. Upon receipt of the request, estimate the fees involved in the processing of each request, and notify the requestor, as appropriate;
6. Submit fee waiver requests to the Freedom of Information Office for review and determination;
7. Review records, whether in hard copy or electronic format (e-mails, diskettes, CD-ROMs, or other electronic storage media), located in response to a request and, if exemptions apply, make recommendations to the Freedom of Information Officer regarding whether the request should be denied in whole or in part. Regional Office and Office of Inspector General staffs should provide their recommendations to their FOIA Review Officer;
8. In every instance in which the twenty (20) business-day response time cannot be met, provide the requestor with an opportunity to narrow the scope of the request; and/or negotiate with the requestor a mutually acceptable schedule for processing the request. If an extension of the response time is required, notify the requestor in writing (via letter, postcard or e-mail) of the need for the extension and the date when a determination will be made on the request;

9. Where “expedited treatment” is requested, examine the request to determine if exceptional circumstances exist to warrant such treatment and notify the requestor and the FOIA Office of the decision;
 10. Establish and maintain a file for each FOIA request (which will include but not be limited to the initial request, documentation of clarifications, interim responses, “clean” copies of responsive records and a copy of each document – with redactions, if applicable – ultimately provided to the requestor) to ensure that ED’s actions and decisions are well documented;
11. Consult with the Freedom of Information Officers as appropriate to resolve complex issues (e.g., potential claims concerning commercial or proprietary information);
12. In each instance where all responsive records are releasable (except in cases where the request is being coordinated by the FOIA Office), release records to the requestor with a suitable cover letter, and send a copy of the cover letter to the Freedom of Information Officer (without attachments);
13. In each instance where all responsive records are releasable, but the request

OCIO: 1-102 Page 1 of 19 (07/07/2004)

14. has been identified as one coordinated by the FOIA Office, forward the responsive record(s) along with the cost information to the FOIA Office;
15. In each instance in which it is recommended that record(s) or portion(s) thereof be withheld, carefully separate materials to be withheld from those to be released, redact (e.g., remove) all exempt information from the records, and forward a copy of the redacted materials, along with an unredacted version for comparison, to the appropriate denial official. Indicate where in the records the redactions occur and why the relevant exemption(s) apply;
16. In each instance where "no responsive records" are located, forward (a) a memorandum to the appropriate denial official describing with particularity what records (both electronic and hard copy) were searched, search times (differentiating between computer search times and manual searches since there is a different fee rate assessed for each of these searches), and who conducted the search, and stating that the search results were negative together with (b) a draft denial letter to the requestor to be signed by a FOIA Officer;

17. Instruct requestors to do the following:
 - a. Send payments for fees assessed under the FOIA to the U.S. Department of Education, Office of the Chief Information Officer, Attn: FOIA Office, 400 Maryland Avenue, SW, PCP South, 9th Floor, Washington, DC 20202-4651, for posting to ED's accounting system; and
 - b. Address the check to the U.S. Department of Education and include the FOIA Request Number on the check. (The FOIA Office will forward the fee [check or money order], within two (2) business days of receipt, along with applicable supporting documentation to the Office of the Chief Financial Officer, Receivables & Cash Receipts (RCR) for posting to ED's tracking system);
17. Identify appropriate FOIA training for individuals in the organization who are involved with the processing of FOIA requests;
18. Attend periodic FOIA Working Group meetings and training, to ensure knowledge with government-wide and ED's FOIA policy;
19. Review and validate the PO's statistical data required for ED's *FOIA Annual Report* and assist the Freedom of Information Officers in resolving any issues identified in completing this report; and

OCIO: 1-102 Page 1 of 19 (07/07/2004)

20. Review and ensure that the PO provides all of the records specified under the FOIA on its website and on ED's FOIA web site, or in the event that certain legacy records are available only in paper form, to the NLE staff for inclusion in the FOIA Reading Room.
- D. FOIA Coordinators for OIG and the Regional Offices (primarily OCR) are additionally responsible for serving as the deciding official for a) initial denials, b) partial denials, and c) "no records" determinations for records maintained by their respective offices.

VII. FOIA Procedures

- A. Initial FOIA Requests

1. Requests come to a from one of three sources:
 - a. Directly from the requestor (which should be sent to the FOIA Office for central intake and processing);
 - b. The Office of the Secretary or other control system; and
 - c. A Freedom of Information Officer.
2. When a request is assigned to the office having custody of the records being sought, the FOIA Coordinator will ensure that within two business days the office communicates (either in writing or by telephone) with the requestor as necessary to obtain clarification or more information to process the request.
3. When a request is assigned to an office, which does not retain custody of the records being sought, that office has two business days to:
 - a. Forward the request to the FOIA Office with recommendations as to which office has custody of the records.
 - b. The FOIA Office will send a postcard, letter, or e-mail to the requestor acknowledging ED's receipt of the request.

OCIO: 1-102 Page 1 of 19 (07/07/2004)

4. If another Federal agency has custody of the records being sought, the FOIA Coordinator forwards the request to the FOIA Office, who will forward it to the custodial agency within two business days of receiving it from the FOIA Coordinator, and informs the requestor to which agency the request has been forwarded.
5. All requests (including e-mail and fax requests) received by the FOIA Office are assigned and forwarded to the appropriate FOIA Coordinator(s) for handling and for routing to the

appropriate Action Office.

6. When all responsive records are located, the FOIA Coordinator prepares an estimate of fees.
7. The subject matter experts in the program having custody of the requested records, working with the FOIA Coordinator, review the responsive records and make initial recommendations regarding what will be released and what will be withheld. The following actions are required:
 - a. Inform the requestor in advance if the estimated charges for processing the request exceed \$25, unless the requestor has expressed a willingness to pay fees greater than or equal to the estimated fees. In addition, if the charges will exceed \$250, these fees should be collected in advance. If the expected fee is greater than \$250 and the requestor has a history of prompt payments, arrangements may be made for progress payments as the work is performed. Otherwise, work is suspended until payment of the assessed fees is received by ED.
 - b. If the requestor has asked for a fee waiver, forward the request and the requestor's supporting documentation to the FOIA Office for decision, and suspend processing the request until a Freedom of Information Officer has made a decision on the fee waiver (See Section VII.C for more information about fee waivers).
 - c. If the request will involve the collection of fees, instruct the

OCIO: 1-102 Page 1 of 19 (07/07/2004)

requestor to make payment to the U.S. Department of Education, Office of the Chief Information Officer, Attn: FOIA Office, 400 Maryland Avenue, SW, PCP South, 9th Floor, Washington, DC 20202-4651, (include his/her current address in the correspondence as well as the FOIA Request Number).

- d. If a determination is made to release *all* responsive records in their entirety, send the records to the requestor, and forward a copy of the transmittal letter (without attachments) to the Freedom of Information Officer.
- e. If a search is conducted and *no* responsive records are located, a "no records" letter is prepared for signature by the appropriate denial official. Include the standard statement of appeal rights as the last paragraph of the letter. (See Section VII.E.3.)
- f. If a *portion* of the responsive records can be released in their entirety, but "no records" are found for other parts of the request, send those records that can be released to the requestor along with a "no records" letter bearing the signature of the appropriate denial official as discussed in VII.A.3(e) above.
- g. If one or more exemptions apply, the Action Office will consult with the FOIA Coordinator and, as necessary, the appropriate denial official.

Carefully separate the record(s) or portion(s) thereof to which one or more exemption applies, and clearly identify and explain in detail why the exemption(s) apply. Redact (e.g., remove) all exempt information from the record(s), and furnish to the appropriate denial official a copy of the redacted materials, along with an unredacted version for comparison.

- h. In each instance in which a requestor seeks information from *more than one PO*, and all responsive records are clearly releasable, each PO's FOIA Coordinator, working with the Action Office(s), shall release to the FOIA Office the records maintained by his/her PO. The FOIA Office will review the records and respond to the request on

OCIO: 1-102 Page 1 of 19 (07/07/2004)

- i. behalf of ED.
- j. In each instance in which a requestor seeks information from *more than one* , and only portions of the record are releasable, inform the

FOIA Office and follow normal procedures for this situation described below in number 9 of this section.

8. If the records cannot be located, or a decision to grant or deny the request cannot be made within twenty business days, the PO Action Office may request an extension from the 's FOIA Coordinator of up to twenty (20) additional business days. Such extensions will be granted only in unusual circumstances unless the FOIA Coordinator "negotiated with the requestor a mutually acceptable date" for processing the request (See Section VI.C. (7)). "Unusual circumstances" arise when there is:
 - a. A need to search for and collect the requested records from Regional Offices or program offices separate from the office processing the request;
 - b. A need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
 - c. A need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the Department having substantial subject-matter interest in the request.

When such circumstances arise, the PO Action Office must notify the FOIA Coordinator, who will notify the requestor in writing of the reason for the delay and the date by which the requestor may expect a response (see VI.C. (7)).

9. If the PO Action Office, in consultation with the FOIA Coordinator, determines that the request should be denied, in whole or in part, it must send a copy of the request, a copy of the redacted records and an unredacted version for comparison, and a justification for the denial to the appropriate denial official. The denial official determines whether the request should be denied, in whole or in part, and informs the FOIA Coordinator and the PO Action Office of the decision.

10. If the denial official agrees with the recommendation to deny the request, the denial official notifies the requestor in writing of the decision to withhold the information, in whole or in part, and informs the requestor of his/her appeal rights.
11. If the denial official disagrees with the recommendation to deny the request, he/she notifies the FOIA Coordinator and the PO Action Office and directs the FOIA Coordinator to provide the records to the requestor.
12. In making initial FOIA decisions, it is important to note that a request cannot be denied because: (a) the requestor does not prove a need or state a purpose for seeking the requested documents or information; (b) the requestor does not cite the FOIA or another statute; or (c) the requestor does not give the full and exact title of the requested record, as long as he/she identifies it sufficiently for the FOIA Coordinator or PO Action Office to understand the scope of the request.

B. FOIA Exemptions and Exclusions

1. All requests for records must be granted unless it can be shown that the record(s) fall within one or more of the FOIA's nine (9) statutory exemptions and three (3) exclusions. The full text of the FOIA exemptions, 5 U.S.C. § 552(b)(1) – (9) and exclusions (5 U.S.C. § 552(c)(1) – (3)) are available at <http://www.usdoj.gov/04foia/foiastat.htm>.
2. Provided a request for records falls within one or more of the FOIA's exemptions or exclusions, ED is required and authorized to deny public access to the requested records. ED employees involved in the administrative processing of FOIA requests should direct all questions or concerns regarding the scope of the exemptions or exclusions to the FOIA Office.
3. When only a portion of a requested record is exempt from disclosure, ED is required to release any reasonably separated portion of the record to the requestor after redaction of the portions that are exempt.

C. Fees

1. By law, ED is authorized to collect fees to cover a portion of the cost of administering the FOIA. Furthermore, the FOIA states that the Office of Management and Budget shall provide for a uniform schedule of fees for all agencies. ED's fee structure is based on that guidance.
2. Fees are charged based on the type of records requested (hard copy/electronic), the type of requestor seeking the records (see categories below), and the intended use of the records sought (relevant with respect to fee waiver requests). ED's FOIA regulation identifies three types of requestors for the purposes of determining fees. These categories, in accordance with the requirements of 5 U.S.C. §552 (4)(A)(ii), are as follows:
 - a. *Category One* (commercial business requestors). These requestors are charged 10 cents per photocopied page. Additional fees are charged for search and review time based on the employee's hourly rate of pay plus 16%, and for computer searches, based on the employee's hourly rate of pay plus 16% plus \$287 per hour for computer operation.
 - b. *Category Two* (educational institutions or institutions engaged in scientific research and news media requestors). These requestors are charged 10 cents per photocopied page; however, the first 100 pages are provided without charge. No fees are charged for search or review time.
 - c. *Category Three* (all other requestors, including individuals and non-profit organizations). These requestors are charged 10 cents per photocopied page; however, the first 100 pages are provided without charge. Additional fees are charged for search time (no review charges) based on the employee's hourly rate of pay plus 16% and for computer searches based on the employee's hourly rate of pay plus 16% plus \$287 per hour for computer operation. The first two hours of search time are free of charge. Two hours of search time on a computer search equals the equivalent of two hours of the computer operator's basic rate of pay per hour plus

16% of that rate.

3. If the FOIA Coordinator estimates that the cost of processing the request will exceed \$25, the requestor is notified and given an opportunity to narrow the scope of the request, unless the requestor has expressed a willingness to pay fees greater than or equal to the estimated fees.
4. If the estimated fees exceed \$250, payment in advance is required unless the requestor has established with ED a history of satisfactory payment of FOIA fees.

Alternatively, the requestor may stipulate his/her willingness to pay a specified amount above \$250 when he/she submits the request. This written statement will be considered a promise to pay up to the specified amount, and ED staff may proceed with processing the request until such time as the amount specified by the requestor is exhausted as long as said requestor has an established history with ED of satisfactory payment of assessed fees.

5. If a requestor who owes fees for a prior request submits a new request, the requestor must pay the outstanding fee balance as well as make advance payment on the new request. If the requestor has a history of nonpayment of assessed fees, ED will not process any new requests until payment is received.
6. ED shall not assess, or collect from a requestor, payment of fees in an amount less than five dollars.
7. Where a request involves more than one and/or more than one regional office, each FOIA Coordinator should contact the FOIA Office to ensure that the fees are calculated accurately and consistently.

D. Fee Waivers

1. The FOIA provides for fees to be waived in whole or in part "if disclosure of the information is in the public interest because 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 requestor."

2. The Freedom of Information Officers are responsible for making all fee waiver determinations.
3. In order to qualify for a fee waiver, the requestor must show that his/her request meets all of the following criteria:
 - a. The subject of the requested records concerns the "operations or activities of the government";
 - b. Disclosure is "likely to contribute" to an understanding of government operations or activities;
 - c. Disclosure is likely to contribute "significantly" to public understanding of government operations or activities;
 - d. If the requestor has a "commercial interest" that would be furthered by the requested disclosure, that commercial interest must be outweighed by the public interest in disclosure, as determined by a Freedom of Information Officer.
4. ED requires a requestor to seek a fee waiver for *each request* for which a waiver is sought. The fee waiver request must specifically address how *each* of the above four factors applies to the request. ED does not grant standing fee waivers, but rather considers each fee waiver request on its merits. In order to ensure consistency, the Freedom of Information Officers review each fee waiver request and make the initial determination on the basis of the evidence submitted by the requestor.

E. Appeals

1. Types of Appeals

a. Appeal of Denial of Access to Records or Information

When ED denies access to records or information, in whole or in part, the requestor has thirty (30) calendar

days from receipt of the decision to file an appeal with the Department seeking administrative review. The

OCIO: 1-102 Page 1 of 19 (07/07/2004)

appeal must appropriately articulate the requestor's basis for appeal, including all specific reasons why the exemption(s) or exclusion(s) cited in the denial should not be applied.

b. Appeal of the Adequacy of the Search

When ED is unable to locate any records responsive to a request, the requestor may appeal ED's finding based upon an assertion that ED's search was inadequate. This assertion must clearly state the basis upon which the requestor believes the search was inadequate.

c. Appeal of Fee Determinations

The requestor may appeal one or more of the following aspects of a fee determination:

- 1) ED's estimate of fees to be charged;
 - 2) ED's calculation of fees assessed; and/or
 - 3) ED's denial of a request for a fee waiver, in whole or in part.
2. The Secretary has delegated to the Chief Information Officer the authority to serve as ED's FOIA Appeals Officer.
 3. The Freedom of Information Officers, Regional FOIA Review Officers, and Office of Inspector General staff involved in processing FOIA requests must ensure that all initial denial letters (including "no records" located) contain the following language concerning the requestor's appeal rights:

"You have the right to appeal this determination by writing, within 30 days of

your receipt of this letter, to the Chief Information Officer; Office of the Chief Information Officer, U.S. Department of Education, 400 Maryland Avenue, SW., ATTN: FOIA Appeals, Room 2W311, FB-6; Washington, DC 20202-4500. Your

OCIO: 1-102 Page 1 of 19 (07/07/2004)

appeal should be accompanied by a copy of your initial request and this denial letter, and should contain any evidence or argument you wish the Department to consider in making an administrative determination on your appeal.”

4. The Chief Information Officer shall appoint a FOIA Appeals Coordinator to assist him/her in reviewing appeals, and to work with the POs' FOIA Coordinators and Action Offices to ensure that all issues raised in an appeal are carefully considered and resolved in making the appeal determination.
5. The FOIA Appeals Coordinator will issue an acknowledgment to the submitter of an appeal within two business days of receipt, and will monitor the process to ensure that all ED offices involved in processing FOIA appeals complete their review and recommendations in a timely manner.
6. The 's FOIA Coordinator, working with the Action Office, shall submit the completed draft appeals package (with tabs) to the FOIA Appeals Coordinator within seven business days of receipt in the Action Office. This package shall contain: (1) a copy of the original FOIA request at issue; (2) a copy of the initial denial letter and any other correspondence between ED and the requestor; (3) redacted and unredacted copies of the records at issue; (4) a chronology of the processing of the request including all communications between ED and the requestor; (5) an index of tabbed documents included in the package; (6) other materials related to the appeal, as appropriate; and (7) a copy of the PO Action Office's proposed appeal determination letter.

7. The FOIA Appeals Coordinator shall review the materials provided by the FOIA Coordinator and either finalize the draft appeal letter for review by OGC or return the package to the FOIA Coordinator with directions for additional work to be completed by the within three (3) business days of receipt.
8. OGC shall review and comment on a completed FOIA Appeal package within seven (7) business days of receipt from the FOIA Appeals Coordinator. Where the draft determination is

OCIO: 1-102 Page 1 of 19 (07/07/2004)

legally sufficient as submitted to or as rewritten by the OGC reviewer, OGC shall clear the determination for issuance by the FOIA Appeals Officer. OGC may request an extension of the review deadline for a period not to exceed ten (10) business days, where necessary.

9. The FOIA Appeals Coordinator will ensure that an appeal determination letter is drafted, reviewed, and ready for signature by the FOIA Appeals Officer within twenty (20) business days of receipt. The FOIA Appeals Coordinator will send a copy of the final appeal determination letter to the FOIA Coordinator who processed the original request.

F. Processing requests for records maintained in a Privacy Act system of records (also see [ACS Departmental Directive Privacy Act OCIO: 1-101 as amended](#))

1. First Person Requests

- a. A request must be processed under *both the FOIA and the Privacy Act* if:
 - 1) The requestor seeks information about himself/herself; and
 - 2) The information sought is contained in a Privacy Act system of records.
- b. Privacy Act access requests can be processed only after the requestor has furnished proof of identity (e.g., driver's license, social security card) in accordance with

2. Third Person Requests

A request should be processed only under the FOIA if a third party asks for information about an individual whose records are contained in a Privacy Act system of records. Under the FOIA, Exemptions 6 and 7 address (using somewhat different standards) the withholding of records that would implicate an individual's personal privacy. By definition, a record that is maintained in a Privacy Act system of records implicates an individual's personal privacy. And the Privacy Act prohibits the release of such records to a third-party requestor unless release

OCIO: 1-102 Page 1 of 19 (07/07/2004)

is required by the FOIA. Consequently, in each case, the FOIA Coordinator must analyze whether the record sheds sufficient light on the Department's operations and activities that the public interest in the record outweighs the invasion of personal privacy that would result from its release.

G. FOIA Reporting Requirements

On or before February 1 each year, the Department must submit a *FOIA Annual Report* to the Department of Justice and publish this report on ED's Web site. This report is to contain information to cover the preceding fiscal year. The contents of this report are specified in 5 U.S.C. § 552(e)(1) at <http://www.usdoj.gov/04foia/foiastat.htm>

H. FOIA Reading Room

1. ED's FOIA Reading Room shall contain a wide variety of documents and information concerning ED's programs and activities. ED's published documents and information, whether available for purchase or not, should be made available for examination in the FOIA Reading Room. This Reading Room is located at the National Library of Education, 400 Maryland Avenue, S.W., Washington, D.C., and is open to the public between the hours of 9 a.m. and 5 p.m., Monday - Friday, excluding Federal holidays.

2. Each Principal Office is responsible for ensuring that its Web site provides all of the records specified under the FOIA. In the event that certain legacy records are available only in paper form, these materials shall be provided to the NLE staff for inclusion in the FOIA Reading Room.
3. The FOIA Reading Room should contain the following types of information:
 - a. All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases;
 - b. Statements of policy and policy interpretations that have been adopted by ED that are not published in the Federal Register;

OCIO: 1-102 Page 1 of 19 (07/07/2004)

- c. Administrative staff manuals and instructions to staff that may affect any member of the public;
 - d. Frequently requested records which were created since November 1, 1996; and
 - e. The Department's Records Disposition Schedules, Privacy Act Systems of Records Notices, and other current indices (e.g., inventory of major information systems) and record locator information (e.g., topics and categories) pertaining to the foregoing materials.
4. In addition, ED maintains a FOIA Information Line to assist the public in obtaining information about the FOIA and the basic procedures for submitting a FOIA request to ED. This voice message-based service may be reached at (202) 708-9263.

I. ED's FOIA Web site and Electronic Reading Rooms

ED maintains a separate FOIA Web site on the home page of ed.gov for access by the public. The primary components of this Web site include frequently asked questions (FAQs) about ED's FOIA Program; an Electronic Reading Room that contains a wide

range of documents about ED programs, and includes frequently requested materials; an index to ED's Reading Room records (including information identifying records that are available electronically); copies of the FOIA and Privacy Act, with ED's implementing regulations and guidelines; all manuals, directives, decisions, and opinions since November 1, 1996, which are available in electronic form; and ED's *FOIA Annual Reports* for the past several years. A search engine linked to a variety of categories and indices of records also is provided to assist the requestor.

J. Training of ED Personnel Involved with the FOIA Program

The Freedom of Information Officers, RIMG/OCIO, provide a variety of FOIA training materials and job aids for use by ED staff. To the maximum extent feasible, these materials are based upon the individual's roles and responsibilities in connection with the FOIA Program. Upon request, the Freedom of Information Officer provides training in current ED policies and procedures for handling FOIA requests. A number of training videos are also available and these materials are supplemented by course offerings made available through the Department of Justice and other sources of professional training. For additional information on FOIA training opportunities, please contact the FOIA Office.

OCIO: 1-102 Page 1 of 19 (07/07/2004)

K. System Support for FOIA Requests and Appeals Tracking and Management

1. ED is in the process of implementing a network-based system to assist staff responsible for handling FOIA requests, decisions and appeals. This tracking and management information system will reside on the Department's EDNet Wide Area Network (WAN). Each PO FOIA Coordinator will have access to this system. In addition to its request tracking capabilities, this System will be programmed to eliminate most of the manual data gathering required for the preparation of ED's *FOIA Annual Report*.
2. The Freedom of Information Officers, assisted by the members of the FOIA Working Group, will direct the implementation of the new system in a phased manner. Working Group members are encouraged to recommend additional enhancements and features to support all staff involved with the FOIA Program. The Working Group will continuously review the system's

capabilities to ensure that the system satisfies all of the new processing and reporting requirements mandated by the E-FOIA Amendments of 1996.