



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.7.14

APRIL 17, 2023

EFFECTIVE DATE

(04-17-2023)

PURPOSE

- (1) This transmits revised IRM 8.7.14, Freedom of Information Act (FOIA) Administrative Appeal Cases.

MATERIAL CHANGES

- (1) Deleted IRM section entitled FOIA Administrative Appeal Cases Background and added Program Scope and Objectives, and related subsections to comply with the Deputy Commissioners of Services and Enforcement and Operations Support memo dated September 14, 2016, entitled Heightened Awareness, Sensitivity, and Understanding of Internal Controls. See IRM 8.7.14.1, Program Scope and Objectives.
- (2) Updated TBOR content based on guidance from Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration). See IRM 8.7.14.1.6, Related Resources.
- (3) Added reference IRM 25.30.2.3, Statement of Commitment, to IRM 8.7.14.1.6, Related Resources. This references that Appeals will work collaboratively with the Taxpayer Advocate Service (TAS) to enhance the taxpayer experience.
- (4) Expanded IRM 8.7.14.2, Authority for FOIA Administrative Appeal Cases, to provide procedures for appealing a denial for expedited processing and filing a request to verify whether an appropriate search was conducted.
- (5) Updated IRM 8.7.14.3, Source of Cases, to remove Office of Professional Responsibility as a source.
- (6) Revised IRM 8.7.14.4.1, Expedited Processing, to address loss of due process rights. Added IRM reference for additional information on Expedited Response.
- (7) Added clarifying language to IRM 8.7.14.4.2, Fee Waiver, IRM references added for public interest and requesting waivers.
- (8) Added IRM reference for Categories of Users to IRM 8.7.14.4.3, Favorable Fee Category.
- (9) Added clarifying language that a requester may exercise administrative appeal rights to IRM 8.7.14.4.4, Proper Search and Release of Responsive Records. Included reference to IRM 11.3.13.6.7, Administrative Appeals.
- (10) Updated address and added clarifying language to IRM 8.7.14.5, FOIA Administrative Appeal Request Requirements.
- (11) Added clarifying language to IRM 8.7.14.6, Receipt and Control of FOIA Administrative Appeal Request, to further emphasize the strict 20-day timeframe for working a FOIA case and the use of a combo acknowledgement/closing letter.
- (12) Updated procedures for IRM 8.7.14.6.2, Appeals Team Manager (ATM) Responsibilities. Added IRM reference 11.3.13.6.7, Administrative Appeals.
- (13) Deleted IRM 8.7.14.6.4, Acknowledgement Letter.

- (14) Changed the title of IRM 8.7.14.7, Automated Freedom of Information Act System (AFOIA) or Electronic Disclosure Information Management System (E-DIMS) to Disclosure Inventory Management System Utilized by Appeals. The AFOIA and E-DIMS systems are retired.
- (15) Updated IRM 8.7.14.8, Timely Filed FOIA Administrative Appeal Request, to reflect a change in the number of days to file an administrative appeal request from 35 to 90 days.
- (16) Added language to IRM 8.7.14.9, Late filed FOIA Administrative Appeal Request, to advise taxpayer of recourse available if an appeal request is filed late.
- (17) Revised IRM 8.7.14.10, Prescribed Time Frame to Work FOIA Administrative Appeal Request, to remove subsections (2) and (3).
- (18) Clarified steps for judicial review, IRM 8.7.14.10.2, Judicial Review.
- (19) Changed title for IRM 8.7.14.11, Imperfect FOIA Administrative Appeal Request to Improper FOIA Administrative Appeal Request. Updated days from 35 to 90 to reflect the change in days a requester must submit a perfected administrative appeal request from the date of written notification.
- (20) Removed 5 USC 552(b) specific exemptions chart from IRM 8.7.14.12, Statutory Exemptions.
- (21) Added clarifying language to IRM 8.7.14.13, Record Exclusions. Added title for reference IRM 11.3.13.5.3, Record Exclusions.
- (22) Revised ATM procedures in IRM 8.7.14.14, FOIA Closing Procedures.
- (23) Added additional closing instructions for Appeals Technical Employees (ATE) in IRM 8.7.14.14.2, ATE Closing Procedures.
- (24) Deleted instruction in IRM 8.7.14.14.2.2, Inadequate Search, for ATM to issue letter if Disclosure does not agree with additional search.
- (25) Added procedures in IRM 8.7.14.14.2.3, Premature Referral, for ATM to mail a copy of the closing letter to the requester and upload the closing letter to ACDS.
- (26) Added procedures in IRM 8.7.14.14.2.4, Closing Letter, for ATM to mail a copy of the closing letter to the requester and upload the closing letter to ACDS.
- (27) Added procedures for voluminous records to IRM 8.7.14.14.2.5, Closed Case File Assembly. Deleted reference to AFOIA system.
- (28) Revised Appeals Team Manager closing procedures, IRM 8.7.14.14.3, ATM Closing procedures.
- (29) Revised IRM 8.7.14.14.4.1, Case File Retention, to add reference for Document 12829.
- (30) Deleted IRM 8.7.14.15, Feedback. Revised to Feedback to Disclosure with updated feedback requirements.
- (31) Removed language and instructions for the FOIA Appeals Team Managers to track case results for Congress in IRM 8.7.14.15.1, Annual FOIA Report to Congress. Changed title to Annual FOIA Report to the Attorney General.
- (32) Deleted IRM 8.7.14.16, Automated Freedom of Information Act System (AFOIA). System has been retired.
- (33) Deleted all references to Automated Freedom of Information Act System (AFOIA) throughout this IRM. Replaced all references to AFOIA with Disclosure Inventory Management system.

(34) Editorial changes have been made throughout to update IRM, references, terms, and procedures.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 8.7.14, Freedom of Information Act (FOIA) Administrative Appeal Cases, dated August 01, 2014.

AUDIENCE

Appeals

Steven M. Martin
Director, Case and Operations Support

8.7.14

Freedom of Information Act (FOIA) Administrative Appeal Cases

Table of Contents

8.7.14.1 Program Scope and Objectives

8.7.14.1.1 Background

8.7.14.1.2 Authority

8.7.14.1.3 Responsibilities

8.7.14.1.4 Program Reports

8.7.14.1.5 Terms and Acronyms

8.7.14.1.6 Related Resources

8.7.14.2 Authority for FOIA Administrative Appeal Cases

8.7.14.3 Source of Cases

8.7.14.4 Types of FOIA Administrative Appeal Cases

8.7.14.4.1 Expedited Processing

8.7.14.4.2 Fee Waiver

8.7.14.4.3 Favorable Fee Category

8.7.14.4.4 Proper Search and Release of Responsive Records

8.7.14.5 FOIA Administrative Appeal Request Requirements

8.7.14.6 Receipt and Control of FOIA Administrative Appeal Request

8.7.14.6.1 FOIA Carding Procedures

8.7.14.6.2 Appeals Team Manager (ATM) Responsibilities

8.7.14.6.3 ATE Responsibilities

8.7.14.7 Disclosure Inventory Management Systems Utilized by Appeals

8.7.14.8 Timely Filed FOIA Administrative Appeal Request

8.7.14.9 Late Filed FOIA Administrative Appeal Request

8.7.14.10 Prescribed Time Frame to Work FOIA Administrative Appeal Request

8.7.14.10.1 Appeals Failure To Comply Within Prescribed Time Frame

8.7.14.10.2 Judicial Review

8.7.14.11 Improper FOIA Administrative Appeal Request

8.7.14.12 Statutory Exemptions

8.7.14.13 Record Exclusions

8.7.14.14 FOIA Closing Procedures

8.7.14.14.1 FOIA Closing Codes

8.7.14.14.2 ATE Closing Procedures

8.7.14.14.2.1 Appeals Determination

8.7.14.14.2.2 Inadequate Search

8.7.14.14.2.3 Premature Referral

8.7.14.14.2.4 Closing Letter

-
- 8.7.14.14.2.5 Closed Case File Assembly
 - 8.7.14.14.3 ATM Closing Procedures
 - 8.7.14.14.4 APS Closing Procedures
 - 8.7.14.14.4.1 Case file Retention
 - 8.7.14.15 Feedback to Disclosure
 - 8.7.14.15.1 Annual FOIA Report to the Attorney General

8.7.14.1
(04-17-2023)
**Program Scope and
Objectives**

- (1) Purpose: This IRM provides instructions and procedures for Appeals employees who work Freedom of Information Act (FOIA), Administrative Appeal cases.
- (2) Audience: Appeals Technical Employees (ATEs) and Appeals Technical Managers (ATMs).
- (3) Policy Owner: Policy, Planning, Quality and Analysis is under the Director of Case and Operations Support.
- (4) Program Owner: Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization and is under the Director of Policy, Planning, Quality and Analysis.
- (5) Contact Information: Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.7.14.1.1
(04-17-2023)
Background

- (1) The Freedom of Information Act (FOIA), *5 USC 552*, as amended, provides for public access to records and information maintained by Federal agencies. The FOIA sets standards for determining which records must be made available for public inspection and which records (or portion of records) must or may be withheld from disclosure. The law also provides administrative and judicial remedies for those denied access to records. The Independent Office of Appeals is responsible for processing administrative appeals under the FOIA.
- (2) IRM 11.3.13, Disclosure of Official Information, Freedom of Information Act (FOIA), provides background information on the Freedom of Information Act (FOIA).
- (3) On March 14, 2022, the Freedom of Information Act Obligations and Transparency memorandum was issued by the IRS Chief Privacy Officer. The memo reiterates the IRS's commitment to openness in government and describes every employee's responsibility to promote transparency under the FOIA. It further mandates that open compliance files should be made available to taxpayers or their authorized representatives without directing them to make a formal FOIA request. Under IRC 6103(e), taxpayers generally have a right to receive copies of their files to the extent release will not seriously impair tax administration. A copy of the memo can be found on the following link: *FOIA Obligation Memo*.

8.7.14.1.2
(04-17-2023)
Authority

- (1) The Freedom of Information Act (FOIA), *5 USC 552*, provides for public access to records and information maintained by Federal agencies.
- (2) Administrative appeals are made in accordance with 26 CFR 601.702.
- (3) With respect to cases under the jurisdiction of Appeals, Appeals is delegated the authority to settle any case. See Delegation Order 8-8 (Rev. 1), Authority of Appeals in Protested and Tax Court Cases, in IRM 1.2.2.9.8, Servicewide Policies and Authorities - Servicewide Delegations of Authority and Policy Statement P-8-47, Consideration to be given to offers of settlement in IRM 1.2.1.9.6, Servicewide Policies and Authorities - Servicewide Policy Statements.

8.7.14.1.3
(04-17-2023)
Responsibilities

- (1) The Director, Case and Operations Support (C&OS) is the executive responsible for designing, developing, delivering, and monitoring short and long range administration policies, programs, strategies, and objectives for the Appeals organization.

8.7.14.1.4
(04-17-2023)
Program Reports

- (1) Policy, Planning, Quality and Analysis (PPQ&A) provides trends and data analyses and detailed summary reports for Appeals.

8.7.14.1.5
(04-17-2023)
Terms and Acronyms

- (1) See IRM 8.1.1-1 Exhibit, Common Terms Used in Appeals for common terms and definitions used in IRM Part 8. Terms listed in the exhibit are not included in the table.

- (2) The table lists commonly used acronyms and their definitions:

Acronyms	Definitions
FOIA	Freedom of Information Act

8.7.14.1.6
(04-17-2023)
Related Resources

- (1) This IRM serves as the primary source of guidance for Appeals procedures for Appeals employees working FOIA cases.
- (2) Additional sources of guidance can be found in:
 - IRM 8.20.5.28, Freedom of Information Act (FOIA) Administrative Appeal Case Carding
 - IRM 8.20.7.37, Freedom of Information Act (FOIA) Case Closing
 - IRM 11.3.1, Introduction to Disclosure
 - IRM 11.3.5, Fees
 - IRM 11.3.13, Disclosure of Official Information, Freedom of Information Act (FOIA)
 - IRM 11.3.41, Disclosure Case Processing and Inventory Management
 - In accordance with IRM 25.30.2.3, Statement of Commitment, Appeals will work collaboratively with the Taxpayer Advocate Service (TAS) to enhance the taxpayer experience. For more information, see IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service.
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

8.7.14.2
(04-17-2023)
Authority for FOIA Administrative Appeal Cases

- (1) In accordance with 26 CFR 601.702, a requester may administratively appeal any initial determination made under the FOIA within 90 days of the date of a notification letter that notifies the requester:
 - that the request has been denied in full or in part,
 - of an adverse determination to change the requester's stated fee category,

- of an adverse determination of the requester's fee waiver or reduction request, or
 - that no responsive records exist.
- (2) A requester may also appeal a denial of a request for expedited processing. An appeal for expedited processing must be postmarked within 10 days of the date of the notification letter.
- (3) A requester can file an appeal requesting the IRS verify that an appropriate search was conducted. An appeal for adequate search can be submitted whether responsive records were produced or not. See 26 CFR 601.702(c)(10)(iii).

8.7.14.3
(04-17-2023)
Source of Cases

- (1) Appeals FOIA cases come from IRS Disclosure.

8.7.14.4
(10-25-2011)
Types of FOIA Administrative Appeal Cases

- (1) Campus or Field Appeals has jurisdiction to review the following types of denied FOIA cases:
- Expedited processing
 - Fee waiver
 - Favorable fee category
 - Proper Search and
 - Release of responsive records

8.7.14.4.1
(04-17-2023)
Expedited Processing

- (1) Appeals has jurisdiction to determine whether a compelling need exists for expedited processing of the initial FOIA request.
- (2) A compelling need may exist when:
- a. There is an imminent threat to life or the physical safety of an individual.
 - b. There is urgency to inform the public concerning actual or alleged Federal government activity.
 - c. The failure to obtain records quickly could cause a loss of substantial due process rights.

See IRM 11.3.13.6.4, Expedited Response, for additional information.

8.7.14.4.2
(04-17-2023)
Fee Waiver

- (1) Appeals has jurisdiction to determine whether the fees associated with the initial FOIA request should be waived or reduced because the disclosure:
- a. Would be in the public interest because it is likely to contribute significantly to the public's understanding of the operations or activities of the IRS, and
 - b. Would not be primarily in the commercial interest of the requester.

See IRM 11.3.5.3.3.1.1, Public Interest and Humanitarian Purposes, and IRM 11.3.5.3.3.1, Requesting Waivers.

8.7.14.4.3
(04-17-2023)
Favorable Fee Category

- (1) Appeals has jurisdiction to determine whether the requester has been classified in the correct category. Under FOIA, there are four different categories of requesters. Those categories are:

- Commercial use requester
- News media requester
- Educational or Noncommercial scientific institution requester
- Other requester

See IRM 11.3.5.3.1, Categories of Users.

8.7.14.4.4
(04-17-2023)
Proper Search and Release of Responsive Records

- (1) Appeals has jurisdiction to determine whether IRS Disclosure (Disclosure Specialist) or other applicable government agency employees conducted an adequate search for documents. If a requester believes that there may be more responsive records than those addressed in the FOIA response and the concern is not promptly resolved, the requester may exercise administrative appeal rights. See IRM 11.3.13.4.2, Adequacy of Search, and IRM 11.3.13.6.7, Administrative Appeals.

8.7.14.5
(04-17-2023)
FOIA Administrative Appeal Request Requirements

- (1) The administrative appeal request must be addressed and mailed to the IRS Commissioner at:
IRS Independent Office of Appeals
Attn: FOIA Appeals
M/S 55205
3211 S. Northpointe Drive
Fresno, CA 93725
- (2) All administrative appeal requests, per 26 CFR 601.702(c)(10)(ii), must:
- Be made in writing and signed by the requester.
 - Reasonably describe the records requested.
 - Include an address at which the requester desires to be notified of the appeals determination.
 - Specify the date of the initial FOIA request, the office to which the request was submitted, and where possible, include a copy of the initial FOIA request and the initial determination being appealed.
 - Ask the IRS Commissioner to grant the request for records, fee waiver, expedited proceeding, or favorable fee category, as applicable, or verify that an appropriate search was conducted and the responsive records were either produced or an appropriate exemption asserted.

8.7.14.6
(04-17-2023)
Receipt and Control of FOIA Administrative Appeal Request

- (1) Upon receipt, Appeals is required per 26 CFR 601.702 (c)(10)(iii), to promptly date stamp the administrative appeal request. When the request is received, it is date stamped by Fresno Campus Account and Processing Support (APS) which will start the required time frame for Appeals to consider the request per 26 CFR 601.702(c)(9).
- (2) APS creates the case file and establishes the case on Appeals Centralized Database System (ACDS).
- (3) The Appeals Technical Employee (ATE) receives the case file from the ATM and will ensure the following actions:
- a. Except for appeals of denials of expedited processing, the determination to affirm the initial denial (in whole or in part) or to grant the request for

records shall be made and notification of the determination shall be mailed within **20** days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal unless extended per 26 CFR 601.702(c)(11)(i).

- b. Appeals of initial determinations to deny expedited processing must be made within **10** calendar days of the determination to deny the expedited processing. See also IRM 8.7.14.10.1, Appeals Failure to Comply within Prescribed Time Frame.
- c. If the appeal from the initial denial is denied (in whole or part), the requester shall be notified in writing of the denial, the reasons for the denial, the name and title or position of the official responsible for the denial on appeal, and the provisions of *5 U.S.C. 552(a)(4)* for judicial review of that determination.
- d. Due to the strict 20 business days time frame to work a FOIA case, a combo acknowledgement/closing letter is often issued explaining when the FOIA request was received and Appeals' determination. The ATE should annotate in the case activity record that the required FOIA acknowledgement letter was sent.

8.7.14.6.1
(08-01-2014)
**FOIA Carding
Procedures**

- (1) For APS FOIA Carding Procedures see IRM 8.20.5.28, Freedom of Information Act (FOIA), Administrative Appeal Case Carding.

8.7.14.6.2
(04-17-2023)
**Appeals Team Manager
(ATM) Responsibilities**

- (1) Upon receipt of the FOIA administrative appeal case file from APS, the ATM will:
 - a. Determine the appropriate grade of the case and assign to an ATE.
 - b. Update ACDS to ensure the Case Summary Card (CSC) accurately shows the assigned ATE and grade of the case.
 - c. Email the designated FOIA Policy Analyst from HQ Disclosure Office the following information: requester name, FOIA case number that is being appealed, received date, and request date. Disclosure staff will establish a case in the Disclosure inventory management system.
 - d. Include Disclosure's inventory management system documents in the case file and give to the assigned ATE.

Note: The ATM and ATEs have access to Disclosure's inventory management system and should not need records, response letters, or other information that have been imaged and are in the system. If a paper file exists for a request not imaged into the inventory management system, Disclosure personnel will provide the paper file, as needed.

- e. The ATM may also verify the timeliness of the Appeals request under 26 CFR 601.702(c)(10)(i), as modified by the FOIA Improvement Act of 2016. See IRM 8.7.14.8, Timely Filed FOIA Administrative Appeal Request and IRM 11.3.13.6.7, Administrative Appeals.

8.7.14.6.3
(11-27-2013)

ATE Responsibilities

(1) Upon receipt, the ATE will:

Step	Action
1	<p>Make a preliminary review as soon as possible (5 business days) to determine whether the administrative appeal request is timely. If untimely, the ATE will send a closing letter to the requester and a copy to the Disclosure Manager of the Disclosure Specialist who worked the case previously. See IRM 8.7.14.9, Late Filed FOIA Administrative Appeal Request.</p> <p>Note: The ATM may have determined the request to be untimely; however, it is the ATE's ultimate responsibility to determine if the request is timely.</p> <p>See IRM 8.7.14.14.2.3, Premature Referral.</p>
2	Determine whether the request meets the requirements as outlined in IRM 8.7.14.5, FOIA Administrative Appeal Request Requirements.
3	Either issue a FOIA Appeals acknowledgement letter or combo acknowledgement/closing letter at closing. See IRM 8.6.1.2, New Receipts and Initial Case Actions, lists (c) and (d) on exceptions for sending the initial contact letter.
4	Access Disclosure's inventory management system to retrieve a copy of the original request and a copy of all withheld, original, and redacted documents. Save and close the case in the Disclosure system.
5	Review the request, documentation for the basis of the request, and Disclosure's determination. For proper ACM preparation, see IRM 8.6.2.2, Introduction to Appeals Case Memos (ACMs).

(2) Prior to closing the case:

If the ATE....	Then the ATE will...
Fully sustains Disclosure's determination	<p>Issue a combo acknowledgement/closing letter to the requester and copies to:</p> <ul style="list-style-type: none"> the Disclosure Manager of the Disclosure Specialist who previously worked the case. the designated FOIA Policy Analyst from HQ Disclosure Office.

If the ATE....	Then the ATE will...
Does not sustain or partially sustains Disclosure's determination	Contact the Disclosure Specialist and discuss the reasons to release documents.

8.7.14.7
(04-17-2023)
Disclosure Inventory Management Systems Utilized by Appeals

- (1) Appeals uses the Disclosure inventory management system to secure all responsive documents applicable for processing all FOIA requests. For more information about the Disclosure inventory management system, see IRM 11.3.41.2.4, Inventory Management System.
- (2) The system provides a one-stop solution for the entire request life cycle from the initial request receipt to the final delivery of documents.

8.7.14.8
(04-17-2023)
Timely Filed FOIA Administrative Appeal Request

- (1) The FOIA administrative appeal request must be made by letter postmarked within **90** days after the date of the applicable FOIA adverse determination letter (aka Denial Letter or Adverse Determination Letter), the date of any letter determining that no responsive records exist, or the date of the last transmission of the last records released. Otherwise, the appeal is considered late. An administrative appeal for denial of a request for expedited processing may also be submitted. Such an appeal must be postmarked within **10** days of the date of the notification letter.

8.7.14.9
(04-17-2023)
Late Filed FOIA Administrative Appeal Request

- (1) Appeals does not have jurisdiction to review late filed FOIA administrative appeal requests. A letter is sent informing the requester that the appeal was late and they may seek judicial review. A copy of the letter is also sent to the Disclosure Manager of the Disclosure Specialist who originally worked the request. The letter should include the following information:
 - a. The date the appeal was received; and
 - b. The date the notification letter was sent.

8.7.14.10
(04-17-2023)
Prescribed Time Frame to Work FOIA Administrative Appeal Request

- (1) Appeals has to make a determination on the requester's appeal within:
 - **10** calendar days for expedited processing requests [26 CFR 601.702(c)(10)(iii)]
 - **20** business days (excluding Saturdays, Sundays, and legal public holidays) for regular cases [26 CFR 601.702(c)(10)(iii)]
 - Up to **30** business days (excluding Saturdays, Sundays, and legal public holidays) for cases involving unusual circumstances [26 CFR 601.702(c)(11)(i)]

8.7.14.10.1
(10-25-2011)
Appeals Failure To Comply Within Prescribed Time Frame

- (1) Per 26 CFR 601.702(c)(12), if IRS Appeals fails to comply within the time frame prescribed, the requester will be deemed to have exhausted all administrative remedies and may file suit in court.
- (2) If a requester files suit after the prescribed time frame for Appeals to work the case, Appeals sends a letter to the requester stating that the case is being

closed because the requester has filed suit in court. Appeals will close the case sustaining Disclosure's determination and use the closing code 14.

8.7.14.10.2
(04-17-2023)
Judicial Review

- (1) If Appeals denies an administrative appeals request for:

- a. requested records,
- b. fee waiver or reduction,
- c. expedited processing,
- d. favorable fee category, or
- e. a determination is made that there are no responsive records, or
- f. no determination is made within the required timeframes set forth in the Treasury Regulations,

the requester may commence an action in the United States District Court in the jurisdiction in which the requester resides, in which the requester's principal place of business is located, in which the records are situated, or in the District of Columbia. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 USC App.) applicable to actions against an agency of the United States.

8.7.14.11
(04-17-2023)
**Improper FOIA
Administrative Appeal
Request**

- (1) If a timely appeal is made and the request does not meet the requirements as outlined in IRM 8.7.14.5, FOIA Administrative Appeal Request Requirements, the requester must submit a perfected administrative appeal request within **90** days from the date of written notification from the Disclosure Office.
- (2) If the perfected appeal is not submitted within the prescribed time period, the assigned ATE will send a letter to the requester stating that the request was not timely and the case will not be considered by Appeals and a copy to the Disclosure Manager of the Specialist who worked the original request. Appeals will close the case sustaining Disclosure's determination and use the closing code 14. See IRM 11.3.13.3.5, Imperfect Requests.

8.7.14.12
(04-17-2023)
Statutory Exemptions

- (1) The FOIA requires agencies to make the maximum possible information available to the public. The decision to edit or withhold records is generally made based upon the application of nine specific exemptions. These specific exemptions are listed in *5 USC 552(b)* and form the legal basis for the IRS to withhold records or portions of records from the public. Careful consideration of the exemptions is required when reviewing responsive records. For more information, see IRM 11.3.13.5.2, Exemptions.
- (2) For more information on each exemption, refer to the IRM sections listed below:

Exemption	See IRM
Exemption (b)(1)	IRM 11.3.13.5.2.2
Exemption (b)(2)	IRM 11.3.13.5.2.3
Exemption (b)(3)	IRM 11.3.13.5.2.4
Exemption (b)(4)	IRM 11.3.13.5.2.5
Exemption (b)(5)	IRM 11.3.13.5.2.6

Exemption	See IRM
Exemption (b)(6)	IRM 11.3.13.5.2.7
Exemption (b)(7)	IRM 11.3.13.5.2.8
Exemption (b)(7)(A)	IRM 11.3.13.5.2.8.1
Exemption (b)(7)(B)	IRM 11.3.13.5.2.8.2
Exemption (b)(7)(C)	IRM 11.3.13.5.2.8.3
Exemption (b)(7)(D)	IRM 11.3.13.5.2.8.4
Exemption (b)(7)(E)	IRM 11.3.13.5.2.8.5
Exemption (b)(7)(F)	IRM 11.3.13.5.2.8.6
Exemption (b)(8)	IRM 11.3.13.5.2.9
Exemption (b)(9)	IRM 11.3.13.5.2.10

8.7.14.13
(04-17-2023)
Record Exclusions

- (1) Subsection (c) of the FOIA exempts from disclosure certain law enforcement records in specifically described situations (involving ongoing proceedings, informant protection, terrorism or foreign intelligence matters) in which exemption protection alone would not always be adequate. For more information, see IRM 11.3.13.5.3, Record Exclusions.
- (2) For more information on each record exclusion, refer to the IRM sections listed below:

Exemption	See IRM
Exemption (c)(1)	IRM 11.3.13.5.3.1
Exemption (c)(2)	IRM 11.3.13.5.3.2
Exemption (c)(3)	IRM 11.3.13.5.3.3

8.7.14.14
(04-17-2023)
**FOIA Closing
Procedures**

- (1) After the ATE makes a determination on the administrative appeal and submits the case to the ATM for review and approval, the closing letter is signed by the ATM. A closing letter is sent to the requester and a copy is maintained in the administrative file. The ATM will upload a copy of the closing letter into ACDS. The ATM will email the designated FOIA Policy Analyst from the HQ Disclosure Office a copy of the Form 5402, Appeals Case Memorandum (ACM), and the closing letter. The case is then forwarded to APS for closing.

8.7.14.14.1
(10-25-2011)
FOIA Closing Codes

- (1) Only the following closing codes are used for FOIA cases:

Closing Code	FOIA Closing Code Definition
14	Fully Sustained - Appeals denied the request in full (i.e., the finding in the adverse determination letter was fully sustained)
15	Not Sustained - Appeals granted the request in full (i.e. the finding in the adverse determination letter was reversed in full)
16	Part Sustained - <ul style="list-style-type: none"> • Appeals granted the request in part or • FOIA request withdrawn by the requester
20	Premature Referral

8.7.14.14.2
(04-17-2023)
ATE Closing Procedures

- (1) The ATE is responsible for preparing the customized Form 5402-FOIA in ACDS and the ACM. The correct disposal information should be entered by using the drop down arrows to make the appropriate selection.
- The ATE can select multiple exemptions and/or other reasons for denial on the Form 5402. If the "Other Reasons for Denial" box is selected, an explanation must be made in the field below the box for "Other Reasons for Denial" in order for the form to print.
 - The ATE is responsible for preparing the closing letter to the requester and maintaining a copy for the file.

8.7.14.14.2.1
(11-27-2013)
Appeals Determination

- (1) Appeals' responsibility is to determine whether the Disclosure Specialist did an adequate search and whether information was properly withheld. If Appeals determines that information should have been released, the ATE and Disclosure Specialist would discuss the release of the information in question.
- (2) Appeals should discuss the requester's contact with IRS Disclosure Specialist who worked the case or other applicable case worker to determine if all required attempts were made to obtain all responsive documents available.

8.7.14.14.2.2
(04-17-2023)
Inadequate Search

- (1) After Appeals reviews all documents and ensures an adequate search for documents was done, a determination is made. If Appeals determines that an adequate search was **not** done, Appeals will discuss with Disclosure that an additional search is required and return the case to the Disclosure Office.

8.7.14.14.2.3
(04-17-2023)
Premature Referral

- (1) If Appeals receives a FOIA administrative appeal request while the Disclosure Office is working the request and an initial determination has not been made, Appeals will close the request as a premature referral. In circumstances where the IRS has not responded to the requester by the deadlines specified in the regulations, Appeals will respond to the requester advising him/her that there

are no administrative appeal rights and if the requester is not willing to wait for an initial determination, the only recourse is to seek judicial review in court.

- a. The assigned ATE will prepare a closing letter to the requester. The ATM will sign, mail a signed copy of the closing letter to the requester, and upload a copy to ACDS. The ATM will email the designated FOIA Policy Analyst from the HQ Disclosure Office a copy of the closing letter.
- b. The ATE will use the closing code 20.

8.7.14.14.2.4 (04-17-2023) Closing Letter

- (1) The ATE prepares a closing letter to the requester to notify them of Appeals' determination. The closing letter includes the following in the letterhead:

Item Number	Description
1	Appeals office address
2	Person to contact information - ATE's: <ul style="list-style-type: none">• Name• Employee identification number• Telephone number• Fax number
3	In regards information: <ul style="list-style-type: none">• Freedom of Information Act• Who or what the request involves
4	Disclosure case number (taken from Disclosure inventory system)

- (2) The closing letter includes the following in the body:

Item Number	Description
1	Dates of correspondence: <ul style="list-style-type: none">• Date of letter of original request• Date of denial letter or adverse determination letter• Date of administrative appeal request
2	Summary of original records requested
3	Summary of determination in denial letter or adverse determination letter
4	What is requested in appeal
5	Appeals determination in case <ul style="list-style-type: none">• Reason for determination• Volume of documents, if applicable

Item Number	Description
6	<p>If the case result is “not full grant” insert the following statement regarding the availability of mediation through the Office of Government Information Services:</p> <p>As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The IRS Independent Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:</p> <p>Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road - OGIS College Park, MD 20740 E-mail: ogis@nara.gov Web: https://www.archives.gov/ogis Telephone: 202-741-5770 Facsimile: 202-741-5769 Toll-free: 1-877-684-6448</p>
7	Statement of judicial remedies

- (3) The person delegated to sign the Appeals determination letter is the ATM or designee.
- (4) If it is determined that the request should be partially or fully granted, the ATE and the Disclosure Specialist will discuss the documents to be released.
 - If an agreement is reached, the case will be referred back to the Disclosure Specialist to determine what documents will be provided to the requester.
 - The ATE will prepare a closing letter to the requester.
 - The ATM will sign, mail and upload the closing letter to ACDS. The ATM will email the designated FOIA Policy Analyst from the HQ Disclosure Office a copy of the closing letter.

8.7.14.14.2.5
(04-17-2023)

Closed Case File Assembly

(1) The FOIA Administrative Appeals case file is assembled as follows:

Case File Location	Description of Item
Attached outside front folder:	<ul style="list-style-type: none"> Case routing sheet Case Summary Card Case Activity Record
Attached inside right folder:	<p>Case file documents which may include:</p> <ul style="list-style-type: none"> Administrative appeal request Initial FOIA request Denial letter or adverse determination letter Disclosure inventory management system record Copies of withheld/redacted documents (if not voluminous). If the records are voluminous, then a copy of the disk with documents should be placed in the file. Other
Unattached inside folder:	<p>Appeals Closing Letter</p> <ul style="list-style-type: none"> Copy for requester Customized FOIA Form 5402, Appeals Transmittal and Case Memo, and Appeals Case Memorandum <p>Note: A copy of the closing letter should be made for the requester and a copy of all documents, including ACM should be made for the file.</p>

8.7.14.14.3
(04-17-2023)

ATM Closing Procedures

(1) The ATM will take the following actions after receiving the closed case for approval:

- Review the closing letter, Form 5402, and ACM to ensure the content and language is appropriate and the determination is correct.
- Review the APGolf customized Form 5402 for completeness and accuracy. The ATE is responsible for using the APGolf customized Form 5402-FOIA through ACDS and correctly entering Disposal Information by using the drop down arrows to make the appropriate selections. Multiple exemptions and/or other reasons for denial can be selected on the Form 5402. See also IRM 8.7.14.14.2, ATE Closing Procedures.
- Sign and date stamp the closing letter, ACAP the case, and forward the case to APS for closing.
- Upload a copy of the closing letter into ACDS. The ATM will email the designated FOIA Policy Analyst from the HQ Disclosure Office a copy of the Form 5402, Appeals Case Memorandum (ACM) and the closing letter.

8.7.14.14.4
(10-25-2011)

APS Closing Procedures

- (1) APS follows normal closing procedures. Please see IRM 8.20.7.37, Freedom of Information Act (FOIA) Case Closing.

8.7.14.14.4.1
(04-17-2023)

Case file Retention

- (1) The FOIA case file and associated records are required to be maintained for a period of at least 6 years after the date of Appeals reply to the requester. See Document 12990, IRS Records Control Schedule 8, Item 54 and Document 12829, General Records Schedule 4.2, Item 020. All closed FOIA case files are maintained at various IRS Campuses for the current year and the previous two years and then they are sent to the National Archives Records Administration (NARA) Federal Records Centers (FRC) for the remainder of the retention period. The FRCs destroy the files after the retention period expires.

8.7.14.15
(04-17-2023)

Feedback to Disclosure

- (1) Appeals will provide a copy of the Form 5402, Appeals Case Memorandum (ACM), and closing letter to the Disclosure Policy Analyst (HQ).
- (2) Appeals also must provide data to the Headquarters Disclosure Office to include in the Annual FOIA Report to the Attorney General of the United States and the Director of the Office of Government Information Services (OGIS).

8.7.14.15.1
(04-17-2023)

Annual FOIA Report to the Attorney General

- (1) Each agency is required by *5 USC 552(e)* to make an annual report to the Attorney General and to the OGIS. Disclosure provides an annual report to the U.S. Department of the Treasury on the results of initial FOIA requests and FOIA appeals case determinations. Therefore, case records and closing information are required to be tracked. The FOIA appeals portion of the annual report to the Attorney General and the OGIS is prepared from data extracted from Form 5402 and tracked in ACDS.