



**ADMINISTRATIVE  
COMMUNICATIONS SYSTEM  
U.S. DEPARTMENT OF EDUCATION**

**DEPARTMENTAL DIRECTIVE**

**OM: 6-101**

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*Distribution:*  
All Department of Education  
Employees

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Acting Assistant Secretary for  
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**Freedom of Information Act (FOIA) and Privacy Act (PA)  
Requests**

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For technical questions concerning information found in this ACS document, please contact the FOIA Service Center on (202) 401-4536 or via E-mail: [edfoiamanager@ed.gov](mailto:edfoiamanager@ed.gov).

Supersedes OCIO: 1-102, "Freedom of Information Act (FOIA) Policies and Procedures: Release or Denial of Department of Education Records Responsive to FOIA Requests," dated 07/07/2004.

## **I. Purpose**

This Directive describes the U.S. Department of Education (the Department)'s policies for responding to requests made pursuant to the Freedom of Information Act (FOIA) and the Privacy Act (PA). This Directive supersedes OCIO: 1-102, "Freedom of Information Act Policies and Procedures: Release or Denial of Department of Education Records Responsive to FOIA Requests," June 18, 2004.

The Department strives to provide the most complete and efficient disclosure of records to the public as possible while safeguarding the interests recognized by the FOIA.

Executive Order (E.O.) 13392 entitled "Improving Agency Disclosure of Information," contains several statements of FOIA policy and sets forth planning and reporting requirements that affect all federal agencies in their administration of the FOIA. Pursuant to this Executive Order, the Department has designated the Assistant Secretary for Management as its Chief FOIA Officer to oversee the agency's administration of the FOIA.

## **II. Authorization**

- The Freedom of Information Act, 5 U.S.C. § 552, as amended.
- The Privacy Act of 1974, 5 U.S.C. § 552a, as amended.
- The Department's FOIA Regulations, 34 C.F.R. Part 5.
- The Department's Privacy Act Regulations published at 34 C.F.R. Part 5b.
- The "Openness Promotes Effectiveness in our National Government Act of 2007," Public Law 110-175.

## **III. Applicability**

Except where otherwise specifically noted, this Directive applies to all the Department's offices other than the Office of Inspector General (OIG) and Office for Civil Rights (OCR) Regions which have the exclusive authority to administer the Department's responsibilities under the FOIA for documents maintained in their respective offices. See Delegation of Authority (DOA) Number EA/EF/193 for OIG and DOA Number EMV/ECD-GEN/230 for OCR Regions.

#### IV. Definitions

- A. **Chief FOIA Officer.** The Chief FOIA Officer is a senior official at the Assistant Secretary level or its equivalent, appointed by the Secretary to oversee the efficient and effective administration of FOIA across the Department. The Chief FOIA Officer has responsibility for monitoring the Department's FOIA performance management activities. The Department's Chief FOIA Officer is the Assistant Secretary for Management.
- B. **Director of the FOIA Service Center (FSC).** The Director of the FSC directs and manages the FSC to ensure agency compliance with the FOIA.
- C. **Chief Privacy Officer (CPO).** The CPO provides leadership, oversight, and coordination to ensure Departmental compliance with government initiatives regarding the acquisition, release and maintenance of information. The CPO is also responsible for developing and/or updating policies, standards, and procedures that ensure the Department complies with governmental information management requirements particularly in relation to the Department's activities subject to the FOIA, Information Collection, Records Management and Privacy Safeguards.
- D. **FOIA Appeals Coordinator (FAC).** The FAC is appointed by the Director of the FSC to assist in processing appeals by working with the FOIA Coordinators and the Office of the General Counsel (OGC) to ensure that all FOIA appeals are processed consistent with the FOIA, the PA, and all applicable regulations, rules and policies.
- E. **FOIA Appeals Officer (FAO).** The FAO as designated by the Assistant Secretary for Management is responsible for the adjudication of FOIA appeals received by the Department. The FAO makes decisions on a full range of FOIA appeals from an initial decision to deny a FOIA request or a request for a fee waiver in whole or in part. The FAO also reviews appeals of denials, in whole or in part, of fee waiver requests for documents maintained in the OIG. The Department's FAO is the CPO.
- F. **FOIA Coordinator (FC).** The FC(s), as designated by the Assistant Secretary in each Principal Office (PO) (or equivalent), in Headquarters and in the Regional Offices, manages and coordinates the PO's responses to FOIA requests. The FC within each PO coordinates the timely completion of FOIA and PA processing tasks, including verifying that PO officials perform a thorough and appropriate search for responsive records, uploading the records into the FOIA case management system, and recommending any redactions in the records in accordance with the FOIA and the Department's regulations.

- G. **FOIA Public Liaison (FPL).** The FPL(s), as designated by the Director of the FSC, serves as the point of contact with whom a FOIA requester can raise concerns about the service the FOIA requester has received. The FPL also assists in reducing delays and providing transparency to requesters, and resolving disputes.
- H. **FOIA Analyst (FA).** The FA(s), located in FSC, makes final determinations on FOIA and PA requests, including denials of requested records. The FA approves redactions recommended by FOIA Coordinators to ensure appropriate release and denial of records to requesters in accordance with the FOIA/PA and all applicable laws, regulations, rules, and policies; and ensures that the Department has adequately addressed all requests. The FA's responsibilities also include coordinating multi-agency and multi-PO requests, conducting follow-ups with requesters and providing the requesters 20-day initial determination responses as needed; conducting fee assessments; reviewing responses for adequacy and appropriate use of redactions; and working with POs to ensure that all FOIAs are processed consistent with all applicable laws, regulations, rules, and policies.
- I. **FOIA Service Center (FSC).** Based in the Office of the Chief Privacy Officer (OCPO) of the Office of Management (OM), the FSC receives, coordinates, tracks and documents the processing of all incoming FOIA and PA requests.
- J. **Principal Office (PO).** An organization within the Department headed by a Senior Officer. Except where otherwise noted, PO does not refer to the OIG.
- K. **Records.** Under the FOIA, this refers to any information that would be an agency record subject to the requirements of 5 U.S.C. § 552(f)(2) when maintained by an agency in any format, including an electronic format; or that is maintained for an agency by an entity under Government contract, for the purposes of records management. Information may be a record under FOIA even if it is not a record under the Federal Records Act. Under the PA, a record means any item, collection, or grouping of information about an individual that is maintained by the Department, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular that is assigned to the individual.
- L. **Regional FOIA Review Officer.** The Regional FOIA Review Officer is the OCR employee in each regional office designated by the Chief FOIA Officer to administer the Department's responsibilities under the FOIA for records maintained in his or her respective regional office, which includes denying access to records maintained by that region and charging, waiving or reducing fees to requesters.

- M. **Responsive Records.** Records or portions of records determined to be within the scope of a FOIA or PA request.
- N. **System of Records.** Any group of records under the Department's control from which information is retrieved by a personal identifier. Single records or groups of records that are not retrieved by a personal identifier are not part of a System of Records. (See ACS Directive OM: 6-104.)

## V. Responsibilities

- A. The **Chief FOIA Officer**, in accordance with Executive Order 13392 (Reference G), shall:
1. Delegate to the Director of the FSC the primary responsibility for implementing and administering the Department's FOIA program;
  2. Oversee all aspects of the Department's FOIA program to include annual reviews to ensure compliance with FOIA's requirements;
  3. Secure resources for the FOIA Program within the Department;
  4. Serve as the primary liaison with the Office of Government Information Services (OGIS) and the Office of Information Policy (OIP); and
  5. Participates as a member of the Chief FOIA Officer Council.
- B. The **CPO** shall:
1. Ensure the Department's compliance with FOIA and the PA and related Federal policies and regulations;
  2. Review the functions performed by the FSC to ensure the timely, effective and efficient administration of the FOIA and PA;
  3. Oversee the development of the Department's policies, directives, regulations and guidance related to the FOIA's administration by the Department; and
  4. As delegated by the Chief FOIA Officer, serve as the Department's FAO.
- C. The **Director of the FSC** shall:
1. Oversee all daily aspects of the Department's administration of the FOIA and PA;

2. Ensure that the FSC provides appropriate guidance to POs, including the OIG, as needed to address any FOIA/PA concerns they may have
  3. Prepare and submit the Department's FOIA Annual Report to the Department of Justice (DOJ) and the OIGIS, create other FOIA and PA related reports, as appropriate;
  4. Promote greater collaboration between the FSC and other Department PO personnel involved with FOIA administration to promote timeliness and efficiency in the Department's administration of the FOIA and PA;
  5. Ensure the maintenance of a central reporting system to track all fees assessed and collected in the Department's administration of the FOIA;
  6. Chair periodic meetings with the Department's FCs;
  7. Identify functional systems and technology support requirements necessary for the effective management of the Department's FOIA Program;
  8. Oversee yearly FOIA training programs for Department employees; and
  9. Provide training on PA requests on an ad hoc basis.
- D. The **FAs** shall:
1. Send written acknowledgments to the FOIA requesters that their requests have been received by the POs;
  2. Analyze incoming requests to determine whether they are requests properly made pursuant to the FOIA and, when necessary, meet with the POs and determine what type of clarification/modification is needed before communicating with the requesters. All agreements regarding changes or modifications to the request must be confirmed with the requesters in writing and documented in the FOIA case management system;
  3. Assign requests to the appropriate PO(s), including the OIG and OCR Regions when such requests are directed to the FSC rather than directly to the OIG or OCR Regions, to search for responsive records;
  4. Ensure a service-oriented response to requests and related inquiries by working with requesters and POs to reduce delays, increase transparency, and resolve any disputes;

5. Review records produced to ensure that POs have conducted adequate searches;
6. Coordinate requests assigned to individual or multiple POs to include clarifying the scope of requests as appropriate, conducting data entry activities into the FOIA case management system, coordinating receipt of documents from POs, sending out responses on behalf of the Department, and maintaining the official files for those requests;
7. Ensure that appropriate follow-ups are conducted with POs to address any issues that need to be addressed, such as issues regarding the scope of a request and fee determinations;
8. Provide notices to requesters when FOIA requests cannot be closed within 20 business days;
9. Review all fee waiver requests, including those submitted for documents maintained in the OIG, and issue determinations granting such requests or denying them, in whole or in part, as appropriate;
10. Review PO's initial responses to ensure compliance with policies and regulations, and full responsiveness to requests;
11. Prepare and issue responses to requesters that are timely, clearly written, complete, and processed consistent with the FOIA, PA and applicable rules, regulations, and policies;
12. Document all processing steps of FOIA requests, consistent with applicable FSC Standard Operating Procedures (SOPs);
13. Provide, in conjunction with OGC, technical advice, training, and related assistance to FCs and other PO personnel with responsibility for FOIA and PA administration;
14. Serve as the deciding official for all Department Headquarters' decisions denying a FOIA request in whole or in part (including "no records" responses), other than decisions delegated to the OIG and OCR to process;
15. Coordinate multiagency requests, including transferring such requests to the appropriate agencies, requesting records, or seeking guidance from the other relevant federal agency(ies), as needed;
16. Oversee the computation of FOIA fees to ensure that such calculations are accurate and consistent with the statute, and with applicable Department regulations and policies; and

17. Provide data and information for the Department's FOIA Annual Report to DOJ and other reports about the progress of the administration of the FOIA and PA, as needed.

The **FAs** with designated authority to process PA requests shall also:

1. Verify the identity of first party PA requesters or their representatives in accordance with 34 C.F.R. Part 5b prior to processing such requests;
  2. Send written acknowledgements of all perfected PA requests within 10 business days of receipt;
  3. Analyze incoming requests to determine whether they are requests properly made pursuant to the PA and, when necessary, meet with the POs and determine what type of clarification/modification is needed before communicating with the requesters. All agreements regarding changes or modifications to the request must be confirmed with the requesters in writing and documented in the FOIA case management system;
  4. Assign each PA request to the appropriate FC and coordinate the response to the requester;
  5. Review PO responses to ensure compliance with policies and regulations, and full responsiveness to requests; and
  6. Prepare and issue responses to requesters that are timely, clearly written, complete, and processed consistent with the PA and applicable rules, regulations, and policies.
- E. The **POs**, including the OIG and OCR Regions, shall appoint FCs who must identify appropriate and ongoing FOIA training for those PO employees responsible for processing FOIA requests.
- F. The **FCs** shall:
1. Coordinate responses to FOIA and PA requests from their PO, including the OIG and OCR Regions;
  2. Oversee the execution of adequate searches for responsive records, upload all responsive records into the FOIA case management tracking system, review and make all appropriate redactions in the responsive records and notify the FSC by e-mail to [edfoiamanager@ed.gov](mailto:edfoiamanager@ed.gov) of the completion of the searches and the assessments of fees;



3. Review and validate the PO's statistical data required for the Department's FOIA Annual Report to the DOJ and otherwise assist the FSC as appropriate in the completion of the report;
  4. Attend periodic FCs' meetings; and
  5. Comply with FOIA and PA guidance received by the FSC, OGC, DOJ, and the Office of Management and Budget (OMB).
- G. The **FCs** for OCR Regional Offices and the OIG shall be additionally responsible for serving as the deciding officials for all FOIA releases and denials, including denials in whole or in part and "no records" determinations, as they relate to requests for records maintained by their respective offices.
- H. The **FAO** shall review, approve, and sign appeal determination letters.
- I. The **FAC** shall manage the processing of all appeals received by the Department, oversee the appropriate Department action office in its preparation of an appeal determination, assist and collaborate with OGC in its review and clearance of the proposed appeal determination for legal sufficiency, and assist the FAO in ensuring the timely issuance of the appeal determination to the requester.
- J. **OGC** (Division of Business and Administrative Law (DBAL)) shall:
1. Represent the Department, in conjunction with DOJ, with respect to FOIA and PA litigation;
  2. Provide advice on all legal matters related to the Department's FOIA and PA administration;
  3. Provide legal advice on the processing and determination of FOIA appeals, including reviewing and clearing the appeal determination letters for legal sufficiency; and
  4. Provide FOIA training in partnership with the FSC.

## VI. Procedures

### A. FOIA and PA Requests

1. Requests may come to a PO, including the OIG and OCR Regions, from:

- a. A Requester (which should be sent to the FSC for central intake and processing, except in the case of the OIG or OCR Regions, which processes such requests) or
  - b. The FSC.
2. The FSC will send a letter or email to the requester acknowledging the Department's receipt of the request.
3. When a request is assigned to the PO having custody of the records being sought, the PO FC will ensure that within 5 business days the PO communicates with the FSC as necessary to obtain clarification or more information to process the request.
4. When a request is assigned to a PO, including the OIG and OCR Regions, which does not retain custody of the records being sought, that PO should forward the request to the FSC, as soon as possible, with recommendations as to which PO has custody of the records, if known.
5. If another Federal agency has custody of the records being sought, the PO FC should forward the request to the FSC who will refer the request to the correct custodial agency, as soon as possible, after receiving it and should inform the requester.
6. The PO FC shall oversee the execution of adequate searches for responsive records, upload all responsive records into the FOIA and PA case management tracking system, review and make all appropriate redactions in the responsive records. The PO FC shall consult with the PO Subject Matter Experts (SMEs) as needed. The FSC and OGC (if necessary) are available for assistance.
7. The PO FC shall notify the FSC by e-mail to [edfoiamanager@ed.gov](mailto:edfoiamanager@ed.gov) of the completion of the searches.
8. The PO FC should upload a cost recovery sheet into the FOIA case management system.
9. The FSC, OCR Regions, and the OIG should assess fees in accordance with the Department's FOIA Regulations for Fees (34 C.F.R. § 5.30) and PA regulations (34 C.F.R. § 5b.13).
10. The FSC, OCR Regions, and the OIG should prepare all determinations for release to the requester and update/close the request in the FOIA and PA case management system. The PO may make full releases to the requester with the understanding that the FSC must be notified of the

release and the FSC will close the request in the FOIA and PA case management system.

#### B. FOIA Exemptions and Exclusions

All FOIA 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/or three (3) exclusions (5 U.S.C. § 552).

#### C. Privacy Act Exemptions

All PA requests for records must be granted unless it can be shown that the record(s) fall within one or more of the Privacy Act's ten (10) statutory exemptions (5 U.S.C. §§ 552a(d)(5), (j)(1) and (2), and (k)(1)-(7)).

#### D. FOIA Appeals (See the FOIA Appeal Procedure under Appendix A of the FOIA Manual.)

1. The Secretary has delegated to the Chief FOIA Officer the authority to serve as the Department's FAO. The Chief FOIA Officer may delegate the authority of adjudicating FOIA Appeals to the CPO.
2. Types of Appeals under FOIA

- a. Appeal of Denial of Access to Records or Information

When the Department denies access to records or information, in whole or in part, the Requester has 90 calendar days from the date on the decision letter to file an appeal with the Department seeking administrative review. The appeal must appropriately articulate the Requester'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 the Department is unable to locate any records responsive to a request, the Requester may appeal the Department's finding based upon an assertion that the Department's search was inadequate. This assertion must clearly state the basis upon which the Requester believes the search was inadequate.

- c. Appeal of Fee Determinations

The Requester may appeal the following aspect of a fee determination: the Department's denial of a request for a fee waiver, in whole or in part.

d. Appeal of Expedited Processing

The Requester may appeal the following aspect of expedited processing: the Department's denial of a request for expedited processing.

3. The FAC who has not made the initial determination under appeal, has the authority to review the appeal and to work with the PO FCs to ensure that all issues raised in an appeal are carefully considered and resolved in making the appeal determination.
  4. The FAC who has not made the initial determination under appeal, will issue an acknowledgment to the submitter of an appeal within two business days of receipt and will monitor the process to ensure that the Department offices involved in processing the FOIA appeal complete their review and recommendations in a timely manner.
  5. The FAC, who has not made the initial determination under appeal, shall submit the completed draft appeals package to OGC within 10 business days of receipt of the appeal. The 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 the Department and the Requester; (3) other materials related to the appeal, as appropriate; and (4) a draft appeal determination letter.
  6. FAC shall seek legal sufficiency reviews from OGC for all appeals except for fee related and expedited treatment requests appeal determinations unless needed. OGC shall clear appeal determinations or provide comments or advice within 7 business days after receipt of an appeal package. OGC may request an extension of the review deadline for a period not to exceed ten (10) business days, where necessary.
  7. The Chief FOIA Officer will review and approve the final appeal determination letter and will ensure that final agency determination responses are issued no later than 20 business days from when the appeal is received.
- E. Processing requests for records maintained in a PA system of records. (See ACS Directive OM:6-104 and ED's regulations in Part 5b, Title 34, Code of Federal Regulations (C.F.R.).)

## 1. First Person Requests

- a. A request shall be processed under both the FOIA and the PA if:
  - 1) The Requester seeks information from records about themselves; and
  - 2) The information from the records sought is contained in a PA system of records.
- b. An individual who does not make a request in person shall submit either a notarized request to the FOIA Service Center to verify their identity, a declaration under 28 U.S.C. § 1746 (an unsworn declaration subscribed to as true under penalty of perjury), or shall certify in his/her request that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act subject to a \$5,000 fine.

## 2. Third Party Requests

- a. A third party request for information about an individual whose records are contained in a PA system of records shall have the written consent of the individual whose records are being requested. Further, if the individual gives such written consent to a specific individual, then the identity of the specified individual to whom a record is to be disclosed also must be verified.
- b. A third party request without consent from an individual whose records are contained in a PA system of records shall be processed only under the FOIA.

## F. FOIA Reporting Requirements

Each year the Department must submit a FOIA Annual Report to DOJ and OGIS and publish this report on the Department's Web site.

## G. FOIA Library (<http://www2.ed.gov/policy/gen/leg/foia/readingroom.html>)

The FOIA Library shall contain the following types of information:

1. All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases;

2. Statements of policy and policy interpretations that have been adopted by the Department that are not published in the Federal Register;
3. Administrative staff manuals and instructions to staff that may affect any member of the public;
4. Records that, because of the nature of their subject matter, the Department determines have become or are likely to be the subject of subsequent requests for substantially the same records;
5. Records that have been requested 3 or more times, and
6. 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.

#### H. FOIA Request and Appeal Status

The Department maintains a FSC hotline to provide information about the FOIA, basic procedures, and status about pending requests and appeals. The Department FOIA hotline is (202) 401-8365. Request and appeal status can also be located at <http://www2.ed.gov/policy/gen/leg/foia/foiatoc.html?src=ft>.

## VII. References

- A. ACS OM: 6-104, "The Privacy Act of 1974 (The Collection, Use, and Protection of Personally Identifiable Information)," dated 8/31/2006.
- B. U.S. Department of Education FOIA Regulations, 34 C.F.R. Part 5., dated July 1, 2011
- C. U.S. Department of Education Privacy Act Regulations, 34 C.F.R. Part 5b, dated July 1, 2015.
- D. The President's "[Transparency and Open Government](#)" memorandum, dated January 21, 2009.
- E. The Attorney General's "[Freedom of Information Act Guidelines](#)", dated March 19, 2009.
- F. Executive Order 13392, "Improving Agency Disclosure of Information," dated December 19, 2005.

G. The "Openness Promotes Effectiveness in our National Government Act of 2007," Public Law 110-175.