Office of Chief Counsel
Internal Revenue Service

memorandum

CC:PA:07:RBley
POSTS-117736-25

VIA EMAIL

UILC: 0052A.02-02

date: July 9, 2026

to: Lucia C Lykke
Director, Data Products and Insights
(Research, Applied Analytics and Statistics)

from: Teresa D Trissel
Chief, Branch 7
(Procedure & Administration)

---

subject: Internal Revenue Manual Publishing Requirements

This memorandum responds to your request for assistance dated February 2, 2026. It may not be used or cited as precedent.

ISSUE

Under current law and transparency standards, is it legally permissible for IRM guidance to be made effective and available for internal use by employees prior to public posting of the IRM, provided that public disclosure is not intentionally delayed and publication requirements are fully satisfied.

CONCLUSION

It is legally permissible for the IRM to be published internally before it is published externally if the IRS promptly makes new IRM sections available to the public within the same calendar quarter that sections are made available to IRS employees.

FACTS

The Internal Revenue Manual (IRM) contains instructions to staff that are required to be made publicly available consistent with FOIA (5 USC § 552(a)(2)). Under the current process, IRM guidance is posted internally for employee use only after the completion of the external publication process managed by Taxpayers Services' Media and Publications Office (M&P), which includes contractor support. Specifically, the content is approved by the program owner and business unit internal management document (IMD) coordinator, after which it is transmitted to M&P for contractor transformation. Once the contractor returns the electronic files, the IRM is posted internally (IRM Online, SERP, and Publishing Catalog) and externally (irs.gov), with the effective date typically aligned with the date the files are received. This process results in a delay between the approval of new IRM sections and their availability to employees as internal posting is dependent on the completion of the external publication process. According to the M&P IRM Team, IRM files sent for contractor transformation are returned within one to two weeks.

LAW AND ANALYSIS

The FOIA requires federal agencies to make certain records available to the public for public inspection and copying. 5 U.S.C. § 552(a)(2). Such records include administrative and staff manuals and instructions to staff that affect a member of the public. 5 U.S.C. § 552(a)(2)(C). The intent behind the requirement is to ensure that the public knows how to interact with federal agencies and how to conform their actions to the requirements of the law. If an agency fails to make staff manuals and instructions available for public inspection, then the agency may not rely on, use, or cite the instructions as precedent against a party or other agency unless the other party had actual notice of the instruction. 5 U.S.C. § 552(a)(2).

The IRS states that the IRM serves as the primary, official source of instructions to staff that relates to the administration and operation of the IRS. IRM Sections 1.11.1.2.1 & 1.11.2.2. Due to this, the IRS is required to externally publish, and make available to the public, portions of the IRM under section 552(a)(2)(C). Information disclosed under section 552(a)(2)(C) must be made promptly available to the public. 26 CFR § 601.702(b). 5 U.S.C. § 552(a)(2)(E) requires federal agencies to make publicly available indexes of records for FOIA reading rooms on a quarterly basis. Because of this, we have previously opined, and continue to recommend, that qualifying instructions to staff be made available to the public by the close of the quarter in which they are issued.

Additionally, under the FOIA, federal agencies must disclose all instructions to staff that affect a member of the public. The IRS generally states that instructions to staff "affect a member of the public" when they affect how a member of the public files, pays, and complies with their tax requirements, or interacts with the IRS. IRM 1.11.10.5.1. Mainly though, what constitutes instructions to staff affecting a member of the public has been interpreted by the Courts. In Hawkes v. IRS, 467 F.2d 787 (6th Cir. 1972) the Court stated the IRS must make IRM provisions that provide basic guidelines for the investigation of various members of the public available for public inspection. Further, in Cox v. DOJ, 576 F.2d 1302 (8th Cir. 2002) the Court held that if a manual clarifies procedural or substantive law, then the manual should be released under section 555(a)(2)(C). In Smith v. Nat'l Transp. Safety Bd., 981 F.2d 1326 (D.C. Cir. 1993) the Court noted that any instruction to staff, the publication of which could alter the public's behavior, should also be made available under section 552(a)(2)(C).

While section 552(a)(2)(C) requires the IRS to promptly release any instructions to staff that affect a member of the public, for law enforcement purposes section 552(b)(7)(E) exempts from public disclosure instructions that could enable a member of the public to circumvent the law. Where an instruction to staff constitutes or includes sensitive law enforcement information then the IRS should not make this information publicly available.

The Open Government Directive was established in 2009 and called for agencies to release agency records that are of sufficient public interest to warrant public disclosure if no harm would occur because of the release of the record even if a record may technically be exempt from disclosure pursuant to section 552(b). In 2022 the Department of Justice released updated FOIA guidelines which state that federal agencies should proactively disclose categories of records described in the FOIA as soon as feasible. Neither the Open Government Initiative nor the 2022 FOIA guidelines set down specific timetables or directions for publishing manuals or instructions to staff under section 552(a)(2).

The IRS Restructuring and Reform Act of 1998 (RRA 98) was a major piece of legislation that expanded the IRS's disclosure obligations. RRA 98 Section F sets down multiple procedures for the IRS to disclose certain types of information to taxpayers such as an explanation of their rights. It additionally calls for the disclosure of certain types of legal advice created by the IRS such as Chief Counsel Advice. RRA 98 does not discuss the IRS's obligation to publish manuals or instructions to staff under section 552(a)(2).

<u>Recommendation and Hazards</u>

The Research, Applied Analytics & Statistics' (RAAS) Servicewide Policy, Directives and Electronic Resources (SPDER) office is looking for ways to modernize the IRM platform. SPDER is proposing that approved IRM sections (new or revised) be posted internally for employee use immediately upon final review and approval and be published publicly after the publication process is completed. The publication process occurs with coordination between the Taxpayer Service's M&P Team and outside contractors and generally takes about one to two weeks.

We believe that this proposal is legally permissible if defined deadlines for internal and external publication and other requirements regarding what constitute IRM sections that affect the public are met. As discussed above, section 552(a)(2)(C) requires that manuals and instructions to staff that affect a member of the public must be publicly published in a prompt manner.

While there is not a defined publication timetable set down in section 552(a)(2)(C) itself, the direction to make indexes of FOIA records promptly available to the public, within the quarter they are issued, exists in section 552(a)(2)(E). Additionally, the IRS's regulations state that manuals and instructions to staff shall be made promptly available to the public at 26 CFR § 601.702(b) and it has been previously opined that making instructions to staff "promptly available" to the public follows the quarterly period for publication set down in section 552(a)(2)(E). We continue to advise that the "prompt manner" and "promptly available" standards are met if an IRM provision is published within the same quarter that it is posted internally for employee use. [redacted]

[redacted]

Please call Robert Bley at (202) 317-5927 if you have any further questions.