

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC DIRECTIVE	Title	
	Freedom of Information Act (FOIA) Requests	
	Directive Number	Effective Date
	FCCINST 1179.3	March 2018

1. **PURPOSE:** To implement standard internal procedures for use within the Federal Communications Commission (FCC or Commission) in receiving, processing, and reporting on Freedom of Information Act (FOIA) requests. This directive supplements procedures in the FCC Rules and Regulations 47 C.F.R. §§ 0.460 and 0.461 and does not in any way alter the rights of the public to file FOIA requests.
2. **CANCELLATION:** This instruction supersedes FCCINST1179.2 dated April 16, 2012.
3. **BACKGROUND:** The FOIA, 5 U.S.C. § 552, as amended, makes many federal records available for public inspection. It ensures public access to Federal records in a reasonable, timely fashion.

The FOIA was amended in 2007 by the Openness Promotes Effectiveness in our National Government Act, known as the OPEN Government Act. It made several procedural amendments to the FOIA, including revising the definition of news media requesters; specifying the manner of computing and tolling the time limits for responding to requests; requiring tracking of FOIA requests by agencies; amending the annual agency reporting requirements; amending the way agency records maintained by government contractors are treated under the FOIA; codifying the Chief FOIA Officer and FOIA public liaison position; setting forth new marking requirements for redactions of documents; and creating a new Office of Government Information Services (OGIS) as part of the National Archives and Records Administration (NARA).

On June 30, 2016, the President signed into law the FOIA Improvement Act of 2016, which addressed a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they inform requesters of dispute resolution services at various times throughout the FOIA process. The Act also codified the Department of Justice’s “foreseeable harm” standard, enacted a sunset provision for Exemption 5, created a new Chief FOIA Officers Council, and added two new elements to agency Annual FOIA Reports. Following the passage of the FOIA Improvement Act, the Commission amended Part 0 of its rules to reflect these changes and update its FOIA process, which are incorporated below.

4. RESPONSIBILITIES:

- A. The General Counsel has been delegated authority by the Chairman of the Commission to serve as the FCC's Chief FOIA Officer. In this role, the General Counsel is responsible for overseeing and monitoring the efficiency and effectiveness of the FOIA program, including:
- (1) Subject to the authority of the Chairman, serving as the Chief FOIA Officer for the Commission and being responsible for the Commission's efficient and appropriate compliance with the FOIA, and exercising the responsibilities assigned to that position in the FOIA statute.
 - (2) Monitoring FOIA implementation throughout the Commission and keeping the Chairman and the Attorney General appropriately informed of the agency's performance in implementing the FOIA.
 - (3) Reviewing and reporting to the Attorney General, through the Chairman, on the Commission's performance implementing the FOIA.
 - (4) Recommending to the Chairman such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of FOIA.
 - (5) Preparing the annual Chief FOIA Officer Report.
 - (6) Facilitating public understanding of the purpose of the FOIA, including statutory exemptions, with respect to the FCC.
 - (7) Issuing FOIA-related policy documents.
 - (8) Offering training to Commission staff regarding their responsibilities under the FOIA.
 - (9) Serving as the FOIA coordinator for the Chairman and Commissioners.
 - (10) Serving as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy.
 - (11) Serving as the Commission's representative on the Chief FOIA Officers Council.

- (12) Providing consultation on FOIA issues to bureaus and offices (B/O) and PERM when requested.
- (13) Consulting with PERM when requested with respect to the category of the requester for fee assessment purposes. If there is a disagreement, OGC will make the final determination on the category of the requester.
- (14) Acting on requests for waiver of search, duplication, or review fees.
- (15) Preparing recommendations to the Commission on the disposition of applications for review (FOIA appeals) and representing the Commission in court actions involving FOIA matters.
- (16) Dismissing FOIA appeals that are untimely, repetitious, or fail to articulate specific grounds for review.

B. The Office of Managing Director/Performance Evaluation and Records Management (PERM) is responsible for the administration and day-to-day management of the FOIA program. Specific duties include:

- (1) Managing the FCC's FOIA program and the FOIA Requester Service Center.
- (2) Serving as the central control and contact point on all requests for records received pursuant to the FOIA, acknowledging receipt of all incoming FOIAs, processing and distributing initial FOIA requests to appropriate B/O for response, monitoring the B/O's progress in responding to requests, preparing and submitting all routine reports on the disposition of requests, and notifying Financial Operations (FO) of the amount to be billed to the requester.
- (3) Where multiple B/Os are likely to have responsive records, assigning lead B/O to prepare the initial response with the assistance of other B/Os.
- (4) Serving as the FOIA Public Liaison, which includes: (i) responding to public inquiries concerning the status of FOIA requests; (ii) addressing concerns about the processing of requests; and (iii) resolving disputes between the public and the Bureau/Office processing the request to the extent possible.

- (5) Leading efforts to consult with or refer a FOIA request to other government agencies and departments when necessary, as described in the FCC FOIA Guide.
- (6) Ensuring customer-friendly responses to FOIA requests and FOIA related inquiries.
- (7) Reviewing monthly report of delinquent accounts to ensure that requesters who have an outstanding financial obligation to the Commission do not obtain FOIA services until the debt is satisfied.
- (8) In consultation with the OGC, preparing the required annual report for submittal to the Department of Justice.
- (9) Maintaining B/O records of FOIA requests, actions, and responses and disposing of these records in accordance with the provisions of the General Records Schedule 4.2 which pertains to FOIA records.
- (10) Establishing and maintaining a FOIA home page on the FCC website to explain the scope of the FCC's FOIA program and to provide requesters with the option of submitting FOIA requests electronically. At a minimum, the FCC FOIA home page shall include an electronic reading room containing final opinions and orders, specific agency policy statements, administrative manuals and instructions to staff that affect members of the public and records disclosed in response to a FOIA request that have become or are likely to become the subject of subsequent FOIA requests. In addition to the reading room, the page should contain the FCC Annual FOIA and Chief FOIA Officer Reports, a listing of the principal FOIA contacts including the FOIA Public Liaison and how to submit a FOIA request including a link to the agency-wide electronic FOIA portal, known as FOIAonline.
- (11) Establishing and maintaining a FOIA home page on the FCC Intranet to expand the availability of FOIA documents to FCC staff. At a minimum, the FCC FOIA Intranet page shall contain B/O contacts and information, and guidance for drafting response letters and assessing fees.
- (12) Pursuant to the 2007 OPEN Government Act, designating a FOIA Public Liaison, "who shall assist in the resolution of any disputes"; assigning tracking numbers to FOIA requests that take longer than 10 days; providing systems determining the status of a request; and making the raw statistical data used in its reports available electronically upon request.

- (13) Managing the Commission's implementation and use of FOIAonline. PERM grants user access to the system, provides training and guidance on its use, and serves as the FCC representative in decisions concerning maintenance and enhancement of FOIAonline.

C. Bureau/Office Chiefs are responsible for:

- (1) Designating an internal coordinator as point of contact to manage B/O FOIA actions.
- (2) Encouraging coordinators and others routinely involved with FOIA to attend FOIA training at least once a year from a recognized source of FOIA expertise, such as the Department of Justice.
- (3) Reviewing responsive records to determine if release or withholding is consistent with the FOIA's foreseeable harm standard and determine what records should be released proactively. This responsibility may be delegated as appropriate.
- (4) Reviewing response to FOIA requests, exercising final approval authority, and signing all FOIA correspondence as the responsible official. This responsibility may be delegated as appropriate.

D. Bureau/Office FOIA Coordinators are responsible for:

- (1) Managing requests within B/O to ensure response within 20 business days or within an extension as permitted by law. B/O will make every effort to act on the request within 20 business days. B/O may extend that time by an additional 10 business days under certain circumstances (see 47 C.F.R. § 0.461 and the separate FCC FOIA Guide) or by agreement with the FOIA requester.
- (2) Informing requesters of any necessary extensions.
- (3) Notifying PERM when a new response date has been extended or negotiated, to include forwarding a copy of the letter of extensions and requests for additional time to PERM.
- (4) Notifying PERM when a request has been withdrawn.
- (5) Reviewing and acting on requests for expedited processing of FOIA requests in accordance with 47 C.F.R. § 0.461(h). Expedited processing shall be granted to a requester demonstrating a compelling need that is certified by the requester to be true and correct to the best of his/her knowledge and belief. Simply stating

that the request should be expedited, by itself, is not a sufficient basis to obtain expedited processing. Notice of the determination as to whether to grant expedited processing shall be provided to the requester within 10 calendar days. The B/O that grants a request for expedited processing is expected to process the request as soon as practicable.

- (6) Determining applicable fees and receive requester's agreement to pay fees prior to fulfilling the request. Document all determinations that lead to a decision to charge or not to charge a FOIA requester. This can be done by including in the written response the assessed charges, if any. Coordinators shall also notify requesters by letter that they will be receiving under separate cover a bill for payment and instructions for payment.
- (7) Mailing response to the requester (via email, when possible), and forwarding an electronic copy of the FOIA response letter to PERM.
- (8) Keeping records documenting all responses (including records released or redacted and released) and fee determinations in accordance with the provision of the General Records Schedule 4.2.

E. Office of Inspector General (OIG) is responsible for:

- (1) Recognizing OIG's independence pursuant to the Inspector General Act of 1987 as amended (5A U.S.C. § 8G), OIG, at its discretion, may exercise independent authority and consequently make FOIA determinations related to materials within the possession of, or related to OIG, that may on occasion vary from those of the OGC.
- (2) OIG will otherwise adhere to the standard internal procedures within the FCC for receiving, processing, and reporting on FOIA requests as stated in this directive.

F. The Administrative Services Center (ASC) is responsible for immediately delivering all mail identified as a FOIA request to PERM.

5. PROCEDURES: Specific procedures for handling FOIA requests are detailed in the separate FCC FOIA Guide.

6. EFFECTIVE DATE AND IMPLEMENTATION: This directive is effective immediately and shall be implemented promptly upon distribution.

A handwritten signature in black ink, appearing to read "Mark Stephens", with a long horizontal flourish extending to the right.

Mark Stephens
Managing Director