



CHIEF PRIVACY OFFICER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

March 16, 2023

MEMORANDUM FOR DISTRIBUTION

FROM: Kathleen E. Walters
Chief Privacy Officer

Kathleen E. Walters

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Kathleen E. Walters
Date: 2023.03.16
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SUBJECT: Your Obligations under the Freedom of Information Act (FOIA)

The Freedom of Information Act (FOIA) was enacted in 1966 and gives the public the right to access records from federal agencies. FOIA requires agencies to respond to requests for records the agency maintains within 20 business days. Our ability to comply with FOIA and promote the openness of government is dependent on the commitment of all IRS employees to prioritize the handling of FOIA requests. By working together to promote public trust through government transparency, we enhance the integrity of tax administration. Employee obligations in support of IRS FOIA compliance include:

- timely responding to requests for copies of records under your office's jurisdiction;
- timely reviewing responsive records and providing release recommendations; including any basis for withholding;
- providing responsive documents on a "rolling production" schedule as they become available, until all documents are delivered;
- making open compliance files available to taxpayers and/or their authorized representative without directing them to make a FOIA request to the extent release will not impair tax administration;
- making certain proactive disclosures when appropriate; and
- consistently using the Organization, Function and Program Code (OFP) 800-85330 on Single Entry Time Reporting (SETR) to record time spent on FOIA activities.

Categories of Records Required to be Disclosed Proactively

You should make the following categories of records available without requiring a formal FOIA request, to the extent their release does not seriously impair tax administration, compromise privacy interests, or fall within a statutory FOIA exemption:

- Final statements of agency policy and interpretations not published in the Federal Register;
- Final administrative staff manuals and instructions to staff that affect a member of the public, including training materials that would not impair tax administration;¹
- Final opinions, including concurring and dissenting opinions, as well as orders, made in adjudication of cases; and
- Records that have been released under the FOIA that are likely to become the subject of subsequent requests for substantially the same records or that have been requested three or more times.

Discretionary Proactive Disclosure of Records to Promote Transparency

In addition to the mandatory proactive disclosure requirements discussed above, the Department of Justice² has directed agencies to exercise their discretion to make a broader range of records available beyond the minimum required by the statute. As with records required to be disclosed proactively, any records disclosed on a discretionary basis will be subject to line-by-line review. Any material that would seriously impair tax administration, compromise privacy interests, or fall within a FOIA statutory exemption should be redacted prior to release of the record.

To learn more about proactive disclosures, please visit XXXXX, found in the Disclosure and Privacy Knowledge Base Site. There you will also find a listing of staff available to address proactive disclosure inquiries.

¹ Informal training materials, such as handouts prepared for a Continuing Legal or Professional Education session, transcripts of oral presentations, SABA discussions, etc., do not constitute the functional equivalent of an administrative staff manual and therefore are not required to be proactively disclosed. However, informal training materials should be considered for discretionary proactive disclosure to promote transparency to the extent they do not impair tax administration.

² See United States Department of Justice, Attorney General Memo issued March 15, 2022, at <https://www.justice.gov/ag/page/file/1483516/download>

Disclosure Guidance and Support

Disclosure staff are available to provide guidance concerning all aspects of the FOIA program at XXX-XXX-XXXX or by email at XXXXX. If you have any questions, please contact me, or a member of your staff may contact Michael Oser, Acting Director, Governmental Liaison, Disclosure and Safeguards at XXX-XXX-XXXX.

Thank you for your support.

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