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# FDIC DIRECTIVE 1023.01

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## Freedom of Information Act Requests

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**Approving Official:** Harrel Pettway, General Counsel

**Originating Division/Office:** Legal Division

**Approval Date:** 05/16/2019

**Pedestrian Change Date:** 08/23/2023

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### PURPOSE

This Directive is a Pedestrian Change, providing policy for responding to requests and associated administrative appeals pursuant to the Freedom of Information Act (FOIA), Title 5, United States Code (U.S.C.), Section 552 and Privacy Act Regulations, FDIC Regulations found in Title 12, Code of Federal Regulations (CFR), Section 309.5.

### SCOPE

This Directive applies to all FDIC Divisions/Offices involved in the processing of FOIA requests.

### AUTHORITIES

- Title 5, U.S.C., Section 552, The Freedom of Information Act
- Title 12, CFR, Section 309.5, Procedures for Requesting Records
- Title 12, CFR, Part 310, Privacy Act Regulations (FDIC Regulations)
- Executive Order (EO) 12600, Pre-Disclosure Notification Procedures for Confidential Commercial Information, 52 Federal Register (FR) 23781, dated June 23, 1987
- EO 13392, Improving Agency Disclosure of Information, 70 FR 75373, dated December 14, 2005
- FDIC Directive 1360.20, Privacy Program
- FDIC Delegation of Authority to the General Counsel for Freedom of Information Act and Privacy Act

### FORMS

None.

## **SUMMARY OF CHANGES**

This Directive supersedes Circular 1023.1, Procedures for Processing Freedom of Information Act Requests, dated April 18, 2006.

### **REVISION, dated May 16, 2019**

This Directive has been revised to conform to the new template, clarify authorities, and update terminology.

### **PEDESTRIAN CHANGE, dated August 23, 2023**

This Directive has been revised to:

- Provide minor clarifications to the Policy section; and
- Change responsible officials (Responsibilities section), authorities (Authorities section), and terms (Glossary of Terms section).

# TABLE OF CONTENTS

PURPOSE .....	1
SCOPE .....	1
AUTHORITIES.....	1
FORMS.....	1
SUMMARY OF CHANGES .....	2
BACKGROUND .....	4
POLICY.....	5
A. Response Requirements .....	5
B. Search for Requested Information .....	5
C. Defective FOIA Requests.....	5
D. Granting Requests in Full.....	6
E. Denial of Requests in Full or in Part .....	6
F. Providing Records in the Form or Format Requested .....	6
G. Referrals of Records to Another Agency .....	6
H. Confidential Business Information .....	6
I. Administrative Appeal Process .....	6
RESPONSIBILITIES .....	8
A. Chief FOIA Officer.....	8
B. FOIA Public Liaison .....	8
C. FOIA and Privacy Act Group.....	8
D. Division/Office Directors .....	8
E. Supervisors/Managers .....	8
F. Employees.....	8
APPENDIX.....	9
GLOSSARY OF TERMS.....	10
GLOSSARY OF ACRONYMS.....	11

## **BACKGROUND**

The FOIA, enacted in 1966, generally provides that any person has a right to obtain access to federal agency records except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement records exclusions.

The Privacy Act of 1974 may also be used by certain individuals to obtain access to records maintained by their names or other personal identifier in an agency system of records. Requests for Privacy Act records must be processed in accordance with the Privacy Act Regulations, FDIC Regulations at 12 CFR Part 310, and the procedures in FDIC Directive 1360.20, Privacy Program.

In 1996, Congress enacted the Electronic Freedom of Information Act Amendments (E-FOIA) requiring public access to information in an electronic format and for the establishment of electronic FOIA reading rooms through agency FOIA websites. The FDIC's FOIA webpage contains a variety of reference materials and links to the FOIA Reading Room of electronic records.

In 2005, President Bush issued EO 13392, Improving Agency Disclosure of Information, 70 FR 75373, dated December 14, 2005, directing agencies to ensure citizen - centered and results-oriented FOIA operations. In accordance with this Executive Order and as now required by the FOIA at 5 U.S.C. Section 552(j)(1), the FDIC has designated the General Counsel as its Chief FOIA Officer.

On June 30, 2016, the FOIA Improvement Act of 2016 became law. Among other things, this Act amended the FOIA to require that agencies allow for a minimum of 90 days for requesters to file administrative appeals and provide requesters access to dispute resolution services at various times throughout the administrative process, amended Exemption 5 of the FOIA, and codified the "foreseeable harm standard."

## **POLICY**

The FDIC is committed to full compliance with the FOIA. Under 12 CFR 309.5, all requests for records must be made in writing and sent directly to the FOIA and Privacy Act Group (FOIA-PA Group). FDIC Divisions/Offices that receive FOIA requests directly must send the requests immediately to the FOIA-PA Group.

### **A. Response Requirements**

1. The FDIC is required to respond to valid FOIA requests within 20-business days after receipt of these requests, unless there are unusual circumstances, which extends the response period. A valid FOIA request must be made in compliance with the FOIA and the FDIC's published regulations. The FOIA-PA Group assigns valid FOIA requests to the appropriate FDIC Division/Office to search for responsive agency records.
2. The assigned Division/Office promptly notifies the FOIA-PA Group of the results of its search and provides the FOIA-PA Group with its disclosure recommendations.

### **B. Search for Requested Information**

1. Scope

The assigned Division/Office is responsible for searching all records that might reasonably contain the requested information.

2. Documenting Scope of Search

The Division/Office must be able to identify the specific files and databases searched in response to a FOIA request.

3. Search Cut-off Date

Pursuant to 12 CFR 309.5(d)(8), a search of records maintained by the FDIC "in existence on the date of receipt of the request" must be conducted.

### **C. Defective FOIA Requests**

All requests are reviewed to identify defective (i.e., not valid) requests. If a request is not defective, the FOIA-PA Group assigns the request to a Division/Office. For any request that is assigned to a Division/Office, the Division/Office promptly notifies the FOIA-PA Group if the request does not describe the records in a way that allows for a reasonable search to be conducted.

#### **D. Granting Requests in Full**

When an assigned Division/Office recommends a request be granted in full, the Director of the Division/Office (or designee) notifies the FOIA-PA Group, in writing, of the decision and promptly delivers a copy of the records requested to the FOIA-PA Group.

#### **E. Denial of Requests in Full or in Part**

If an assigned Division/Office recommends denial of a request, either in full or in part, the Division/Office provides a copy of the responsive records to the FOIA-PA Group and advises the FOIA-PA Group of the reasons for each recommended denial, including that there is foreseeable harm in release of the information. The FOIA-PA Group makes the final determination of all requests.

#### **F. Providing Records in the Form or Format Requested**

The Division/Office provides responsive records in the format requested if the records are readily reproducible by the FDIC in that format (e.g., hardcopy or electronic format).

#### **G. Referrals of Records to Another Agency**

If the requested record or information originated with another agency or falls within the special expertise of another agency, the assigned Division/Office must inform the FOIA- PA Group. The FOIA-PA Group refers the request and any responsive records to the other agency for disposition and direct response to the requester.

#### **H. Confidential Business Information**

Requests for the disclosure of information that were submitted by business entities (submitters) to the FDIC must, when applicable, be treated as required by EO 12600, except for information that is:

1. Publicly available by regulation, lawful publication, or similar means;
2. Of a type the release of which is regularly ordered by Federal Courts; or
3. Determined by the FOIA-PA Group to be confidential and withheld under an appropriate FOIA exemption.

#### **I. Administrative Appeal Process**

Pursuant to 12 CFR 309.5(i), requesters whose initial request for records or whose request for a waiver of fees was denied, in full or in part, or whose requested records could not be located, have the right to appeal the denial.

## 1. Appeal Requirements

Appeals should be addressed to the General Counsel and must be submitted within 90 calendar days of receiving notification of the denial. Appeals must be made in writing and submitted to the FOIA-PA Group.

## 2. Appeal Response Requirements

Appeals are adjudicated on behalf of the General Counsel by the Corporate Litigation Unit. The FDIC is required to respond to appeals within 20-business days after receipt of the appeal, unless it is an appeal of a denial of expedited treatment. Appeals of denials of expedited treatment will be responded to within 10 business days after receipt. The appeal response will inform the requester whether the appeal is granted or denied in whole or in part, the name of the person responsible for the denial, the exemptions relied upon in making the denial, if applicable, and the right to seek judicial review of the denial.

## **RESPONSIBILITIES**

### **A. Chief FOIA Officer (or designee):**

1. Has Corporate-wise responsibility for ensuring the efficient and appropriate compliance with the FOIA;
2. Provides oversight and guidance to the FOIA Program; and
3. Conducts reviews and makes final determinations on administrative appeals.

### **B. FOIA Public Liaison:**

Serves as a supervisory official to whom a FOIA requester can raise concerns about the service received from the FOIA-PA Group.

### **C. FOIA and Privacy Act Group:**

1. Manages the day-to-day administration and operation of the FOIA Compliance Process; and
2. Receives, tracks, and processes all FOIA and Privacy Act requests received by the FDIC.

### **D. Division/Office Directors:**

1. Designate primary and secondary FOIA Coordinators of appropriate grade, training, and experience to assist the FOIA-PA Group; and
2. Ensure Division/Office adherence to the FOIA Compliance Process.

### **E. Supervisors/Managers:**

Ensure employees collaborate with FOIA Coordinators and the FOIA-PA Group to adhere to the FOIA Compliance Process.

### **F. Employees:**

Perform FOIA-related assignments in accordance with this Directive.



## **APPENDIX**

None.

## **GLOSSARY OF TERMS**

*Defective FOIA Request:* A FOIA request that does not comply with the FOIA or FDIC Regulations.

*FDIC Records:* For FOIA purposes, information that is either created or obtained by the FDIC and under FDIC control at the time of the FOIA request.

*Search:* To manually or electronically review FDIC records for the purpose of locating records that are responsive to a FOIA request, including time spent requesting records from off-site storage. This term does not include time spent reviewing, processing, or duplicating records.

## **GLOSSARY OF ACRONYMS**

*E-FOIA*: Electronic Freedom of Information Act Amendments

*FOIA*: Freedom of Information Act

*FOIA-PA*: Freedom of Information Act and Privacy Act