

# **National Archives and Records Administration**

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## **Transmittal Memo**

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DATE: September 7, 2018

TO: All Staff

**SUBJECT: NARA 1602, Access to Records Requested under the Freedom of Information Act (FOIA)**

**Purpose:** This directive provides uniform guidance to NARA employees who are responsible for processing and tracking Freedom of Information Act (FOIA) requests for NARA's operational records and for executive branch archival records in NARA's legal custody. This directive also discusses the procedural provisions of the FOIA; NARA's FOIA regulations; statutory FOIA exemptions; procedural reasons for not complying with a FOIA request; and steps to be taken in answering FOIA requests and tracking FOIA data in the Performance Measurement and Reporting System (PMRS).

**Background/Significant changes:** This directive is being updated to reflect statutory changes in the FOIA and corresponding changes to NARA's regulations.

**Available forms:** None.

**Cancelled forms:** None.

**Cancelled policy:** None.

**Effective date:** This directive is effective date of signature.

**Contact information:** For questions on this policy contact Gary M. Stern, General Counsel (NGC), by telephone at 301.837.3026 or by [email](#).

DEBRA STEIDEL WALL  
Deputy Archivist of the United States

Attachment

# **National Archives and Records Administration**

NARA 1602  
September 7, 2018

## **SUBJECT: NARA 1602, Access to Records Requested under the Freedom of Information Act (FOIA)**

### **PART 1 – GENERAL**

#### **1602.1 Policy.**

a. The Freedom of Information Act, or FOIA (5 U.S.C. § 552, as amended), is a law that generally provides any person with the right, enforceable in court, to obtain access to Government information in executive branch agency records. This right to access is limited when such information is protected from disclosure by one of nine statutory exemptions (see subpar. 1602.17a).

b. It is NARA's policy to provide public access to as many of our records as possible. We affirmatively release and post records, or descriptions of records, on our website in the absence of any FOIA request, and we proactively identify and make discretionary disclosures of additional records of interest to the public whenever possible. It is also NARA's policy to release any reasonably segregable portion of an otherwise restricted record in response to a FOIA request.

#### **1602.2 Scope and Applicability.**

a. This directive applies to all records NARA creates (operational records) and to all records created by executive branch agencies and transferred to NARA's legal custody (archival records), including Presidential records created after January 20, 1981. However, the Office of Inspector General (OIG) independently processes and administers FOIA requests for OIG records. Except as specifically stated below, this directive does not apply to processing or administering OIG FOIA requests.

b. FOIA, and this directive, applies only to the records in the executive branch of the Federal Government and certain Presidential records. It does not apply to judicial branch records (including records of the Supreme Court), records of Congress and legislative branch agencies, donated historical materials, Nixon Presidential Historical Materials (44 U.S.C. § 2111 note), or Presidential records within the first five years from the end of an administration (44 U.S.C. § 2204(2)(A)). In addition, this directive does not apply to records that another agency owns, even when those records are in NARA's physical custody at NARA records centers. The agencies that own the records handle FOIA requests for them.

#### **1602.3 Responsibilities.**

a. NARA's responsibilities under the FOIA are to:

- (1) Respond in a timely manner to all FOIA requests, to the extent possible (see subpar. 1602.12a);
- (2) Maintain accurate information in a FOIA tracking log on each request;
- (3) Inform FOIA requesters, when asked, of estimated dates of completion;
- (4) Release all information requested, except for that properly withheld in accordance with one or more of the nine FOIA exemptions, to the extent applicable; and
- (5) Report statistics accurately in accordance with NARA's implementation of the Open Government Act, the Government Performance and Results Act (GPRA), and the FOIA.

b. In addition to the authorities delegated in NARA 101, NARA Organization and Delegation of Authority, the following responsibilities are assigned in order to effectively implement this policy:

- (1) Archivist of the United States is NARA's appeal authority for FOIA requests denied by the Inspector General (see 36 CFR 1250.72(a)(1)(i)).
- (2) Deputy Archivist of the United States is NARA's appeal authority for all other FOIA appeals (see 36 CFR 1250.72(a)(1)(ii)).
- (3) Office of the General Counsel (NGC):
  - (a) **Chief FOIA Officer** duties. The General Counsel is NARA's Chief FOIA Officer. The Chief FOIA Officer has agency-wide responsibility for NARA's efficient and appropriate compliance with the FOIA, monitors implementation of FOIA policies, directives, and regulations, and appoints NARA's FOIA public liaisons. The Chief FOIA Officer also oversees NARA's FOIA program offices to ensure compliance with FOIA and this directive. This includes:
    - (i) Monitoring NARA's implementation of the FOIA (including fee assessments and waivers, records disclosures, timeliness, exemption use, and dispute resolution services in conjunction with OGIS);
    - (ii) Providing guidance and training to NARA staff on FOIA responsibilities;
    - (iii) Reporting on NARA's FOIA implementation and recommending improvements;

- (iv) Serving as NARA's primary liaison with OGIS and DOJ's Office of Information Policy; and
- (v) Designating one or more NARA FOIA public liaisons.
- (b) **NARA FOIA Officer** duties. The FOIA Officer processes FOIA requests for NARA's operational records and provides administrative support to the Deputy Archivist for FOIA appeals.
- (4) **Office of the Federal Register (F)** processes FOIA requests for *Federal Register* documents, unpublished documents, and related materials.
- (5) **Office of the Inspector General (OIG) independently** processes FOIA requests for records created by that office.
- (6) **Executives, office heads, or staff directors** process, or direct the processing of, FOIA requests for records among their holdings that are subject to FOIA, based on guidance provided by the Chief FOIA Officer.
  - (a) **FOIA program offices** must periodically update their FOIA guidelines, policies, and procedures to incorporate any changes in law, regulations, or directives.
- (7) **FOIA public liaisons** are designated by the Chief FOIA Officer to assist in resolving any dispute between a requester and NARA.
- (8) **Office of Government Information Services (OGIS)** reviews Federal agency FOIA policies, procedures, and compliance, identifies ways to improve compliance, and provides mediation services to help FOIA requesters and Federal agencies resolve FOIA disputes.

## PART 2 – FOIA REQUESTS

### 1602.4 Types of FOIA requests.

Every FOIA request is either an initial request or an appeal.

- a. An **initial request** is a request to NARA for access to records under the FOIA. Subsequent correspondence that clarifies the initial request is treated as part of the initial request for the purposes of this directive.
- b. An **appeal** is a request to NARA asking that it review at a higher administrative level a full denial or partial denial of access to records under the FOIA, or any other FOIA determination, such as a matter pertaining to fees or the adequacy of a search.

**1602.5 Who can file a FOIA request.**

Any person can make a request under the FOIA. A “person” can be an individual, a corporation, an association, or a foreign national. Requesters do not have to be U.S. citizens.

**1602.6 What qualifies as a FOIA request.**

To qualify as a request under the FOIA, the request must be in writing (either by email, the FOIAOnline portal (or equivalent), regular mail, or fax). It must describe the records in enough detail to allow a staff member to find them with a reasonable amount of effort. At the very least, the request should clearly specify the information wanted; the type(s) of records sought; the agencies, offices, or individuals involved; and the approximate dates when the records were created. For additional guidance refer to NARA’s FOIA regulation (36 CFR 1250.20).

**1602.7 What to do if the request does not reasonably describe the records sought.**

Contact the requester and inform him or her that the request is overly broad or that it does not provide enough information to locate the records sought, and then allow the requester to clarify the request with additional information. If the requester fails to respond within 60 calendar days, then you may close the request for procedural reasons. See subpar. 1602.19e.

**1602.8 Proactive disclosure of records without a FOIA request.**

NARA always has the discretion to proactively release records that are not subject to a mandatory exemption, and we encourage proactive disclosures of both archival and operational records. For questions about proactive disclosure of operational records, please consult with NGC.

**1602.9 NARA’s FOIA electronic reading room.**

NARA’s electronic reading room is a section of NARA’s public website on which we maintain certain administrative information and copies of frequently requested records (as required under the FOIA), proactive disclosures, and any other records that NARA decides to include. NGC determines the content and updates the electronic reading room.

## **PART 3 – PROCESSING AN INITIAL FOIA REQUEST**

**1602.10 What to do when receiving a FOIA request.**

- a. If the request is for archival records, NARA operational records, or Presidential records in the custody of NARA that were created since January 20, 1981, and is received in the office or facility that holds the records:
  - (1) Enter the request into a FOIA tracking log. For NARA offices that have multi-track processing, annotate the log to distinguish between simple and

complex requests. (See subpar. 1602.12a for turnaround time.) Multi-track processing is a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an exceptional need or urgency for the records may also request expedited processing, which prioritizes his or her request over other requests that were received earlier (see par. 1602.11);

- (2) Assign a unique number to each request (or use the number assigned by the FOIA tracking log) and use that number in all correspondence related to that request;
- (3) Conduct a search for the requested information. Searches need only be conducted for up to two hours (offices have the discretion to search longer):
  - (a) For archival records that are subject to FOIA, search for the requested information in the finding aids for the record group or series indicated in the request. Also look at other record series that you know may contain the requested information;
  - (b) For NARA's operational records, NGC contacts the NARA offices that are likely to maintain information responsive to the request and asks them to conduct a search and provide any potentially responsive records for final review by NGC (per subpar. 1602.10b, if an office receives a FOIA request for operational records, they must forward it to NGC);
- (4) If, after exhausting all search paths, you are unable to locate responsive records, respond to the requester in writing, explain that no responsive records could be located, and describe the search method employed. Notify the requester that he or she has the right to file an administrative appeal by writing to the Deputy Archivist or the Archivist (see par. 1602.23). Once the letter is sent, log this request out of the FOIA tracking log citing the procedural reason "No records" (see subpar. 1602.19a);
- (5) If you find records containing the information sought, conduct a line-by-line review of the records to determine whether or not they contain any information exempt from disclosure under the FOIA. (See NARA 1601, Screening Federal Records for Information Covered by FOIA Exemptions.) FOIA requests for records that do not require a review (such as archival records already open to the public) must also be tracked in a FOIA tracking log;

- (6) Once the review is done, make a final determination and release information as appropriate. Presidential records must be handled in accordance with the requirements of the PRA before their release;
  - (7) If information is withheld, notify the requester (in writing) that he or she has the right to appeal any adverse determination (see par. 1602.23); and
  - (8) Enter the completed data into a FOIA tracking log as described in par. 1602.21. This is considered a completed request, which is a request for which NARA has taken a final action or made a final determination.
- b. If the records requested are among the holdings of another NARA office or facility or the request seeks operational records, forward the request to the appropriate NARA office or NGC for a reply and notify the requester where and when the request was forwarded.
- c. NARA ordinarily has a time limit of 20 workdays from receipt of a FOIA request in which to respond. (See par. 1602.12.)

#### **1602.11 Expedited processing.**

- a. NARA can expedite requests or segments of requests for records over which we have control under the following circumstances:
- (1) A reasonable expectation of an imminent threat to an individual's life or physical safety;
  - (2) A reasonable expectation of an imminent loss of a substantial due process right;
  - (3) An urgent need to inform the public about an actual or alleged Federal Government activity (this criterion is applicable only to requests made by members of the news media); or
  - (4) A matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity.
- b. NARA cannot expedite FOIA requests for Classified National Security Information (CNSI) that must be referred for declassification review. Nor can NARA expedite the notification period that is required for Presidential records subject to section 2208 of the PRA (44 U.S.C. § 2208).

#### **1602.12 What to do if the response to a request is going to take a long time.**

a. Once the office that holds the records receives a FOIA request, NARA has 20 workdays to respond (excluding Federal holidays). We may take longer than 20 days if there is a backlog or the request is considered complex. Requests are complex when the requested records are voluminous, contain CNSI or significant amounts of other information subject to a FOIA exemption, they require referral to another Government agency for review, or they require a NARA office to conduct extensive searches. Some examples include records that need to be referred for declassification review, a high volume of responsive records that require review, or the records being requested are Presidential records subject to the PRA. Offices may establish a multi-track queue system to process simple and complex requests separately. In complex cases, you must:

- (1) Inform the requester in writing of the status of his or her request and, if unusual circumstances exist as defined in section 552(a)(6)(B) of the FOIA, that you are taking ten additional days to respond to the request;
- (2) Include an approximation of the number of pages your search found (if reasonably discernable), the reason for delaying release, which track their request is in, and which place within that track (if reasonably discernable); and
- (3) Give the requester the option of modifying his or her request.

b. This process is considered an initial response. You cannot mark the request as completed in your FOIA tracking log based on this initial response. That must wait until you have completed processing all responsive records in accordance with pars. 1602.10, 1602.20, and 1602.21.

### **1602.13 Requests for records in multiple NARA FOIA program offices.**

NARA FOIA program offices are the Office of General Counsel (NGC), the Special Access and FOIA Staff (RD-F), the National Declassification Center (ANDC), each of the Presidential libraries subject to FOIA (LP), the Presidential Materials Division (LM), and the National Personnel Records Center (AFN). The office that receives a FOIA request that might involve other NARA FOIA program offices will forward or share the request with the main FOIA program office within their executive office, or with the Office of General Counsel. Offices may also use cross-agency communication tools, to the extent available and appropriate.

### **1602.14 Requests for records we don't have.**

If the request is for state, local, or non-Governmental records not in NARA's custody (*e.g.*, driving records, birth certificates from their original sources, copies of telephone books, etc.):

- a. Log the request into your FOIA tracking log;
- b. Respond to the requester, denying the request; and



- c. Cite “other” as the determination code and enter procedural reason “other” (see subpar. 1602.19i) as a justification for the determination.

#### **1602.15 Requests for records that are not covered by the FOIA.**

If the FOIA request is for records not covered by the FOIA, for example, for records covered by the PRA that are not yet subject to the FOIA, for court or congressional records, or for donated materials:

- a. Log the request into your FOIA tracking log;
- b. Respond to the requester denying the request; and
- c. Cite the procedural reason that applies to the case. For example, if the record is subject to the PRA, cite “Presidential Records Act applies” (see subpar. 1602.19j). If the request is for court or congressional records or donated historical materials, including Presidential records created before 1981, cite “Not an agency record” (see subpar. 1602.19g).

#### **1602.16 Requests for records that are already open to research.**

Often NARA receives FOIA requests for archival records that are already open to research. If such a request is received, handle it like any other FOIA request:

- a. Log the request into your FOIA tracking log;
- b. Conduct a search (two-hour maximum) for the requested information in the finding aids for the record group or series indicated in the request to try to locate the records in our holdings. If located, inform the requester that the records are already open to the public for research and that they may view the responsive records in a NARA research room or purchase copies. If the requested information could not be located in the allowable search time, inform the requester they may search our open collections for the material;
- c. Always give appeal language in the letter (because, even if all of the responsive records are open, the requester can appeal the adequacy of the search); and
- d. If the records are open in their entirety, mark the request as completed in the FOIA tracking log, citing a decision of “total grant.” If the records contain withdrawals, mark the decision as a “partial grant.”

#### **1602.17 The FOIA exemptions.**

- a. Subsection (b) of the FOIA specifically exempts from release information that falls into one of nine categories. NARA withholds records only if it reasonably foresees that disclosure would harm an interest protected by one of these nine exemptions:

- (1) Exemption (b)(1) – exempts national defense or foreign policy information properly classified pursuant to an executive order;
- (2) Exemption (b)(2) – exempts information related solely to the internal personnel rules and practices of an agency. NARA generally does not apply this exemption to archival records;
- (3) Exemption (b)(3) – exempts information that is specifically exempted from disclosure by statute. Not all statutes qualify for this exemption. The Department of Justice maintains a list of Statutes Found to Qualify under Exemption 3 of the FOIA at <https://www.justice.gov/oip/page/file/623931/download>. The following statutes are among those that apply to NARA records:

Federal Rule of Criminal Procedure 6(e)	Grand jury information
10 U.S.C. § 130	Technical data with military or space application
13 U.S.C. §§ 8(b) and 9(a)	Census information
16 U.S.C. § 470aa	Archaeological Resources Protection Act
26 U.S.C. §§ 6103 and 6105	Income tax information
42 U.S.C. §§ 2162 and 2168(a)(1)(C)	Atomic energy information
50 U.S.C. § 3024(i)(1)	Intelligence sources and methods
50 U.S.C. § 403g	Information pertaining to the organization, function, and employees of the CIA

- (4) Exemption (b)(4) – exempts trade secrets and commercial or financial information obtained from a person that is privileged or confidential;
- (5) Exemption (b)(5) – exempts interagency or intra-agency memoranda or letters that would not, because of legally recognized “privileges,” be available by law to a party other than an agency in litigation with NARA. Among the privileges incorporated into (b)(5) are the “executive” or

deliberative process privilege, attorney work product privilege, and the attorney-client privilege, except that the deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested. This exemption is discretionary, and NARA generally does not apply this exemption to archival records. This exemption cannot be applied to Presidential records (44 U.S.C. § 2204(c)(1));

- (6) Exemption (b)(6) – exempts personnel, medical, or other personal information the release of which would constitute a clearly unwarranted invasion of privacy;
- (7) Exemption (b)(7) – exempts records or information compiled for law enforcement purposes, but only if it relates to:
  - (a) Exemption (b)(7)(A) – information that could reasonably be expected to interfere with law enforcement proceedings
  - (b) Exemption (b)(7)(B) – information that would deprive a person of a right to a fair trial or impartial adjudication,
  - (c) Exemption (b)(7)(C) – personal information about the subject of a law enforcement investigation, or an individual not under investigation, the release of which would cause an unwarranted invasion of privacy,
  - (d) Exemption (b)(7)(D) – the identity of a confidential source or information provided by the source,
  - (e) Exemption (b)(7)(E) – law enforcement techniques and investigative procedures. This exemption is one of the two law enforcement exemptions that NARA uses to protect records that could enable someone to succeed in causing harm to the Federal Government, the United States infrastructure, or U.S. citizens,
  - (f) Exemption (b)(7)(F) – information that could endanger the life or physical safety of any individual. This exemption is the other law enforcement exemption that NARA uses to protect records that could enable someone to succeed in causing harm to the Federal Government, the United States infrastructure, or U.S. citizens;
- (8) Exemption (b)(8) – exempts records contained in or related to the examination, operating, or condition reports prepared by, or on behalf of, or for the use of, an agency responsible for the regulation or supervision of financial institutions; and

- (9) Exemption (b)(9) – exempts from release geological or geographical information and data, including maps, concerning wells.

b. Typically, when NARA withholds information in executive branch Federal archival records and in Presidential records in the custody of NARA that were created since January 20, 1981, it does so under FOIA exemptions (b)(1), (b)(3), (b)(4), (b)(6), (b)(7)(C), (D), (E) and (F), and (b)(8). NARA generally does not withhold Federal archival records under exemption (b)(5), except in specific circumstances when the records have been transferred to NARA at a young age (i.e., under twelve years). For specific guidance on applying FOIA exemptions to archival records that are subject to FOIA, see NARA 1601, Screening Federal Records for Information Covered by FOIA Exemptions.

- (1) For records containing CNSI, NARA must generally consult with those agencies that have Original Classification Authority in order to obtain a declassification decision on the requested records, except to the extent that the agencies have provided NARA with declassification guidance or NARA can make an initial determination that the information remains classified.
- (2) NARA withholds personal information in records subject to FOIA under (b)(6) for 75 years from the events documented in the record, unless the individual to whom the information relates is deceased.
- (3) Census data is withheld under (b)(3) (13 U.S.C. 8(b) and 9(a)) for 72 years.
- (4) Presidential records can also be closed under six Presidential restrictive categories of the PRA, 44 U.S.C. § 2204(a), for a period not to exceed 12 years from the end of a Presidential administration.

c. When NARA withholds information in operational records, it typically does so under exemptions (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7).

#### **1602.18 Relationship between a CUI marking and a FOIA exemption.**

Records may be marked as controlled unclassified information (CUI) in accordance with 32 CFR Part 2002, or may have some other marking on them. These markings have no bearing on whether information can be released in response to a FOIA request, although a CUI marking may alert you that a FOIA exemption listed above might apply. A line-by-line review of the information at the time of the request should be done to determine if any of the FOIA exemptions apply. If not, the records should be released. When such records are released by NARA in response to a FOIA request, they are decontrolled under NARA's CUI program.

#### **1602.19 Procedural reasons for denying a FOIA request.**

NARA will deny a request for procedural reasons when we receive a request for a record that is not among our holdings, either because the record does not exist or it belongs to another agency, or for a record that is not governed by FOIA. The following is a comprehensive list of the procedural reasons that NARA may use in denying a FOIA request:

- a. **No records** – A search found no records responsive to the request;
- b. **Request referred** – The request was referred to another agency. The referral marks the completion of NARA’s work. Use this procedural category to catalog requests that need to be referred to the original agency because the records are not in NARA’s legal custody (e.g., records center holdings). Do not use this procedural category when “referring” records for declassification review. In those cases, NARA is still responsible for answering the FOIA request;
- c. **Request withdrawn** – The requester withdrew his or her request;
- d. **Fee-related reason** – The requester has refused to pay costs associated with his or her FOIA request or the requester has an outstanding amount due for copying fees;
- e. **Records not reasonably described** – The request did not describe the records in sufficient detail for a staff person to locate them;
- f. **Improper request** – The request requires the creation of records in order to make a response or the request does not ask for records, but either poses a question or asks for information about a broad subject. Also use this determination when a FOIA request asks NARA to interpret records or asks for legal advice;
- g. **Not agency record** – The records requested are not “agency records” subject to the FOIA. For example, Presidential donated historical materials, Nixon Presidential historical materials, and legislative and judicial branch records are not agency records subject to FOIA;
- h. **Duplicative request** – The same requester has already made a request for the same records;
- i. **Other** – For example, the request is for state, local, or non-Governmental records not in NARA’s custody (e.g., driving records, birth certificates from their original sources, copies of telephone books, etc.) or the requestor has died; or
- j. **Presidential Records Act applies** – Presidential records are not subject to FOIA for 5 years after the end of the Presidential administration.

#### 1602.20 NARA’s response to a FOIA request.

- a. A FOIA response must detail the decision concerning the request. The decision may be to grant the request in full or in part, to deny the request in full or in part under

one of the FOIA's nine exemptions, to deny the request because NARA cannot comply for one of various procedural reasons, or a combination of these.

b. If you grant the request in full or in part, include copies of the responsive material or the amount of total fees due, if any. Notify the requester that he or she has the option of viewing any responsive records at the NARA facility that holds the records without having to pay a fee, and may make their own copies.

c. If you deny the request in whole or in part, provide the requester with specific information about the decision. If you deny the request or part of it pursuant to a FOIA exemption or if NARA cannot comply with the request for procedural reasons, you must clearly and completely explain the reasons. A denial letter must indicate:

- (1) For paper records, the number of pages of responsive records found and, for records on another medium, the number of responsive records found;
- (2) For paper records, the number of pages releasable in full and, for records on another medium, the number of records releasable in full;
- (3) The number of pages or records releasable in part;
- (4) The number of pages or records denied in full;
- (5) The specific FOIA exemption(s) that were applied to any withheld pages or records, or the procedural reason(s) for NARA being unable to comply with the request; and
- (6) To the extent any information was withheld, notify the requester that all reasonable steps necessary were taken to segregate and release non-exempt information.

d. For all requests, you must notify the requester of their right:

- (1) To an administrative appeal in accordance with NARA's regulations, including for interim responses (see pars. 1602.22-1602.24 and 36 CFR 1250.70-1250.78);
- (2) To seek assistance from the appropriate FOIA public liaison; and.
- (3) To seek mediation services from the Office of Government Information Services.

#### **1602.21 Completing a FOIA request.**

A FOIA request is considered completed when all of the information in par. 1602.20 has been provided to the requester concerning all of the records requested. If NARA must refer records

responsive to a FOIA request to another agency for declassification review, the request is not considered completed until all such reviews are done. When the request is completed, NARA offices must annotate their FOIA tracking log to include the following information:

- a. Completion date;
- b. Final determination;
- c. Any exemptions cited, if applicable; and
- d. Any procedural reasons for not complying with the request, if applicable.

## **PART 4 – APPEALS**

### **1602.22 Requester’s appeal rights under FOIA.**

A requester may appeal any of the following decisions:

- a. Refusal to release a record, either in whole or in part;
- b. Determination that a record does not exist or cannot be found;
- c. Determination that the record sought is not subject to the FOIA;
- d. Denial of a request for expedited processing; or
- e. Denial of a fee waiver request.

### **1602.23 Appeals of requests for operational and archival records (but not including Presidential records).**

- a. Requesters must submit appeals in writing (either by mail, fax, or email) and they must be postmarked within 90 calendar days of the date NARA initially denies access (see 36 CFR 1250.72).
- b. Requesters must address appeals about records created by the OIG to the Archivist of the United States. The OIG coordinates review of the appeal and prepares the response for the Archivist’s signature within 20 workdays (see 36 CFR 1250.72).
- c. With the exceptions listed in subpar. d and in par. 1602.24, requesters must address appeals about other records to the Deputy Archivist of the United States. NGC coordinates review of all appeals for NARA’s operational records and archival records that are subject to FOIA and prepares a response for the Deputy Archivist’s signature within 20 workdays (see 36 CFR 1250.74).

d. If NARA denies the request under FOIA exemption (b)(1), requesters must submit appeals to the Deputy Archivist of the United States, who will then consult with those agencies that have Original Classification Authority about declassifying the requested records.

#### **1602.24 Appeals of requests for Presidential records.**

a. Requesters must submit appeals for Presidential records denied under both a FOIA exemption and a PRA restriction within the first 12 years following the end of the administration to the Director of the Presidential library that holds those records. These appeals must be in writing and postmarked within 90 calendar days of the date NARA initially denies access (see 36 CFR 1250.72).

b. Requesters must submit appeals of Presidential records denied solely under a FOIA exemption to the Deputy Archivist of the United States. These appeals must be in writing and postmarked within 90 calendar days of the date NARA initially denies access (see 36 CFR 1250.72). The Deputy Archivist will:

- (1) Coordinate NARA's appeal response with the Director of the appropriate Presidential library to ensure that the Deputy Archivist is aware of any ancillary issues related to the documents. For records closed under FOIA exemption (b)(1), the Presidential library coordinates a declassification review with the originating agency appellate board before the Deputy Archivist generates an appeal response; and
- (2) Coordinate with both the Presidential Materials Division (LM) and the appropriate Presidential library to ensure former and incumbent Presidential representatives are notified as required by the Presidential Records Act, 44 U.S.C. § 2208(a).

### **PART 5 – FEES**

#### **1602.25 Fees for FOIA requests and payment procedures.**

a. For archival records and Presidential records in NARA's custody that were created since January 20, 1981, we assess fees based on NARA's reproduction fee schedule (NARA's current fee schedule is at <https://www.archives.gov/research/order/fees>; policies governing the fee schedule are in 36 CFR Part 1258 and NARA 1653). Fees for reproductions of archival records can be paid by check or money order made payable to the National Archives Trust Fund Board or by credit card.

b. For NARA's operational records, we assess fees in accordance with NARA's FOIA fee schedule (36 CFR § 1250.53). We do not charge fees for operational records if



the aggregate of all applicable fees is less than \$25. We charge commercial requesters search, review, and reproduction fees. We provide all other requesters the first 100 pages of reproductions or the equivalent free of charge and assess fees on any additional pages.

c. Fees for operational records can be paid by check or money order made payable to National Archives and Records Administration or NARA. Send payments to Accounting Policy and Operations (XA) in the Office of the Chief Financial Officer.

#### **1602.26 Waiving fees for FOIA requests.**

a. NARA does not grant fee waivers under the FOIA for reproducing archival records or Presidential records in the custody of NARA that were created since January 20, 1981. 44 U.S.C. § 2116(c) allows NARA to charge fees to recover the costs of making reproductions of such records. Therefore, NARA's archival records are exempt from the FOIA fee waiver provisions.

b. NARA also considers fee waivers for operational records if the requester meets the criteria outlined in 36 CFR 1250.56.

## **PART 6 – FOIA REPORTING**

#### **1602.27 Decisions, or determinations, in response to a FOIA request.**

There are four possible determinations, which are mutually exclusive. If withholding pursuant to a FOIA exemption, use determinations in subpars. b or c. If you are denying a FOIA request for a procedural reason, use the determination in subpar. d.

a. **Total grant** – use when NARA responds to a FOIA request by disclosing all responsive records in full. This includes records that are already open to research and require no review action under FOIA.

b. **Partial grant** – use when NARA responds to a FOIA request by disclosing a record in part, deleting information determined to be exempt under one or more of the FOIA exemptions; or when NARA responds to a request by disclosing some records in their entirety, but withholding others in whole or in part. Do not use this determination when NARA denies a FOIA request for a procedural reason.

c. **Denial** – use when NARA does not release any part of a record in response to a FOIA request because NARA determines that all the information in the requested record is exempt under one or more of the FOIA exemptions. Do not use this determination when NARA denies a FOIA request for a procedural reason.

d. **Other** – use when NARA denies a FOIA request, in whole or in part, for procedural reasons, such as because no record is located in response to a FOIA request.

### **1602.28 Collecting data for the annual FOIA report.**

Each office that processes FOIA requests is responsible for maintaining a local FOIA tracking log that tracks the decisions concerning each FOIA request and ensuring that this information is reported to PMRS on a regular basis. This system is the official source of statistical information that NARA uses to track its performance against the target goals in NARA's Strategic Plan. This reporting data is also the basis for data in the Chief FOIA Officer's Report, the annual FOIA report, and quarterly FOIA reporting to the Department of Justice.

### **1602.29 Preparing the annual FOIA report.**

Using input from the PMRS database, NGC prepares the annual FOIA report and sends it to DOJ by December 31 of each year. Data concerning staff time spent processing FOIA requests is not collected in the PMRS. NGC collects this data from each office to include in the annual FOIA report.

## **PART 7 – ADMINISTRATIVE**

### **1602.30 Definitions**

The following definitions apply for terms used in this directive:

- a. **Archival records** are records that have been accessioned into the legal custody of the National Archives and Records Administration (NARA), Presidential and Vice Presidential records subject to the Presidential Records Act, deeded materials in the legal custody of NARA and its Presidential libraries, and Congressional, Supreme Court, and other historical materials in NARA's physical custody and for which NARA has a formal agreement for their permanent retention. (Note: Only records created by executive branch agencies, and Presidential or Vice Presidential records in NARA's custody that were created after January 20, 1981, are subject to FOIA.).
- b. **Operational records** are any records that NARA creates or receives in carrying out its mission and responsibilities as an executive branch agency. This definition excludes archival records among NARA's holdings.
- c. **Presidential records** are any records as defined by 44 U.S.C. § 2201, including "documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff... in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President." The Presidential Records Act (PRA) applies to all such materials created on or after January 20, 1981. For the purpose of this directive, the term "Presidential record" also includes Vice Presidential records created on or after January 20, 1981.

**1602.31 Authorities.**

- 5 U.S.C. § 552, as amended (Freedom of Information Act);
- 44 U.S.C. § 2110 (Servicing records);
- 44 U.S.C. § 2116 (Fees for copies)
- 44 U.S.C. §§ 2201 and 2204 (Presidential Records Act);
- 36 CFR Part 1250 (NARA Records Subject to FOIA);
- 36 CFR Parts 1254 and 1256 (Using and access to records and donated historical materials);
- 36 CFR Part 1258 (Fees for copies);
- 36 CFR Part 1260 (Declassification); and
- 36 CFR Part 1270 (Presidential Records).

**1602.32 Public release.**

Unlimited. This directive is approved for public release.

**1602.33 Records management.**

For records created in processing FOIA requests, use the appropriate file number(s) in subpars. a and b:

- a. Operational records: staff fulfilling FOIA requests for NARA operational records should maintain all records created by that process in accordance with GRS 4.2, Items 001, 010, and 020.
  
- b. Archival records: staff fulfilling FOIA requests for archival records in the holdings of the National Archives should maintain all records created by that process in accordance with NARA file number 1422.