

National Oceanic and Atmospheric Administration	NOAA Administrative Order #205-14	
NOAA ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE	EFFECTIVE DATE April 22, 2014
SUBJECT Freedom of Information Act		
<p><b><u>SECTION 1. PURPOSE.</u></b></p> <p>.01 This National Oceanic and Atmospheric Administration (NOAA) Administrative Order (NAO) provides guidance to all elements for processing requests under the Freedom of Information Act (FOIA).</p> <p>.02 This revision reflects the relocation of the NOAA FOIA Program to the Office of the Chief Information Officer.</p>		

**SECTION 2. SCOPE.**

This NAO applies to NOAA staff, contractors, grantees and others who may possess NOAA records as defined by the FOIA.

**SECTION 3. AUTHORITY.**

The authority for this NAO is:

- .01 Freedom of Information Act, 5 U.S.C. Sect. 552, as amended.
- .02 15 Code of Federal Regulations (CFR), Part 4, as amended.

**SECTION 4. DEFINITIONS.**

Action Office - line office (LO) or staff office (SO), or sub-office, assigned to process the FOIA request.

Consultation – process whereby: 1) NOAA sends a document to another agency for review because that other agency has a significant interest in the document or 2) NOAA receives a document from another agency for review because NOAA has a significant interest in the document.

Denial Officials - NOAA officials authorized to initially deny information under the FOIA, as listed in Appendix B, 15 CFR Part 4  
([http://www.corporateservices.noaa.gov/foia/title\\_15\\_commerce\\_and\\_foreign\\_trade/appendix-b.html](http://www.corporateservices.noaa.gov/foia/title_15_commerce_and_foreign_trade/appendix-b.html)).

FOIA Liaison – primary contact for FOIA issues in each SO/LO, designated by the SO/LO Program Manager or other Director.

FOIAonline – web-based FOIA tracking and processing tool which includes a records repository.

Lead FOIA Office – office with primary responsibility to process an identified FOIA request which spans multiple LO/SO and is assigned by the NOAA FOIA Officer.

NOAA FOIA Office – organization within the Office of the Chief Information Officer that manages the FOIA Program within NOAA.

NOAA FOIA Officer - person responsible for carrying out certain tasks, as defined by the Chief Information Officer, to implement NOAA's FOIA program.

Perfected Request - A request for records which reasonably describes the records sought and is made in accordance with the Department of Commerce's regulations regarding FOIA requests.

Switchboard – location at Department or NOAA FOIA Office where incoming requests are received through FOIAonline.

Tasker – required memorandum which documents the cut-off date for search and includes foreseeable harm statement and sample certification of search.

## **SECTION 5. RESPONSIBILITIES.**

.01 NOAA FOIA Office:

a. review and update FOIA policies, procedures, and guidance in coordination with the Department of Commerce (DOC) FOIA Office and NOAA Office of General Counsel (NOAA GC);

b. offer guidance, advice, and training to NOAA managers, program personnel, and FOIA Liaisons who respond to FOIA requests and provide basic training on NOAA FOIA procedures to all employees;

c. prepare and submit the NOAA contribution of the FOIA Annual Report to Department of Justice and Chief FOIA Officer report, and coordinate the submission of all other FOIA reports requested of NOAA;

d. maintain the NOAA FOIA home page;

e. retain copies of all FOIA requests and files in FOIAonline unless there is a documented strong business need to maintain outside of the web-based tool. Original copies of responsive records, whether released or not, are kept by the FOIA SO/LO Liaison or Action Office;

f. review all FOIA requests received by NOAA, including referrals from DOC and other federal agencies, and assign them to the appropriate FOIA Liaison whose office may have records responsive to the request and, when appropriate, suggest adding a task to additional office(s) at the time of assignment;

g. serve as agency lead for responding to all FOIA requests referred to NOAA from DOC;

h. maintain a list of all NOAA appeals and work with FOIA Liaisons to facilitate the appeals process;

- i. function as the primary liaison between NOAA and DOC in resolving any FOIA issues; and
- j. read each FOIA response to review metadata for completeness and mark as closed in FOIAonline.

.02 NOAA FOIA Officer in addition to responsibilities in .01:

- a. approve or deny fee waiver and expedited processing requests; and
- b. act as Denial Official, as listed in Appendix B, 15 CFR Part 4 ([http://www.corporateservices.noaa.gov/foia/title\\_15\\_commerce\\_and\\_foreign\\_trade/appendix-b.html](http://www.corporateservices.noaa.gov/foia/title_15_commerce_and_foreign_trade/appendix-b.html))

.03 Line Office Assistant Administrators (AAs)/Deputy AAs and Staff Office Directors:

- a. designate a FOIA Liaison for the management and coordination of FOIA requests assigned to the office;
- b. make certain that the designated FOIA Liaison obtains the proper training to carry out his or her duties;
- c. encourage employees within the office to make records publicly available through proactive disclosure in accordance with the FOIA and established policies and procedures, and ensure that employees respond to requests under the FOIA in accordance with the required time limits as well as respond in a complete manner;
- d. act as Denial Official, if listed in Appendix B, 15 CFR Part 4 ([http://www.corporateservices.noaa.gov/foia/title\\_15\\_commerce\\_and\\_foreign\\_trade/appendix-b.html](http://www.corporateservices.noaa.gov/foia/title_15_commerce_and_foreign_trade/appendix-b.html)); and
- e. ensure compliance with FOIA timeliness standards for Line and Staff Office processing of FOIA requests.

.04 FOIA Liaisons:

- a. manage and process assigned FOIA requests under established FOIA policies, procedures, and timelines; notify the NOAA FOIA Office when he or she is no longer performing FOIA Liaison duties; and provide the NOAA FOIA Office with the replacement's name;
- b. forward all incoming requests, referrals or requests for consultation immediately to the FOIAonline switchboard for assignment;
- c. be prepared to provide any requester the status of assigned requests based on the following information: FOIA tracking number, name of requester, receipt date, due date, person to whom the FOIA is assigned, fulfillment date, and date of fee payments;
- d. complete all perfected FOIA requests within the 20 working-day time limit mandated by the FOIA or if an extension(s) is necessary, notify the requester of the need for the voluntary extension, and document in FOIAonline that the requester is aware of the voluntary extension along with the new due date;

- e. forward requests for consultation or transfer to Department of Commerce to the NOAA FOIA Office;
- f. refer requests for consultation or transfer to other Commerce bureaus and other Federal agencies for disclosure determination;
- g. obtain legal review for requests involving litigation or potential litigation or any other requests that, in the view of NOAA GC or the SO/LO, merit particular attention by NOAA GC;
- h. provide the NOAA FOIA Office the status of the efforts to complete all outstanding FOIA requests when requested;
- i. ensure that the SO/LO maintains a complete record copy (FY13 and later files shall be maintained in FOIAonline unless there is a documented strong business need to maintain outside of the web-based tool), including withheld redacted and unredacted responsive records, of all FOIA requests received for action when acting as the Lead or sole office responsible for processing the request; and
- j. promptly respond to requests for information not stored in FOIAonline with respect to a FOIA appeal from the DOC Office of the Assistant General Counsel for Administration.

.05 FOIA Action Offices:

- a. respond thoroughly to FOIA requests;
- b. release responsive records to the requester in the case of a full release;
- c. forward all incoming requests, referrals or requests for consultation immediately to the FOIAonline switchboard for assignment;
- d. provide the NOAA FOIA Office with frequently requested documents or links to them;
- e. when directed by the FOIA Liaison, complete all FOIA requests within the 20 working-day time limit or, if an extension(s) is necessary, notify the requester of the need for the voluntary extension, and document in FOIAonline that the requester approved the voluntary extension along with the new due date; and
- f. ensure that the SO/LO maintains a complete record copy (FY13 and later files shall be maintained in FOIAonline unless there is a documented strong business need to maintain outside of the web-based tool), including responsive records, of all FOIA requests received for action, when directed by the FOIA Liaison.

.06 NOAA Office of General Counsel. In accordance with Attachment 3:

- a. meet regularly with individual FOIA Liaisons to review the current FOIA docket for the purpose of: 1) identifying legal issues that have arisen and determining whether they need further attention; and 2) seeking a consistent approach to NOAA's FOIA requests.
- b. provide when appropriate: 1) legal advice to FOIA Liaisons on: the scope of the request; application of FOIA exemptions; applicable deadlines and other procedural issues; and interpretation of the FOIA statute, caselaw, DOC regulations and other applicable authorities; and 2) guidance on how to determine foreseeable harm.

c. maintain a list of FOIA litigation and provide legal review and clearance of any requests involving litigation or potential litigation as determined by NOAA GC or any other requests that NOAA GC believes merit particular attention.

d. where appropriate, consult with the DOC Office of General Counsel on any issues related to the FOIA.

e. conduct legal review of FOIA policies, procedures, and guidance in coordination with the DOC Office of General Counsel.

## **SECTION 6. PROCEDURES.**

.01 The NOAA FOIA Office shall:

a. assign all FOIA requests to the SO/LOs that must search for responsive records;

b. enter the FOIA request into FOIAonline, if not submitted into the web-based system and assign the request to the FOIA Liaison for the appropriate SO/LO(s). The NOAA FOIA Office will task the request to the FOIA Liaison for further assignment in FOIAonline. FOIAonline will calculate the due date and document all fee related issues and clock stoppages;

c. send all checks or money orders received from requesters for processing FOIA requests (that are sent to the NOAA FOIA Office) to the NOAA Finance Office for deposit in the Miscellaneous Receipts Account of the U.S. Treasury;

d. document in FOIAonline when a check is received; and

e. review all FOIA request close-out documentation in FOIAonline for completeness.

.02 FOIA Liaisons shall:

a. task the FOIA request to all offices within the SO/LO that may have responsive records and, when appropriate, task to other SO/LO(s) for input;

b. complete the administrative cost input form in FOIAonline to determine the charges associated with answering individual FOIA requests, and notify the requester of any fees due according to 15 CFR Part 4 (or, if there is a Lead FOIA Office, notify the FOIA Liaison for that Office);

c. notify the requester in writing (requesters who provided an email address in FOIAonline may be contacted through the system) that prepayment is required before FOIA information is released if the amount is greater than \$250, or if the requester has not paid for previous FOIA requests, except when a Lead Office is assigned to the request;

d. request written assurance of payment (upload a copy into FOIAonline if invoice function is not used) for amounts estimated between \$20 and \$250 before collecting records and obtain payment for any amount prior to completing processing the request except when a Lead Office is assigned to the request;

e. confirm that a thorough search is conducted in all offices that may have responsive records by completing the table sent with the Tasker or comparable documentation; and

f. load within one (1) business day a copy of all fee notification letters, acknowledgment letters, and interim and final response letters to the requester not sent through FOIAonline into FOIAonline.

.03 The assigned Action Office(s) shall:

a. notify the FOIA Liaison if a FOIA request was misdirected or incorrectly assigned to his or her office or if additional offices should be assigned;

b. search for and collect responsive records;

c. review records for release, referral to another agency, withholding, or referral to NOAA GC for review, and if there is a Lead Office; notify FOIA Liaison for Lead Office to receive further instructions;

d. release responsive records to the requester in the case of a full release unless otherwise instructed after coordinating with the FOIA Liaison;

f. update FOIAonline with the response letter(s) for all assigned FOIA requests; and

g. maintain the official FOIA request file, administrative history of the request, and a clean and redacted copy of the responsive records when not maintained by the Lead FOIA Office. FY13 and later files shall be maintained in FOIAonline unless there is a documented strong business need to maintain outside of the web-based tool.

.04 The Lead FOIA Office shall:

a. task additional SO/LO(s) for input;

b. receive input from all assigned offices regarding fees, scope of request, timeline, consistency of responsive records, release procedures, advance payment, and estimated fees;

c. notify the requester in writing that prepayment is required before FOIA information is released if the amount is greater than \$250, or if the requester has not paid for previous FOIA requests, and upload a copy into FOIAonline if invoice function is not used;

d. request written assurance of payment (upload a copy into FOIAonline if invoice function is not used) for amounts estimated between \$20 and \$250 before collecting records and obtain payment for any amount prior to completing processing the request;

e. review responsive records to make certain that releases, withholdings, and redactions are consistent among offices and coordinate with NOAA GC when appropriate;

f. draft consolidated interim and final determination responses for the agency, and send full release determinations and responsive records to the requester, or route the final denial response to the proper denial official for signature;

g. close out FOIA file and upload a copy of the final response letter and completed Tasker into FOIAonline; and

h. maintain the official FOIA request file, administrative history of the request, and a clean and redacted copy of the responsive records. FY13 and later files shall be stored in FOIAonline unless there is a documented strong business need to maintain outside of the web-based tool.

#### **SECTION 7. REFERENCES.**

Relevant DOC documents are:

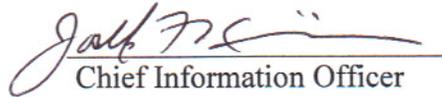
.01 Department Administrative Order (DAO) 205-14, Processing Requests Under the Freedom of Information Act, as amended.

.02 DAO 205-12, Public Information, as amended.

#### **SECTION 8. EFFECT ON OTHER ISSUANCES.**

This Order supersedes NOAA Administrative Order 205-14, Processing Requests Under the Freedom of Information Act (FOIA), effective January 3, 2012.

An electronic copy of this Order will be posted in place of the superseded Order on the NOAA Office of the Chief Information Officer website under the NOAA Administrative Issuances Section. [http://www.corporateservices.noaa.gov/ames/administrative\\_orders/](http://www.corporateservices.noaa.gov/ames/administrative_orders/)

  
Chief Information Officer

Offices of Primary Interest:  
Office of the Chief Information Officer

**15 CFR Part 4**

(Including Amendment of 8/12/2004)

NOTES CONCERNING ATTACHMENT 1

Attachment 1 to NAO 205-14 is a xerographic copy of material published in Parts 4, 4a, and 4b of Title 15 of the Code of Federal Regulations, (i.e., 15 CFR Part 4).

The materials in 15 CFR Part 4 are not reproduced on this Internet site. If you do not have access to the printed volume of the CFR that contains Part 4, you may want to view the materials that are available in electronic format at NOAA's FOIA Home Page, located at:  
[http://www.corporateservices.noaa.gov/foia/title\\_15\\_commerce\\_and\\_foreign\\_trade/](http://www.corporateservices.noaa.gov/foia/title_15_commerce_and_foreign_trade/)

If you still would like a paper copy, contact the Information Management Staff at 301-628-5658.

**SAMPLE- DOC TASKING MEMO**

Date:

MEMORANDUM FOR: NAME  
(*Insert Organization*)

FROM: (Insert Name)  
(*Insert Organization*)

SUBJECT: FOIA Request from (*Insert FOIA Requester's Name*)  
NOAA FOIA No. (*Insert FOIA Tracking Number*)

I am forwarding a copy of the attached FOIA request for your immediate attention. Please produce two sets of photo copies (retain your original and one set of photo copies) of all documents that may be responsive to the attached request. This would include, in addition to final documents, drafts, notes, informal records, and electronic records. You must search every place that could reasonably be expected to have responsive documents.

**Make sure that you identify any documents or portions of documents that originated with another office, agency or bureau that need to be referred for disclosure determinations.**

One set of copies (not original documents) should be produced without additional annotation; on the second set, please identify whether you believe the document, or any portion of it, should be withheld from disclosure because it is not an agency record, outside the scope of the request, privileged, confidential, an invasion of personal privacy, or for any other legitimate reason recognized by FOIA. You must include the FOIA exemption next to any information you identify as protected from disclosure. The office, agency, or bureau that originated a document must make disclosure determinations for that document.

**The cut-off for the search is \_\_\_\_\_. Documents created after this date are not responsive to the request. If the search is delayed for any reason, please notify me immediately, but no later than 24 hours from the date listed.**

Attached is a list of FOIA exemptions for your use in making disclosure determinations.

In order to be responsive to this request in a timely manner, we need any responsive documents by COB (*Insert Date Documents are Needed*). Please send your response to (*Insert Name and Office Organization*).

**When providing your response, please attach written documentation of:**

- 1) Which office(s) originated the documents?
- 2) Who made disclosure determinations, showing that the originating office is the Office that made the disclosure determinations

**THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.**

Do not hesitate to contact me at (*Insert Contact Number*) if you have any questions.

Please sign this sheet of paper and check **all** of the appropriate boxes.

- Transmitted herewith are all documents in the possession of my office which are responsive and can be released in entirety.
- Transmitted herewith are all documents within the possession of my office which are responsive and we have found reason to partially withhold, copies were made and exemptions were noted.
- Transmitted herewith are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Transmitted herewith are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.
- My office has found no responsive documents.
- All disclosure determinations have been made by the Commerce Office that originated or has control of the documents.

A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm \_\_\_\_\_.

- Interim response                       Final response

\_\_\_\_\_  
Signature (Senior Official)

\_\_\_\_\_  
Date

Attachments:

Copy of FOIA request

List of FOIA exemptions

## Attachment 3

### Legal Advice and Review

Legal advice and review to a NOAA line or program office, as described in Section 5.06, will be provided by the office within NOAA GC that is responsible for programmatic legal support to such line or staff office as follows:

Weather, Satellites and Research Section: National Weather Service; the National Environmental Satellite, Data, and Information Service; Office of Oceanic and Atmospheric Research;

Ocean and Coasts Section: National Ocean Service and the Office of Marine and Aviation Operations;

Fisheries and Protected Resource Section: National Marine Fisheries Service (NMFS)  
Regional Sections: - The NMFS Region or OLE office that they support;

Natural Resources Section: In coordination with Ocean and Coasts Section, NOS Office of Response and Restoration and Fisheries and Protected Resource Section, NMFS Office of Habitat Conservation;

Enforcement Section: In coordination with Fisheries and Protected Resource Section, NMFS Office for Law Enforcement;

International Section: NOAA Office of International Affairs

NOTE: when the office of the Chief Financial Officer, Chief Information Officer, Chief Administrative Officer, Acquisition and Grants, or Workforce Management Office, Program Policy and Integration ("Requesting Office") seeks legal review:

- 1) If the question directly concerns one of the line offices listed above, then the Requesting Office should seek advice from the listed NOAA GC office;
- 2) If the request does not directly concern one of the line offices above, then the Requesting Office should seek advice from the Weather, Satellites and Research Section.

Legal advice to the Office of the Under Secretary will be provided by GC Headquarters.