



FEDERAL DEPOSIT INSURANCE CORPORATION

# DIRECTIVE SYSTEM

TYPE AND NUMBER

Circular 1023.1

CONTACT

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DATE

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DATE OF CANCELLATION (*Bulletins Only*)

**TO:** All Divisions and Offices

**FROM:** Douglas H. Jones  
Acting General Counsel and  
Chief FOIA Officer

**SUBJECT:** Procedures for Processing Freedom of Information Act Requests

**1. Purpose** To update procedures for processing requests for FDIC records and associated administrative appeals pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and FDIC Regulations found in 12 CFR, § 309.5.

**2. Revision** FDIC Circular 1023.1, Procedures for Processing Freedom of Information Act Requests, dated February 11, 1999, is hereby revised and superseded.

**3. Scope** The provisions of this circular apply to all divisions and offices involved in the processing of FOIA requests.

**4. 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 shall be processed in accordance with the Privacy Act, FDIC Regulations at 12 CFR, § 310, and the procedures in FDIC Circular 1031.1, The Privacy Act of 1974: Employee Rights and Responsibilities.

## **Background (cont'd)**

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 web sites. The FDIC's E-FOIA web site is available at [www.fdic.gov/about/freedom/index.html](http://www.fdic.gov/about/freedom/index.html) where a variety of reference materials and links to component reading rooms of electronic records may be found.

In 2005, President Bush issued Executive Order 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, the FDIC has designated the General Counsel as its Chief FOIA Officer with corporate-wide responsibility for efficient and appropriate compliance with the FOIA.

To ensure appropriate communication with FOIA requesters, a FOIA Requester Service Center has been established within the Legal Division to receive and respond to inquiries concerning the status of pending FOIA requests. The FOIA Requester Service Center may be contacted at [www.fdic.gov/about/freedom/index.html](http://www.fdic.gov/about/freedom/index.html). Additionally, the Office of the Ombudsman is the designated FOIA Public Liaison to whom a FOIA requester can raise concerns about the status of their FOIA request and FOIA-related inquiries. The FOIA Public Liaison can be contacted at [Ombudsman@FDIC.Gov](mailto:Ombudsman@FDIC.Gov).

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### **5. Policy**

The FDIC is committed to full compliance with the Freedom of Information Act.

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### **6. Responsibilities**

The Legal Division FOIA/Privacy Act Group (FOIA-PA Group) in Washington, DC has been delegated responsibility for the day-to-day administration and operation of the FOIA program.

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### **7. Procedures**

#### **a. Processing FOIA Requests**

(1) **Receipt of Requests.** Under Section 309.5 of FDIC's Rules and Regulations, (12 C.F.R. 306.5) all requests for records shall be in writing and sent directly to the FOIA-PA Group. FDIC Divisions or Offices that receive FOIA requests directly must send the requests immediately to the FOIA-PA Group via fax or interoffice or electronic mail.

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(2) **Cataloging of Requests.** Upon receipt of a FOIA request, the FOIA-PA Group shall assign the request a FOIA Log Number, that shall be used by the Division or Office in all correspondence and communications regarding the request.

(3) **Referral of Requests.** The FDIC is required to respond to valid FOIA requests within 20-business days after receipt of these requests by the FOIA-PA Group. A valid FOIA request is one that has been made in compliance with the FOIA and the FDIC's published regulations.

(a) The FOIA-PA Group shall:

1. Date-and time-stamp valid requests upon receipt, thereby commencing the 20-business-day response period required under FOIA, unless the request is to be afforded expedited treatment; and

2. Promptly refer and deliver requests to the appropriate Divisions or Offices that would reasonably be expected to have custody of the requested records.

(c) The assigned Division or Office shall immediately notify the FOIA-PA Group upon determining that it does not have custody of the requested records. If the assigned Division or Office believes that another Division or Office may have responsive records, the assigned Division or Office should advise the FOIA-PA Group, who will then reassign the request to the appropriate Division or Office. No Division or Office shall directly refer a request to another Division or Office. Reassignment to a different Division or Office does not extend the 20-business-day response period except in unusual circumstances.

**(4) Coordination with Divisions and Offices**

(a) Each Division or Office shall notify the FOIA-PA Group, in writing, of the name and title of the point-of-contact:

1. Responsible for coordinating FOIA responses and to whom requests for Division or Office records may be delivered. The point-of-contact shall also be responsible for advising the FOIA-PA Group on the status of pending requests; and

2. Authorized to recommend the release or withholding of records in response to FOIA requests.

(5) **Time for Responding to Requests**

(a) The assigned Division or Office shall make a recommendation to the FOIA-PA Group as to whether the request should be granted or denied within 15-business days following receipt of the request from the FOIA-PA Group. The Division or Office shall also complete the steps set forth in subparagraphs 7.a.(6) through (9), below.

(b) The 15-business-day time period referred to in subparagraph 7.a.(5)(a), above, is not applicable if: (i) the requested records are located in facilities, such as field offices, separate from the FDIC Washington office; or (ii) the requested records are voluminous or are not in proximity to one another; or (iii) there is a need to consult with another agency or among FDIC components having a substantial interest in the determination.

**1. Notification to the FOIA-PA Group.** If any of the circumstances described in subparagraphs 7.a.(5)(b), above, are present and an extension of time is necessary for making a decision, the assigned Division or Office shall, prior to the expiration of the 15-business-day time period, notify the FOIA-PA Group, in writing, of the need for and approximate length of an extension of time to respond. The FOIA-PA Group shall then advise the requester of the need for an extension of time.

**2. Maximum Additional Time Authorized.** By law, if responding to the request involves unusual circumstances, as described in subparagraphs 7.a.(5)(b), above, the 20-business-day time period may be extended: (i) for a period of no more than 10-business days; (ii) by an alternative time period agreed on by the requester; or (iii) by an alternative time period, reasonably determined by FDIC, when the FDIC notifies the requester that the request cannot be processed within the specified time limit.

(c) **Extension of Time to Obtain Agreement to Pay.** When it appears that processing costs will exceed \$10 and the requester has not agreed to pay such costs, the Division or Office must prepare a cost estimate as described in subparagraph 7.b.(3), below. The 15-business-day processing period shall be suspended until the agreement to pay is received from the requester.

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(d) **Failure to Respond Within Time Limitations.** A request for records not responded to within 15-business days following receipt from the FOIA-PA Group by either a recommendation to grant or deny the request or by a request for additional time due to unusual circumstances will be considered a "no records" response. The FOIA-PA Group will notify the non-responsive Division or Office in writing before proceeding with a "no records" response to the requester.

**(6) Searching for Records**

(a) **FDIC Records.** FDIC records are records that are either created or obtained by the FDIC; and under FDIC control at the time of the FOIA request.

(b) **Scope of Search.** The assigned Division or Office shall search all records that might reasonably contain the requested information. The term "search" means to review, manually or electronically, FDIC records for the purpose of locating records that are responsive to a request, including time spent requesting records from off-site storage. The term "search" does not include time spent duplicating records. Questions regarding the scope of any FOIA search for records should be directed to the FOIA-PA Group.

(c) **Documenting Scope of Search.** The Division or Office must be able to identify the specific files and databases searched in response to a FOIA request. Such documentation is necessary to facilitate the review of an administrative appeal challenging the adequacy and scope of the FDIC's search for responsive records, or challenging the FDIC's determination to withhold records. At a minimum, this documentation must include a completed form FDIC 1023/01, FDIC Control Record for FOIA and Privacy Act Requests, (shall be referred to as (FOIA Control Record)) and FOIA Records Search Checklist attached to each referral by the FOIA-PA Group. The assigned Division or Office may also continue to include with their response any supplemental search-related information or memoranda deemed appropriate.

(d) **Search Cut-off Date.** Under Section 309.5(d)(7) of FDIC's Rules and Regulations a search shall be conducted of records maintained by the FDIC "in existence on the date of receipt of the request." If a time period is not specified by the requester, please inform the FOIA-PA Group if a search cut-off date other than the date of the request's receipt is used.

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(e) **Defective FOIA Requests.** A defective FOIA request is one that does not comply with the FOIA or the FDIC Regulations. The FOIA-PA Group will review all requests prior to routing to identify defective requests. For any request that is routed to a Division or Office, the Division or Office shall promptly notify the FOIA-PA Group if the request does not describe the records in a way that allows for a reasonable search to be conducted. The FOIA-PA Group shall promptly notify the requester of the apparent deficiency of the request. The 15-business-day processing period shall then be suspended until the FOIA-PA Group obtains clarification from the requester. The FOIA-PA Group shall promptly advise the appropriate Division or Office upon receipt of clarification.

(7) **Granting Requests in Full.** When an assigned Division or Office recommends that a request be granted in full, the director of the Division or Office (or designee) shall notify the FOIA-PA Group, in writing, of the decision and promptly deliver to the FOIA-PA Group a copy of the records requested. A Division or Office may grant a request in full and respond directly to the requester only when authorized to do so in writing by the Legal Division, or in accordance with Section 309.6 of FDIC's Rules and Regulations and subparagraph 7.a.(10) Discretionary Release of Exempt Records, below.

(8) **Providing Records in the Form or Format Requested.** The Division or Office shall provide responsive records in the format requested if the records are readily reproducible by the FDIC in that format (for example, hardcopy, fax, or electronic format).

(9) **Denial of Requests in Full or in Part.** The General Counsel (or designee) is the only FDIC official with the authority to deny, either in whole or in part, requests for records under FOIA. The authority to make an initial denial, in whole or in part, of requests for records made under FOIA is exercised by the FOIA-PA Group. When an assigned Division or Office recommends denial of a request, either in whole or in part, the Division or Office shall furnish the FOIA-PA Group with a copy of the responsive records and advise the FOIA-PA Group of the reasons for each recommended denial. The FOIA-PA Group may take such action with respect to Division or Office recommendations for the denial of a request as it deems appropriate, including granting the request. The FOIA-PA Group shall promptly furnish the assigned Division or Office with a copy of the notification letter granting the request in whole or in part.

**Procedures  
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(10) **Discretionary Release of Exempt Records.** A Division or Office having primary authority over exempt records or information of the FDIC may effectuate a discretionary release of exempt records but only in strict accordance with the conditions and requirements set forth in Section 309.6 of the FDIC's Rules and Regulations. Prior to any discretionary release pursuant to a FOIA request, the Division or Office shall send a written statement to the FOIA-PA Group explaining why the records should be released together with the name and title of the official responsible for authorizing the release.

(11) **Referrals of Requests to Another Agency**

(a) If the requested record or information originated with another agency or falls within the special expertise of another agency, the assigned Division or Office shall so inform the FOIA-PA Group. The FOIA-PA Group shall contact the agency for guidance with respect to disposition of the request and, if necessary, shall forward the request and any responsive records to the agency for response. When records are referred to the agency for processing, the FOIA-PA Group shall advise the requester of the referral.

(b) When it appears that a request has been misdirected to the FDIC, the FOIA-PA Group shall advise the requester and provide the requester with the address of the agency believed to have the responsive records.

(12) **Confidential Business Information.** Requests for information submitted by business entities (submitters) to the FDIC shall, when applicable, be treated as required by Executive Order 12,600, Pre-Disclosure Notification Procedures for Confidential Commercial Information, 52 FR 23781, dated June 23, 1987, except for information that is: (i) publicly available by regulation, lawful publication, or similar means; (ii) of a type the release of which is regularly ordered by Federal Courts; or, (iii) determined by the FOIA-PA Group to be confidential and withheld under an appropriate FOIA exemption. (See Attachment for Executive Order 12,600.)

**b. Recording Processing Costs of FOIA Requests**

(1) **Computation of FOIA Processing Time for Purposes of Calculating Costs.** The assigned Division or Office shall receive a FOIA Control Record that shall be attached to the copy of the requester's letter.

(a) The billing information portion (caption 4) of the FOIA Control Record shall be completed by each Division or

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Office to whom a request has been referred, regardless of whether the requester will be charged.

(b) In the case of a recommended denial, partial denial, or full grant, the completed FOIA Control Record shall be returned to the FOIA-PA Group together with the documents proposed to be withheld and those proposed to be released; and

(c) In the case of a request granted in whole with prior Legal Division authorization, the completed FOIA Control Record shall be returned to the FOIA-PA Group together with a copy of the reply letter from the assigned Division or Office.

**(2) Fees**

(a) Requesters may be assessed a fee according to one of the following categories as determined by the FOIA-PA Group:

1. Commercial requesters shall be charged for all search time, review time, and duplication costs.

2. News media, educational institutions, and non-commercial scientific institutions shall be charged only for duplication costs in excess of the first 100 pages.

3. All other requesters shall be charged only for search time in excess of two (2) hours and duplication costs in excess of 100 pages.

(b) The Billing Information portion of the FOIA Control Record (caption 4) divides time spent responding to FOIA requests into three categories: search hours, review hours, and other hours. All billable hours shall be calculated in quarter (1/4) hour increments. Corresponding time entries should be entered into the CHRIS Time and Attendance to support corporate accounting and cost management requirements.

1. Search Hours consist of time spent searching for the documents requested.

2. Review Hours consist of time spent processing the documents and preparing them for release. This activity would include, for example, determining whether any statutory exemptions are applicable, deleting exempt material from documents to be

