



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

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11.3.41.13.6.2.1

MEMORANDUM FOR ALL DISCLOSURE EMPLOYEES

FROM: Celia Y. Doggette /s/ *Celia Y. Doggette*
Director, Governmental Liaison, Disclosure and Safeguards

SUBJECT: Interim Guidance on Discretionary Release of Records and Harm Statements

This memorandum issues Disclosure policy on the discretionary release of records and the requirement for harm statements, until IRM 11.3.13, Freedom of Information Act and RM 11.3.41, Disclosure Case Processing and Inventory Management, are updated. This policy applies to all IRS employees who process IRS Freedom of Information Act (FOIA) requests.

Purpose: This Interim Guidance (IG) updates policy to clarify discretionary release of records and the requirement for a harm statement to be provided to Disclosure if the business function reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates.

Background/Source(s) of Authority: 5 USC §552; 26 CFR §601.702

Procedural Change: FOIA exemptions allow for discretionary release of information. Agencies can redact out portions of documents, or entire documents in full, using discretionary FOIA exemptions but are not compelled to do so by the FOIA statute.

Determinations to withhold information using exemptions other than (b)(3) are discretionary releases. These must be made in accordance with discussions with the business function that has control of the responsive records.

Business functions must articulate both the nature of the harm from release and the link between the specified harm and specific information contained in the material withheld. The basis for withholding must be documented in the case notes and with a formal

statement provided by the business function. Disclosure personnel must ensure the harm statement from the business function contains enough information to support withholding a record for any discretionary FOIA exemptions applied. If the business function cannot articulate a harm in release of the documents, a determination may be made to waive the application of the exemption. See IRM 1.2.2.12.6, Delegation Order 11-7 (New), Authority for Initial Determinations with Respect to Written Requests for Records Pursuant to 5 USC 552, Freedom of Information Act for additional information on the authority to make FOIA determinations concerning the release of IRS agency records.

Example: Before applying FOIA exemption (b)(5) to "draft" counsel documents or a "draft" Revenue Agent Report (RAR), you must obtain a harm statement from the Chief Counsel attorney or RA who owns the documents and have the document owner articulate the harm of release before applying the redaction.

Note: Certain discretionary exemptions have clearly established and understood reasonable foreseeable harm, such as Exemptions 4, 6, and 7C and do not require a foreseeable harm statement from the business function.

Effect on Other Documents: This guidance will be incorporated into IRM 11.3.13, Freedom of Information Act and IRM 11.3.41, Disclosure Case Processing and Inventory Management, by September 30, 2026.

Effective Date: April 18, 2024

Contact: If you have any questions, please contact Mary Brunelle, Senior Disclosure Analyst.

Distribution:

Disclosure Employees
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