

U.S. CUSTOMS AND BORDER PROTECTION DIRECTIVE

CBP DIRECTIVE NO. 2120-009B

DATE: July 9, 2024

ORIGINATING OFFICE: OC-PDO

REVIEW DATE: July 9, 2029

SUBJECT: FREEDOM OF INFORMATION ACT Policy and Implementation

1. PURPOSE. This Directive establishes the procedures and designates the duties and responsibilities required to ensure that all U.S. Customs and Border Protection (CBP) offices and employees fully comply with the Freedom of Information Act (FOIA).

2. SCOPE. This Directive applies to all personnel designated to conduct FOIA responsibilities.

3. POLICY. It is the policy of CBP to fully implement the FOIA in a uniform and consistent manner, and to provide the maximum allowable disclosure of agency records upon request from individuals or organizations and through posting to the FOIA Reading Room on CBP.gov. This guidance is effective on issuance and supersedes the previously issued FOIA Compliance Requirements Directive, published June 17, 2015.

4. AUTHORITIES/REFERENCES

4.1 The Freedom of Information Act, as amended (5 U.S.C. 552).

4.2 E- Government Act of 2002, as amended, Public Law 107-347 Section 208 (Title 44, United States Code (U.S.C.), § 3501 note.

4.3 Federal Register Notice of Freedom of Information Act and Privacy Act Procedurals Final Rule, 81 Federal Register (FR) 83625, dated November 22, 2016.

4.4 Department of Homeland Security (DHS) FOIA Regulations (6 C.F.R. §§ 5.1 – 5.13).

4.5 The Privacy Act of 1974, as amended (5 U.S.C. § 552a).

4.6 Paperwork Reduction Act of 1995, Pub. L. No. 104-13.

4.7 Department of Justice Fee Waiver Policy Guidance, dated April 2, 1987, amended, effective April 25, 1987.

4.8 Executive Order (E.O.) 12600, "Pre-disclosure Notification Procedures for Confidential Commercial Information," dated June 23, 1987.

4.9 E.O. 13526, "Classified National Security Information," dated December 29, 2009.

4.10 Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines; 52 Federal Register 10012, dated March 27, 1987.

4.11 President's Memorandum for Heads of Departments and Agencies, subject: The Freedom of Information Act, dated October 4, 1993.

4.12 Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act. (December 1987).

4.13 President's Memorandum for Heads of Executive Departments and Agencies Regarding the FOIA, dated January 21, 2009.

4.14 White House Memorandum on Safeguarding Information Regarding Weapons of Mass Destruction and Other Sensitive Documents Related to Homeland Security, dated March 19, 2002.

4.15 Department of Homeland Security Management Directive Number 0460.1, Freedom of Information Act Compliance, dated March 1, 2003.

4.16 Department of Homeland Security Management Directive Number 11042.1, Safeguarding Sensitive but Unclassified (For Official Use Only) Information, dated January 6, 2005.

5. RESPONSIBILITIES

5.1. Executive Director, Privacy and Diversity Office (PDO) will:

5.1.1 Ensure that CBP fully implements and complies with the FOIA and all applicable laws and regulations to ensure the effectiveness of CBP's FOIA program.

5.2 Director, FOIA Office will:

5.2.1 Provide day-to-day leadership, management, and oversight for CBP's FOIA program and staff (permanent FOIA employees, FOIA contractors, and temporary duty assignment (TDY) employees), to maximize resources to achieve FOIA goals.

5.2.2 Receive and Assign FOIA Requests

- Ensure FOIA requests are received, reviewed, and assigned to an individual, or a CBP office, so that record searches are conducted, and responsive records are uploaded to the FOIA management system timely for final processing. There are two (2) types of FOIA requests: "Simple" (more targeted and requires fewer pages of records) and "Complex" (requires records from multiple offices and based on volume and/or complexity of records).
- Determine if any fees will be charged and notify the requester before the request is processed. Fees are charged by the FOIA office as follows:
 - Commercial use requesters are charged for any search time, document review, and duplication;
 - News media, educational, or non-commercial scientific requesters are charged for duplication only, after the first 100 pages; and
 - All other requesters are charged for search time (in excess of two hours) and

duplication (after 100 pages).

5.2.3 Record Searches

- Ensure all appropriate CBP systems are searched for responsive records and uploaded to the CBP FOIA management system.
- Comply with DHS and CBP policies regarding the identification and safeguarding of personally identifiable information (PII), classified information, and sensitive but unclassified (SBU) information.

5.2.4 Redact and Close FOIA Requests

- Ensure records are reviewed and legal exemptions are applied, and the final FOIA request is closed. Ensure responsive records are released to the requester within 20 business days of receiving the FOIA request, unless the FOIA criteria has been met that allows CBP more time to respond. CBP offices will be given the opportunity to review final redactions for FOIA cases assigned to them before records are released to the requestor, unless there is an agreement between the designated CBP office FOIA point of contact (POC) and the FOIA office that no final review is necessary.
- Ensure consistency and completeness of CBP's response, whether to grant or deny requests for access to records/documents or fee waivers, and a requester's category for fee purposes.

5.2.5 FOIA Training

- Ensure CBP employees who are responsible for any phase of FOIA are knowledgeable about FOIA processing, to include the receipt/review, assignment, record search, redaction, and uploading of responsive records to the FOIA management system. The Office of Trade (OT), Regulations and Rulings (RR), FOIA Appeals and Policy Branch and Disclosure Law and Judicial Actions Branch, will provide CBP employees with training on FOIA law to include legal exemptions.

5.2.6 FOIA Reporting

- Ensure all mandatory FOIA data is submitted to DHS for the DHS FOIA Annual Report to the Department of Justice (DOJ) Attorney General, and all other reporting purposes as required.
- Prepare and distribute monthly FOIA Non-Travel Reports to CBP leadership to provide "real time" statistics on FOIA requests assigned and overdue status for each CBP office.

5.2.7 FOIA Records Management

- Ensure that reasonable efforts are made to maintain records/documents in forms or formats that are reproducible for the purposes of the FOIA request.
- Retain and destroy all FOIA records in accordance with the National Archives and

Records Administration (NARA) policy and approved CBP records retention schedule.

- Ensure records subject to 5 U.S.C § 552 (a)(2) of the FOIA that have been created on or after November 1, 1996, are posted to the CBP FOIA Reading Room, so they are proactively available to the public (i.e., final agency opinions and orders rendered in the adjudication of cases, specific policy statement that are not published in the Federal Register, and administrative staff manuals and instructions to staff that affect a member of the public).
- In consultation with CBP offices, determine which records are likely to become the subject of repeated FOIA requests and as appropriate, post these records to the CBP FOIA Reading Room.

5.3 All CBP Offices [Executive Assistant Commissioners (EAC), Assistant Commissioners (AC), Chiefs of U.S. Border Patrol (USBP), Executive Directors] will:

5.3.1 Designate appropriate staff to meet the demands of FOIA requests assigned to their office. Failure to comply with FOIA requests timely can result in costly litigation and sanctions against CBP.

5.3.2 Receive FOIA requests and conduct thorough record searches and upload responsive records – including those already marked For Official Use Only (FOUO) – to the FOIA management system within the timeframe assigned by the FOIA office and assign the FOIA request back to the FOIA office for final review and processing.

5.3.3 Provide the FOIA office with proposed redactions on responsive records and review final redactions prior to the release of records to the requester by the FOIA office – unless there is an agreement between the designated CBP office FOIA POC and the FOIA office that no final review is necessary.

5.3.4 Notify the FOIA office as soon as possible (within 1 – 2 business days), if a FOIA request has been erroneously assigned to your office.

5.3.5 Redirect immediately to the FOIA office any requests received from any individual or office other than the FOIA office through the CBP FOIA public liaison contact (cbpfoiapublicliaison@cbp.dhs.gov).

5.3.6 Retain and destroy all FOIA records in accordance with NARA policy and approved CBP records retention schedule.

5.3.7 Upon notice of a FOIA appeal from CBP OT, RR, FOIA Appeals and Policy Branch or Disclosure Law and Judicial Actions Branch, or upon notice of FOIA litigation from CBP Office of Chief Counsel (OCC), designate a staff member to assist in the review and processing of the appeal or litigation, which may include, but not be limited to, conducting new record searches, explaining existing record systems, and providing subject matter expertise and guidance regarding the sensitivity of any records.

5.4 CBP Privacy Officer will:

5.4.1 Ensure compliance with established legal and DHS policy requirements associated with the release of CBP information containing PII.

5.4.2 Process Privacy Act correction and amendment requests, coordinate with CBP personnel from the Office of Field Operations (OFO), Office of Air and Marine Operations (AMO), USBP, OT, and other support offices within CBP to locate and assess the records in question, determine whether records should be corrected or amended, and notify the individual that the request was received and ultimately granted or denied.

5.5 Assistant Commissioner for the Office of Information Technology (OIT) will:

5.5.1 Provide technical assistance as necessary to CBP's FOIA website, and other e-discovery systems utilized by CBP to support FOIA.

5.5.2 Ensure the availability of cost-effective, state-of-the-art technical solutions for the electronic redaction of documents and video.

5.5.3 Maintain operability of the CBP FOIA Reading Room to ensure a library of documents that can be downloaded and reviewed by the public.

5.6 Assistant Commissioner for the Office of Public Affairs (OPA) will:

5.6.1 Review and ensure all relevant content is posted to the CBP FOIA Reading Room, such as: agency manuals, agency policy directives, video footage, et al.

5.7 CBP OT, RR, FOIA Appeals and Policy Branch and Disclosure Law and Judicial Actions Branch will:

5.7.1 Process and respond to all FOIA appeals received by CBP.

5.7.2 Assist OCC in their representation of the agency in FOIA litigation involving matters which were the subject of FOIA appeals.

5.7.3 Provide training as necessary to CBP personnel about their responsibilities under the FOIA.

5.7.4 Compile and provide FOIA appeal data for the DHS FOIA Annual Report.

5.7.5 Upon receipt of administrative appeal, either affirm, reverse, modify or remand adverse determinations or denials of requests.

5.7.6 Coordinate with the CBP Privacy Office for any records that require correction or amendment.

6. MEASUREMENT. The effectiveness of the CBP FOIA program will be measured by performance standards established by the FOIA. The effectiveness of FOIA appeals will be established by the Executive Director, OT, RR.

7. NO PRIVATE RIGHTS CREATED. This document is for internal CBP use only, and does not create or confer any rights, privileges, or benefits for any person

or entity. *United States v. Caceres*, 440 U.S. 741 (1979).

A handwritten signature in black ink, appearing to read "Troy A. Miller". The signature is stylized with several overlapping loops and a long, thin tail extending downwards and to the right.

Troy A. Miller
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection