



FDIC DIRECTIVE

1023.1

Nicholas J. Podsiadly
General Counsel
Legal Division

See approval(s) on Action Log

Freedom of Information Act Requests

PURPOSE

To provide guidance for responding to requests 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.

SCOPE

The provisions of this Directive apply to all Divisions/Offices involved in the processing of FOIA requests.

AUTHORITIES

- 5 U.S.C. § 552, The Freedom of Information Act
- 12 C.F.R. § 309.5, Procedures for Requesting Records

FORM(S)

None

REVISION(S)

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

Action Log

Submission Type <i>(New, Pedestrian Change, Revision)</i>	Date	Approved through Directives Management Center
Pedestrian Change	05/16/2019	Nicholas J. Podsiadly

Submission Type <i>(New, Pedestrian Change, Revision)</i>	Date	Approved
Pedestrian Change	11/16/2013	Richard J. Osterman, Jr.
Revision	04/18/2006	Douglas H. Jones

Summary of Changes (if applicable)

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

Table of Contents

Action Log	2
Summary of Changes (if applicable)	2
Table of Contents.....	3
Background.....	4
Policy	5
A. Response Requirements	5
B. Search.....	5
C. Defective FOIA Requests	5
D. Granting Requests in Full	6
E. Providing Records in the Form or Format Requested	6
F. Denial of Requests in Full or in Part.....	6
G. Referrals of Requests to Another Agency	6
H. Confidential Business Information.....	6
Responsibilities	7
A. Chief FOIA Officer	7
B. FOIA and Privacy Act Group (FOIA-PA Group)	7
C. Division/Office Directors.....	7
D. Supervisors and Oversight Managers.....	7
E. Employees and Contractor Personnel.....	7
Appendix - References.....	8
Glossary of Terms.....	9
Glossary of Acronyms.....	10

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, FDIC Regulations at 12 CFR, § 310, and the procedures in FDIC Circular [1031.1, Administration of the Privacy Act](#).

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 E-FOIA web site is available at 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 and as now required by the FOIA at 5 U.S.C. § 552(j)(1), the FDIC has designated the General Counsel as its Chief FOIA Officer with Corporate-wide responsibility for efficient and appropriate compliance with the FOIA.

Policy

The FDIC is committed to full compliance with the Freedom of Information Act. Under Section 309.5 of FDIC's Rules and Regulations (12 C.F.R. 309.5), all requests for records must be 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

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 is one that has been 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.

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

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 C.F.R. 309.5(d)(7), a search must be conducted of records maintained by the FDIC "in existence on the date of receipt of the request."

C. Defective FOIA Requests

The FOIA-PA Group reviews all requests to identify defective (*i.e.*, not valid) requests. If a request is not defective, the FOIA-PA Group assigns 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 to the FOIA-PA Group a copy of the records requested.

E. 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 (for example, hardcopy or electronic format).

F. Denial of Requests in Full or in Part

If an assigned Division/Office recommends denial of a request, either in whole or in part, the Division/Office furnishes the FOIA-PA Group with a copy of the responsive records and advises the FOIA-PA Group of the reasons for each recommended denial. The FOIA-PA Group makes the final determination of all requests.

G. Referrals of Requests 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 so 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 was submitted by business entities (submitters) to the FDIC must, 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:

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. (See Attachment for Executive Order 12,600.)

Responsibilities

A. Chief FOIA Officer

The Chief FOIA Officer has Corporate-wide responsibility for efficient and appropriate compliance with the FOIA and applicable oversight and guidance.

B. FOIA and Privacy Act Group (FOIA-PA Group)

The FOIA-PA Group has responsibility for the day-to-day administration and operation of the FOIA Compliance Process.

C. Division/Office Directors

Division/Office Directors designate primary and secondary FOIA Coordinators of appropriate grade, training and experience to assist the FOIA-PA Group and to ensure Division/Office adherence to the FOIA Compliance Process.

D. Supervisors and Oversight Managers

Supervisors and Oversight Managers ensure employees and contractor personnel collaborate with FOIA Coordinators and the FOIA-PA Group to ensure adherence to the FOIA Compliance Process.

E. Employees and Contractor Personnel

Employees and Contractor Personnel perform FOIA-related assignments in accordance with this Directive.

Appendix - References

- Privacy Act, FDIC Regulations at 12 CFR, § 310
- FDIC Circular 1031.1, Administration of the Privacy Act
- Executive Order 13,392, Improving Agency Disclosure of Information, 70 FR 75373, dated December 14, 2005
- Executive Order 12,600, Pre-Disclosure Notification Procedures for Confidential Commercial Information, 52 FR 23781, dated June 23, 1987

Glossary of Terms

Term	Definition
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	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.
Defective Request	A defective FOIA request is one that does not comply with the FOIA or the FDIC Regulations.

Glossary of Acronyms

Acronym	Definition
E-FOIA	Electronic Freedom of Information Act Amendments
FOIA	Freedom of Information Act
FOIA-PA	Freedom of Information Act and Privacy Act