

THE FREEDOM OF INFORMATION ACT

1. PURPOSE

This Directive establishes the procedures to be followed by officials and employees of the Grain Inspection, Packers and Stockyards Administration (GIPSA) in complying with the requirements of the Freedom of Information Act (FOIA) (5 U.S.C. 552).

2. REPLACEMENT HIGHLIGHTS

This Directive replaces FGIS Directive 1470.1, Freedom of Information Act and Privacy Act, dated September 24, 1993. A separate Directive will be issued at a later date establishing the procedures to be followed in administering the Privacy Act.

3. AUTHORITIES

- a. The Freedom of Information Act (5 U.S.C. 552).
- b. Electronic Freedom of Information Act Amendments of 1996 (Public Law 104-231).
- c. USDA Freedom of Information Act Regulations (7 CFR Part 1).

4. POLICY

GIPSA is committed to providing the fullest possible disclosure of information consistent with the exclusions and provisions of the FOIA, and to responding to citizens' requests for information in a customer-friendly manner. The Agency is equally committed to protecting fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of the United States' law enforcement agencies, protecting sensitive business information, and preserving individuals' personal privacy.

5. BACKGROUND

The FOIA was originally enacted in 1966 and established for the first time an effective statutory right of access to Government information. The FOIA set the standards for determining which records must be made available for public inspection and which records can be withheld from disclosure. It also provided administrative and judicial remedies for those denied access to records, and required Federal agencies to provide the fullest possible disclosure of information to the public.

6. PROCEDURAL REQUIREMENTS

The FOIA requires Federal agencies to make their records promptly available to any person who makes a proper request for them. An overview of how a typical FOIA request is processed—from the point of determining whether an entity in receipt of a request is subject to the FOIA to the review of an agency's initial decision regarding a FOIA request on administrative appeal—follows:

a. Entities Subject to the FOIA.

- (1) Agencies within the Executive Branch of the Federal Government, including the Executive Office of the President and independent regulatory agencies, are subject to the FOIA. Entities not subject to the FOIA include those that are neither chartered by the Federal Government nor controlled by it, State governments, municipal corporations, the courts, Congress, and private citizens.
- (2) Privately owned agencies that provide official inspection and weighing services under the U.S. Grain Standards Act (USGSA) are considered “entities” for purposes of the FOIA in that they have been designated by the Secretary of Agriculture to perform all or specified functions involved in official inspection and/or official weighing at locations where the Secretary determines such service(s) is/are needed. Should a request for official records be received, GIPSA will work with the designated agency to obtain the records for FOIA processing.
- (3) State agencies that provide official inspection and weighing services at interior locations as well as those that provide mandatory export inspection and weighing services also are considered “entities” for purposes of the FOIA. The interaction between GIPSA and the State agencies results in a “shared” responsibility for the inspection and weighing records; but the State agency, ultimately, is the office of record. Should a request for official records be received, GIPSA will work with the designated or delegated State agency to obtain the records for FOIA processing.

b. Records and Non-Public Information Subject to a FOIA Request.

- (1) The FOIA applies only to records—not to tangible, evidentiary objects. Agency records include any information that is either created or obtained by GIPSA and that is under Agency control in any format (including electronic format) at the time of the request. They also include records maintained in field offices and regional offices; records that have been forwarded by GIPSA offices to Federal Records Centers; and records maintained by delegated/designated State agencies and designated official agencies.
- (2) GIPSA records subject to a FOIA request include, but are not limited to, internal and external correspondence, memoranda, statistical data, electronic mail, telephone notes, official certificates, inspection and weighing work records, test results, complaints filed, documents compiled during investigations, investigation reports, data analyses, scale test reports, and annual reports (filed by subject entities). The form in which a record is maintained does not affect its availability. A FOIA requestor may seek a printed or typed document, tape recording, map, computer printout, computer tape, fax, electronic mail, or similar item.
- (3) Certain “personal records” maintained by GIPSA employees are subject to the FOIA. Agency FOIA coordinators will examine "the totality of the circumstances surrounding the creation, maintenance, and use" of the record in determining the "personal record" status of a record. Factors considered will include the purpose for which the document was created, the degree of integration of the record into the Agency's filing system, and the extent to which the record's author or other employees used the record to conduct Agency business.

c. Records and Public Information Not Subject to a FOIA Request.

- (1) Federal agencies are required to make certain types of records available electronically if created by the Agency on or after November 1, 1996. The following types of records may be accessed on the World Wide Web without the formality of a request:
 - (a) Final opinions and orders made in adjudication cases;
 - (b) Final statements of policy and interpretations which have not been published in the *Federal Register*;
 - (c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Copies of records that have been the subject of a FOIA request and that are of sufficient public interest or curiosity that the Agency believes other persons are likely to request them; and

(e) The Agency's annual FOIA report.

(2) Information such as directives, handbooks, brochures, and annual statistical reports or information on GIPSA's Web site (e.g., press releases, speeches, consumer and technical publications, statistics, congressional testimony, and some letters and memoranda) are available to the public without their having to file a FOIA request. See section 6.1. of this Directive for the procedures to follow in providing this type of information to national media/wire services and Congressional offices.

d. Who May Request Records.

(1) A FOIA request can be made by any person, which encompasses individuals, foreign citizens, partnerships, corporations, associations, news media/wire services, States, State governments, and foreign governments. Requests also may be made through an attorney or other representative on behalf of "any person." FOIA requests can be made for any reason whatsoever. FOIA requesters do not have to explain or justify their requests because the purpose for which records are sought has no bearing upon the merits of the request.

(2) Members of Congress may seek access to Federal agency records for a variety of different purposes; e.g., in aid of a specific or general legislative function, on behalf of a constituent, or even as a matter of a Member's personal interest. When GIPSA receives a request from a Member of Congress, it should first determine whether it is a duly authorized request on behalf of Congress through a legislative committee or subcommittee. If so, then the request falls within subsection (c) of the FOIA and only a specially authorized claim of executive privilege could be interposed to justify nondisclosure. Any FOIA request submitted by the chairman of a committee or subcommittee on a subject within its jurisdiction will routinely fall into this category. If the request is not an official committee or subcommittee request, GIPSA will process it as a request from "any person" under the FOIA, but with particular regard for the considerations of congressional relations, discretionary disclosure, and waiver referred to above.

e. Proper FOIA Requests.

(1) A FOIA request is a request from any person for copies of, or access to, documents or records.

- (2) GIPSA will acknowledge requests for records under the FOIA if received by U.S. mail, telephone, fax, express mailed, electronically mailed; or if forwarded by another Federal agency. A requester should indicate that their request is being made under the FOIA; however, if the requester does not cite the statute, GIPSA will automatically treat the request as being made under the FOIA.
- (3) Requests must reasonably describe the records sought, being as specific as possible with regard to names, dates, places, events, subjects, etc. If the request does not reasonably identify the records sought or if it appears the search is going to impose an unreasonable burden on the Agency, the GIPSA FOIA coordinator responsible for processing the request will contact the requester giving him/her the opportunity to provide more specific information, to reformulate his/her request, or to narrow the scope of the request.
- (4) GIPSA will not search for responsive records created after a certain date. This date is referred to as a “cut-off” date. The FOIA requires agencies to use the date its search for records begins as their “date-of-search cut-off.”
- (5) Federal agencies **are only required** to search for an existing record or document in response to a FOIA request. Requesters cannot compel agencies to make automatic releases of records as they are created. Agencies are not required to create a new record to comply with a request, to answer questions posed as a FOIA request, to collect information it does not have, to conduct research, or to analyze data. When records are maintained in an automated database, an agency is required to retrieve that which is responsive. The process of retrieving the information may result in the creation of a new document when the data is printed out on paper or maintained on computer tape or disk.
- (6) A requester does not have to specify in his/her request that he/she is willing and able to pay all fees but may establish a specified limit or provide satisfactory evidence that he/she is entitled to a waiver of fees or a reduction of the fees when the release of the information is considered as “primarily benefiting the public.”
- (7) To ensure that private information about an individual is not disclosed to anyone else, GIPSA will ask the individual requesting information about himself/herself to provide a notarized statement or a statement signed under penalty of perjury stating that he/she is the person claimed to be. GIPSA will not process a request for personal information if these procedures are not followed.

- (8) In accordance with 7 CFR 1.215, Subpoenas Duces Tecum for USDA Records in judicial or administrative proceedings in which GIPSA is not a party are requests for records under the FOIA and will be handled pursuant to the rules governing the FOIA.

f. Response Times.

- (1) GIPSA will not search for responsive records, meet time deadlines, or release any records until it actually receives a FOIA request. GIPSA has 20 business days, excluding Saturdays, Sundays, and legal holidays, in which to make a determination on FOIA requests. The Agency is not required to send out the releasable documents by the last business day, but it can send the requester a letter informing him/her of its decision and then send out the documents within a reasonable time afterward.
- (2) GIPSA may extend the response time an additional 10 business days when:
 - (a) It needs to collect responsive records from offices not located at its Washington, D.C., headquarters;
 - (b) The request involves a voluminous amount of records which must be located, compiled, and reviewed; and
 - (c) It must consult with another agency which has a substantial interest in the responsive material.
- (3) When such an extension is needed, GIPSA must notify the requester in writing and offer him/her the opportunity to modify or limit the request or to arrange for an alternative time frame for completion of the Agency's processing.
- (4) GIPSA makes every effort to respond to FOIA requests within the required timeframe; but in some cases, it cannot do so due to the size of the request or to the fact that the Agency has a backlog of previously received requests that are pending processing. Some agencies use "multitrack processing" queues to deal with heavy FOIA workloads, but GIPSA, generally, handles FOIA requests on a "first-in, first-out" basis. The GIPSA FOIA coordinator will determine whether a request is simple or complex and will provide a requester whose request does not qualify for quick processing an opportunity to limit (in writing, by hard copy, facsimile, or electronically) the scope of the request in order to qualify for quick processing.

g. Expedited Processing.

- (1) In an effort to treat all requesters equitably, GIPSA ordinarily will process a FOIA request ahead of others only in cases in which there will be a threat to someone's life or physical safety, or where an individual will suffer the loss of substantial due process rights if the records are not processed on an expedited basis.
- (2) The FOIA also requires that requests be processed on an expedited basis if made by a person primarily engaged in disseminating information to the public, if the subject is of widespread and exceptional media interest, or the information sought involves possible questions about the Government's integrity, which affects public confidence. (Requests are not expedited under this provision merely because the requester is a representative of the news media.) A requester must submit a statement with the reasons why his/her request should be expedited. The Agency must notify the requester of its decision whether to grant expedited processing within 10 days after receiving the statement. Should GIPSA deny a request for expedited processing, the requester will be advised of his/her right to submit an administrative appeal of that denial.

h. Processing Components.

GIPSA's processing of FOIA requests consists of the following components:

- (1) Records Search - Secretarial, professional, and/or managerial personnel locating records or information "manually or by automated means," including page-by-page or line-by-line identification of material within documents.
- (2) Document Review - The initial examination of a document by the FOIA Coordinator for making a release determination. Review time includes doing all that is necessary to prepare documents for release. When GIPSA withholds documents or information in full or in part, the Agency will redact the exempted information indicating the exemption applied. When the Agency withholds a document(s)/page(s) in its/their entirety, GIPSA will indicate the number of pages being withheld or will make a reasonable effort to estimate the volume of information withheld. In providing information electronically, GIPSA must indicate on the document the amount of information excised at the point in the record where the excision was made, wherever it is technically feasible to do so.

- (3) Referrals - GIPSA's search for responsive records may locate records that originated with another agency/office. GIPSA is responsible for making the final release determination on the record(s); however, the FOIA coordinator may forward a copy of the request and the document to the originating agency and ask for its input.
- (4) Duplication - Photocopying responsive documents.

i. Fee Assessment.

The FOIA provides for the following three categories of requesters to assess fees for processing requests. The level of fees to be charged depends upon the identity of the requester and the intended use of the information sought.

- (1) Commercial-use requesters -- a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made. (Attorneys usually fall into this category.) These requesters may be charged fees for searching for records, processing the records, and photocopying them.

Agencies are authorized to charge the actual direct cost incurred by the individual(s) who conducted the search, and may charge for search time even if they fail to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure.

- (2) Educational or noncommercial scientific institutions and representatives of the news media are charged only for photocopying expenses after the first 100 pages of copies. They are not charged for a records search or for processing fees.
- (3) Requesters who do not fall into the above two categories are not charged for processing; they are charged only for record searches and photocopying, and there is no charge for the first 2 hours of search time or for the first 100 pages of photocopies.

A requester may include in his/her request letter a specific statement limiting the amount he/she is willing to pay in fees. GIPSA will assume the requester is willing to pay fees up to \$25; but if it appears the total fees for processing a request will exceed \$25, the GIPSA FOIA coordinator will notify the requester in writing of the estimate and offer him/her an opportunity to narrow his/her request in order to reduce the fees or ask him/her to commit to pay the estimated fees. GIPSA will not process any requests until the requester commits to pay the estimated fees. Requesters will not be required to actually pay the fees until the Agency's response and responsive records have been forwarded to the requester. However, if

the requester has failed to pay fees from previous requests or if the estimated fees exceed \$250, GIPSA may require that the requester pay the estimated fees in advance; that is, before the records are processed. GIPSA may charge the requester interest on his/her overdue balance if he/she agrees to pay fees and then fails to do so. In addition, the Agency will not process any further requests from the requester until payment has been made in full. Requesters may be required to pay fees for files search even if the search does not locate any responsive records.

j. GIPSA Fee Schedule.

The FOIA authorizes Federal agencies to charge requestors fees to cover the full direct cost of processing requests for documents. Agencies are authorized to charge the actual direct cost incurred by the individual(s) who conducted the search, and may charge for search time even if they fail to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure. The GIPSA Fee Schedule is as follows:

Manual records search by secretarial, professional, or managerial employee	Hourly salary rate of employee + 16%
Manual records search conducted by a group of employees of like rank, grade, pay or position.	\$10 per hour for clerical time, and \$20 per hour for supervisory or professional time
Document review by employee conducting the review to determine whether any information is exempt from mandatory disclosure	Hourly salary rate of employee + 16%
Photocopying documents	\$.20 per copy
Total fee does not exceed \$25	No fee will be charged
Mainframe computer searches and services	Rate established in the Users Manual or Handbook published by the computer center at which the work will be performed
Mainframe computer searches and services where the rate has not been established	\$27 per minute
Searches using computers other than mainframes	Hourly salary rate of employee conducting the search + 16%

k. Fee Waivers.

A requester may request a waiver of fees if he/she expects, or is advised, that a fee will be charged. However, fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public's interest because it is likely to contribute significantly to the public's understanding of the operations and activities of the Government and is not primarily in the commercial interest of the requester. Requests for a fee waiver from an individual who is seeking records pertaining to him/her usually are denied under this standard because such disclosures usually will not result in any increase of the public's understanding of Government operations and activities. In addition, a requester's inability to pay fees is not a legal basis for granting a fee waiver.

l. Handling Requests Received from National Media/Wire Services and Congressional Offices for GIPSA Records or for Public and Non-Public Information.

- (1) Requests from national media/wire services and Congressional offices for records not subject to the FOIA and for non-public information must be referred to the appropriate program FOIA coordinator for processing in accordance with established FOIA procedures. The FOIA coordinator will notify GIPSA's Congressional relations contact and appropriate Program Deputy Administrator when such requests are received.

The FOIA coordinator will forward a copy of the FOIA request to the appropriate program official(s) for his/her review and will ask that a search be conducted of his/her files to locate any records that may be responsive to the request. Records located will be forwarded to the FOIA coordinator for review and a release determination. The Agency's response will be prepared pursuant to the guidelines stated in section 6.m. and 6.n. of this Directive. GIPSA's FOIA coordinators will contact the Office of the General Counsel (OGC) regarding the releasability of documents or initial response, if necessary. Such contact will ensure the Agency's FOIA response and that responsive documents receive sufficient review.

The FOIA coordinators will notify GIPSA's Congressional relations contact promptly of any developments after the release of information to representatives of the national media/wires services and Congressional offices to ensure that Departmental officials are kept apprised of the situation and have the necessary information to respond to questions that may arise.

- (2) GIPSA staff may provide public information to national media/wire services or to Congressional offices or they may advise such requesters that such information can be found on the GIPSA Web site at <http://www.usda.gov/gipsa/>. The responding office should maintain a record of the request and the information released, and should consult with a FOIA coordinator if help is needed to determine whether the request is for public or for non-public information. Responding offices must notify GIPSA's Congressional relations contact of such requests.

m. Initial Determination Response.

GIPSA will notify the requester in writing of its initial determination when it has completed processing the FOIA request. In the vast majority of cases, GIPSA will include any responsive documents located with its response, although in exceptional cases the documents themselves may be sent within a reasonable time afterward. The Agency must provide the requested record in any form or format requested by the requester if the record is readily reproducible in that form or format and make reasonable efforts to maintain its records in forms or formats that are reproducible for such purposes.

n. Elements of a FOIA Response.

FOIA responses must contain the following information:

- (1) The date the GIPSA FOIA coordinator received the request;
- (2) The nature of the request and, when appropriate, the Agency's interpretation of it;
- (3) The construction of the request, including information regarding any followup telephone conversations with the requester;
- (4) The total number of records and pages located;
- (5) The total number of records and pages being released in whole and/or in part, and the identification of such records;
- (6) If records are presently unavailable, the date the records will be available;
- (7) The total number of records and pages being withheld in their entirety and the identification of such records;
- (8) The FOIA exemption for withholding information, if applicable;
- (9) The justification for withholding or redacting information, if applicable;

- (10) The fees incurred for processing and address at which to mail the payment;
- (11) The reason for denying a waiver of fees, if applicable;
- (12) The name and title of person responsible for denial, if records were exempt or withheld;
- (13) Notification that the request has been completed;
- (14) Notification of the right to appeal. Such notification will include the name of the official to whom to appeal, his/her address, and instructions to mark the letter and front of the envelope "FOIA APPEAL."
- (15) Signature of official designated to respond to FOIA requests.

o. FOIA Appeals.

- (1) GIPSA will advise the requester of his/her right to file an appeal in its initial determination letter or in the letter denying the request for expedited processing or a for a fee waiver. The GIPSA Administrator is the official to whom requesters may administratively appeal the Agency's initial determination. The appeal must be received within 45 days of the date of GIPSA's initial determination letter.
- (2) Requesters may file an appeal for the following reasons:
 - (a) Denials to disclose records in full or in part;
 - (b) "No records" responses;
 - (c) Denials of requests for fee waivers;
 - (d) Denials of requests for expedited treatment;
 - (e) Disagreeing with the Agency's withholding of information;
 - (f) Believing that there are additional records responsive to the request, that the Agency failed to locate that a record is not readily reproducible in the form requested, or that the requested information is not a record subject to the FOIA; or
 - (g) Any disputed fee matter.

p. Review of Appeal.

- (1) A determination must be made within 20 business days after receiving a FOIA appeal (excluding Saturdays, Sundays, and legal holidays) whether to grant it. Appeals should be reviewed by an official other than that who made the initial determination. For administrative appeal processing, USDA regulations require that agencies send a copy of all correspondence relating to the request, including the applicable documents, to the Assistant General Counsel, General Law Division, (GLD), OGC, for review. When the volume of records is so large as to make sending a copy impracticable, the Agency will enclose an informative summary of those records. GIPSA will not deny an appeal until it receives concurrence from the Assistant General Counsel, GLD.
- (2) The Assistant General Counsel, GLD, will review the matter (including necessary coordination with GIPSA) and render all necessary assistance to enable the Agency to respond to the appeal within the administrative deadline or within any extension of the administrative deadline.

q. Appeal Determination.

- (1) If GIPSA determines to grant the appeal, it will inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If GIPSA grants only a portion of the appeal or if it denies the appeal entirely, the Agency will inform the requester of that decision and of the following:
 - (a) The reason(s) for denial,
 - (b) The name and title or position of each person responsible for denying the appeal, and
 - (c) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).
- (2) If GIPSA upholds a denial, it must inform the requester of its reasons for upholding the denial and of the name and title of each person responsible for the administrative appeal decision. An administrative appeal decision upholding an adverse determination also must inform the requester of the provisions for judicial review of that determination in the Federal courts.

r. Judicial Review. A requester has the right to challenge the Agency's denial of his/her administrative appeal in a lawsuit filed in Federal court. A FOIA appeal lawsuit can be filed in the U.S. District Court in the district where the requester lives. The requester also can file suit in the district where the documents are

located or in the District of Columbia. When a requester goes to court, the burden of justifying the withholding of documents is on the Government. This is a distinct advantage for the requester. Requesters have 6 years to file suit from the time the appeal is denied.

s. Reasons Access to Records May Be Denied.

- (1) GIPSA may refuse to disclose an Agency record that falls within any of the FOIA's nine statutory exemptions. The exemptions protect against the disclosure of information that would harm national defense or foreign policy, privacy of individuals, proprietary interests of business, functioning of the Government, and other important interests. A document that does not qualify as an "Agency record" may be denied because only Agency records are available under the FOIA. Personal notes of Agency employees may be denied on this basis (see section 6.b. of this Directive). However, most records in the possession of GIPSA are "Agency records" within the meaning of the FOIA.
- (2) GIPSA may withhold exempt information, but it is not always required to do so. For example, GIPSA may disclose an exempt internal memorandum because no harm would result from its disclosure. However, the Agency should not disclose an exempt document that is classified or that contains a trade secret.
- (3) When a record contains some information that qualifies as exempt, the entire record is not necessarily exempt. Instead, the FOIA specifically provides that any reasonably segregable portions of a record must be provided to a requester after the deletion of the portions that are exempt. This is a very important requirement because it prevents an agency from withholding an entire document simply because one line or one page is exempt.
- (4) The FOIA require agencies to identify the location of deletions in the released portion of the record and to show the deletion at the place on the record where the deletion was made, unless including that indication would harm an interest protected by an exemption.

t. FOIA Exemptions.

The following exemptions provide the only bases for the nondisclosure of Federal agency records:

- (1) Exemption 1 permits the withholding of properly classified documents. Information may be classified in the interest of national defense or foreign policy. The rules for classification are established by the President and

not the FOIA or other law. The FOIA provides that, if a document has been properly classified under a Presidential Executive Order, the document can be withheld from disclosure.

- (2) Exemption 2 covers matters that are related solely to an agency's internal personnel rules and practices. There are two separate classes of documents that are generally held to fall within exemption 2: (1) information relating to personnel rules or internal agency practices is exempt if it is a trivial administrative matter of no genuine public interest (e.g., a rule governing lunch hours for agency employees); and (2) an internal administrative manual can be exempt if disclosure would risk circumvention of law or agency regulations. In order to fall into this category, the material will normally have to regulate internal agency conduct rather than public behavior.
- (3) Exemption 3 incorporates into the FOIA other laws that restrict the availability of information. To qualify under this exemption, a statute must require that matters be withheld from the public in such a manner as to leave no discretion to the agency (i.e., the law designating identifiable census data is confidential.)
- (4) Exemption 4 protects from public disclosure two types of information-- trade secrets and confidential business information. A trade secret is a commercially valuable plan, formula, process, or device. This is a narrow category of information. An example of a trade secret is the recipe for a commercial food product. The second type of protected data is commercial or financial information obtained from a person and privileged or confidential. The courts have held that data qualifies for withholding if disclosure by the Government would be likely to harm the competitive position of the person who submitted the information. Detailed information on a company's marketing plans, profits, or costs can qualify as confidential business information. Information also may be withheld if disclosure would be likely to impair the Government's ability to obtain similar information in the future.

Only information obtained from a person other than a Government agency qualifies under the fourth exemption. A person is an individual, a partnership, or a corporation. Information that an agency created on its own normally cannot be withheld under exemption 4. Although there is no formal requirement under the FOIA, GIPSA may choose to notify a submitter of business information that disclosure of the information is being considered. The submitter then has an opportunity to convince the agency that the information qualifies for withholding. A submitter also can file suit to block disclosure under the FOIA. Such lawsuits generally are referred to as "reverse" FOIA lawsuits because the FOIA is being used in

an attempt to prevent rather than to require the disclosure of information. A reverse FOIA lawsuit may be filed when the submitter of documents and the Government disagree whether the information is exempt.

- (5) Exemption 5 applies to internal Government documents. An example is a letter from one Government department to another about a joint decision that has not yet been made. Another example is a memorandum from an agency employee to his supervisor describing options for conducting the agency's business. The purpose of the fifth exemption is to safeguard the deliberative policymaking process of Government. The exemption encourages frank discussion of policy matters between agency officials by allowing supporting documents to be withheld from public disclosure. The exemption also protects against premature disclosure of policies before final adoption.

The fifth exemption protects the policymaking process, but it does not protect purely factual information related to the policy process. Factual information must be disclosed unless it is inextricably intertwined with protected information about an agency decision.

Protection for the decision making process is appropriate only for the period while decisions are being made. Thus, the fifth exemption has been held to distinguish between documents that are pre-decisional and therefore may be protected, and those which are post-decisional and therefore not subject to protection. Once a policy is adopted, the public has a greater interest in knowing the basis for the decision. The exemption also incorporates some of the privileges that apply in litigation involving the Government. For example, papers prepared by the Government's lawyers can be withheld in the same way that papers prepared by private lawyers for clients are not available through discovery in civil litigation.

- (6) Exemption 6 covers personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption protects the privacy interests of individuals by allowing an agency to withhold personal data kept in Government files. Only individuals have privacy interests. Corporations and other legal persons have no privacy rights under Exemption 6.

The exemption requires agencies to strike a balance between an individual's privacy interest and the public's right to know. However, since only a clearly unwarranted invasion of privacy is a basis for withholding, there is a perceptible tilt in favor of disclosure in the exemption. Nevertheless, Exemption 6 makes it harder to obtain information about another individual without the consent of that individual.

The following table reflects examples of information that are protected, and that which are not protected, under Exemption 6:

Information Protected	Information Not Protected
Home addresses of employees	Names of FOIA requesters
Home telephone numbers	Names of Government employees
Social security numbers	Work telephone numbers
Rap sheets	Work addresses
Employees' evaluation	Grade and salary

- (7) Exemption 7 allows agencies to withhold law enforcement records in order to protect the law enforcement process from interference, but only to the extent that the production of such law enforcement records or information:
- (a) Could reasonably be expected to interfere with enforcement proceedings. This subexemption protects an active law enforcement investigation from interference through premature disclosure.
 - (b) Would deprive a person of a right to a fair trial or an impartial adjudication,
 - (c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (d) Could reasonably be expected to disclose the identity of a confidential source,
 - (e) 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
 - (f) Could reasonably be expected to endanger the life or physical safety of any individual.

In most civil and criminal law enforcement cases, it is proper to withhold names, addresses, and other identifying information regarding citizens who submit reports or complaints indicating possible violations of law when the individual requests anonymity, when the complainant has an expectation of anonymity even though not specifically requested, or when the investigation determines that release would be an unwarranted invasion of the individual's privacy.

- (g) Exemption 8 protects information that is contained in or related to examination, operating, or condition reports prepared by or for a bank supervisory agency such as the Federal Deposit Insurance Corporation, the Federal Reserve, or similar agencies.
- (h) Exemption 9 covers geological and geophysical information and data, and maps about wells.

7. RESPONSIBILITIES

- a. The **Administrator** is responsible for establishing GIPSA's FOIA policy regarding the availability of records and information.
- b. **Deputy Administrators, Federal Grain Inspection Service (FGIS) and Packers and Stockyards Program (P&SP)**, will share with the Administrator the responsibility for formulating GIPSA's FOIA policy and for implementing such policy. They also will be the officials to whom requesters may administratively appeal the Agency's initial FOIA determination.
- c. **Division Directors, Staff Directors, Field Office Managers, and Regional Supervisors** will:
 - (1) Forward requests for records to the Agency FOIA coordinators when received by their office and assist in preparing the initial determination response, if necessary.
 - (2) Make records available for public inspection or copying, or furnish copies according to this Directive.
 - (3) Search files to locate responsive records and forward to the FOIA coordinator for processing.
 - (4) Provide public information and those records not subject to the FOIA to requesters, advise requesters that such information can be found on the GIPSA Web site at <http://www.usda.gov/gipsa/>, maintain a record of the request, and the information released.
 - (5) Notify GIPSA's Congressional relations contact and appropriate Program Deputy Administrator when requests for GIPSA records or for any information (public and non-public) are received from national media/wire services and Congressional offices.

- d. **Delegated State and Designated Agency Managers** will:
- (1) Forward requests for records to the FGIS FOIA coordinator when received by their office and, if necessary, assist in preparing the initial determination response.
 - (2) Search files to locate responsive records and forward to the FGIS FOIA coordinator for processing.
- e. **The GIPSA FOIA Coordinator(s)** will:
- (1) Serve as liaison between GIPSA and the Department on FOIA matters.
 - (2) Inform the Administrator, Deputy Administrators, Division/Staff Directors, Field Office Managers, and Regional Supervisors of FOIA policies and procedures.
 - (3) Develop policies and procedures governing the Agency's FOIA program.
 - (4) Prepare required reports documenting the Agency's FOIA activities and submit to appropriate reporting officials.
 - (5) Ensure that GIPSA's FOIA website is up to date and that documents subject to the FOIA are posted.
 - (6) Maintain necessary records to document the receipt and processing status of FOIA requests and appeals.
 - (7) Maintain the Agency's official file copy of initial FOIA requests and administrative appeals according to the Marketing and Regulatory Programs Records Management Program guidelines.
 - (8) Notify GIPSA's Congressional relations contact and appropriate Program Deputy Administrator when requests for GIPSA records or for any information (public and non-public) are received from national media/wire services and Congressional offices.
 - (9) Notify GIPSA's Congressional relations contact and appropriate Program Deputy Administrator promptly of any developments after the release of information to representatives of the national media/wires services and Congressional offices to ensure that Departmental officials are kept apprised of the situation and have the necessary information to respond to questions that may arise.

- (10) Request that Agency offices conduct file searches to locate responsive records; and work with such offices when the Agency's response requires their assistance.
- (11) Review documents located by Agency offices to determine their responsiveness and to determine the extent of accessibility to the requester.
- (12) Forward, if necessary, the FOIA request and GIPSA records that originated with another USDA agency or other Federal agencies to the originating agency for input prior to GIPSA making the release determination.
- (13) Delete from records to be made available to the public any reasonably segregable portions which are exempt from disclosure, unless disclosure is determined to be in the public interest.
- (14) Prepare the Agency's initial determination response in accordance with section 6.f. of this Directive.
- (15) Consult with OGC and obtain its approval on initial FOIA determinations and on all appeal determinations.
- (16) Collect fees for FOIA processing in accordance with sections 6.i. and 6.j. of this Directive and forward to the U.S. Treasury pursuant to USDA regulations.

8. INQUIRIES

- a. Direct inquiries regarding this Directive to the GIPSA Safety and Issuance Management Branch at (202) 720-0244.
- b. This Directive is available on the Internet at <http://www.aphis.usda.gov/library> and <http://www.aphis.usda.gov/library/gipsa/GIPSA.html>

Administrator

