



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

11.3.13

OCTOBER 6, 2025

EFFECTIVE DATE

(10-06-2025)

PURPOSE

- (1) This transmits revised IRM 11.3.13, Disclosure of Official Information, Freedom of Information Act.

MATERIAL CHANGES

- (1) The following IRM sections were removed in their entirety as they contain guidance specific to Disclosure caseworkers, and can be found in the corresponding sections of IRM 11.3.41, Disclosure Case Processing and Inventory Management, in the chart below:

Removed from 11.3.13	Located in IRM 11.3.41 Section
11.3.13.3, Initial Analysis of FOIA Request	11.3.41.13.3, Initial Analysis
11.3.13.3.1, Tolling	11.3.41.13.3.4, Tolling
11.3.13.3.2, Identity of Requester	11.3.41.13.3.4, Identity of Requester
11.3.13.3.5, Imperfect Requests	11.3.41.13.3.7, Imperfect Requests
11.3.13.3.6, Records of Other Treasury Components or Other Agencies	11.3.41.13.3.9, Requests for Records of Other Treasury Components or Other Agencies
11.3.13.3.7, IRS Records Located in Other Agencies or Other Treasury Components	11.3.41.13.3.10, IRS Records Located in Other Agencies or Other Treasury Components
11.3.13.8, Requests for All Records Concerning Me	11.3.41.13.3.11, Requests for All Records Concerning Me
11.3.13.3.9, Pseudo Requests	11.3.41.13.3.13, Pseudo Requests
11.3.13.3.10, Unclear Requests	11.3.41.13.3.14, Unclear Requests
11.3.13.3.11, Routine Established Agency Procedures	11.3.41.13.3.16, Routine Established Agency Procedures
11.3.13.4, Search Process	11.3.41.13.5, Research and Search Efforts
11.3.13.4.1, Search Efforts	11.3.41.13.5, Research and Search Efforts
11.3.13.4.2, Adequacy of Search	11.3.41.13.5.1, Adequacy of Search
11.3.13.4.3, Search Efforts Pertaining to Email Records	11.3.41.13.5.3, Search Efforts pertaining to Email Records

Removed from 11.3.13	Located in IRM 11.3.41 Section
11.3.13.5.6, Redacting Records	11.3.41.13.6, Review and Redacting
11.3.13.5.7, Legibility of Copies	11.3.41.3.4 (8), Review and Edit
11.3.13.6, Response and Closing	11.3.41.13.7, Respond and Close
11.3.13.6.2, Extension Letters	11.3.41.13.7.1, Extension Letters
11.3.13.6.3, Interim Response Letters	11.3.41.13.7.2, Interim Response Letters
11.3.13.6.4, Expedited Response	11.3.41.13.7.3, Expedited Response

- (2) IRM 11.3.13.1.6, Definitions and Acronyms updated to add acronyms and descriptions.
- (3) IRM 11.3.13.1.7, Related Resources, updated (1) to consolidate links to Disclosure and Privacy Knowledge base.
- (4) IRM 11.3.13.2, Overview and Processing, updated as follows:
- Added new (1) to clarify the roles and responsibilities of both Disclosure and other IRS employees in the processing of FOIA requests.
 - Removed (3) as referenced IRMs and note was guidance specific to Disclosure employees and can be found in IRM 11.3.41, Disclosure Case Processing and Inventory Management.
- (5) IRM 11.3.13.2.1, Receipt and Control of FOIA Requests, updated as follows:
- Updated title of this IRM section to Categories of the FOIA.
 - Updated to remove (1) as this was guidance specific to Disclosure employees, and can be found in IRM 11.3.41, Disclosure Case Processing and Inventory Management.
- (6) IRM 11.3.13.3, Initial Analysis of FOIA Request, updated as follows:
- Renumbered IRM 11.3.13.3.3, Definition of an Agency Record, to IRM 11.3.13.3.
 - Added new (1) and note, containing information related to the definition of agency records.
 - Adding new (2)-(5) providing information on agency records as they relate to FOIA.
 - Renumbered IRM 11.3.13.3.4, Joint Committee on Taxation, to IRM 11.3.13.3.1, due to removal of all other sections in IRM 11.3.13.3.
 - Removed Sections 11.3.13.3.1 through 11.3.13.3.11, excluding 11.3.13.3.4, as these sections all contain information pertaining to Disclosure case processing actions currently in IRM 11.3.41, Disclosure Case Processing and Inventory Management.
- (7) Removed IRM 11.3.13.4, Search Process, as this was guidance specific to Disclosure caseworkers and can be found in IRM 11.3.41, Disclosure Case Processing and Inventory Management.
- (8) IRM 11.3.13.5, Review and Redacting, updated as follows:
- Renumbered this section to IRM 11.3.13.4.
 - Updated title to Record Review and Recommendation.
 - Updated to remove (1) through (6), as this was guidance specific to Disclosure employees and can be found in IRM 11.3. 41, Disclosure Case Processing and Inventory Management.

- Updated to add new (1) through (5) containing information on actions to take when reviewing responsive records requested under the FOIA.
- (9) Former IRM 11.3.13.5.2.1, Discretionary Release of Records, updated as follows:
- Renumbered this section to IRM 11.3.13.4.2.1.
 - Updated title to Discretionary Release of Records and Harm Statements.
 - Updated (1) to add clarification to add specificity to prior language used.
 - Updated (2) to add clarification on (b)(3) discretionary release and removed caution as content will be included in new (3).
 - Added new (3) to clarify discretionary release of records and the requirement for a harm statements.
- (10) Former IRM 11.3.13.5.2.4, Exemption (b)(3) – The following updates were made:
- Renumbered this section to 11.3.13.4.2.4.
 - Updated (2)(c) to remove reference to IRM 11.3.41 which does not have the same audience as this IRM.
- (11) Former IRM 11.3.13.5.2.5, Exemption (b)(4) – The following updates were made:
- Renumbered this section to 11.3.13.4.2.5.
 - Updated (6) to correct IRM reference from IRM 11.3.13.7.2 to 11.3.13.6.2.
- (12) Former IRM 11.3.13.5.2.6, Exemption (b)(5) - The following updates were made:
- Renumbered this section to 11.3.13.4.2.6.
 - Updated (13) to correct IRM reference from IRM 11.3.13.7.2 to 11.3.13.6.1(8).
- (13) Former IRM 11.3.13.5.5, Outside of Scope – The following updates were made:
- Renumbered this section to IRM 11.3.13.4.5.
 - Updated to remove (3) as this was guidance specific to Disclosure employees and can be found in IRM 11.3.41, Disclosure Case Processing and Inventory Management.
 - Removed reference to IRM 11.3.13.4.2, which has been removed.
- (14) Removed IRM 11.3.13.5.6, Redacting Records, as this was guidance specific to Disclosure employees and can be found in IRM 11.3.41, Disclosure Case Processing and Inventory Management.
- (15) Removed IRM 11.3.13.5.7, Legibility of Copies, as this was guidance specific to Disclosure employees and can be found in IRM 11.3.41, Disclosure Case Processing and Inventory Management.
- (16) Former IRM 11.3.13.6, Response and Closing - The following updates were made:
- Renumbered to IRM 11.3.13.5.
 - Renamed FOIA Requester Rights.
- (17) Removed IRMs 11.3.13.6.1 through 11.3.13.6.4 as this was guidance specific to Disclosure employees and can be found in IRM 11.3.41, Disclosure Case Processing and Inventory Management.
- (18) Renumbered IRM 11.3.13.6.5, FOIA Public Liaison, to IRM 11.3.13.5.1.
- (19) Renumbered IRM 11.3.13.6.6, Office of Government Information Services (OGIS), to IRM 11.3.13.5.2.
- (20) Renumbered IRM 11.3.13.6.7, Administrative Appeals, to IRM 11.3.13.5.3.

- (21) Renumbered IRM 11.3.13.6.8, Declarations, to IRM 11.3.13.5.4, and renamed the section FOIA Litigation Declarations.
- (22) Former IRM 11.3.13.7, Special Issues, is being renumbered to IRM 11.3.13.6.
- (23) Former IRM 11.3.13.8, FOIA Reporting, is being renumbered to IRM 11.3.13.7.
- (24) Former IRM 11.3.13.8.1, Written Determinations (Including Private Letter Rulings, Technical Advice & Chief Counsel Advice) - The following updates were made:
- Renumbered section to IRM 11.3.13.7.1.
 - Removed (3) as it does not add value to this section.
 - Updated Note in (7) to remove reference to IRM section removed above.
- (25) Former IRM 11.3.13.7.3.1, Public Information Listing - The following updates were made:
- Renumbered section to IRM 11.3.13.6.3.1.
 - Removed instructions in (1) and (4) to refer to a resource not intended for this audience.
- (26) Former IRM 11.3.13.8.1.2, Data Capture – The following updates were made:
- Renumbered section to IRM 11.3.13.7.1.2.
 - Removed note in (4) as it is intended for Disclosure employees only and is contained in IRM 11.3.41.
- (27) Removed Exhibit 11.3.13-1, FOIA/PA Delegation Order for the following reasons:
- The FOIA delegation order is now Delegation Order 11-7, found in IRM 1.2.2.12.6, Delegation Order 11-7, Authority for Initial Determinations with Respect to Written Requests Pursuant to 5 USC 552, Freedom of Information Act.
 - The Privacy Act delegation order is now Delegation Order 11-8, found in IRM 1.2.2.12.7, Delegation Order 11-8, Authority for Initial Determinations with Respect to Requests for records pursuant to 5 USC 552a, Privacy Act.
- (28) Editorial changes were made throughout to comply with the plain language standard as well as update IRM, statutory, web, titles, and organizational references.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 11.3.13, Disclosure of Official Information, Freedom of Information Act (FOIA), dated April 17, 2025. This IRM incorporates Interim Guidance Memorandum PGLD-11-0723-0007, Interim Guidance for FOIA Requests Seeking Email Records; Interim Guidance Memorandum PGLD-11-0324-0008, Interim Guidance on Discretionary Release of Records and Harm Statements; and Interim Guidance Memorandum PGLD-11-0524-0015, Interim Guidance on Adequacy of Search.

AUDIENCE

All Operating Divisions and Functions

RELATED RESOURCES

- (1) Additional information can be found on the *Disclosure and Privacy Knowledge Base*

Brytten M. Rice
Acting Director, Governmental Liaison,
Disclosure and Safeguards

11.3.13

Freedom of Information Act

Table of Contents

11.3.13.1 Program Scope and Objectives

11.3.13.1.1 Background

11.3.13.1.2 Authority

11.3.13.1.3 Responsibilities

11.3.13.1.3.1 Disclosure Manager

11.3.13.1.3.2 The Roles of Other IRS Employees in Processing FOIA Requests

11.3.13.1.4 Program Management and Review

11.3.13.1.5 Program Controls

11.3.13.1.6 Definitions/Acronyms

11.3.13.1.7 Related Resources

11.3.13.2 Overview and Processing

11.3.13.2.1 Categories of the FOIA

11.3.13.3 Definition of Agency Record

11.3.13.3.1 Joint Committee on Taxation

11.3.13.4 Review and Recommendation

11.3.13.4.1 Approach to Exemptions

11.3.13.4.2 Exemptions

11.3.13.4.2.1 Discretionary Release of Records and Harm Statements

11.3.13.4.2.2 Exemption (b)(1)

11.3.13.4.2.3 Exemption (b)(2)

11.3.13.4.2.4 Exemption (b)(3)

11.3.13.4.2.5 Exemption (b)(4)

11.3.13.4.2.6 Exemption (b)(5)

11.3.13.4.2.7 Exemption (b)(6)

11.3.13.4.2.8 Exemption (b)(7)

11.3.13.4.2.8.1 Exemption (b)(7)(A)

11.3.13.4.2.8.2 Exemption (b)(7)(B)

11.3.13.4.2.8.3 Exemption (b)(7)(C)

11.3.13.4.2.8.4 Exemption (b)(7)(D)

11.3.13.4.2.8.5 Exemption (b)(7)(E)

11.3.13.4.2.8.6 Exemption (b)(7)(F)

11.3.13.4.2.9 Exemption (b)(8)

11.3.13.4.2.10 Exemption (b)(9)

11.3.13.4.3 Record Exclusions

11.3.13.4.3.1 Exclusion (c)(1)

-
- 11.3.13.4.3.2 Exclusion (c)(2)
 - 11.3.13.4.3.3 Exclusion (c)(3)
 - 11.3.13.4.4 Glomar
 - 11.3.13.4.5 Outside of Scope
 - 11.3.13.5 FOIA Requester Rights
 - 11.3.13.5.1 FOIA Public Liaison
 - 11.3.13.5.2 Office of Government Information Services (OGIS)
 - 11.3.13.5.3 Administrative Appeals
 - 11.3.13.5.4 FOIA Litigation Declarations
 - 11.3.13.6 Special Issues
 - 11.3.13.6.1 Written Determinations (Including Private Letter Rulings, Technical Advice & Chief Counsel Advice)
 - 11.3.13.6.2 Contracts/Commercial Information
 - 11.3.13.6.3 Personnel Records
 - 11.3.13.6.3.1 Public Information Listing
 - 11.3.13.6.4 News Media Requests
 - 11.3.13.7 FOIA Reporting
 - 11.3.13.7.1 Annual FOIA Report
 - 11.3.13.7.1.1 Report Submission
 - 11.3.13.7.1.2 Data Capture
 - 11.3.13.7.1.3 Cost Data
 - 11.3.13.7.1.4 Citing Supporting Statutes
 - 11.3.13.7.2 Chief FOIA Officer's (CFO) Report
 - 11.3.13.7.2.1 Report Submission
 - 11.3.13.8 Annual TIGTA Review

11.3.13.1
(07-16-2020)
Program Scope and Objectives

- (1) **Purpose:** These procedures provide instructions for IRS employees when responding to requests for records pursuant to the Freedom of Information Act (FOIA), 5 USC 552.
- (2) **Audience:** These procedures apply to all IRS employees in connection with processing a request for agency records pursuant to FOIA.
- (3) **Policy Owner:** The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) **Program Owner:** The Disclosure office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensuring its employees are aware of and follow Servicewide Disclosure policy.
- (5) **Primary Stakeholders:** All IRS employees, that process requests for records pursuant to the Freedom of Information Act.

11.3.13.1.1
(10-05-2021)
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. FOIA has been amended a number of times, most recently by the FOIA Improvement Act of 2016. This Act addresses many procedural issues, including administrative appeals time frames, dispute resolution services, the Department of Justice foreseeable harm standards, as well as other FOIA program requirements. This IRM incorporates guidance regarding all new FOIA Improvement Act of 2016 provisions.
- (2) Prior to the enactment of FOIA, first effective July 4, 1967, there were no practical guidelines to help a person obtain information about how the government operated, and no judicial remedies for those denied access to governmental records. With the passage of FOIA, the burden shifted from the requester having to justify access to governmental records, to the government having to justify why information would not be released.
- (3) The premise of FOIA is that the public has a right to know what goes on in government without having to demonstrate a need or reason, and a right to file an administrative appeal or a suit in U.S. District Court if denied access to records.
- (4) On December 31, 2007, the President signed into law the OPEN Government Act of 2007. This amendment to FOIA codified many procedures and guidelines that were already being practiced by the IRS. It also established additional requirements to track and report statistical data to Congress. Some of the provisions were effective upon enactment while others were not effective until December 31, 2008.
- (5) This IRM deals primarily with processing requests pursuant to 5 USC 552(a)(3) for reasonably described records maintained by the IRS which are not required to be published or otherwise made available under Sections (a)(1) or (a)(2).

Note: See IRM 11.3.7, Freedom of Information Reading Room Operations, for the interaction of these provisions and maintenance of the IRS Freedom of Information Act Library.

Note: Disclosure employees should also see IRM 11.3.41, Disclosure Case Processing and Inventory Management, for FOIA case processing guidance.

- (6) *Treasury Directive 25-05*, dated March 1, 2000, establishes policy and procedures and assigns responsibilities for carrying out the requirements of the Act within the Department of the Treasury.
- (7) On March 19, 2009, the Department of Justice issued a *FOIA Policy Directive* and a call for "Openness in Government." By this action, the Attorney General rescinded the October 12, 2001 Attorney General Memorandum on the FOIA and established a new standard for defending agency decisions to withhold information. When a FOIA request is denied, the Department of Justice will now defend an agency's determination "only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law."
- (8) Effective April 23, 2004, the IRS issued Policy Statement 11-13, Freedom of Information Act Requests (formerly P-1-192), found in IRM 1.2.1.11.1. This Policy Statement affirms the commitment of the IRS to administer FOIA in a manner consistent with "the fundamental values held by our society, including public accountability, safeguarding national security, enhancing the effectiveness of law enforcement agencies and the decision-making processes, protecting sensitive business information, and protecting personal privacy." The policy statement goes on to note that the "administrative cost and impact on operations involved in furnishing information in response to a FOIA request is not to be a material factor in deciding to deny a request unless the cost or impact would be so substantial as to seriously impair IRS operations."

Note: See IRM 11.3.13.4.2.6, Exemption (b)(5), for further discussion of applying these guidelines when processing FOIA requests and asserting the (b)(5) exemption.

- (9) All actions taken, and determinations made, in response to FOIA requests will be in accordance with procedural rules appearing at:
 - 31 CFR Part 1, Appendix B ; and
 - 26 CFR 601.702
- (10) All FOIA activities must be reported under Single Entry Time Reporting (SETR) code 800-85330.

11.3.13.1.2
(10-05-2021)

Authority

- (1) The Director, Governmental Liaison, Disclosure and Safeguards (GLDS) and their delegate, have authority to make FOIA determinations concerning the release of most IRS agency records. See IRM 1.2.2.12.6 and IRM 1.2.2.12.7, FOIA/PA Delegation Orders, for additional information.
- (2) The Executive Order issued in December 2005, the OPEN Government Act of 2007 and the FOIA Improvement Act of 2016 require the IRS to designate FOIA Public Liaisons to serve as supervisory officials to whom a FOIA requester can raise issues about the service the FOIA requester received.

11.3.13.1.3
(07-16-2020)

Responsibilities

- (1) This IRM is used by all IRS employees to help comply with the procedures pertaining to requests for agency records under the Freedom of Information Act.
- (2) The IRS is committed to openness in Government and complying with FOIA. FOIA requires all federal agencies to respond timely to requests for records

and information the agency maintains. This statutory obligation is a responsibility shared by all IRS employees and Disclosure is committed to meeting this obligation.

11.3.13.1.3.1
(10-05-2021)
Disclosure Manager

- (1) Disclosure Managers are responsible for administering the FOIA Program. Responsibilities related to processing FOIA requests may involve:
 - a. Ensuring uniform and consistent responses to FOIA requests. This can be accomplished by encouraging Disclosure staff to use standardized language or paragraphs in communications with requesters.
 - b. Educating requesters on the proper procedures for filing a valid FOIA request, and educating IRS employees on the provisions of FOIA that affect them.
 - c. Using the inventory management system to control FOIA inventory to ensure timely responses.
 - d. Completing reviews of work in process for accuracy, completeness, and timeliness.
 - e. Coordinating requests with the functions providing responsive data.
 - f. Providing direction to IRS employees in other business units conducting searches for responsive records.
 - g. Providing assistance with respect to administrative appeals and lawsuits.
 - h. Determining if records marked "official use only" or "sensitive but unclassified" (OUO or SBU) should be declassified and released to a FOIA requester.

Note: See IRM 10.5.8, Privacy and Information Protection, Sensitive But Unclassified Policy: Protecting SBU in Non-Production Environments, and IRM 11.3.12, Designation of Documents, regarding designating records OUO or SBU.

- (2) Disclosure Managers have delegated authority to make agency determinations. This authority includes making determinations about the release of records and signing the response letter to the requester when denying records in part or in full, or in cases where we locate no responsive records. Other Disclosure personnel may sign correspondence and release records in response to FOIA requests when making full grants, responding to imperfect requests, or referring requests. See IRM 1.2.2.12.6 and IRM 1.2.2.12.7, FOIA/PA Delegation Orders, for additional information, and Delegation Order 11-2, found in IRM 1.2.2.12.2.
- (3) Disclosure Managers are responsible for reducing delays in processing, knowing the status of requests in their offices, and assisting in the resolution of disputes raised by FOIA requesters for cases completed by their staffs. Disclosure staff must notify the Disclosure Manager promptly of any inquiries or disputes raised by requesters.

11.3.13.1.3.2
(10-05-2021)
The Roles of Other IRS Employees in Processing FOIA Requests

- (1) The Disclosure Office relies heavily on the support and cooperation of all IRS employees in order to meet FOIA processing requirements. Many of the records requested under FOIA are under the control of front-line employees in the various functional areas. While the specific roles of other IRS employees in processing FOIA requests will depend upon local circumstances, it is important that these employees cooperate with the Disclosure Office in the FOIA

process. FOIA SETR time code (800-85330) must be used by all IRS employees to document the time spent in researching, processing and releasing documents.

11.3.13.1.4
(08-03-2023)
**Program Management
and Review**

- (1) Disclosure inventory management and case processing is facilitated within FOIAXpress (FX), which is monitored and maintained by the GLDS Data Services office. FX allows management to validate program compliance through generating reports and requiring inventory to be processed under IRC 6103 statutory authority.

11.3.13.1.5
(08-03-2023)
Program Controls

- (1) Disclosure program oversight also includes participation in operational and quality reviews. The Disclosure Office uses the Embedded Quality Review System (EQRS) to perform quality review on Disclosure specific casework.

11.3.13.1.6
(10-06-2025)
Definitions/Acronyms

- (1) The following is a list of the acronyms that are used in this IRM section:

Acronym	Definition
CCA	Chief Counsel Advice
CCDM	Chief Counsel Directives Manual
CFO	Chief FOIA Officer
CFR	Code of Federal Regulations
CI	Criminal Investigation
CMIR	Currency or Monetary Instruments Report
CTR	Currency Transaction Report
CUI	Controlled Unclassified Information
DOJ	Department of Justice
DMV	Department of Motor Vehicles
DVD	Digital Versatile Disc
EEO	Equal Employment Opportunity
EPF	Employee Performance Folder
FAR	Federal Acquisition Regulation
FBAR	Foreign Bank and Financial Accounts Report
FOIA	Freedom of Information Act
FPM	Federal Personnel Manual
FRC	Federal Records Center
FRCrP	Federal Rules of Criminal Procedure

Acronym	Definition
GLDS	Governmental Liaison, Disclosure and Safeguards
GSS	GLDS Support Services
HQ	Headquarters
IDRS	Integrated Data Retrieval System
IPSU	Identity Protection Specialized Unit
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IT	Information Technology
JCT	Joint Committee on Taxation
LGM	Litigation Guideline Memoranda
MEF	Modernized E-file
MF	Master File
NTEU	National Treasury Employees Union
OGIS	Office of Government Information Services
OIC	Offer in Compromise
OPF	Official Personnel Folder
OPM	Office of Personnel Management
OUO	Official Use Only
PA	Privacy Act
P&A	Procedure and Administration, Counsel
PGLD	Privacy, Governmental Liaison and Disclosure
PIL	Public Information Listing
PLR	Private Letter Ruling
PPO	Policy and Program Operations, Disclosure
PTIN	Preparer Tax Identification Number
RA	Revenue Agent
RAR	Revenue Agent Report
RFP	Request for Proposal

Acronym	Definition
RO	Revenue Officer
RRA 98	IRS Restructuring and Reform Act of 1998
SA	Special Agent
SBU	Sensitive but Unclassified
SERFE	Selection of Exempt Organization Returns for Examination
SETR	Single Entry Time Reporting
SA	Special Agent
SFR	Substitute for Return
SSN	Social Security Number
TAM	Technical Advice Memoranda
TLS	Tax Law Specialist
TIGTA	Treasury Inspector General for Tax Administration
TP	Taxpayer
UIDIF	Underreported Income DIF
UIL	Uniform Issue List
USC	United States Code

11.3.13.1.7
(10-06-2025)
Related Resources

- (1) Additional resources related to disclosures of information pursuant to the Freedom of Information Act can be found at the *Disclosure and Privacy Knowledge Base*.

11.3.13.2
(10-06-2025)
Overview and Processing

- (1) All IRS employees have an obligation to assist in the processing of FOIA requests. The Disclosure Office has the sole authority to issue determinations and responses to each request.
- (2) Processing a request under FOIA consists of five basic steps:
- Receipt and control - classifying, assigning and controlling requests in inventory.
 - Analysis - determining validity, identifying expedited processing or fee waiver requests, and other special features.
 - Search - searching IRS systems or offices for responsive records.
 - Review - reviewing records located in the search and applying exemptions or exclusions, if appropriate.
 - Response and closing - drafting responses to the requester and closing the case.

11.3.13.2.1
(10-06-2025)
Categories of the FOIA

- (1) Requests are classified as either 5 USC 552 (a)(1), (a)(2), or (a)(3), depending upon the nature of the information requested.
- (2) Section (a)(1) pertains to requests for agency records required to be published in the Federal Register. Requests for IRS Regulations or for Privacy Act System of Records Notices fall under this category.
- (3) Section (a)(2) pertains to requests for agency records required to be made publicly available for inspection and copying. Requests for FOIA Library materials such as Internal Revenue Manuals (IRMs), IRS FOIA Logs, and Field Directives fall under this category.
- (4) Section (a)(3) pertains to requests for agency records that are not required to be made available to the public under Section (a)(1) or (a)(2). Requests for tax records or information protected by the Privacy Act fall under this category.
- (5) The order of priority for requests seeking records that fall under more than one category is (a)(3), (a)(2), and (a)(1). The request will be categorized and controlled under the highest category of records requested, with (a)(3) being the highest.

Example: A request for IRM 11.3 (under (a)(2)), combined with a request for tax records (under (a)(3)) will be logged as an (a)(3) request.

- (6) Agencies are required to make available for public inspection in an electronic format, records that have been requested three or more times.

Note: Release of records that meet this requirement must be coordinated through the FOIA Senior Policy Analyst.

11.3.13.3
(10-06-2025)
Definition of Agency Record

- (1) Title 44 USC 3301 defines records as “all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.”

Note: This definition includes email records maintained by, or on behalf of, current and separated IRS employees.

- (2) The FOIA provides for the disclosure of agency records. Not every record within the possession of an agency is an agency record subject to FOIA. Agency records are records that are either created or obtained by an agency, and are under agency control at the time of the FOIA request. Courts have identified four relevant factors to consider when determining whether a record is an agency record:
 - a. The intent of the record's creator to retain or relinquish control over the record.
 - b. The ability of the agency to use and dispose of the record as it sees fit.
 - c. The extent to which agency personnel have read or relied upon the record for agency business.
 - d. The degree to which the record was integrated into the agency's record keeping system or files.

- (3) Records that are not agency records are not responsive to a FOIA request, regardless of whether the subject matter or type of record would otherwise appear to be responsive to the request.
- (4) Whenever a request seeks records that originated outside of the IRS, Disclosure personnel will make a determination, after coordination with the records' originator, whether the records are agency records based upon the factors mentioned above.
- (5) If the IRS transfers records to a government contractor for records management purposes, those records remain agency records subject to FOIA, even though they are no longer in the physical custody of the agency. By contrast, records created by the contractor as part of the contractor's own business (such as the contractor's personnel files) are not agency records and are not subject to FOIA.

11.3.13.3.1
(10-06-2025)
**Joint Committee on
Taxation**

- (1) The Joint Committee on Taxation (Joint Committee or JCT) is authorized under IRC 8021 to obtain and inspect information, including returns and return information pursuant to IRC 6103(f) , for the purpose of carrying out its general oversight responsibilities.
- (2) The Joint Committee is authorized under IRC 8023 to secure directly from the IRS information for the purpose of making investigations, reports and studies relating to internal revenue taxation, including returns and return information, as to any action taken or proposed to be taken by the Service as a result of any audit of the return.
- (3) When the Joint Committee corresponds with the IRS under its general oversight authority, it generally includes a legend on the incoming correspondence that restricts the dissemination and use of both the inquiry and responsive records. The Joint Committee reserves the right to adjust the legend as needed, after coordination with the Service.

Note: At this time, the legend reads, "This document is a record of the Joint Committee on Taxation (Joint Committee) and is entrusted to the Department of the Treasury for your use only in handling this matter. Additionally, any documents created by the Department of the Treasury in connection with a response to this Joint Committee document, including (but not limited to) any replies to the Joint Committee, are records of the Joint Committee and shall be segregated from agency records and remain subject to the control of the Joint Committee. Accordingly, the aforementioned documents are not agency records for purposes of the Freedom of Information Act. Absent explicit Joint Committee authorization, access to this document and any responsive documents shall be limited to Treasury personnel who need such access for the purposes of providing information or assistance to the Joint Committee."

- (4) The incoming JCT document, as well as any documents created by the IRS in connection with a response to the JCT document, including (but not limited to) any replies to the Joint Committee, are records of the Joint Committee and shall be segregated from agency records and remain subject to the control of the Joint Committee. Accordingly, the aforementioned documents are not IRS agency records for purposes of FOIA.
- (5) Whenever the Joint Committee's inquiry letter includes the restrictive legend, the file that is created for the IRS's reply, as well as any accompanying documents, may only be accessed by IRS personnel for the purpose of

providing information to, or otherwise assisting, the Joint Committee. Copies of the inquiry letter and the IRS response are available through the Office of Legislative Affairs in the Communications and Correspondence Tracking System. Copies of records compiled by the IRS to respond to the Joint Committee inquiry are maintained in the office of the IRS component chiefly responsible for preparing the response.

- (6) Whenever the Joint Committee's inquiry letter includes the restrictive legend, that letter remains a congressional record and is not an agency record of the IRS. In addition, any records created by the IRS in connection with the agency's response to the Joint Committee's inquiry, including (but not limited to) the IRS reply letter, are congressional records and are not IRS agency records. Such documents shall not be considered as responsive to a FOIA request directed to the IRS, and must not be released under FOIA. Moreover, the IRS file(s) associated with providing records to the Joint Committee need not be searched for responsive records because the records that the files may contain are not agency records.
- (7) The legend is included as a matter of best practice. It identifies the document as a congressional record, not an IRS agency record. The legend is also an indication of the intent of the parties on how the records should be categorized. However, the absence of the legend is not legally determinative. If a JCT document fails to contain a legend, generally, IRS practice is to treat the JCT document and any IRS response thereto as a congressional record.

Note: Consider consulting Chief Counsel (Procedure & Administration) on the treatment of JCT originated documents that do not contain a legend.

- (8) In addition to its general oversight authority under IRC 8023, the Joint Committee is also entitled to reports by the IRS under IRC 6405 of the IRS's proposed issuance of refunds or credits that meet the jurisdictional threshold. Section 6405 directs the IRS to delay the issuance of large refunds or credits for a thirty-day period after the report is submitted to the Joint Committee. Correspondence or other documentation reflecting the Joint Committee's inquiries relating to the proposed credits or refunds will be maintained separately within the administrative file of the taxpayer to whom it pertains. Based upon best practice, Joint Committee correspondence in this context may not contain a legend, and any documents or information received from the Joint Committee or prepared by the IRS in response to the Joint Committee's inquiries regarding the proposed refund will not constitute IRS agency records subject to FOIA. IRS practice is to treat these records as congressional records. Accordingly, the Joint Committee's response to the IRS's letter concerning the proposed refund, and any records created by the IRS as a result of, or in response to, the Joint Committee's response, are not IRS agency records responsive to a FOIA request and must not be released under FOIA. Moreover, the IRS file(s) associated with providing records to the Joint Committee need not be searched for responsive records because any records the files may contain are not IRS agency records.

11.3.13.4
(10-06-2025)
**Review and
Recommendation**

- (1) Once the responsive records have been retrieved, the next step in case processing requires the Disclosure caseworker to work with the IRS employee who has ownership of the records to review the material and determine what should be released or what should be withheld in full or part. The determination to grant or deny access to a specific record is made for each request on a case-by-case basis. Information being withheld must be approved by the au-

thorizing official (i.e., information withheld under IRC 6103 requires manager approval per Delegation Order 11-2, found in IRM 1.2.2.12.2, Delegation Order 11-2 (Rev. 5), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents).

- (2) Disclosure caseworkers are responsible for ensuring the documents are responsive to the request. Caseworkers will review documents provided by IRS functions to ensure they have received all responsive records and to separate and remove any non-responsive records. The Disclosure caseworker will also review all releases of documents to ensure that only covered documents and information are released in response to the request.
- (3) The following information may need to be redacted:
 - Information that would identify a confidential informant or seriously impair a civil or criminal tax investigation.
 - ID theft indicators or fraudulent tax returns.
 - Tax convention information protected under 26 USC 6105.
 - Wagering tax information protected under 26 USC 4424 (see IRC 6103(o)(2)).
 - Information obtained from, or on behalf of, a grand jury proceeding, unless a valid order permitting the use, or the information has been issued under Rule 6(e) of the Federal Rules of Criminal Procedure.
 - Returns and return information of a third party or unrelated taxpayer.
 - Returns and return information covering tax years not specifically covered by an IRC 6103 authorization.
 - Numeric Discriminant Index Function (DIF) scores, Discriminant Analysis System (DAS) scores, and Underreported Income DIF (UIDIF) scores and Selection of Exempt Organization Returns for Examination (SERFE) indicators. It is IRS policy to delete all DIF, DAS, and UIDIF scores and SERFE indicators.
 - Other information where disclosure is prohibited by 18 USC 1905 (for example, trade secrets and other proprietary business information.)

Note: The Disclosure Manager will ensure any information prohibited from disclosure is redacted accordingly.

- (4) Copies of responsive records made in connection with disclosure casework must be as legible as possible. When copies are illegible because the originals are poor, the copy must be stamped with the notation "Best Copy Available".

Note: Do not withhold illegible documents on that basis alone. However, review illegible or barely legible documents for possible redactions. Assert applicable redactions for illegible material and withhold in the same manner as for legible documents. This is equally true whether the illegibility is caused by indecipherable handwriting or by poor quality of the original or electronically scanned document. Disclosure personnel will work with the function providing the documents or GSS to determine the contents of the illegible documents or to have the illegible copy re-scanned to try to improve legibility. Copies of records made in connection with FOIA matters must be as legible as possible.

- (5) The burden of proof in defending withholding rests with the Government. Therefore, copies of documents which may ultimately be submitted to a court **in camera** inspection must be legible.

11.3.13.4.1
(07-16-2020)

Approach to Exemptions

- (1) The FOIA requires agencies to make the maximum possible information available to the public. In March 19, 2009, a Department of Justice (DOJ) FOIA policy memorandum was issued to support the notion that the FOIA reflects a fundamental national commitment to open government and to ensure that commitment was realized in practice. The memorandum also declared a presumption of openness and carried with it two implications:
 - a. Agencies should make discretionary disclosures of information where possible and not withhold merely because they can demonstrate that the records fall within the scope of a FOIA exemption.
 - b. When agencies determine that a full disclosure is not possible, they should take all reasonable steps to disclose what they can.
- (2) The DOJ policy directive also expressed a commitment to protecting other fundamental values including protecting national security, personal privacy, privileged records, and law enforcement interests.
- (3) Under the FOIA, once a record is determined to be responsive, only such portion as falls within one of the nine (9) specific exemption categories or three (3) special law enforcement exclusions may be withheld. Disclosure personnel shall clearly document in their case notes any decision to edit or withhold records. The decision must be made based on the application of one of the exemptions or exclusions contained in the FOIA statute. Each of the exemptions and exclusions is listed and discussed in IRM 11.3.13.4.2, Exemptions.
- (4) Some exemptions are mandatory in nature. Exemptions (b)(1), (b)(3) and (b)(4) of the FOIA are exemptions for which discretionary disclosures are not appropriate since there are civil and/or criminal penalties for unauthorized disclosure of statutorily protected information.
- (5) Consideration of whether discretionary exemptions should be asserted will usually be made on a case-by-case basis. See Policy Statement 11-13 (Formerly P-1-192), Freedom of Information Act Requests, which is available at IRM 1.2.1.11.1.
- (6) Decisions to withhold information protected under the FOIA's discretionary exemptions will be made only when:
 - a. The Agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or
 - b. Disclosure is prohibited by law.
- (7) When considering discretionary disclosures related to personal privacy, Disclosure personnel will weigh the public's right to the information against the privacy interests of the individual(s) affected. Case history notes will fully document the reasons for the application of an exemption and include any discussions with the functions supporting that application.
- (8) Records will not be withheld from the public simply because they may be subject to misinterpretation, because there is no apparent public benefit to their release, to avoid embarrassment, or to hide instances of errors or wrongdoing by IRS officials or employees.
- (9) The designation of a record as "OUO" or "SBU" does not preclude the release of the record pursuant to FOIA. See IRM 11.3.12.4, Guidelines for Removing Administrative Controls, and IRM 10.5.1, Privacy Policy, for additional information on "OUO" or "SBU" determinations.

11.3.13.4.2
(07-16-2020)
Exemptions

- (1) There are nine specific FOIA exemptions. They 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. Consider the following:
 - Withhold information under the FOIA only if “the agency reasonably foresees that the disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law”.
 - Whether partial disclosure of information is possible, whenever it is determined that a full disclosure of a requested record is not possible.
 - Taking reasonable steps to segregate and release nonexempt information.
- (2) “Outside the scope” or “out of scope” is not a legal FOIA exemption found in section 552(b) of the Freedom of Information Act and should never be used when processing a FOIA request. See IRM 11.3.13.4.5, Outside of Scope.

11.3.13.4.2.1
(10-06-2025)
**Discretionary Release of
Records and Harm
Statements**

- (1) Except for information required to be withheld by statute, 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.
- (2) 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.
- (3) Business functions **must** articulate both the nature of the harm from release and the link between the specified harm and the 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 who owns the documents and/or 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.

11.3.13.4.2.2
(08-14-2013)
Exemption (b)(1)

- (1) This exemption applies to classified records concerning national defense and foreign policy. This exemption refers to information which has been or may be properly classified as confidential, secret, or top secret under the terms and procedures of the Executive Order establishing the classification system. It is seldom used by the IRS.

11.3.13.4.2.3
(04-19-2017)

Exemption (b)(2)

- (1) This exemption covers matters that relate solely to the internal personnel rules and practices of an agency.
- (2) With the ruling in the Supreme Court case, *Milner v Dept. of the Navy*, 131 S. Ct. 1259 (2011) (Kagan, J.), the Court overturned decades of established judicial interpretation and significantly narrowed the scope of the exemption. The exemption is no longer divided into “high 2” and “low 2.” Instead, the Court held that (b)(2), consistent with the plain meaning of the term “personnel rules and practices,” encompasses only records relating to issues of employee relations and human resources.

Note: Material cannot be withheld under (b)(2) if there is a genuine and significant public interest in its disclosure, since it would not satisfy the requirements that it relate “solely” to the “internal” personnel rules and practices of the agency.

Example: The Court included several examples of covered personnel rules and practices, such as rules dealing with employee relations or human resources which concern the conditions of employment at federal agencies – such matters as hiring and firing, working rules and discipline, compensation and benefits. The Court also described personnel-related rules and practices as including the selection, placement, and training of employees and the formulation of policies, procedures, and relations with, or involving, employees or their representatives.

- (3) Disclosure personnel should consider whether it is appropriate to withhold records previously withheld under (b)(2) under other exemptions. In particular, exemption (b)(7)(F) may apply to building plans and other security information. These determinations should be made on a case-by-case basis.
- (4) Disclosure personnel may find conference call-in information in files responsive to FOIA requests in the form of printed emails, calendar invitations, case notes, or other documents. An employee who uses an assigned call-in number and access code on a recurring basis often organizes these calls. Information about conference call-in information no longer meets the (b)(2) standard because the information is not directly related to agency personnel rules and practices. However, because disseminating conference call-in information could lead to its misuse and impede the effectiveness of IRS law enforcement activities, consider redacting conference call in numbers and access codes found in documents responsive to FOIA requests using the (b)(7)(E) exemption (and not the (b)(2) exemption). Additionally, telephone numbers and pass codes assigned to participants of a conference call might be withheld under the (b)(6) exemption because the release of this information could constitute an unwarranted invasion of personal privacy. Disclosure personnel should make determinations about these requests and responsive documents on a case-by-case basis.

11.3.13.4.2.4
(10-06-2025)

Exemption (b)(3)

- (1) This exemption protects information specifically exempted from disclosure by statute, provided that such statute:
 - a. Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
 - b. Establishes particular criteria for withholding or refers to particular types of matters to be withheld.
- (2) Some examples are:

- a. IRC 6103 (most commonly used).

Note: The use of IRC 6103 as a supporting statute requires a determination that the information being denied is a return or return information, as defined in IRC 6103(b)(2). When citing this exemption to deny the requester access to another taxpayer's return information, a determination must be made that the information is the other taxpayer's return information as defined in IRC 6103(b)(2). For example, information gathered in connection with the examination of Taxpayer A's return includes Department of Motor Vehicle (DMV) records of an individual with a similar name. Since the information was gathered in connection with the examination of Taxpayer A's return, it is the return information of Taxpayer A. Since it was not obtained by the IRS with respect to determining the liability under Title 26 of the other individual named in the DMV records, it is not that individual's return information, and thus cannot be withheld from Taxpayer A on the basis that it is the return information of another individual. FOIA exemptions (b)(3) (in conjunction with IRC 6103(e)(7)), (b)(6), and (b)(7)(C) shall be cited in this situation in order to protect the privacy of the third person. As another example, the taxpayer's Examination file contains records of the taxpayer's expenditures for rent and office supplies. The identities and addresses of the property owner and the supplier(s), and the dates and amounts of payments to them that were obtained to determine the taxpayer's correct expenses are return information of the taxpayer. This information merely reflects a business relationship between the taxpayer and the property owner and supplier(s), and is not return information of the property owner or the supplier(s). Information about the business relationship cannot be withheld from the taxpayer as third-party return information (although other exemptions may apply). Any notation in the file that explicitly refers to the tax matters of the property owner or supplier(s) must be withheld from the taxpayer as third-party return information if the information is from IRS sources (including the caseworker). For a discussion of how the wording of the request may change the response, see IRM 11.3.41.13.8.27, Requests Involving Asset Locator Records (ChoicePoint/ Accurant, etc.). Also, a third-party's SSN provided by the taxpayer under examination would not be withheld, although if the same SSN were retrieved from IRS sources it would be withheld. If the third-party Social Security Number (SSN) provided by the taxpayer has been checked against IRS records, any notation of the result must be withheld as third-party return information.

Note: See IRM 11.3.2, Disclosures to Persons with a Material Interest, for additional information on releases of tax information based on material interest. This includes joint taxpayer releases, releases to corporate officers and releases to Tax Matters Partners (TMP) in TEFRA related audits outside of IRC 6103(e)(10) regulations.

- b. Rule 6(e) of the Federal Rules of Criminal Procedure exempts grand jury information.
- c. 31 USC 5319 exempts currency transaction and certain other reports.
- d. 41 USC 4702 exempts certain contract proposals (see IRM 11.3.13.6.2, Contracts/Commercial Information).
- e. 5 USC 7114 (b)(4)(C) exempts labor management guidance (see the example in IRM 10.5.6.8.6, Disclosure Under IRC 6103(l)(4)).
- f. IRC 6105 exempts tax convention information (treaties with other countries).
- g. 18 USC 701 prohibits copying Federal agency identification media (see IRM 11.3.41.13.8.29, Requests for Pocket Commissions).

- (3) Generally, procedural rules are inappropriate as a basis for the (b)(3) exemption, except for those rules prescribed by law and having the effect of law such as Rules 6(e) and 16 of the Federal Rules of Criminal Procedure.

Caution: Do not cite IRC 7213 , IRC 7213A , IRC 7431 , or the Privacy Act of 1974, as supporting statutes to the (b)(3) exemption.

- (4) When a statute other than IRC 6103 is used to support the (b)(3) exemption, include a brief explanation of how the statute applies in the case history notes.

11.3.13.4.2.5

(08-14-2013)

Exemption (b)(4)

- (1) This exemption protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential.
- (2) The exemption is intended to protect the interests of both the government and submitters of information. Its existence encourages submitters to voluntarily furnish useful commercial and financial information to the government and correspondingly provides the government with an assurance that such information will be reliable and complete.
- (3) The exemption also protects submitters who are required to furnish commercial and financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure.
- (4) Requests for competitive bids for government contracts may fall in this category.
- (5) This exemption relates to information submitted by individuals, corporations or partnerships. It does not apply to records generated by the government.
- (6) 26 CFR 601.702 establishes certain notification and processing procedures for requests to which exemption (b)(4) might apply. Reference this citation as needed. For further information, see IRM 11.3.13.6.2, Contracts/Commercial Information.

11.3.13.4.2.6

(10-06-2025)

Exemption (b)(5)

- (1) This exemption applies to inter-agency or intra-agency memorandums, letters or emails that would not be available by law to a party other than an agency in litigation with the IRS. Courts have interpreted this language to exempt those documents, and only those documents, that are normally privileged in the civil discovery context.

Note: Counsel must be contacted for release determination on any emails to/from Counsel that are found in responsive records.

- (2) There are three primary privileges incorporated into exemption (b)(5):
 - Deliberative process privilege
 - Attorney work product privilege
 - Attorney-client privilege
- (3) Once determination has been made to apply exemption (b)(5), the case notes and the response letter must state which privilege, or privileges, the withheld information falls under. The case notes must also support the use of exemption (b)(5) and whether the information was considered for a discretionary disclosure determination.

- (4) The Service's assertion of these privileges in response to FOIA requests and any related discretionary determinations must be consistent with the application of these same privileges in the context of discovery.
- (5) Deliberative process is the most commonly invoked privilege under exemption (b)(5). There are two fundamental requirements, both of which must be met, in order for the deliberative process privilege to apply.
 - a. The communication must be pre-decisional; that is, it precedes the adoption of an agency policy or other final decision, and
 - b. The communication must be deliberative; that is, play a direct part in the process of making recommendations or expressing opinions on legal or policy matters.

Note: Communications which precede a determination not to issue a decision, policy statement, or published guidance, or with respect to which no final decision, policy statement, or published guidance has been issued, may be withheld under the deliberative process privilege if they meet these two requirements. Internal discussion and recommendations regarding FOIA withholding determinations, ordinarily will also be withheld as deliberative process material.

Note: Documents which post-date a decision, but which merely recite deliberations that pre-date the decision, may be withheld if they otherwise meet the requirements of exemption (b)(5).

Note: The deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

- (6) The burden is on the agency to show the records meet both requirements. Records that reflect existing agency policy or reflect an interpretation of law already adopted by the agency should be disclosed because they are not pre-decisional, but discuss established policies and decisions.
- (7) Generally, factual portions of internal agency records which may fall within the deliberative process privilege are not exempt from disclosure. However, if the facts are inextricably intertwined with deliberative matter, or selectively culled as part of the author's deliberations on the facts, they may be exempt.

Example: Revenue Agent Form 4665, Report Transmittal, or "T-letters" transmitting information to Appeals are generally not exempt in their entirety, but must be reviewed to consider whether all, or part, of the record may be exempt.

- (8) Disclosure personnel will withhold documents pertaining to published guidance (i.e. regulations, revenue rulings, revenue procedures, notices, and announcements), and those generated during the preparation of any statements of agency policy, or the preparation of interpretations adopted by the agency (i.e., Appeals Settlement Guidelines, Coordinated Issue Papers, IRM, etc.), when such documents are exempt from disclosure pursuant to discretionary discovery privileges or FOIA exemptions. The basis for this determination is twofold:
 - a. To protect against public confusion that might result from the disclosure of various internal positions that do not reflect the grounds for the adoption of the guidance or policy that was published (or the decision not to publish at all).

- b. To protect against exposing the decision-making processes of the Internal Revenue Service in a way that would discourage candid discussion and undermine the Service's ability to perform its critical tax administration functions.

- (9) Work product privilege protects records prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation. Generally, it does not cover records written by attorneys in the ordinary course of business (i.e., routine review of statutory notices of deficiency or summonses); it only covers those records which, under the particular facts and circumstances, were created primarily because of ongoing, or reasonably expected, litigation. A discussion with the Counsel attorney is required prior to release of any work product. Generally, discretionary FOIA exemptions for documents pertaining to these matters may be waived only by the Associate Area Counsel in consultation with the affected Service client at the supervisory level. For detailed instructions regarding who is authorized to make these determinations, see Chief Counsel Directives Manual (CCDM) 30.11.1.6.

Note: This privilege applies regardless of the court in which the litigation has been (or would be) filed.

- (10) Documents pertaining to litigation include not only documents prepared by Counsel attorneys, but also documents maintained in the administrative files of the Service to which the litigation pertains. Litigants have sometimes used the FOIA as a discovery tool. Therefore, coordinate FOIA responses carefully with the Counsel employee responsible for the litigation. Good coordination will help to ensure that material which is privileged in discovery is also appropriately withheld pursuant to FOIA exemption (b)(5), and that other material which could impair the government's case is reviewed for withholding pursuant to applicable FOIA exemptions. Counsel employees will provide disclosure and withholding recommendations in accordance with CCDM 30.11.1.

Note: The FOIA and Discovery are two separate processes. FOIA requests for records that involve a Tax Court case must be processed in coordination with Counsel.

- (11) Attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice. This includes communication from the client to the attorney and from the attorney to the client based on confidential information conveyed to the attorney by the client. The attorney-client privilege is not limited to communications pertaining to litigation or possible litigation. A discussion with the Counsel attorney is required prior to releasing any attorney-client communication. Discretionary FOIA exemptions for documents pertaining to these matters may be waived only by the Associate Area Counsel in consultation with the affected Service client at the supervisory level. See CCDM 30.11.1.

Note: This privilege also applies to communication among Counsel attorneys regarding the legal advice sought or provided.

Note: This privilege also applies when IRS Counsel seeks legal advice from the Department of Justice (including the Offices of the United States Attorneys).

- (12) Once it is determined that there is a sound factual and legal basis for asserting the exemption, a decision must be made about whether the IRS should

exercise its discretion not to claim the exemption. Make the decision to disclose information in response to a FOIA request only after a full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosing.

- (13) Sometimes, Chief Counsel Advice or other written determinations are located in field compliance files. Since these documents are exclusively governed by IRC 6110, process copies of these documents in accordance with that statutory schema and not the FOIA. IRC 6110 requires the IRS to publish Chief Counsel Advice in addition to other written determinations (i.e., letter rulings, technical advice, and determination letters). If a FOIA request seeks an exam file, and a section 6110 written determination is included in the file, see IRM 11.3.13.6.1. Additional information for handling requests for section 6110 written determinations can also be found at IRC 6110, IRM 37.1.1, Disclosure, Written Determinations Under Section 6110, CCDM 33.1.3, Releasing Legal Advice to the Public, and CCDM 37.1.1, Written Determinations Under Section 6110.

11.3.13.4.2.7

(10-06-2025)

Exemption (b)(6)

- (1) This exemption pertains to the protection of personal privacy and requires a balancing of privacy and public interests. If there is a protectable privacy interest threatened by disclosure of the records, this exemption requires a balancing between the individual's right of privacy against the public's right to be informed. The public interest in this balance is whether the information will shed light on government operations (the core purpose of FOIA).
- (2) This exemption protects personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The phrase "similar files" as used in the (b)(6) exemption has been given a broad interpretation. The Supreme Court stated that Congress intended exemption (b)(6) to cover detailed information on an individual which can be identified as applying to that individual, regardless of the type of file in which the information is maintained, rather than just a narrow class of files. This may include reports of reviews made of an office if the narrative portion of the review focuses on a named official or uniquely titled official whose operation is being evaluated.
- (3) To accomplish the balancing of public interest and privacy interest, use the following formula:
 - a. If no privacy interest exists - release the information
 - b. If any protectable privacy interest exists - check for public interest
 - c. If there is no public interest (or public interest is not the kind of interest that sheds light on how the government operates) - withhold the information
 - d. If there is both privacy and **qualifying** public interest - balance the two interests with a leaning toward releasing the information
- (4) Examples of items that are protected by this exemption are the real names of employees using pseudonyms, disciplinary action files, complaint files, and employees' ratings of record.
- (5) Exemption (b)(6) does not preclude the release of:
 - Purely statistical information
 - Staffing patterns
 - Graphs of units closed, or
 - Overtime expenditures

- (6) When information pertains to federal government employees, but the information is essentially business in nature rather than personal, the (b)(6) exemption is not applicable.

Example: A request about an IRS employee's business travel (i.e., locations, costs) should not be withheld under exemption (b)(6).

- (7) The *DOJ Guide to the FOIA and Privacy Act Overview* contain an in-depth discussion about how to apply this exemption.

11.3.13.4.2.8
(04-19-2017)
Exemption (b)(7)

- (1) Exemption (b)(7) exempts from disclosure records or information compiled for law enforcement purposes, but only to the extent that the production of such records:
- could reasonably be expected to interfere with enforcement proceedings,
 - would deprive a person of a right to a fair trial or an impartial adjudication,
 - could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - could reasonably be expected to disclose the identity of a confidential source, including state, local, or foreign agency or authority, or any private institution, which furnished information on a confidential basis. In the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, any information furnished by the confidential source is also exempt,
 - would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
 - could reasonably be expected to endanger the life or physical safety of any individual.
- (2) This exemption allows, but does not require, the withholding of records or information compiled for law enforcement purposes. **It does not permit a blanket denial of records.** When information is withheld, in full or in part under this exemption, case notes must explain the foreseeable harm releasing such records would cause. Consider whether partial disclosure of information is possible whenever a determination that a full disclosure of a requested record is not possible. Records may be edited or withheld only if the production of such records would cause one of the six specifically enumerated harms described above. The exemptions under (b)(7) apply to records generated out of civil and criminal judicial and administrative enforcement proceedings, and also apply to information that discusses investigations, such as instructions to staff and other employee guidelines.

Note: The first (threshold) requirement that must be met when applying any of the (b)(7) exemptions is to determine that the document or record in question was compiled for law enforcement purposes. If the record was not compiled for law enforcement purposes, the (b)(7) exemptions do not apply.

Example: An agency's general monitoring of its own employees to ensure that the procedures in effect are compliant with the agency's statutory mandate and regulations does not satisfy the threshold requirement.

Note: Case notes must support the use of exemption (b)(7) and Disclosure personnel must be able to determine the harm to the government's interest and articulate how release would or could interfere with enforcement proceedings.

11.3.13.4.2.8.1
(10-05-2021)

Exemption (b)(7)(A)

- (1) Exemption (b)(7)(A) exempts from disclosure, records or information compiled for law enforcement purposes. Information contained in records compiled for a law enforcement purpose is not exempt unless disclosure would harm a protected interest. Thus, records may be withheld if disclosure could reasonably be expected to interfere with enforcement proceedings. This will apply to any ongoing enforcements or where there is a concrete prospect of future enforcement proceedings. This exemption may apply to open or closed investigatory files, along with non-investigatory files if the files were compiled for law enforcement purposes. The supporting documentation of the expected harm to interfere with enforcement proceedings must be explained in the inventory management system case notes.
- (2) Records may be withheld if disclosure of information unknown to requesters might impede the investigation or harm the government's case in that particular or a related proceeding. A determination may be made to exempt a category of records in a specific case, without the necessity of completing a document-by-document review if the category of records meets the requirements for exemption described in (1) above. It is expected that withholding a category of records rather than doing a document-by-document review would be an infrequent approach based on very specific and compelling circumstances relating to individual enforcement matters. The following procedures and documentation are required to make a determination to exempt a category of records.
- (3) If disclosing the records to the requester will harm an ongoing investigation, and making copies for Disclosure personnel would also impair the investigation because it would significantly interrupt the efficient conduct of the investigation, the function with control over the records must make a written attestation and provide it to Disclosure personnel. Disclosure personnel will include the attestation in the FOIA case file. The attestation must contain:
 - a. Employee name, title, and phone number
 - b. Approximate volume of records (number of file cabinet drawers, boxes, pages etc.)
 - c. Location of records
 - d. Other contact name, title, telephone number (i.e. Supervisor or Administrative personnel who would be able to locate the records)
 - e. Statement that disclosure of the records could reasonably be expected to interfere with enforcement proceedings and that copies of all records to be withheld from the requester are being provided at this time to the Disclosure employee or will be provided to the Disclosure employee if the requester files an administrative appeal or judicial complaint pertaining to the FOIA determination
 - f. Assurance that the FOIA search request has been noted in the investigative file, and
 - g. The signature of an IRS or Chief Counsel supervisor who has the authority to withhold return information under IRC 6103(e)(7) as found in Delegation Order 11-2 (see IRM 1.2.2.12.2).

- (4) The assigned Disclosure employee will advise the requester that responsive records in an approximate volume are being withheld pursuant to FOIA exemption (b)(7)(A) and/or (b)(3) in conjunction with IRC 6103(e)(7) .
- (5) The function making the determination that disclosure could harm the government's case may provide a complete copy of the records being withheld to the Disclosure employee or must state in the documentation described above that a complete copy of the withheld documents will be kept available and will be provided if the requester files an administrative appeal or judicial complaint in the FOIA matter. IRS must be able to identify any documents withheld. Therefore, if the function does not provide copies of the withheld records to the Disclosure employee, it is imperative that the function clearly identify within its file which documents were withheld in response to the FOIA request, and that this identification be maintained for the life of the file. None of the withheld documents may be destroyed sooner than called for in the Records Control Schedule controlling FOIA records, and case documents received or developed subsequent to the FOIA request must be distinguishable from documents withheld.
- (6) The function with control of an open and ongoing case must carefully weigh the administrative burden of providing the copies with its response to the search request against the burden of maintaining the segregation within its file between the withheld documents and newer material added as the case continues. An issue to consider is the possibility that the requester will make additional requests for the file, which will require the function to separately identify the documents responsive to each FOIA request.
- (7) The Supreme Court has stated that the exemption may also apply when release of requested information would give the requester earlier and greater access to the government's case than he/she would otherwise have.
- (8) This exemption is commonly applied to open Criminal Investigation, Examination, Collection, Appeals, and Counsel files. Disclosure personnel, after coordinating with appropriate functional personnel, must be able to determine the harm to the government's interest and articulate how release would interfere with enforcement proceedings. Document the file adequately to reflect the determination.
- (9) Occasionally, exemption (b)(7)(A) may be applied to records in a closed case, where disclosure could reasonably be expected to interfere with other open or future expected cases.

Example: The amount of money actually spent in a sting operation may be withheld to prevent public knowledge of the agency's resource limitations. This is distinct from exemption (b)(7)(E) because this is actual funds, not guidelines, procedures or techniques.

11.3.13.4.2.8.2
(08-14-2013)
Exemption (b)(7)(B)

- (1) Exemption (b)(7)(B) protects against prejudicial pretrial publicity. This exemption provides for withholding if disclosure of the records would deprive a person of a right to a fair trial or impartial adjudication. This is primarily a protection against prejudicial publicity in civil or criminal trials. This is rarely used by IRS.

11.3.13.4.2.8.3
(04-19-2017)

Exemption (b)(7)(C)

- (1) Exemption (b)(7)(C) protects personal information found in law enforcement records. This exemption protects from disclosure records or information compiled for law enforcement purposes the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- (2) This exemption differs from exemption (b)(6) in that it requires a different standard for evaluating the invasion of personal privacy. It requires only a reasonable expectation of an invasion of personal privacy rather than a clearly unwarranted invasion of personal privacy. It also differs from exemption (b)(6) in that it requires the records or information being withheld to have been compiled for law enforcement purposes.

Example: A FOIA request for only an Integrated Data Retrieval System (IDRS) transcript does not constitute information compiled for law enforcement purposes but simply information compiled to respond to the FOIA request. (Exemption (b)(6) should be considered in this instance to protect any personal privacy.) However, copies of IDRS transcripts within a tax administration file that were compiled by the Compliance employee as part of their administrative proceeding would be considered compiled for law enforcement purposes. (Both exemption (b)(6) and (b)(7)(C) should be considered in this instance to protect any personal privacy.)

- (3) Prior to invoking this exemption, you must identify and evaluate the personal privacy interests implicated in the requested records. The Supreme Court held that whether disclosure is warranted within the meaning of the (b)(7)(C) turns upon the nature of the requested information and its relationship to the FOIA's central purpose of exposing to public scrutiny official information that sheds light on an agency's performance of its statutory duties. Disclosure personnel must balance competing personal privacy and public interests.
- (4) This exemption only protects the personal privacy of individuals. Entities have no personal privacy. If the privacy or confidential information of a non-individual entity is at issue, Disclosure personnel must consider whether another FOIA exemption will properly apply to withhold the information.
- (5) This exemption is commonly used to protect the identity of lower level Compliance employees at the Federal, state, or local level, names and other identifying information of taxpayers or other targets under investigation, and any witnesses or confidential sources interviewed. See IRM 11.3.41.13.8.22, Employee Privacy Matters, for more information.

11.3.13.4.2.8.4
(08-14-2013)

Exemption (b)(7)(D)

- (1) Exemption (b)(7)(D) protects the identity of confidential sources and, in criminal cases, the information the confidential source provided. This exempts from disclosure the name and any material which could reasonably be expected to disclose the identity of a confidential source. In criminal investigations, any information furnished by a confidential source, whether or not it identifies the source, is exempt.
- (2) The first part of this provision, concerning the identity of confidential sources, applies to any type of law enforcement record, civil or criminal. The term confidential source refers not only to paid informants but to any person who provides information under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred. The factual basis for confidentiality, if not clear from the face of the records, will be documented in the case file.

- (3) A source can be confidential with respect to some items of information provided, even if other information is furnished on an open basis.
- (4) Sources have been interpreted to include local, state, and foreign law enforcement agencies that provide information to an agency in confidence. This was codified by the 1986 amendments to the FOIA. It does not include Federal agency personnel.
- (5) The second part of the provision applies to the information provided by the confidential source. Generally speaking, with respect to civil matters, such information may not be treated as exempt on the basis of exemption (b)(7)(D), except to the extent that its disclosure would reveal the identity of the confidential source. However, with respect to criminal investigations and lawful national security intelligence investigations, any information provided by a confidential source is, by that fact alone, exempt.
- (6) Use of this exemption by itself provides an indication that a confidential source exists. Use this exemption only where Disclosure personnel have confirmed, through consultation with the affected function(s), that the requester knows a confidential source exists and asserting the exemption is not likely to indirectly reveal the identity of the source. Where assertion of the exemption is believed to be inappropriate, exemption (b)(3) in conjunction with IRC 6103(e)(7) , (b)(7)(A), and (b)(7)(C) may be asserted.

11.3.13.4.2.8.5
(10-05-2021)

Exemption (b)(7)(E)

- (1) Exemption (b)(7)(E) exempts from disclosure certain enforcement procedures. This exemption applies to records that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of law.
- (2) This exemption may only be used to protect investigative techniques or guidelines not generally known to the public.

Note: Where a technique is generally known, but the criteria for its use or the details of its use in a specific case are not publicly known, exemption (b)(7)(E) may apply to protect the information. For example, wiretapping is a technique generally known to the public. However, the criteria for IRS use of this technique are not generally known, and can be withheld using this exemption. Further, because the mere fact of use of the technique in a specific situation may reveal the criteria for use, fact of usage may (under certain circumstances) be withheld. This must be discussed with the agent(s) handling the investigation.

Caution: Information marked "OUO", "CUI", or a similar classification is not automatically exempted under (b)(7)(E). The information must still be reviewed, and an appropriate harm standard provided, in order to redact the information.

- (3) This exemption has been applied to protect DIF, DAS and UIDIF scores, tolerances, and investigative criteria, which are also protected by FOIA exemption (b)(3) in conjunction with IRC 6103(b)(2). See IRM 11.3.41.13.8.9, DIF, DAS, and UIDIF Score, SERFE Indicator. Settlement criteria or records that discuss hazards of litigation can also be withheld pursuant to FOIA exemption (b)(7)(E).

- (4) After the passage of time, tolerances, investigative and prosecutorial criteria, and settlement guidelines may become known to the public or revised. Consider such factors before invoking the exemption. The determination must be made in consultation with the affected function(s), and documented in the case file.

11.3.13.4.2.8.6

(08-14-2013)

Exemption (b)(7)(F)

- (1) Exemption (b)(7)(F) applies to the life and safety of individuals. It exempts information the disclosure of which could reasonably be expected to endanger the life or physical safety of any individual.

Example: This exemption might apply to information that would reveal the identity or existence of undercover agents (local, state, or federal) working on such matters as narcotics, organized crime, terrorism, or espionage.

- (2) The exemption is not limited to law enforcement personnel. The 1986 amendments to the FOIA broadened the scope of the exemption to encompass danger to any person. This exemption may also be appropriate to protect the identity or location of witnesses if the requester is already known or believed to be violent.

11.3.13.4.2.9

(08-14-2013)

Exemption (b)(8)

- (1) Exemption (b)(8) applies to reports related to the regulation of financial institutions. This exempts from disclosure matters contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. It is rarely used by the IRS.

11.3.13.4.2.10

(08-14-2013)

Exemption (b)(9)

- (1) Exemption (b)(9) applies to geological and geophysical information and data, including maps concerning wells. It is rarely used by the IRS.

11.3.13.4.3

(08-14-2013)

Record Exclusions

- (1) The Freedom of Information Act includes three special exclusions for protecting certain law enforcement records under subsection (c) of the FOIA.
- (2) These exclusions expressly authorize Federal law enforcement agencies to treat certain law enforcement records as not subject to the requirements of the FOIA. These provisions apply only to especially sensitive records in specific limited circumstances.
- (3) Disclosure personnel **must** thoroughly familiarize themselves with the exclusion guidelines found in the *DOJ Guide to the Freedom of Information Act*.
- (4) Disclosure personnel must coordinate the assertion of these exclusions using established communication protocols with the FOIA Senior Policy Analyst who will coordinate as necessary with Branch 6 or 7 of the Office of the Associate Chief Counsel, Procedure and Administration.

11.3.13.4.3.1

(08-14-2013)

Exclusion (c)(1)

- (1) The (c)(1) exclusion provides that, under certain conditions, when a request involves access to records described in subsection (b)(7)(A), the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the FOIA.
- (2) The exclusion may only be applied when the following conditions exist:

- a. The investigation or proceeding involves a possible violation of criminal law.
 - b. There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency.
 - c. Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.
- (3) Where the excluded records are just part of other records subject to the request, the request will be handled as a routine request with the other responsive records processed as if they were the only responsive records.
- (4) Where the only records responsive to a request fall within the exclusion, advise the requester that no responsive records exist.
- (5) The letter to the requester must not mention the (c)(1) exclusion or include the excluded documents in any statement of the quantity of documents located or withheld.
- (6) The case history notes must thoroughly document the basis for the exclusion and identify the excluded documents and the functional employee with knowledge of the situation. If possible, the excluded documents shall be kept with the FOIA case file, clearly identified as (c)(1) excluded documents.
- (7) After issuing an initial response that involves the (c)(1) exclusion, if the taxpayer learns of the investigation and a FOIA appeal or lawsuit is pending, it is no longer appropriate to claim the exclusion; however, other FOIA exemptions may apply.

11.3.13.4.3.2
(08-14-2013)
Exclusion (c)(2)

- (1) The (c)(2) exclusion provides that a law enforcement agency may treat requests for informant records maintained under an informant's name or personal identifier as not subject to the FOIA unless the informant's status as an informant has been officially confirmed.
- (2) This does not preclude the IRS from responding to such requests by denying third-party investigative records without searching for or confirming or denying the existence of such records consistent with statutory or regulatory requirements.

11.3.13.4.3.3
(08-14-2013)
Exclusion (c)(3)

- (1) The (c)(3) exclusion pertains only to classified law enforcement records concerning foreign intelligence or counterintelligence or international terrorism generated by the FBI.

11.3.13.4.4
(07-16-2020)
Glomar

- (1) Executive Order 12-958, as amended, incorporates the use of a "Glomar" by a federal agency in response to a request for records. The "Glomar" response provides that: "An agency may refuse to confirm or deny the existence or non-existence of requested records whenever the very fact of their existence or non-existence is itself classified under this order."
- (2) A FOIA exemption must apply to information that is being considered for withholding under a Glomar response. A Glomar response can only be used if any responsive records, or evidence that records exist, fall under one of the nine FOIA exemptions. The exemption(s) and support for the use of those exemptions must be documented in the inventory management system case notes. The basis for applying a Glomar response must also be documented in the inventory management system case notes.

Example: A FOIA request is received from a third party asking for copies of tax administration files for a taxpayer and the third party does not have proper authorization. These tax administration files would fall under FOIA exemption (b)(3) used in conjunction with 26 U.S.C. 6103 and IRS can neither confirm nor deny the existence of any tax records to the third party.

- (3) A Glomar response is not appropriate when the FOIA request is imperfect.
- (4) In employing “Glomarization”, agencies must be careful to use it only to the extent that is warranted by the terms of the FOIA request at hand. For a request that involves more than just a law enforcement file, the agency should take a “bifurcated” approach to it, distinguishing between the sensitive law enforcement part of the request and any part that is not so sensitive as to require “Glomarization”.
- (5) Appeal rights are provided to the requester when a Glomar response is used.

11.3.13.4.5
(10-06-2025)
Outside of Scope

- (1) “Outside the scope” is not a legal FOIA exemption found in section 552(b) of the Freedom of Information Act and should rarely be used when processing a FOIA request. The term outside of scope refers to responsive records that have been provided or obtained that are outside the scope of the FOIA request.
- (2) Outside the scope of the FOIA request is the term used to refer to records, or portions of records, that are not responsive to the request. This situation should rarely apply because caseworkers should only be retrieving or receiving documents that are responsive to the request. Once records are received, information can only be withheld by citing an appropriate FOIA exemption.

Note: Documents such as the Form 2275-A, Records Request, Charge and Recharge (Disclosure), that the caseworker used to request files are not considered responsive and should be removed from responsive records before sending a final response to the requester. Do not include them as responsive documents to the request. Non-responsive records such as Form 2275-A should be scanned and placed in the inventory management system, using appropriate procedures to import documents for that specific system, but should be maintained separately from responsive records. These types of documents should remain in the inventory management system to support actions taken on the case.

- (3) A legitimate and rare outside the scope situation only applies when there are records that are “created” or came into the possession or control of the record holder after the date of the FOIA. However, out of scope does not apply to entries on transcripts or case history entries that were made after the date of the FOIA as the case history entry is not creating a record, it only reflects actions taken after the date of the FOIA. The record in its entirety is responsive because it was within the possession and control of the function prior to the date of the FOIA. See 26 CFR 601.702(c)(8)(ii). Even if the record was created after the date of the FOIA, release should be considered based upon the concept of openness and transparency or based on the time it takes to locate and retrieve responsive records.

11.3.13.5
(10-06-2025)
FOIA Requester Rights

- (1) There are various methods for FOIA requesters to resolve issues they may have with the processing of their FOIA Request.
- (2) Disclosure and other IRS function staff may be asked to assist in these processes as appropriate to allow a prompt resolution to any disputes.

11.3.13.5.1
(10-06-2025)
FOIA Public Liaison

- (1) The Executive Order issued in December 2005, the OPEN Government Act of 2007, and the FOIA Improvement Act of 2016 required the IRS to designate FOIA Public Liaisons to serve as supervisory officials to whom a FOIA requester can raise issues about the service the FOIA requester receives.
- (2) To comply with the Executive Order, the IRS designated the Disclosure Managers as the FOIA Public Liaisons for their respective offices.
- (3) In their role as FOIA Public Liaison, Disclosure Managers are responsible for reducing delays in processing, knowing the status of requests in their offices, and assisting in the resolution of disputes raised by FOIA requesters for cases completed by their staffs. Disclosure staff must notify the Disclosure Manager promptly of any inquiries or disputes raised by requesters.
- (4) The FOIA Improvement Act of 2016, signed on June 30, 2016, states that whenever an agency sends a response to a FOIA request, the agency must make known to the person making such a request their right to seek assistance from the FOIA Public Liaison.

Note: Agency responses include extension, interim, and final response letters. FOIA Public Liaison contact information must be included in all of these types of response letters.

11.3.13.5.2
(10-06-2025)
Office of Government Information Services (OGIS)

- (1) The Office of Government Information Services (OGIS) is the Federal Freedom of Information Act Ombudsman. OGIS was created within the National Archives and Records Administration (NARA) when the OPEN Government Act of 2007 amended the FOIA regulations (5 USC 552). OGIS reviews agency compliance with FOIA, provides mediation services to resolve FOIA disputes, and identifies policies and procedures for improving FOIA compliance.
- (2) Typically requesters submit their dispute to OGIS, and OGIS contacts the FOIA Senior Policy Analyst. Any OGIS inquiries received in the field must be referred to the FOIA Senior Analyst.
- (3) The FOIA Improvement Act of 2016, signed on June 30, 2016, states that whenever an agency sends an adverse determination responsive to a FOIA request, the agency must make known to the person making such a request the following:
 - a. The right of such person to appeal to the head of an agency within a period that is no less than 90 days after the date of such adverse determination, and
 - b. The right of such person to seek dispute resolution services from the FOIA Public Liaison, and
 - c. The right of such person to seek dispute resolution services from the Office of Government Information Services (OGIS).
- (4) All agency response letters with an adverse determination must include the Notice 393 appeal rights notification, the FOIA Public Liaison contact information, and OGIS contact information.

11.3.13.5.3
(10-06-2025)

Administrative Appeals

- (1) In accordance with 26 CFR 601.702(c)(10)(i), a requester may administratively appeal any initial determination under the FOIA that notifies the requester:
- of a denial of records, in full or part,
 - of an adverse determination of the requester's fee category,
 - of an adverse determination of the requester's fee waiver or fee reduction request,
 - that no responsive records exist, or
 - a denial of a request for expedited processing.

Note: See IRM 1.2.2.12.4, Delegation Order 11-4, Responses to Administrative Appeals Filed Pursuant to the Freedom of Information Act (5 USC 552), for employees delegated to receive, and respond to, IRS FOIA appeals.

Note: The appeal must be postmarked within 10 days of the date of the notification that expedite processing was denied.

- (2) The FOIA Improvement Act of 2016, signed on June 30, 2016, states that whenever an agency sends an adverse determination response to a FOIA request, the agency must make known to the person making such a request the following:
- The right of such person to appeal to the head of an agency within a period that is no less than 90 days after the date of such adverse determination, and
 - The right of such a person to seek dispute resolution services from the FOIA Public Liaison, and
 - The right of such person to seek dispute resolution services from the Office of Government Information Services (OGIS)
- (3) All agency response letters with an adverse determination must include the Notice 393 appeal rights notification, the FOIA Public Liaison contact information, and OGIS contact information.
- (4) The IRS Independent Office of Appeals (Appeals) is responsible for processing administrative appeals under the FOIA.
- (5) Appeals personnel will no longer process or monitor FOIA appeals resulting from constructive denials for records (i.e., lack of timely response). If the Appeals Office receives such an appeal, it will advise the requester that there are no administrative appeal rights and the only recourse is to seek judicial review in court or wait for the initial determination.

Note: When the Appeals Office requests it, Disclosure personnel will provide either a written or verbal anticipated response date.

- (6) A requester may administratively appeal the adequacy of the FOIA search. Requester who believe that there may be more responsive records than those addressed in the FOIA response may communicate their concern regarding the search to the FOIA caseworker. If the concern is not promptly resolved by the caseworker and their Disclosure Manager, then the requester may exercise administrative appeal rights.

Note: Requesters need not contact the caseworker before filing an administrative appeal of the adequacy of a FOIA search.

- (7) Appeals has access to the 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 Appeals with the paper file, as needed.
- (8) If informal or partial indexes are part of the file, Appeals processing personnel may request that Disclosure personnel develop improved indexes in order to facilitate resolution of an appeal. When requested, Disclosure personnel will cooperate fully with Appeals personnel.

11.3.13.5.4
(10-06-2025)
**FOIA Litigation
Declarations**

- (1) If the requester files litigation pursuant to the FOIA, attorneys from the Office of the Associate Chief Counsel (Procedure and Administration) who assist the Department of Justice to defend the agency in FOIA lawsuits prepare declarations for the signature of Disclosure personnel and employees in other functions who assisted in conducting searches for responsive records or who recommended withholding information to establish case processing and the scope of the search.
- (2) Counsel also prepares declarations for the signature of the Revenue Agent, Revenue Officer, or Special Agent who is most familiar with the underlying investigation, or the supervisor of those individuals to establish the factual basis for any law enforcement claims.

Note: Generally, Counsel will also prepare a declaration for the signature of the appropriate official under Delegation Order 11-2 (Rev. 5), found in IRM 1.2.2.12.2, if the request response asserted FOIA subsection (b)(3) in conjunction with IRC 6103(e)(7).

- (3) Declarations are based on the specific facts and circumstances of the particular case that led logically to the conclusions that relied on those facts.
- (4) Attorneys in Branch 6 or 7 of the Office of the Associate Chief Counsel (Procedure and Administration) may require an index of documents withheld in full and in part in order to facilitate resolution of the case. Disclosure personnel will prepare, or assist in preparing, such an index, as requested.
- (5) Disclosure personnel will assist the Counsel attorneys assigned to litigation to:
 - a. gather necessary facts for the declarations,
 - b. provide documents as exhibits to the declarations, as appropriate, and
 - c. coordinate the execution of the declarations by agency personnel.

11.3.13.6
(08-14-2013)
Special Issues

- (1) This subsection provides guidance related to some of the more complex or unusual issues encountered when processing FOIA requests.

11.3.13.6.1
(10-06-2025)
**Written Determinations
(Including Private Letter
Rulings, Technical
Advice & Chief Counsel
Advice)**

- (1) The public may access “written determinations” and “background file documents” pursuant to IRC 6110 . These documents are not subject to FOIA. These terms are defined in IRC 6110(b)(1) and (b)(2) respectively. See IRM 37.1.1, Disclosure, Written Determinations Under Section 6110, regarding processing requests pursuant to IRC 6110.
- (2) The background file may also contain records that are not available under IRC 6110 (i.e., internal memoranda, inter-agency memoranda, routing slips, emails,

and case control sheets) but are subject to request under the FOIA. The Tax Law Specialist will process FOIA requests for background file records.

Note: Disclosure personnel cannot process a third-party FOIA request for background file records if the request identifies the records by a taxpayer name or identifying number. A third party seeking access to written determinations or background files, whether under IRC 6110 or the FOIA, must identify the requested records as described in 26 CFR 301.6110-1 (i.e., by providing the identification, file, or similar number, category, or code section). Proper authorization must be included with a request for third-party written determination documents.

- (3) This section of the IRM provides guidance related to the processing of FOIA requests for records in the underlying file which are not covered by IRC 6110.
- (4) Written determination files are generally stored in the National Office of the Office of Chief Counsel. Written determinations include:
 - Private Letter Rulings (PLR)
 - Technical Advice Memoranda (TAM)
 - Chief Counsel Advice (CCA)
- (5) All PLR's and TAM's are taxpayer specific and are protected under IRC 6103. Proper identification/authorization must be included with the request to be valid for processing.
- (6) CCA is written advice or instruction by the National Office of the Office of Chief Counsel to field offices relating to interpretations of revenue provisions whether taxpayer specific or generic. Examples are:
 - Litigation Guideline Memoranda (LGM)
 - Bulletins
 - Legal Advice

Note: Not all CCA's are taxpayer specific. Requests for CCA's that are taxpayer specific must include proper identification/authorization to be valid for processing.

- (7) CCA issued on or after January 1, 1986, are available for public inspection through the Freedom of Information Act (FOIA) Library and caseworkers may direct requesters seeking CCA to the FOIA Library.

Note: If the requester seeks a copy of a written determination from 1997 or later, and he/she can provide the identification number or Uniform Issue List (UIL) number, field Disclosure personnel may advise the requester how to access the record on the internet website and/or download it themselves and provide it. If, however, the request seeks an underlying file, discuss with the Disclosure Manager to get assistance from a Tax Law Specialist or transfer that portion of the request to the Tax Law Specialist with Disclosure Manager approval.

11.3.13.6.2
(10-05-2021)
**Contracts/Commercial
Information**

- (1) Contractors (Business Submitters/Vendors) provide information to the IRS that may contain trade secrets and commercial or financial information that is privileged or confidential. The IRS routinely receives FOIA requests for this information and must give the contractor the opportunity to provide a detailed statement of any objections to the release of the contract records.

Note: All FOIA requests for contract information must have a valid IRS and/or Treasury contract number listed in the request. If no contract number is listed then the request is imperfect.

- (2) Requesters sometimes seek access to information which, although physically in IRS possession is:
- not an agency record subject to the FOIA; or
 - exempt from access pursuant to 5 USC 552(b)(4) as trade secrets and commercial or financial information obtained from a person and is therefore privileged or confidential.

Caution: Take care not to release information described in (2)(b) without considering the commercial or proprietary interests of the originator.

- (3) Examples of information that may involve commercial or proprietary considerations include:
- Studies provided by non-governmental sources
 - Training materials prepared under contract
 - Operating manuals for purchased or leased equipment
 - Transcripts prepared by court stenographers
 - Contracts and related records concerning the purchase of goods or services
 - Computer software (off the shelf or not governmentally produced)

Note: The IRS Restructuring and Reform Act of 1998 (RRA 98) provides very specific circumstances under which a summons may be issued for the production and/or analysis of tax-related computer source code and related materials. Once in the possession of the IRS, the material becomes IRC 6103 information. As such, it warrants the protections afforded by IRC 6103 plus any additional safeguards as found in IRC 7612. Willful unauthorized disclosures of this information will subject the IRS and the employee to criminal penalties under IRC 7213 and IRC 7213A, and/or civil damages under IRC 7431.

- (4) Studies, operating manuals, and computer software (when prepared by non-governmental sources) may not be agency records subject to the FOIA and may be the property of the originator.
- (5) Base any determinations on the provisions of the agreement under which the IRS obtained the materials, the presence or absence of copyright or other restrictive markings, and whether the IRS obtained exclusive use of the materials.
- If the IRS has exclusive and unlimited use of the materials, they are agency records.
 - If the IRS has only temporary or limited use of the materials, or if the originator exercises continuing control over the materials, they generally are not considered agency records.
- (6) A single record may contain both materials that the IRS prepared and those obtained from other sources. Whether it is possible to segregate the materials will depend on practical considerations and physical constraints.
- (7) Sometimes IRS employees acting on their own initiative and on their own time prepare materials for their own use. Such materials may remain the property of

the employee and would not be considered agency records. Base any determination on the terms of the use permitted by the employee. See (5) above.

- (8) The status of transcripts prepared by court stenographers will depend on applicable law and the agreement under which the stenographer serves the court. Generally, court transcripts are agency records in those situations in which the stenographer's rights to exclusive distribution have terminated.
- (9) Contracts and associated records relating to the purchase of goods and services, including evaluative records, are agency records, but they may contain trade secrets and commercial or financial information that is privileged or confidential. Vendors frequently provide the government with more information concerning their products or services than they would make available in ordinary trade.
- (10) Disclose business information provided to the IRS by a business submitter only as allowed by regulation. Carefully follow the provisions of 26 CFR 601.702(g). Generally, they require prompt written notification to submitters of business information that IRS has received a FOIA request for that information and the details of any proposed response. Further, the IRS must give business information submitters the opportunity to provide a detailed statement of any objections to disclosure within 10 business days. Attempt to contact the submitter to ensure their receipt of the inquiry if you receive no response within the allotted time.

Note: On September 30, 1997, Part 15 of the Federal Acquisition Regulation (FAR) was revised to stipulate that unit prices of each award be disclosed to unsuccessful bidders during the post award notice and debriefing process. Additionally, you may release unit prices on request under the FOIA, unless the business submitter provides written documentation that release of the unit prices would be a competitive disadvantage (consider the use of exemption (b)(4) in this situation). Furthermore, the FAR specifically provides that the items, quantity, and any stated unit prices of each award are also publicly available. These FAR provisions are mandatory for contracts solicited after January 1, 1998.

- (11) Certain business information provided to the IRS by a business submitter is subject to statutory prohibition against disclosure, and must be withheld under FOIA exemption (b)(3) citing 41 USC 4702 as the supporting statute. See 26 CFR 601.702(g)(1).
 - a. This statute applies only to contractor proposals (technical, business, management, and cost proposals) submitted in response to a solicitation for competitive bid (Request for Proposal or RFP).
 - b. The statute also provides protection for a proposal submitted by the successful bidder, provided the language in the proposal is not actually incorporated in, nor referred to in, the contract. Base the determination to assert the (b)(3) exemption on whether the language in the proposal is incorporated into the contract.
- (12) Give considerable weight to a business submitter's objections to disclosure unless they clearly conflict with legal precedent or obviously lack merit.

11.3.13.6.3
(10-05-2021)
Personnel Records

- (1) The Office of Personnel Management (OPM), as the custodian of the Official Personnel Folder (OPF) and Employee Performance Folder (EPF) and the authority through which other Federal agencies may appoint employees, has issued rules and regulations governing the disclosure of OPF and EPF records. These rules and regulations are found in Part 294 of the Federal Personnel Manual (FPM) (5 CFR 294).
- (2) The OPM also has FOIA responsibilities for personnel records maintained by agencies. These responsibilities are detailed in each of the sections describing the various records. Responses to FOIA requests seeking OPF or EPF information will be consistent with OPM regulations at 5 CFR 293 and 5 CFR 297. See IRM 10.5.6.8, Personnel Records, for additional information regarding OPFs/EPFs and their contents.

11.3.13.6.3.1
(10-06-2025)
Public Information Listing

- (1) The Office of Personnel Management (OPM) has designated six items of information, pertaining to federal employees, which are generally available to the public. Based on the OPM guidelines, Federal agencies must maintain a Public Information Listing (PIL) of all their employees which contains the OPM designated items. A copy of the PIL can be provided under the FOIA.
- (2) The PIL consists of the following six items of information as specified in 5 CFR 293.311:
 - a. Name,
 - b. Present and past position titles and occupational series,
 - c. Present and past grades,
 - d. Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials). These may be separately stated, if so requested,
 - e. Present and past duty stations (the official duty station does not include any flexiplace address or even the existence of a flexiplace work option); and,
 - f. Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) which, if released, would not interfere with law enforcement programs or severely inhibit agency effectiveness.
- (3) OPM has authorized the withholding of the public information items of employees in sensitive positions. Consequently, you must ensure that other records such as office telephone directories do not include information on employees in these positions when released to the public. Criminal Investigation provides statistical data to the public on staffing numbers, locations of posts of duty, and salary ranges on an area basis. OPM has designated the following positions as sensitive:

GS/IR Series	Title
0007	Correctional Officer
0082	United States Marshal
0083	Police Officer
0084	Nuclear Materials Courier

GS/IR Series	Title
0132	Intelligence
0134	Intelligence Clerk/Aide
0401	General National Resources and Biological Science
0436	Plant Protection and Quarantine
0512	Internal Revenue Agent
0840	Nuclear Engineering
0930	Hearing and Appeals Officer
1169	Internal Revenue Officer
1171	Property Appraisal and Liquidation Specialist
1801	General Inspection, Investigation, Enforcement and Compliance
1802	Compliance Inspection and Support
1805	Investigative Analyst
1810	General Investigating
1811	Special Agent (SA) Criminal Investigation
1812	Game Law Enforcement
1816	Immigration Inspection
1854	Alcohol, Tobacco, and Firearms Inspection
1881	Customs and Border Protection Interdiction
1884	Customs Patrol Officer
1890	Customs Inspection
1895	Customs and Border Protection
1896	Border Patrol Enforcement

- (4) IRS policy also authorizes the withholding of the public information items of employees in cyber security designated positions. Cybersecurity designated positions are not identified by a specific GS/IR series or position title.

11.3.13.6.4 (04-19-2017)

News Media Requests

- (1) Disclosure personnel may receive requests from individuals stating they are affiliated with news media and seeking a fee waiver or reduction on that basis. The requester must establish their standing as a member of the media prior to a decision to grant a waiver or reduce fees.

(2) Historically, representatives of the news media include persons on the staff of established news media outlets, such as, but not limited to, radio or television stations, wire services, or periodicals of general circulation. The OPEN Government Act of 2007, amending section (a)(4)(A)(ii) of the FOIA, defines representatives of the media to include “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” The term “news” as defined by the Act means “information that is about current events or that would be of current interest to the public.” The Act also addresses the evolution of news delivery methods and allows for consideration of alternative media as news media entities.

(3) The Courts have addressed this area and have defined “news media” as follows:

- a. A representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Note: Requesters stating information will be posted to an online source for public interest may not qualify as a member of the media. Contact must be made to obtain clarification and additional information on how the material will be disseminated in order to categorize the requester under the news media category.

- b. Information is commonly gathered by means of FOIA requests, papers declassified by the Government, interviews with, and private records of, present and former government officials, official statements, publications, and press releases, testimony before Congress, newspaper and periodical accounts of recent events, and reports by congressional committees and the Government Accountability Office.
- c. From documents gathered, the requester or entity exercises a significant degree of editorial discretion in deciding what records to use and how to organize them, creates a record, report, or publication, and distributes the resulting work to the public.

(4) Freelance journalists may be regarded as working for the news media, even though not actually employed by the media, if they can demonstrate a solid basis for expecting publication, such as a publication contract or by demonstrating a record of past publication.

(5) Representatives of narrowly focused publications such as house journals, trade journals, or organizational newsletters, which are not designed for ordinary circulation to the general public, are generally not considered news media for this purpose.

Note: A request from National Treasury Employees Union (NTEU) will not usually qualify as a media request. NTEU’s focus and constituency are the IRS bargaining unit employees, not the general public.

(6) Information vendors, data brokers, and other second-hand disseminators of documents, such as private libraries, private repositories, or those who act as information vendors or as agents of others who want access to government documents, do not qualify as news media for fee waiver purposes.

- (7) Generally, all fees may be waived or reduced when disclosing information is likely to contribute significantly to public understanding of the operations or activities of the government and when it is not primarily in the commercial interests of the requester. See IRM 11.3.5.2.2, Searches.

Note: A requester seeking a fee waiver based on being a representative of the news media must generally explain in the waiver request both an intention and a reasonably expected ability to disseminate the information to the public.

11.3.13.7
(04-19-2017)
FOIA Reporting

- (1) The FOIA requires each federal agency to submit an Annual Report to the Attorney General, each fiscal year. This report contains detailed statistics on the numbers of requests received and processed by each agency, the time taken to respond, the outcome of each request, as well as many other statistics regarding the administration of the FOIA at each agency.
- (2) The Department of Justice also requires each federal agency to submit a Chief FOIA Officers report, each fiscal year. This report contains a detailed description of the steps taken by the agency to improve FOIA compliance and transparency. The IRS Chief FOIA Officers report is available in the *IRS FOIA Library*.

11.3.13.7.1
(04-19-2017)
Annual FOIA Report

- (1) FOIA, in 5 USC 552(e)(1), requires all federal agencies to file the Annual FOIA Report each year, on or before February 1, with the Department of Justice. This report details the agency's administration of the FOIA for the prior fiscal year.
- (2) The Annual FOIA Report must be made electronically available to the public on the internet. The IRS annual report is available beginning with fiscal year 1998 in the *IRS FOIA Library*.

11.3.13.7.1.1
(04-19-2017)
Report Submission

- (1) The report captures statistical data concerning FOIA and Privacy Act requests, administrative appeals, and litigation cases processed by the IRS, and follows the Department of Justice Guidelines.
- (2) The report is prepared by the Office of Disclosure using data from the inventory management system as of September 30. It reflects the cumulative activity for the fiscal year using national totals for cases logged. Upon completion, the IRS report is transmitted to the Department of Treasury who further submits the information to the Department of Justice.

11.3.13.7.1.2
(10-06-2025)
Data Capture

- (1) The Disclosure inventory management system provides the statistical information required for the report.
- (2) Case data entered on the inventory management system is the basis for the report. Data is captured as cases are received and closed. Disclosure personnel must provide complete and accurate information when processing and closing cases.
- (3) Log all incoming requests in a timely manner and document all required case actions to ensure accurate data for the report.

- (4) All FOIA (and PA) requests require an entry capturing how the case was closed (i.e. grant, full or partial denial, etc.). If withholding records, cite the statutory FOIA exemptions and note the supporting statute(s) when asserting the (b)(3) exemption.
- (5) Input fees billed and payments received as they are processed to ensure timely and accurate reporting.
- (6) It is critical that all data reported to Congress annually be captured in the inventory management system. The report includes but is not limited to:
 - the number of initial request cases received, processed, and outstanding at the end of the year
 - all exemptions cited, and all statutes relied upon
 - statistical data concerning the time it takes to process requests for access and appeals
 - a list of the ten oldest requests that are pending at the end of the fiscal year

11.3.13.7.1.3
(04-19-2017)
Cost Data

- (1) To comply with statutory reporting requirements, Disclosure Managers will ensure that all time devoted to FOIA requests by both Disclosure and non-Disclosure personnel is captured and reported by function on each case worked. All offices shall prescribe appropriate reporting procedures to capture FOIA case related time for functional and Disclosure personnel.
- (2) Do not attempt to capture clerical employee time on FOIA cases. For the purposes of this report, time applied for any activities completed by clerical personnel would not be captured, but all time completed by a technical employee would be captured.
- (3) FOIA costs are computed from the hours applied by Disclosure and by employees in other functions. The total hours applied are used to compute the number of staff years. Costs are then calculated using the IRS standard cost factor per staff year, which includes salary, benefits, equipment, rent, supplies, and other costs.

Note: The FOIA SETR time code 800-85330 must be used by all IRS employees to document the time spent in researching, processing and releasing documents. See the FOIA Obligations and Transparency Memo dated March 11, 2024.

11.3.13.7.1.4
(04-19-2017)
Citing Supporting Statutes

- (1) The annual report requires a description of every statute relied upon to withhold records and whether courts have upheld the use of the statute. The inventory management system provides a list of the commonly used statutes, when allowed by that system.

Note: See IRM 11.3.13.4.2.4(2), Exemption (b)(3), for a list of the most common supporting statutes.

- (2) The inventory management system limits caseworkers to a list of supporting statutes, when allowed by that system, used previously in IRS FOIA processing. Contact the FOIA Senior Policy Analyst if you propose invoking a statute not on the list. Never use the Privacy Act as a supporting statute for the FOIA (b)(3) exemption.

11.3.13.7.2
(04-19-2017)

**Chief FOIA Officer's
(CFO) Report**

- (1) The Attorney General's 2009 FOIA Guidelines require the Chief FOIA Officer for each federal agency to submit a report to the Attorney General containing a detailed description of the steps taken by the agency to improve FOIA compliance and transparency. This report contains details of FOIA administration at each agency, as well as steps taken to implement the Attorney General's 2009 FOIA Guidelines during each reporting year.

11.3.13.7.2.1
(04-19-2017)

Report Submission

- (1) This report captures data concerning the agency's compliance with the FOIA, including steps taken to:
 - a. apply the presumption of openness
 - b. ensure that Treasury, and IRS, has an efficient and effective system in place for responding to FOIA requests
 - c. increase pro-active disclosures
 - d. utilize technology
 - e. improve timeliness in responding to requests and reducing backlog
 - f. capture the use of FOIA law enforcement exclusions, and
 - g. spotlight overall success of the FOIA program
- (2) The report is prepared by the Office of Disclosure using data from the inventory management system as well as information provided from business units within the agency that support the FOIA program. Upon completion, the IRS report is transmitted to the Department of Treasury who further submits the information to the Department of Justice.

11.3.13.8
(08-14-2013)

Annual TIGTA Review

- (1) The IRS Restructuring and Reform Act (RRA) of 1998 established a requirement for TIGTA to conduct periodic audits of a statistically valid sample of the total number of denials (full and partial) of requests pursuant to the FOIA and IRC 6103. The overall objective of the audit is to determine whether the IRS improperly withheld information based on 5 USC 552(b)(7) or IRC 6103.
- (2) The data used for the sample is accumulated from the inventory management system database for all offices. To ensure timely and accurate reporting to TIGTA, offices must maintain the information concurrently with the processing of the cases.
- (3) Management must emphasize the importance of maintaining accurate data.