

Directive 160.1
4/3/85

FREEDOM OF INFORMATION

I.
PURPOSE

This Directive:

- A. Sets forth procedures to be followed by the Agricultural Marketing Service (AMS) in making information and records available to the public under the Freedom of Information Act (FOIA), 5 U.S.C. 552.
- B. Contains the following Attachments:
 1. Attachment 1, Freedom of Information Act.
 2. Attachment 2, Department Freedom of Information Regulations and Fee Schedule.
 3. Attachment 3, Format for Annual Report.

II.
REPLACEMENT
HIGHLIGHTS

This Directive replaces AMS/FGIS Instruction 160-1, Freedom of Information, dated 8-24-79.

III.
MATERIALS
AVAILABLE TO
THE PUBLIC

The key portion of the Act is contained in 5 U.S.C. 552, paragraph (a)(3):

"Each agency, upon any request for records that (A) reasonably describes such records, and (B) is made in accordance with published rules stating the time, place, fees, and procedures to be followed, shall make the records promptly available to any person."

The Act does not discriminate the disclosure of information to individuals. Information that is available to the general public is also "available to any person."

A. Materials Published in the Federal Register. The FOIA, paragraph (a)(1), requires the U.S. Department of Agriculture (USDA) and all agencies to publish certain information in the Federal Register (see Attachment 1). Copies of the Federal Register, may be purchased by the requester from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

B. Materials Available for Public Inspection and Copying.

1. The following materials must be made available for public inspection and copying as required under 5 U.S.C. 552, paragraph (a)(2), unless they are promptly published and copies offered for sale:

- a. Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases.

b. Those statements of policy and interpretations that have been adopted by AMS and are not published in the Federal Register.

c. Administrative staff manuals and instructions to staff that affect a member of the public.

d. Current indexes providing identifying information for the public as to any matter issued or adopted after July 4, 1967, and required to be made available or published. The indexes shall be updated at least quarterly.

2. Other records of AMS, except those specifically exempted from disclosure under 5 U.S.C. 552 (b), shall be promptly made available to any person submitting a request which reasonably describes such records.

IV.

MATERIALS

EXEMPT FROM

DISCLOSURE

A. Nine Exempt Categories. The 9 exempt categories are:

1. Materials specifically authorized by Executive Order to be kept secret.

2. Materials related solely to the internal personnel rules and practices of the Agency.

3. Materials specifically exempted from disclosure by statute (except Section 552b of this title), 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.

4. Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

5. Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Agency.

6. Geographical and geophysical information and data, including maps, concerning wells.

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7. Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

8. Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (a) interfere with enforcement proceedings; (b) deprive a person of a right to a fair trial or an impartial adjudication; (c) constitute an unwarranted invasion of

personal privacy; (d) disclose the identity of a confidential source and, 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, confidential information furnished only by the confidential source; (e) disclose investigative techniques and procedures; or (f) endanger the life or physical safety of law enforcement personnel.

9. Materials contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

NOTE: If assistance is required in determining materials exempt from disclosure, call the AMS Freedom of Information Officer (FTS) 447-8998.

V.
FOIA REQUEST

B. Disclosure in the Public Interest. Unless disclosure is specifically prohibited by Executive Order, statute, or regulation, exempt records may be released when such disclosure would be in the public interest.

An FOIA request can be from any person asking for copies of or access to documents or records concerning any matter not available to the public through the Federal Register or in other published form. The request should be in writing and must reasonably describe the records sought. If the requester does not clearly describe the records sought, promptly notify the requester of the problem and give him/her an opportunity to confer with knowledgeable AMS personnel to attempt to identify the records sought.

A. Form of Request. Generally, requests for information or access to records should be submitted in writing. However, oral requests are allowed, but not encouraged. In the event of an oral request, a memorandum should be recorded for documentation. If the requester is not satisfied with the response to his/her oral request, advise the requester to submit a request in writing. Follow the guidelines in Section 1.3 of the Department Regulations.

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B. Determination on Initial Request. The FOIA Officer must determine within 10 workdays whether to comply with the request. It is not necessary to consult with the Office of the General Counsel (OGC) in making a determination on an initial request; however, it is advisable to consult with OGC on all Freedom of Information requests since a routine request may have greater consequences than initial appearance. Also, Government officials can be held personally responsible if a lawsuit is filed.

C. Request Granted. The following guidelines are suggested if the request is to be granted:

1. Inform the requester of any conditions and the approximate date on which the information can be furnished. If an estimated fee exceeds \$50, advise the requester that a 50 percent deposit must be paid before any of the requested materials can be furnished. Collect the fee in advance in the form of a check or money order. See Section XI, and the Department Fee Schedule in Attachment 2.

2. If compliance with the request involves inspection of records by the requester rather than the forwarding of copies, give the requester the name, address, and telephone number of the person to be contacted to arrange for inspection.

3. When a request is received for an authenticated copy of a document (bearing the official seal of USDA), send the request and a correct copy of the document to OGC, requesting authentication. The seal will be affixed by OGC, or by the Hearing Clerk when directed by the Judicial Officer.

4. If an extensive search appears necessary, follow the procedures outlined in Section 7 d of the Department Fee Schedule in Attachment 2.

D. Request Granted in Part. If the requested records contain portions which are exempt and portions which must be disclosed:

1. Identify the exempt portions and delete them from the copies provided to the requester or the records to be inspected.

2. Treat the exempt portions as a denial of request.

E. Request Denied. If a written request or portion of a written request must be denied, notify the requester of that decision in writing. In the notification of the denial, include the following:

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1. Reasons for the denial with the appropriate references of the noted exemptions.

2. Name and title or position of the person responsible for denial of the request,

3. Requester's right to appeal the denial to the Administrator.

VI.
FOIA APPEAL

A. Review of Appeal. The Agency must determine within 20 workdays after receipt of an FOIA appeal whether to grant or deny the appeal. All appeals should be addressed to the Administrator and immediately delivered to the Office of the Administrator.

1. The initial denial will be reviewed to determine whether the requested records are exempt from disclosure under 5 U.S.C. 552 (b).

2. If the records are exempt, they will be analyzed to determine whether a discretionary release should be made in the public interest.

B. Appeal Granted. An appeal may be granted by the Administrator if:

1. It is determined that the records are not exempt. The requester must be immediately informed, in writing, of the grant of the appeal, including any conditions such as a required fee, and the approximate date on which the information can be furnished.

2. The records are determined to be exempt and in the public interest by discretionary release,

C. Appeal Granted in Part. When a portion of a requested record can be disclosed, the undisclosed portion should be treated as a denial.

D. Appeal denied. OGC approval is required before an appeal can be denied.

1. When an appeal is to be denied wholly or in part, send a copy of the records to the Research and Operations Division, OGC. If the volume of records is so large that it would make sending a copy impractical, send an information summary of the records,

2. If OGC upholds the decision to deny the appeal, notify the requester of the determination. Include in the notification of the denial the following:

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a. Reasons for the denial with references to the appropriate exemptions.

b. Name and title or Position of the person responsible for denial of the appeal.

c. Requester's right to judicial review of that determination under 5 U.S.C. 552 (a)(4).

VII.
EXTENSION OF
DEADLINES

In unusual circumstances, as specified in Section 1.8 of the Department Regulations, the deadline for responding to an FOIA request or an FOIA appeal may be extended by a maximum of 10 workdays. Send a written notice to the requester, within the original deadline, stating the reason for the extension and the date when a determination can be expected. The 10-workday extension may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 workdays.

VIII.
COMPULSORY
PROCESS

An employee who receives a subpoena, order, or demand to produce any record which is exempt from disclosure shall refer the matter through supervisors to the Division Director. The Division Director may authorize release or, if determination is

made that it would be improper to comply with the demand, the matter shall be referred to the Administrator for approval of release or further referral to the Secretary. See Section 1.15 of the Department Regulations, Attachment 2, for specific actions to be taken when the demanded records are not authorized to be released.

IX. DESIGNATION OF AMS FOIA OFFICER

The employee serving in the following position is designated to serve as AMS FOIA Officer:

Director, Information Staff, AMS
 Room 3066-South
 U.S. Department of Agriculture
 Washington, DC 20250
 Telephone: (FTS) 447-8998

X. RESPONSIBILITIES

A. The APHIS mailroom, upon receipt of mail identified as a Freedom of Information Request or "FOIA APPEAL" shall:

1. Immediately deliver the Freedom of Information Request to the the FOIA Officer.
2. Immediately deliver the "FOIA APPEAL" to the FOIA Officer.

B. The AMS FOIA Officer shall:

1. Serve as liaison for AMS with the Department on FOIA matters.

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2. Inform the Administrator and Division Directors of current FOIA policies and procedures.

3. Develop instructions and regulations governing FOIA activities in AMS.

4. Maintain copies of FOIA indexes submitted by AMS Divisions.

5. Prepare the AMS annual report of FOIA activities from reports submitted by the Divisions in accordance with Section 1.12 of the Department Regulations. The report will be submitted by the Administrator to the Director, Office of Governmental and Public Affairs, by February 1.

6. Prepare any reports that may be required.

C. Division Directors shall:

1. Maintain current indexes for their respective Divisions of records required to be made available for public inspection or copying and update those indexes quarterly. Provide a copy of each index to the AMS FOIA officer.

2. Review initial FOIA requests and prepare a response for the FOIA Officer to sign.

3. Make records available for public inspection or copying and furnish copies of records requested in accordance with this Directive, Department Regulations, and the FOI Act.

4. Delete from records made available to the public any

reasonably segregable portion which is exempt from disclosure unless disclosure is determined to be in the public interest.

5. Assist the Administrator and the FOIA Officer in responding to appeals.

6. Maintain any records needed to control the processing of FOIA requests and appeals and to document FOIA activities for preparation of the annual report.

7. Designate an employee in the respective Division to assist with the FOIA responsibilities and notify the AMS FOIA Officer of the name, title, office address, and telephone number of that person.

8. Collect and transmit fees as indicated in Section XI and in the Department's Uniform Fee Schedule shown in Attachment 2.

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9. Submit an annual report to the AMS FOIA Officer by January 15 each year, summarizing FOIA activities for the preceding calendar year in accordance with the format shown in Attachment 3.

D The Fiscal Operations and Systems Branch. Financial Management (FM) Division shall:

1. Receive and deposit fees collected by Divisions and the FOIA Officer.

2. Provide the AMS FOIA Officer, by January 15 each year, the total fees collected in AMS during the preceding calendar year for making information available to the public.

E. An employee who receives an FOIA request which exceeds his/her authority to grant or deny shall:

1. Ask the requester to submit the request in writing to the FOIA Officer.

2. Inform the requester that when the written request is received by the FOIA Officer, the processing will begin.

XI.
FEES

A. Fee Schedule. The Department's Uniform Fee Schedule is outline in Attachment 2 and is applicable to all USDA agencies. The fee schedule gives information on:

1. Conditions under which fees may be waived; e.g., in all cases when the fee is less than \$3.

2. Conditions under which fees shall not be charged; e.g., when AMS determines that furnishing the requested information is in the public interest as primarily benefiting the

general public.

3. Types of services for which fees shall be charged, including hourly rates for manual searches by clerical or professional personnel.

4. Photographic reproduction.

5. Methods of payment.

B. Payment of Fees.

1. To the fullest extent possible, fees shall be collected in advance or when the requested records are furnished. Whenever possible, collect fees in the form of checks or money orders. Cash will be accepted, particularly when services are performed in response to a visit to an AMS office, but checks or money orders are preferred.

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2. All payments are to be made to the U.S. Treasury.

3. If an estimated fee exceeds \$50:

a Prepare Form AMS-541, Statement of Charges, if requested. and deliver it to the requester.

b. Collect a deposit of 50 percent of the estimated fee before reproducing or furnishing the requested materials.

c Send the deposit attached to Form AMS-41, Transmittal of Checks, to:

Fiscal Operations and Systems Branch
Financial Management Division, AMS
U.S. Department of Agriculture
Washington, DC 20250

C. Transmittal of Fees Collected. The office collecting a fee for making information available to the public shall:

1. Prepare Form AMS-41 designating the appropriate Subcenter Number to be Credited.

2. Send the fee with the transmittal to the Fiscal Operations and Systems branch, FM Division. Do not send cash. Convert all cash to a money order made payable to the United States Treasury. Claim the cost of the money orders on next travel voucher, Form AD-616.

D. Deposit of Fees. The Fiscal Operations and Systems Branch, FM Division, shall deposit the fees to the Miscellaneous General Fund Receipt Account Number 122410, Fees and Other Charges for Administrative and Professional Services, or as reimbursement to the appropriate account when permitted by law.

James C. Handley
Administrator

3 Attachments

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Attachment 1
AMS Directive 160.1
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Attachment 1 - Freedom of Information Act is not available
Please refer to the printed copy.

Attachment 2
AMS Directive 160.1
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Attachment 2 - USDA Regulations Freedom of Information is not available
Please refer to the printed copy.

Attachment 3
AMS Directive 160.1
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Format for Annual Report of Freedom of Information (FOI) Activities

Due Dates: January 15 - Division reports to the
AMS FOI Officer

February 1 - AMS report to the Director,
Office of Governmental and
Public Affairs

TO: AMS FOI Officer

FROM:

SUBJECT: Report of Activities Under the Freedom of Information Act
for the Year Ended December 31, 19-

1. Number of FOIA requests denied. Total:
Give a brief summary of each requests the reasons for denial, and the name and title or position of the person(s) responsible for each denial.)
2. Number of FOIA appeals resulting from denial of FOIA requests by Division

Total:
(Give a brief summary of each appeal, the result of each appeal, the reasons for each denial of appeal, and the name and title or position of the person(s) responsible for each denial.)
3. Results of each proceeding conducted under Subsection (a)(4)(F) of the Act.
(Give a report of disciplinary action taken against any officer or employee who was primarily responsible for

improperly withholding records, or an explanation of why disciplinary action was not taken.)

4. Total fees collected for making information available to the public.
\$ (This figure to be provided for AMS by the Financial Management Division.)
5. Additional Information.
Give any other information which indicates an effort to fully administer the Freedom of Information Act.)

Attachments

(Attach a copy of every rule made by AMS with respect to making information or records available to the public.)

Distribution: G07

Originating Office: Public Affairs Staff

