



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

Order
1270.1A

Effective Date:
04/30/15

SUBJ: Freedom of Information Act Program (FOIA)

1. Purpose. This Order provides guidance governing the processing of requests for agency records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and implements the U.S. Department of Transportation (DOT) regulations found in Part 7, Title 49 of the Code of Federal Regulations (CFR). In implementing the FOIA, it is the policy of the DOT to make information available to the public uniformly and consistently, and to provide maximum allowable disclosure of records to the greatest extent possible in keeping with the spirit of the statute. The FOIA directs each office and employee of the Federal Aviation Administration (FAA) to cooperate fully by making records available to the public in a timely manner to the fullest extent consistent with this policy.

2. Audience. This Order applies to all FAA employees and managers with FOIA responsibilities.

3. Where to Find This Order. This Order is available on the FAA public website and employee website at http://www.faa.gov/regulations_policies/orders_notices/ and https://my.faa.gov/tools_resources/orders_notices.html, respectively. Additional information on FOIA can be found at <http://www.faa.gov/foia>.

4. Cancellation. This Order cancels FAA Order 1270.1, Freedom of Information Act Program, dated June 13, 2000.

5. Background. The FOIA, enacted in 1966, established a statutory right of access to agency records, unless those records are specifically exempted from disclosure or specifically excluded in the FOIA. In implementing the FOIA, it is the policy of the DOT to make information available to the public to the greatest extent possible in keeping with the spirit of the statute. The FOIA directs each officer and employee of the FAA to cooperate fully by making records available to the public in a timely manner and to the fullest extent consistent with this policy.

6. Explanation of Changes. Changes the subject classification series of the Order from 1270.1 to 1270.1A and incorporates the current requirements of the FOIA as amended and the current DOT regulations as of the date of approval. Routine requirements have been moved to a procedural manual that will be available on the FOIA website 60 days after approval. The procedural manual will allow the program to be more flexible and responsive to FAA organizational transformation

7. Related Publications. The latest edition of the following publications is to be used in conjunction with this Order in the implementation of the FOIA program:

- a. FAA Order 1280.1, Protecting Personally Identifiable Information (PII)
- b. FAA Order 1350.14B, Records Management
- c. FAA Order 1600.1, Personnel Security Program
- d. FAA Order 1600.2, Safeguarding Classified National Security Information
- e. FAA Order 1600.75, Protective Sensitive Unclassified Information
- f. FAA Order JO 7210.3, Facility Operation and Administration
- g. FAA Order 8020.11, Aircraft Accident and Incident Notification, Investigation, and Reporting
- h. FAA Order JO 8020.16, ATO Aircraft Accident and Incident Notification, Investigation, and Reporting
- i. FAA Order 8110.120, Processing Surrendered, Abandoned, and Historical Aircraft Type Certificates
- j. 14 CFR Part 1520, Sensitive Security Information
- k. 49 CFR Part 7, Public Availability of Information
- l. 49 USC 44704(a)(5), Release of Data

8. Definitions. These definitions apply to carrying out the intent of the FOIA.

a. Adequate searches are conducted in a manner reasonably calculated to locate responsive documents maintained by agency personnel familiar with the subject matter and with the likely location of responsive documents. The agency has no obligation either to create records or go outside the agency to obtain them. When no responsive records can be located, the program office should document the name of the person(s) who conducted the search, the files that were searched manually or electronically, the reason the files were searched, and the identity of any other offices that might have the requested records.

b. Agency records are existing documents that are:

- (1) Created or obtained by the agency; and
- (2) Under the agency's control at the time of the FOIA request.

The FOIA makes no distinction between official and unofficial records. The FOIA applies to agency records, which means records under the possession and control of the agency at the time of the FOIA request.

c. Program office is any headquarters, or field organizational unit that has records responsive to the FOIA request. Each Line of Business (LOB)/Staff Office (SO) determines the organizational process through which they prepare, review, and sign FOIA responses in accordance to delegated authority.

d. Records include any existing writing, drawing, map, recording, tape, diskette, DVD, CD-ROM, film, photograph, or other documentary material, regardless of medium used to preserve information by the agency. Records also include existing documentary material stored electronically by computer.

e. Perfected request is a FOIA request for records which adequately describes the records sought, is received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

9. Responsibilities. The listing below outlines responsibilities for the FOIA program.

a. The Assistant Administrator for Finance and Management (AFN-1) approves practices, personnel, and funding as may be necessary to improve FOIA management and authorizes the final agency determinations regarding FOIA appeals.

b. The FAA FOIA Program Management Branch (AFN-140) administers the FOIA program throughout the agency.

c. The FOIA staff in the Office of the Chief Counsel (AGC-400) provides legal advice and counsel on issues relating to the FOIA.

d. The regional and center counsels provide legal assistance regarding FOIA within their respective geographic or organizational jurisdictions.

e. The heads of offices and services, and ATO Vice Presidents authorizes the disclosure for records under their purview and withholds records pursuant to properly applied exemptions or exclusions.

f. Organizational FOIA coordinators act as the focal point between their organization and AFN-140 and ensure FOIA requests received by their organization have appropriate and timely responses. Each Line of Business/Staff Office determines the number and organizational position of their FOIA coordinator(s). Each LOB/SO must report any reassignment of FOIA coordinator duties immediately to AFN-140.

g. FAA FOIA respondents answer and process FOIA requests under established FOIA policies, procedures, and timelines. Each program office determines the FOIA respondent for requests received as appropriate for their structure and records management.

10. Delegations of Authority.

a. Release of FAA Records. Authority to release FAA records requested under the FOIA is vested in the heads of offices and services and ATO Vice Presidents. This signature authority may only be redelegated to heads of divisions.

b. Denial Authority. Authority to withhold FAA records or portions thereof and to make no records /partial no records determinations is vested in the heads of offices and services and ATO Vice Presidents. This signature authority may only be redelegated to an executive position with approval from AFN-1.

c. Fee Waiver Authority. Authority to approve or deny a request for a fee waiver is vested in the heads of offices and services and ATO Vice Presidents.

11. Authority to Issue Changes to this Order. AFN-1 may issue changes to this Order. The Administrator reserves the authority to approve changes that establish policy, delegate authority, or assign responsibility.

12. Forms.

a. FOIA Checklist/Fee Worksheet (FAA Form 1270-1) is a checklist and fee worksheet that must accompany each FOIA request. FAA Form 1270-1 is available electronically on the FAA employee website and is not stocked.

b. FOIA Backer Sheet (FAA Form 1360-35) is a correspondence backer and not a fillable form. Use this form for internal processing of FOIA Requests and FOIA Appeals to and from FAA offices. It is available from the FAA Logistics Center.

13. Reports. AFN-140 prepares the FAA input to the Departmental FOIA Annual Report, which the Office of the Secretary of Transportation submits to Congress. The DOT website hosts the Departmental FOIA Annual Report at <http://www.dot.gov/individuals/foia/dot-annual-foia-reports-congress>. AFN-140 provides regular and special status reports regarding FOIA requests assigned to FAA organizations.

14. Disclosure and Access to FAA Records.

a. Any person, individuals, foreign citizens, partnerships, corporations, associations, foreign, state, or local governments, can make a request for FAA records. The exception to this rule is other Federal agencies. A FOIA request for records is considered by the Department of Justice as a perfected request when it adequately describes the records sought is received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

b. A FOIA request should contain a sufficient description of the records being sought to enable an agency employee who is familiar with the subject area to locate the records with a reasonable amount of effort.

c. The FOIA National Tracking System assigns a due date that is within the regulatory time limit of 20 working days to each perfected FOIA request. The program office may extend the initial time limit for an additional 10 working days if there are unusual circumstances associated with the request. Also, program offices should negotiate extensions with the requester as appropriate given the scope of the request. Negotiated extensions to the due date or modifications to the scope of the request must be confirmed in writing with requester. If the requester refuses to reasonably modify the request or arrange a new due date, the due date for response may not be extended.

d. Provide expedited treatment, at the time of initial request or a later time, only when the requester shows a compelling need based on imminent threat to life or physical safety to an individual, or when a requester primarily engaged in disseminating information shows an urgency to inform the public of an actual or alleged FAA activity.

15. Fees and Fee Waivers.

a. Title 49 CFR § 7.44 (f) prescribes the assessment of FOIA fees. The agency does not have the authority to arbitrarily waive or reduce the fees for processing a FOIA request, unless the request meets the statutory fee waiver requirements. Waive or reduce fees when determined that the release of information will benefit the public interest because it is likely to contribute significantly to the public's understanding of the agency's operations or activities and is not primarily in the commercial interest of the requester.

b. The program office makes fee waiver or fee reduction determinations on a case-by-case basis after consideration of all six factors. Authority to deny a fee waiver requested is delegated to the head of division only.

16. Decision Letters. There are three general types of Decision letters: 1) Full Disclosure, 2) Denial/Partial Denial, and 3) No Records/Partial No Records. Full Disclosure is used when information responsive to the request is found and released in its entirety. The program office responding to the FOIA request retains a copy of the complete FOIA response packet for two (2) years. Denial/Partial Denial and No Records/Partial No Records are considered adverse determinations and the program office responding to the FOIA request retains a copy of the complete FOIA response packet for six (6) years.

17. Documentation. A FOIA file consists of the request letter, interim correspondence, the agency response letter, copies of all records released or an exact listing of the documents (accounting for all pages), copies of any records partially or completely withheld from disclosure (with redactions and/or withheld pages noted with exemption), a memorandum or note in the Remarks section of the FOIA checklist documenting the agency search for "no records" responses, and the completed and signed FOIA checklist and fee worksheet. The responsibility for maintaining the FOIA file resides with the program office preparing the FOIA response. As noted

in Paragraph 16 above, Full Disclosure files are retained for two years, and Adverse Determination files for six years.

18. Appeals. AFN-1 is the decision- maker for all administrative appeals. Upon receipt of an appeal, AFN-140 requests copies of the initial FOIA file from the appropriate program office.

19. Attorney Fees for FOIA Litigations. Each individual FAA organization(s) preparing the FOIA response is (are) responsible for paying attorney fees associated with the FOIA lawsuit where such fees are awarded. If a FOIA requester sues the agency and prevails with awarded attorney fees, the Office of the Chief Counsel, AFN-140, and the involved LOB/SOs must work together to make appropriate payment arrangements in a timely manner.

20. Proactive Disclosures. FAA is expected to disclose records proactively by making records publicly available without specific requests from the public, to the extent practicable, by posting them on its website. AFN-140 will manage the web content on the FAA website.

a. **A FOIA Library** webpage (http://www.faa.gov/foia/electronic_reading_room) and the FAA FOIA Home page (<http://www.faa.gov/foia>) will provide links to documents of FOIA interest that are accessible on the FAA public website (<http://www.faa.gov>).

b. Program offices are encouraged to post information as proactive disclosures on their webpages and provide link information to AFN-140 for posting on the FOIA Library webpage.

c. Types of records to be considered for posting include:

(1) Those disclosed in response to a FOIA request that the program office determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(2) Operational records such as final opinions made in the adjudication of cases, policy statements, and administrative staff manuals and instructions to staff that affect a member of the public.



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