

**E**NVIRONMENTAL  
**P**ROTECTION  
**A**GENCY

**TRANSMITTAL**

Addressee

1550.1B

May 13, 1975

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PUBLIC AFFAIRS - FREEDOM OF INFORMATION PROGRAM

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**MATERIAL TRANSMITTED:**

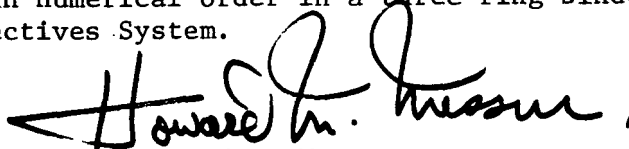
EPA Order 1550.1B, Freedom of Information Procedures

**MATERIAL SUPERSEDED:**

None

**FILING INSTRUCTIONS:**

File the attached material in numerical order in a three-ring binder established for the EPA Directives System.



Howard M. Messner  
Deputy Assistant Administrator  
for Administration

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Dist: Directives

**ENVIRONMENTAL  
PROTECTION  
AGENCY**

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PUBLIC AFFAIRS - FREEDOM OF INFORMATION PROGRAM

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FREEDOM OF INFORMATION PROCEDURES

1. PURPOSE. This Order establishes policy and procedures for implementing the Freedom of Information Act, as amended (5 U.S.C. 552), relating to the availability to the public of identifiable and unpublished records contained in EPA files. It supplements the EPA regulations set forth in Part 2, Title 40, Code of Federal Regulations. For additional information, refer to the regulation attached at Figure 1.
2. POLICY. It is Agency policy to make the fullest possible disclosure of information without unjustifiable expense or delay to any person who requests information subject to the other provisions of this Order.
3. COVERAGE. Any written request to EPA for existing records is considered to be a request for records pursuant to the Freedom of Information Act, 5 U.S.C. 552, whether or not that statute is mentioned in the request. Requests for existing records prepared by EPA for routine public distribution, e.g., pamphlets, copies of speeches, press releases, and educational materials, will be honored automatically. An individual determination is not necessary in such cases, since preparation of the records for routine public distribution itself constitutes a determination that the records are available to the public. Consequently, the detailed procedures in this Order apply to written requests for existing records which are not available for routine public distribution.
4. DESIGNATIONS. The following designations are made with respect to implementation of the Freedom of Information Act. Explanations of specific responsibilities associated with each designation are included in the sections on procedures.
  - a. Freedom of Information Officer. The Executive Officer, Office of the Administrator, is designated as the Agency Freedom of Information Officer. Each Regional Administrator will designate a Regional Freedom of Information Officer responsible for his particular region.

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b. Responsible Official. The authority to make positive determinations to release information, waive payment of fees, or extend the date for mailing a determination is delegated to the Division Director level, unless otherwise reserved by a higher official. The authority to make negative determinations is hereby delegated to the:

- (1) Deputy Administrator;
- (2) Assistant Administrators;
- (3) Deputy Assistant Administrators;
- (4) Heads of Headquarters Staff Offices;
- (5) Regional Administrators; and
- (6) Deputy Regional Administrators.

This authority is not redelegable.

c. Appeal Officials. The General Counsel is designated as the Agency Official responsible for making legal determinations on written appeals from negative determinations made by Headquarters or regional officials. He may delegate this duty to a Regional Counsel in connection with any category of appeals or any individual appeal. The Director, Office of Public Affairs, is responsible for reviewing those appealed determinations where the General Counsel has ruled the information withholdable but not required legally to be withheld. The Administrator is responsible for the final appeals determination whenever the Office of Public Affairs and the responsible official do not agree on the release of information that legally may be withheld.

##### 5. PROCEDURES FOR ROUTING REQUESTS.

a. Correspondence Marked "Freedom of Information" on the Envelope. Correspondence marked "Freedom of Information" on the envelope will be delivered directly to Executive Communications or to the regional Freedom of Information Office, where it will be date stamped, assigned a Request Identification Number, and logged in as a Freedom of Information request. Executive Communications or the appropriate regional staff will complete EPA Form 5180.1, Mail Control Schedule, and hand carry or telecopy the correspondence to the office responsible for preparing the reply. In the event that more than one office will be providing input to the reply, Executive Communications or the regional Freedom of Information Office will designate a lead office to coordinate the reply.

**b. Correspondence Addressed to an Organizational Unit or Official.**

If an organizational unit or EPA official receives correspondence directly which is identified as a Freedom of Information Request within the meaning of paragraph 3 of this Order, the correspondence will be date stamped upon receipt and the procedure for determining whether the information can be provided will commence immediately. Concurrently, the office will forward a copy of the request, with the date and place of receipt noted thereon, to Executive Communications or the regional Freedom of Information Office, whichever the case may be. If the correspondence is not addressed to the appropriate office, the receiving office will record the date of receipt and hand carry or telecopy the correspondence to Executive Communications or the regional Freedom of Information Office for proper routing.

c. Unless there is a predetermined positive determination, Executive Communications or the regional Freedom of Information Office will send an acknowledgment of receipt of the correspondence to the requesting party immediately after logging the correspondence into the Agency. This acknowledgment, EPA Headquarters Form 1550-2 or EPA Form 1550-3, Figure 2, will inform the requesting party of the date of receipt by EPA.

**6. PROCEDURES FOR RESPONDING.**

a. Upon receipt of a Freedom of Information request, the responsible official will immediately initiate an effort to obtain or locate the records requested and within ten (10) working days of the stamped date will:

(1) Obtain or ascertain the location of the records requested, and if the charge for furnishing the information (see paragraph 11) would be less than \$25 or less than the amount authorized in the request, furnish the information and/or notify the requestor that the information will be furnished as promptly as possible; or

(2) If the fee would be greater than \$25 or greater than the amount authorized in the request, immediately inform the requesting party (by telephone if possible) of the expected charge and the requirement that the requesting party authorize such a charge before the search can be continued or the information furnished; or

(3) Inform the requesting party that the records sought are in the possession of another Federal agency; refer the request to the appropriate office in such other agency; and notify the requesting party of such referral; or

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(4) Inform the requesting party that the records requested do not exist, to the best knowledge of the receiving office; or

(5) Inform the requesting party that the records requested have been published in the Federal Register, or in any other generally available publication, and furnish the citation of such publication and the place or places where it may be obtained; or

(6) Make a determination not to release all or part of the information requested (see paragraphs 7 and 8 of this Order for detailed guidance); or

(7) Inform the requesting party by written notice that an extension as described in paragraph 8 of this Order is necessary and advise the party of the anticipated date of determination (no more than twenty (20) working days after the receipt of the request for the records), at which time the provisions of this Order will be promptly followed; and

(8) Inform Executive Communications or the regional staff of the action taken.

b. If the description of the records sought in the request is not reasonably sufficient to identify and locate the requested records, the responsible official will notify the requestor (by telephone, if possible) of the problem and assist the requestor in formulating his request.

c. If the requestor walks into an office to request records and:

(1) The requested record is readily available, provide the requestor with the information subject to the payment requirements of this Order; or

(2) The office is unable to accommodate the "walk-in" requestor at that particular time due to unavoidable staff constraints, set up a return appointment; or

(3) The request will require extensive search time, the requestor may be asked to put his request in writing and the request will then be processed according to procedures of any other written request.

d. Generally, the responsible official has ten (10) working days from the date of receipt by the Freedom of Information Officer in Executive Communications or the regional Freedom of Information Office in which to issue a written determination to the requestor stating which of the requested records will and which will not be released together with the reason for

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any denial of a request. (A written determination is not necessary if within that ten (10) day period all requested records are actually furnished to the requestor). Extensions of this time limit are discussed in paragraph 8 of this Order. The time involved in the following two situations will not be counted towards the ten (10) day period:

(1) Any time which elapses between the time that a requestor is notified by the responsible official that his request does not reasonably identify the records sought and the time that the requestor furnishes a reasonable identification; and

(2) Any time which elapses between the time that a requestor is notified by the responsible official that processing his request will generate chargeable fees and the time that the requestor makes suitable arrangements for payment for such charges.

**7. CRITERIA FOR MAKING NEGATIVE DETERMINATIONS.**

a. Nine categories of matters which are exempt from the mandatory disclosure requirements of the Act are:

(1) Matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Matters that are related solely to the internal personnel rules and practices of EPA;

(3) Matters that are specifically exempted from disclosure by statute;

(4) Matters that are trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Matters that are interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Matters concerning personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

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(7) Matters that are 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 the 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.

(8) Matters that are 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; or

(9) Matters that are geological and geophysical information and data, including maps, concerning wells.

b. Consistent with EPA policy, responsible officials will release requested records despite the applicability of the exemptions listed in subparagraph 7a(2), (5), (7), (8), or (9) unless there exists a compelling reason for withholding the records. They must also provide any reasonably segregable portion of a record to a requestor after deletion of the portions which are exempt.

c. Responsible officials may also have to deny a request because the record requested is not known to exist or the record is not in EPA's possession. In such cases, denials are not supported by statute, but for practical reasons, must suffice for an initial determination. The responsible official making the negative determination will be held accountable for his decision, and search for the records should continue on the assumption that the negative determination will be appealed.

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8. PROCEDURES FOR MAKING NEGATIVE DETERMINATIONS are as follows:

a. If the responsible official, within ten (10) working days of the stamped receipt date, determines that all or part of the requested records will not be provided, he will:

(1) Personally contact the Director of the Office of Public Affairs or her designee, to discuss the impact of the negative determination on EPA's relationships with the public; and if the responsible official still makes a determination to withhold information, such official will notify the requesting party in writing that all or part of the request has been denied.

(2) In preparing the written denial, cite the section in Part 2, Title 40, CFR which provides the statutory basis for nondisclosure and specify the name(s) and title(s) or position(s) of the person(s) responsible for the denial. The denial letter must state that the individual has thirty (30) days after receipt of the denial to make an administrative appeal, addressed to the EPA Freedom of Information Officer, A-101, U. S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460. Figure 3 shows a sample written denial letter.

b. The official signing the negative determination will notify Executive Communications or the regional staff, as appropriate, of the action taken. The Headquarters official making the negative determination or the regional staff will immediately forward to Executive Communications a copy of the request for information, a copy of the negative determination, a sample or description of the records being withheld, and any other appropriate correspondence. This will serve to alert the EPA Freedom of Information Officer of a possible appeal.

9. EXTENSION OF DATE OF DETERMINATIONS.

a. The official responsible for processing a request for information may extend the time limit for making the initial determination for up to ten (10) additional working days in the unusual circumstances listed in (b) below. The EPA Freedom of Information Officer also may extend the time limits for processing an administrative appeal for the remainder of the ten (10) working days that were not used in the initial determination process for the reasons listed in (b) below. The combined extensions for the initial determination and the appeals process cannot exceed a total of ten (10) working days.



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b. The following unusual circumstances are the only criteria for issuing notice of an extension.

(1) The need to search for and collect the requested records from field facilities or other establishments that are physically distant from the office processing the request; or

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in a determination or among two or more components in EPA having substantial subject-matter interest therein.

c. The official responsible for authorizing an extension must send a written notice to the requesting party setting forth the reasons for such an extension and the date on which either the initial determination or appeal decision is expected to be dispatched; and

d. The responsible official also will notify Executive Communications or the regional staff, as appropriate, of the action taken.

10. ADMINISTRATIVE APPEAL.

a. Within thirty (30) days after the receipt of copies of records or a written denial of a request for information from an EPA office, a requestor may appeal the decision.

b. EPA has twenty (20) working days in which to make a final determination on an appeal. Because of the importance of time in this process, all appeals will be date stamped upon receipt by Executive Communications; and the EPA Freedom of Information Officer will hand carry the appeal along with copies of the original request, the initial denial, and the information requested or descriptive samples thereof to the General Counsel or the appropriate Regional Counsel, if authority has been redelegated.

(1) The General Counsel or the appropriate Regional Counsel will review the appeal, the submitted case material and any additional material he may require; and then render a legal opinion on the applicability of the exemptions to the material withheld.

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(2) The Director, Office of Public Affairs will review those negative determinations in which the General Counsel finds that the subject material may be withheld, but is not required by statute to be withheld.

(3) In the event that the Director of the Office of Public Affairs and the appropriate Assistant Administrator, Regional Administrator, or Director of a Headquarters Staff Office does not agree on the release of such information, the Administrator will make the final determination on whether the material is to be released.

c. Notification of Appeal Determination.

(1) If the initial negative determination is not upheld, the General Counsel will inform the requestor in writing that the requested records will be forthcoming.

(2) If the initial negative determination is in whole or part supported, the General Counsel will notify the requestor in writing of the decision to uphold the initial negative determination and of the provisions for judicial review by the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the Agency records are situated, or in the District of Columbia, and state the name and title of the official responsible for making the negative determination.

d. The General Counsel will notify the EPA Freedom of Information Officer of the action taken.

11. CREATION OF RECORDS. Generally, documents will not be created by compiling selected items from other documents at the request of a member of the public, nor will records be created to provide the requesting party with data such as ratios, proportions, percentages, frequency distribution, trends, correlations, or comparisons. The responding office will provide the information in the form deemed most appropriate.

12. PAYMENT.

a. EPA will charge fees for copies of records which are furnished to a requestor and for time spent in locating and reproducing the records in accordance with the fee schedule below. Fees will not be charged for periods of less than one-half hour spent in connection with a search for records or computer programming.

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Record Search Time . . . . . \$2.50 per half hour  
In-house computer programming time . . . . . \$4.50 per half hour  
Reproduction of documents . . . . . \$ .20 per page

If the information requested exists as a computer record and a printout or tape is a means by which that information may be made available, the fee will be the actual direct cost of the computer system time added to any applicable search, in-house programming, reproduction, or contract programming costs.

b. Prepayment.

(1) The responsible office will determine as accurately as possible the amount of fee payment that would become due upon completion of EPA's search and/or copying activities and, in the event that pending requests for information would require the payment of fees in excess of \$25 or the amount authorized by the requestor, will inform the requesting party (by telephone if possible) of the expected charge. The \$25 base-line represents a suggested cut-off point for charging fees. Organizations can charge for requests costing less than \$25, especially if these records are normally for sale.

(2) Once the requestor has agreed to the actual or approximate fee, and advance payment is received or acceptable payment arrangements are made, the information to be made available will be released.

(3) The responsible official must keep the Freedom of Information Officer or the regional Freedom of Information Officer apprised of all actions taken with respect to the payment of fee since the time required by the requestor to agree to the fee and make the necessary arrangements for payment is not included in the ten (10) day response time limit.

(4) Payments must be made in the form of a check or money order, made payable to the U. S. Environmental Protection Agency and delivered to the Freedom of Information Officer, A-101, U. S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460 or the appropriate regional Freedom of Information Officer. The Freedom of Information Officer will log and forward the payment to the local Financial Management Office for deposit in the U. S. Treasury general fund account, and notify the responsible office of the receipt of payment.

(a) In the event that an advance payment is different than the actual fee calculated on completion of the request, the responsible office will notify the Freedom of Information Officer of the difference.

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(b) The Freedom of Information Officer will then direct the local Financial Management Office to affect the appropriate refund or prepare a statement of additional fees due, to be sent to the requestor.

13. WAIVER. A responsible official may reduce or waive payment of fees if such a reduction or waiver is determined to be in the public interest. This procedure will be observed in a consistent and objective manner in consonance with EPA policy. In questionable instances, the Office of Public Affairs or the regional public affairs unit should be consulted.

14. ANNUAL REVIEW.

a. On or before March 1 of each calendar year, EPA's Freedom of Information Act Officer will prepare an Agency report covering the preceding calendar year. The report will be addressed to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The Freedom of Information Act Officer will have to compile the data elements listed below both from the Headquarters and the field so that he may complete the report:

(1) The number of determinations made by EPA not to comply with requests for records and the reasons for each determination;

(2) The number of appeals made by persons, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The name(s) and title(s) or position(s) of each person responsible for the initial denial of records requested and the number of instances of participation for each;

(4) The results of each disciplinary proceeding conducted including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of Agency rules regarding the Freedom of Information Act;

(6) A copy of the fee schedule and the total amount of fees collected for making records available;

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(7) The administrative costs to EPA for complying with the provisions of the Act in terms of man/years of effort expended. (This information is vital to the documentation of future positions to be advanced by EPA and the Executive Branch on the effects of the Act on executive agency workload.); and

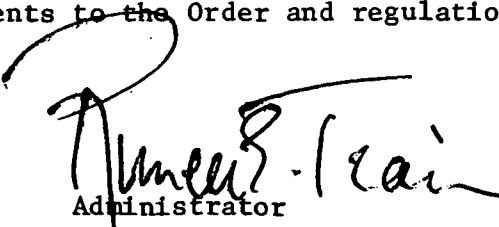
(8) Other related information as may be needed.

b. The Freedom of Information Officer will evaluate the information gathered for the annual report to Congress from a management standpoint to assure that EPA's actions are in congruence with the intent of the Act. The Freedom of Information Officer may conduct evaluations of specific EPA responses to Freedom of Information requests, as appropriate.

15. ACCOUNTABILITY AND DISCIPLINARY ACTION. Responsible officials will be held individually accountable for their decisions with respect to the release or withholding of information, the waiver of payment, and/or the appeals process. As provided previously, the names and titles of responsible officials in certain situations will be forwarded to Congress in the annual report. Whenever the court orders the production of EPA records improperly withheld from the complainant and issues a written finding that the circumstances surrounding the withholding raise questions of whether the responsible official acted arbitrarily or capriciously, the Civil Service Commission will promptly initiate a proceeding to determine whether disciplinary action is warranted.

16. INTERNAL ASSISTANCE AND ADVICE. Responsible officials should be aware of the opportunity to seek legal assistance, especially in instances involving possible exempted material, from the Offices of General Counsel or the Regional Counsel. Likewise, the Headquarters Office of Public Affairs or the regional public affairs units are available for consultation when assessing the probable public response to a negative determination or deciding whether to reduce or waive fees for providing information.

17. REVIEW OF PROGRAM. After a six month period of experience, the Offices of Planning and Management and General Counsel will review the Freedom of Information Program in terms of responsibilities, procedures, and guidelines and make adjustments to the Order and regulation as deemed appropriate.

  
Administrator

## Chapter 1, Part 2, Title 40, Code of Federal Regulations

Part 2 of Chapter I of Title 40 is revised to read as follows:

### Subpart A—Interim Regulations Concerning Requests for Information

- Sec.
- 2.100 Definitions.
  - 2.101 Policy on disclosure of EPA records.
  - 2.102 [Reserved]
  - 2.103 Partial disclosure of records.
  - 2.104 Request for existing records.
  - 2.105 Creation of new records.
  - 2.106 [Reserved]
  - 2.107 Where requests for agency records shall be filed.
  - 2.108 Form of request.
  - 2.109 Requests which do not reasonably describe records sought.
  - 2.110 Initial action upon receipt of a request.
  - 2.111 Action by office responsible for maintaining requested records.
  - 2.112 Time allowed for issuance of initial determination.
  - 2.113 Initial denials of requests.
  - 2.114 Appeals from initial denials; manner of making.
  - 2.115 Appeal determinations; by whom made.
  - 2.116 Contents of determination denying appeal.
  - 2.117 Time allowed for issuance of appeal determination.
  - 2.118 Exemption categories.
  - 2.119 Discretionary release of exempt documents.
  - 2.120 Payment.
  - 2.121 Preparation of annual report.

### Subpart B—[Reserved]

AUTHORITY: 5 U.S.C. 552, 5 U.S.C. 553.

#### § 2.100 Definitions.

For the purposes of this part:

- (a) "EPA" means the United States Environmental Protection Agency.
- (b) "Request" means a request for the release of records under 5 U.S.C. 552.
- (c) "Requestor" means any person who has submitted a request to EPA.

#### § 2.101 Policy on disclosure of EPA records.

(a) EPA will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons in trade secrets and other information entitled to confidential treatment, and the need for EPA to promote frank internal policy deliberations and to pursue its official activities without undue disruption.

(b) All EPA records shall be available to the public unless they are specifically exempt under this part.

(c) All nonexempt records of EPA shall be made available for public disclosure upon request regardless of whether any justification or need for such records has been shown.

#### § 2.102 [Reserved]

#### § 2.103 Partial disclosure of records.

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information will be disclosed unless the disclosable portions

cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

#### § 2.104 Request for existing records.

(a) Any written request to EPA for existing records shall be deemed to be a request for records pursuant to the Freedom of Information Act, 5 U.S.C. 552, whether or not that statute is mentioned in the request, and shall be governed by the provisions of this Part.

(b) All existing EPA records are subject to routine destruction according to standard record retention schedules.

(c) Any written request to EPA for existing records prepared by EPA for routine public distribution, e.g., pamphlets, copies of speeches, press releases, and educational materials, shall be honored. No individual determination under § 2.111 is necessary in such cases, since preparation of the records for routine public distribution itself constitutes a determination that the records are available to the public. Copies shall be furnished with reasonable promptness in response to the request.

#### § 2.105 Creation of new records.

The Freedom of Information Act and the provisions of this part apply only to existing records; they do not require the creation of new records.

#### § 2.106 [Reserved]

#### § 2.107 Where requests for agency records shall be filed.

A request for records may be filed with the EPA Freedom of Information Officer, A-101, 401 M Street, SW., Washington, D.C. 20460. Should the requestor have reason to believe that the records sought may be located in EPA regional offices, he should transmit his request to the appropriate regional Freedom of Information Office indicated below:

(a) *Region I.* (Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island, Vermont):

U.S. Environmental Protection Agency  
Freedom of Information Officer  
Room 2303  
John F. Kennedy Federal Building  
Boston, Mass. 02203

(b) *Region II.* (New Jersey, New York, Puerto Rico, Virgin Islands):

U.S. Environmental Protection Agency  
Freedom of Information Officer  
Room 1005  
26 Federal Plaza  
New York, NY 10007

(c) *Region III.* (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia):

U.S. Environmental Protection Agency  
Freedom of Information Officer  
Curtis Building  
Sixth and Walnut Streets  
Philadelphia, PA 19106

(d) *Region IV.* (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee):

U.S. Environmental Protection Agency  
Freedom of Information Officer  
Suite 504  
1421 Peachtree Street, N.E.  
Atlanta, GA 30309

**(e) Region V. (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin):**

U.S. Environmental Protection Agency  
Freedom of Information Officer  
230 Dearborn Street  
Chicago, IL 60604

**(f) Region VI. (Arkansas, Louisiana, New Mexico, Oklahoma, Texas):**

U.S. Environmental Protection Agency  
Freedom of Information Officer  
Suite 1100  
1800 Patterson Street  
Dallas, TX 75201

**(g) Region VII. (Iowa, Kansas, Missouri, Nebraska):**

U.S. Environmental Protection Agency  
Freedom of Information Officer  
1735 Baltimore Avenue  
Kansas City, MO 64108

**(h) Region VIII. (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming):**

U.S. Environmental Protection Agency  
Freedom of Information Officer  
Suite 900  
1860 Lincoln Street  
Denver, CO 80203

**(i) Region IX. (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territories of Pacific Islands, Wake Island):**

U.S. Environmental Protection Agency  
Freedom of Information Officer  
100 California Street  
San Francisco, CA 94111

**(j) Region X. (Alaska, Idaho, Oregon, Washington):**

U.S. Environmental Protection Agency  
Freedom of Information Officer  
1200 Sixth Avenue  
Seattle, WA 98101

**§ 2.108 Form of request.**

A request for EPA records shall be in writing, shall reasonably describe the records sought in a way that will permit their identification and location by EPA, but otherwise need not be in any particular form. Where the requestor anticipates that search and duplication fees involved in the request might be substantial, he may wish to consider a prepayment, or include a commitment to pay all fees that may be involved or all fees up to a stated limit (see § 2.120). Placing the term "Freedom of Information Act Request" on the envelope and letter may well result in a speedier response.

**§ 2.109 Requests which do not reasonably describe records sought.**

(a) If the description of the records sought in the request is not a reasonable description sufficient to allow EPA to identify and locate the requested records, EPA will notify the requestor (by telephone when practicable) that the request cannot be further processed until additional information is furnished.

(b) EPA will make every reasonable effort to assist in the identification and description of records sought, and to assist the requestor in formulating his request. If a request is described in general terms (e.g., all records having to do with a certain area), the EPA office

shall attempt to communicate with the requestor (by telephone when practicable) with a view toward lessening both the administrative burden of processing a broad request and minimizing the fees payable by the requestor. Such attempts will not be used as a means to discourage requests, but rather as a means to help identify with more specificity the records actually sought.

**§ 2.110 Initial action upon receipt of a request.**

(a) *Requests received by the Freedom of Information Offices.* Each request received by a Freedom of Information Office, whether at EPA Headquarters or at an EPA region, shall be promptly stamped with the date of receipt by that office and assigned a Request Identification Number. The Freedom of Information Office shall promptly forward the request to the EPA office(s) believed to be responsible for maintaining the requested records, retaining a copy of the request. If a request is received by a Freedom of Information Office at an EPA region and the requested records (or some of them) are not maintained by that EPA region, the regional Freedom of Information Office shall promptly furnish a copy of the request to the Headquarters Freedom of Information Office.

(b) *Requests received by EPA offices other than Freedom of Information Offices.* If any request is received by any EPA office other than a Freedom of Information Office, a copy of the request shall be forwarded immediately to the Headquarters Freedom of Information Office (or, if the receiving office is part of an EPA region, to the regional Freedom of Information Office).

(c) *Method of forwarding requests.* Requests shall be forwarded under paragraphs (a) and (b) of this section by electronic means (facsimile machine, telephone, etc.).

**§ 2.111 Action by office responsible for maintaining requested records.**

(a) Whenever an EPA office becomes aware that it has been assigned the responsibility of responding to a request, or whenever such an office becomes aware that EPA has received a request for records which that office maintains or for which that office has responsibility, the office shall:

(1) Locate the records as promptly as possible, or determine that the records are not known to exist, or that they are located at another EPA office, or that they are held by another Federal agency and not by EPA;

(2) Determine which of the records (or portions of records) held by the office may not legally be released, and why;

(3) Determine whether disclosure will be made of requested records which are exempt from mandatory disclosure but which are not required by law or this part to be withheld (see §§ 2.118-2.119), and the reasons for withholding any such records;

(4) Issue an initial determination within the allowed period (see § 2.112),

specifying which requested records will be withheld and which will be released (determinations to withhold requested records shall comply with § 2.113).

(b) If any requested records located under paragraph (a) of this section contain business information which is covered by a business confidentiality claim or is the type of information for which business sometimes requests confidential treatment, or is or may be required by law to be held in confidence for reasons of business confidentiality, the EPA office in possession of such records shall comply with applicable provisions of subpart B of this Part.

(c) Whenever an EPA office learns that some or all of the requested records are not in that office's possession but are or may be in the possession of some other EPA office or some other Federal agency, that office shall immediately so inform the Headquarters or regional Freedom of Information Office which is monitoring the request.

(d) If at any time it appears to an EPA office that performance of further search work would cause fees to be incurred in excess of those which the requestor has paid or agreed to pay (or \$25.00 if no fee has been agreed upon), action shall be taken to obtain or assure payment (see § 2.120), to assist in the reformulation of the request (see § 2.109), or both.

**§ 2.112 Time allowed for issuance of initial determination.**

(a) Except as otherwise provided in this section, not later than the tenth working day after the date of receipt by a Freedom of Information Office of a request for records, the EPA office responsible for responding to the request shall issue a written determination to the requestor stating which of the requested records will, and which will not, be released, and the reason for any denial of a request. (A written determination is not necessary if within that 10-day period all requested records are actually furnished to the requestor.)

(b) The period of 10 working days shall be measured from the date the request is first received and logged in by the Headquarters or regional Freedom of Information Office.

(c) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the time that a requestor is notified by EPA that his request does not reasonably identify the records sought and the time that the requestor furnishes a reasonable identification (see § 2.109).

(d) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the time that a requestor is notified by EPA that processing his request will generate chargeable fees in excess of \$25.00 (or any higher dollar limit he has established as acceptable), and the time that the requestor makes suitable arrangements for payment of such charges (see § 2.120).

(e) The EPA office taking action under § 2.111, after notifying the appropriate

Freedom of Information Office, may extend the basic 10-day period established under paragraph (a) of this section by a period not to exceed 10 additional working days, by furnishing written notice to the requestor within the basic 10-day period stating the reasons for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension:

(1) There is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of EPA.

(4) Failure of EPA to issue a determination within the 10-day period or any authorized extension shall constitute final agency action which authorizes the requestor to commence an action in an appropriate Federal district court to obtain the records.

#### § 2.113 Initial denials of requests.

(a) An initial denial of a request may be issued only for the following reasons:

(1) The record requested is not known to exist;

(2) The record is not in EPA's possession;

(3) The record has been published in the FEDERAL REGISTER or is otherwise published and available for sale.

(4) A statutory provision, provision of this part, or court order requires that the information not be disclosed;

(5) The record is exempt from mandatory disclosure under 5 U.S.C. 552(b) and EPA has decided as a matter of discretion not to release it;

(6) Subpart B of this part requires initial denial because a third person must be consulted in connection with a business confidentiality claim; or

(7) The record is believed to exist in EPA's possession but has not yet been located (see paragraph (h) of this section).

(b) Initial denials of requests may be issued or ordered by those EPA officers or employees occupying positions to which such authority has been delegated or redelegated.

(c) Initial determinations should normally be made by the office which is in possession of, or has responsibility for maintaining, the requested records, and only in unusual cases should it be necessary to refer the matter to higher authorities for issuance of the determination. Initial determinations to deny requests may be issued only by an officer or employee who exercises supervisory

authority over the EPA office which possesses or has responsibility for maintaining the requested records.

(d) Each initial determination to deny a request shall be written, signed, and dated, and shall contain a reference to the Request Identification Number.

(e) If the determination to deny a request was directed to be issued by some EPA officer or employee other than the person signing the determination letter, that other person's identity and position shall be stated in the determination letter. If an EPA regulation (e.g., § 2.204) requires that an initial denial determination be issued upon the finding of certain facts, reference shall be made to the regulation and the determination letter shall state the name of the person who made the fact finding.

(f) Each initial determination which denies a request in whole or part shall state that the requestor may appeal the initial denial by mailing or personally delivering an appeal in writing to the address stated in § 2.114 within 30 days of receipt of the determination or within 30 days of the date the requestor last received any records in response to the request, whichever date is later.

(g) An initial determination shall be deemed to be issued at the time the determination letter is placed in EPA mailing channels for first class mailing to the requestor, is delivered to the U.S. Postal Service for mailing, or is personally delivered to the requestor, whichever first occurs.

(h) When a request must be denied because the record has not yet been located (although it is believed to exist in EPA's possession), the EPA office responsible for maintaining the record shall continue to search diligently until it is located or it appears that the record does not exist or is not in EPA's possession, and shall periodically inform the requestor of the office's progress.

#### § 2.114 Appeals from initial denials; manner of making.

(a) Any person whose request has been denied in whole or in part by an initial determination may appeal that denial by addressing a written appeal to the Freedom of Information Officer (A-101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

(b) Any appeal shall be mailed no later than 30 calendar days after the date the requestor received the initial determination from which the appeal is taken, or 30 calendar days after the date the requestor last received any documents in response to the request, whichever is later.

(c) The appeal letter shall contain a reference to the date of the initial determination, the name and address of the person who issued the denial letter. The appeal letter shall also indicate whether any of the documents to which access was denied are not the subject of appeal.

#### § 2.115 Appeal determinations; by whom made.

(a) The General Counsel shall make one of the following legal determinations

in connection with every appeal of an initial determination from the initial denial of a request for an existing record in EPA's possession:

(1) The record must be released;

(2) The record must not be released, because a statute or a provision of this part so requires; or

(3) The record is exempt from mandatory disclosure but may be released as a matter of Agency discretion.

(b) Whenever the General Counsel has determined under paragraph (a) of this section that a record is exempt from mandatory disclosure but may legally be disclosed, the matter shall be referred to the Director of the EPA Office of Public Affairs. If the Director of the EPA Office of Public Affairs determines that the record shall not be disclosed, a determination denying the appeal shall be issued by the General Counsel. If the Director of the EPA Office of Public Affairs determines that the record should be disclosed, the record shall be disclosed unless the Administrator (upon a review of the matter requested by the appropriate Assistant Administrator, Regional Administrator, or the Director of a Headquarters Staff Office) determines that the record shall not be disclosed, in which case the General Counsel shall issue a determination denying the appeal.

(c) The General Counsel may delegate his duties under paragraph (a) of this section to a Regional Counsel, or to any other attorney employed on a full-time basis by EPA, in connection with any category of appeals or any individual appeal. No redelegation of such duties is authorized.

#### § 2.116 Contents of determination denying appeal.

A determination denying an appeal from an initial denial shall be in writing shall state which of the exemptions in 5 U.S.C. 552(b) are felt to apply to each requested existing record, and shall state briefly the reason(s) for denial of the request. A denial determination shall also state the name and position of each EPA officer or employee who determined or ordered that the appeal be denied. Such a determination shall further state that the person whose request was denied may obtain judicial review of the denial by complaint filed with the district court of the United States in the district in which the complainant resides, or in which the Agency records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a) (4).

#### § 2.117 Time allowed for issuance of appeal determination.

(a) Except as otherwise provided in this section, not later than the twentieth working day after the date of receipt by the Freedom of Information Officer at EPA Headquarters of an appeal from an initial denial of a request for records, the General Counsel shall issue a written determination stating which of the requested records (as to which an appeal was made) shall be disclosed and which shall not be disclosed.



(b) The period of 20 working days shall be measured from the date an appeal, in accordance with § 2.114, is first received by the Freedom of Information Officer at EPA Headquarters, except as otherwise provided in § 2.205.

(c) The Office of General Counsel, after notifying the Freedom of Information Officer at EPA Headquarters, may extend the basic 20-day period established under paragraph (a) of this section by a period not to exceed 10 additional working days, by furnishing written notice to the requestor within the basic 20-day period stating the reasons for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension:

(1) There is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of EPA.

(d) No extension of the 20-day period shall be issued under subsection (c) of this section which would cause the total of all such extensions and of any extensions issued under § 2.112(e) to exceed 10 working days.

#### § 2.118 Exemption categories.

(a) 5 U.S.C. 552(b) establishes nine exclusive categories of matters which are exempt from the mandatory disclosure requirements of 5 U.S.C. 552(a). No request under 5 U.S.C. 552 for an existing, located record in EPA's possession shall be denied by any EPA office or employee unless the record contains (or its disclosure would reveal) matters that are—

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would: (i) interfere with enforcement proceedings; (ii) deprive a person of a right to a fair trial or an impartial adjudication; (iii) constitute an unwarranted invasion of personal privacy; (iv) 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; (v) disclose investigative techniques and procedures; or (vi) endanger the life or physical safety of law enforcement personnel.

(8) 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; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The fact that the applicability of an exemption permits nondisclosure of a requested record (or portion thereof) does not necessarily mean that the record must or should be withheld. Where the rights of third parties other than Federal agencies would not be prejudiced, disclosure of records in response to a request is encouraged unless there is an important reason for nondisclosure.

#### § 2.119 Discretionary release of exempt documents.

(a) EPA may, in its discretion, release requested records despite the applicability of the exemptions listed in paragraphs (2), (5), (7), (8), or (9) of § 2.118(a).

(b) As a matter of policy, EPA will not release a requested record if EPA determines that one or more of the exemptions listed in paragraphs (1), (3), (4), or (6) of § 2.118(a) apply to the record, except when ordered to do so by a Federal court or in exceptional circumstances under appropriate restrictions with the approval of the Office of General Counsel or a Regional Counsel.

#### § 2.120 Payment.

(a) *Fee Schedule.* Fees will be charged for copies of records which are furnished to a person under this part and for time spent in locating and reproducing them in accordance with the fee schedule below. No fee will be charged for periods of less than one-half hour spent in connection with a search for records or computer programming.

Record search time (per half hour) ---	\$2.50
In-house computer programming time (per half hour) ---	4.50
Reproduction of documents (per page) ---	.20

If the information requested exists as a computer record and a printout or tape is a means by which that informa-

tion may be made available, the fee will be the actual direct cost of the computer system time added to any applicable search, in-house programming, reproduction, or contract programming costs.

(b) *Prepayment.* In the event pending requests under this part from the same requesting party would require the payment of fees in excess of \$25.00, such records will not be searched for or made available, nor copies or such records furnished unless the requesting party first pays, or makes acceptable arrangements to pay, the total amount due; or if not ascertainable exactly, the approximate amount that would become due upon the completion of EPA's search and/or copying activities, as determined by the office responding to the request. All payments must be in the form of check or money order made payable to the U.S. Environmental Protection Agency and delivered to the Freedom of Information Officer at EPA Headquarters or at the appropriate regional office. In the event an advance payment hereunder shall differ from the amount of the fees actually due, an appropriate adjustment will be made at the time the negative determination is issued, the copies requested are delivered, or the records are made available.

(c) *Waiver.* EPA may reduce or waive the payment of fees, if such reduction or waiver would be in the public interest.

#### § 2.121 Preparation of annual report.

On or before March 1 of each calendar year, EPA's Freedom of Information Officer will submit an Agency report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include:

(a) The number of determinations made by EPA not to comply with requests for records made under section 552(a) of the Freedom of Information Act, as amended, and the reasons for each determination;

(b) The number of appeals made by persons under subsection 552(a) (6), the result of such appeals, and the reason for the action upon each appeal that results in a denial for information;

(c) The name(s) and title(s) or position(s) of each person responsible for the denial of records requested under section 552(b) and the number of instances of participation for each;

(d) The results of each proceeding conducted pursuant to subsection 552(a) (4) (f), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of Agency rules regarding the Freedom of Information Act;

(f) A copy of the fee schedule and the total amount of fees collected for making records available; and

(g) Other information related to administering section 552(c).

[FR Doc.75-5859 Filed 3-5-75;8:45 am]

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300  
AN EQUAL OPPORTUNITY EMPLOYER

POSTAGE AND FEES PAID  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
EPA-335



EPA HQ FORM 1550-2 (2-75)

\_\_\_\_\_  
DATE

Your request for information pursuant to the provisions  
of the Freedom of Information Act, as amended, was received  
on

The Agency has ten (10) working days to respond to  
your request. You can expect a reply shortly after expiration  
of the ten working day period. Further correspondence on this  
subject should cite the following Request Identification  
Number: (A-101) RIN-

Freedom of Information Officer  
U.S. Environmental Protection Agency

FIGURE 2. Acknowledgement of Receipt Forms  
(Part 1 of 2)

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**POSTAGE AND FEES PAID  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
EPA-935**



**OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300  
AN EQUAL OPPORTUNITY EMPLOYER**

**EPA FORM 1550-3 (2-75)**

**DATE**

**Your request for information pursuant to the provisions  
of the Freedom of Information Act, as amended, was received  
on**

**The Agency has ten (10) working days to respond to  
your request. You can expect a reply shortly after expiration  
of the ten working day period. Further correspondence on this  
subject should cite the following Request Identification  
Number: RIN-**

**Freedom of Information Officer  
U.S. Environmental Protection Agency**

**FIGURE 2  
(Part 2 of 2)**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
PLANNING AND MANAGEMENT

Mr. George S. Straffin  
Northwestern Life Insurance Company  
65 Partridge Road  
Stanford, Connecticut 04860

Dear Mr. Straffin:

This is in response to your request received April 25, 1975, for copies of Messrs. Prentice Hart's and Dean Bradley's personnel records.

[ NOTE DATE RECEIVED BY  
AGENCY ]

I have determined that I will not release these records as their disclosure would constitute a clearly unwarranted invasion of personal privacy. These records are exempt from disclosure under 40 C.F.R. Part 2, Section 2.118 (a)(6).

[ CITE PARAGRAPH AUTHORIZING  
DENIAL OF RECORDS WITH EX-  
PLANATION, IF APPROPRIATE ]

If you wish to appeal this denial, you may address such an appeal in writing to the EPA Freedom of Information Officer, A-101, RN- \_\_\_\_, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460 within thirty (30) days of receipt of this negative determination.

[ NOTE APPEAL OPTION; SPECIFY  
APPROPRIATE RN- NUMBER IN  
ADDRESS ]

Sincerely yours,

Howard M. Messner  
Deputy Assistant Administrator  
for Administration

FIGURE 3. Example of negative determination letter.