

DISCUSSION TOPICS

- ❖ The Administrative Record
- ❖ FOIA Correspondence

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THE ADMINISTRATIVE RECORD

- Why It Matters
- What to Save
- Internal Processing Notes

WHY KEEP	A	THOROUGH	ADMINISTRATIVE
RECORD (I.	. E	. CASE FILE)	1?

- Documents the when, why, how, what, and who of the request processing
- $\bullet \, {\sf Crucial} \, if \, administrative \, appeal \, and/or \, litigation \,$
- Guards against memory loss, staff departures
- Provides accurate information to a potential future declarant
- Especially important to document adverse determinations

WHAT TO SAVE — AT A MINIMUM:

- > Request
- > Search documentation
- > Draft response:
 - > Letter
 - > Responsive records
 - > Proposed redactions

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WHAT TO SAVE — IDEALLY:

Everything that reflects timing, actions, and determinations

- > Communications with the requester:
 - > Acknowledgement
 - $\succ \quad \text{Adverse determinations (e.g. fee category, fee waiver, expedited processing)}$
 - > Responses (interim and final)
 - > Documentation of any verbal conversations with the requester
- > Consultations and referrals
- Correspondence or notes about communications with POCs, record custodians, SMEs, business submitters, other agencies, etc.
- > Records: clean/original, redactions marked, and redacted applied

INTERNAL PROCESSING NOTES

Memorialize everything!

- · Save copies of emails that concern the processing of a request
- Use "notes" or similar section in the FOIA case management system
 - Administrative actions (e.g. related requests, tracking number changes)
 - □ Phone calls
 - Meetings
 - □ FOIA determinations (e.g. no responsive records, privileges, etc.)
- Use text files in the request folder to include procedural notes date & action!

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FOIA CORRESPONDENCE

- Acknowledgment
- Adverse initial determinations
- Unusual circumstances
- Fee estimates
- · Response letters

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THE ACKNOWLEDGMENT

- 1. Tracking number
- 2. Date received
- Estimated date of completion or relevant processing time (20 days, unusual circumstances)
- 4. Point of contact for status inquiries

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1. Expedited processing 2. Fee waiver 3. Preferred fee category	
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"UNUSUAL CIRCUMSTANCES" NOTIFICATION (>10 DAYS)	
Provide requester with opportunity to narrow scope of request	
Make FOIA Public Liaison available to aid the requester, and	
Notify requester of right to seek dispute resolution services from the Office of Government Information Services (OGIS).	
Provide the contact information for the FOIA professional handling the request (optional)	
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FEE ESTIMATES	
Appeals/individual equipment for immediate the second section of the section of the second section of the second section of the section of the second section of the section	
Appeals/judicial review of fee issues are based on the admin record – put it in writing! Provide a fee estimate as soon as possible for anticipated search, review, and/or	
duplication costs	
You can toll processing as often as necessary to clarify fee issues! Challenges to estimated or assessed fees or to denials of fee waivers are subject to	
administrative appeal.	
 Exhaustion of administrative remedies is required before a fee issue is ripe for judicial review. 	

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CHOOSE APPLICABLE OPTION:

You have provided the following justification in support of your request for expedited processing:
["quote justification provided by requester."] You have not demonstrated a compelling need by the
that there is an imminent threat to the life or cafety of an individual.

AND/OR

Specifically you have not described how the request conceive a number of current regiency, and/or in significant recognised interest; and/or how a significant recognised interest would be compromised, and/or feleral government active, Provide a specific explanation of which factors are most (Early) a which are not and why —the reason must be in to the records actually requested.)

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	RESPONSE LETTERS — REQUIRED			
	> The determination(s) and the reasons for it			
	> Availability of the agency's FOIA Public Liaison			
	➤ Name and title of the determining official			
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RESPONSE LETTERS — REQUIRED (CONT'D)

For adverse determinations:

- > Estimate volume of records withheld
 - Redacted records must indicate the exemption applied
- > That agency considered the **foreseeable harm** in disclosure
- > Provide appeal rights with no less than 90 days from the date of the determination to file the appeal
- > Provide notice of the right of the requester to seek **dispute resolution** services from the FOIA Public Liaison or from OGIS.

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RESPONSE LETTERS — OPTIONAL

- Request description
 Amendment or clarification
 Procedural history
 Component that searched or where inquiry was made
 Scope of the search
- Address each requested item and specify the determination for each part
- Fee assessment
- FOIA Requester Service Center contact information FOIA Analyst's contact information for questions
- If an interim response:

 - That the request continues being processed
 Provide appeal rights or address deferral or appeal rights

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RESPONSE LETTER — FOIA EXCLUSIONS

Criminal law enforcement agencies must address that the FOIA excludes the following:

- 1. Matters involving (b)(7)(A) records \underline{AND} violation of criminal law \underline{AND} the subject is not
- 2. Records under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier
- 3. For FBI: records pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in

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OR (when no search was needed to determine there are no recards)	
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OTHER PROCEDURAL CORRESPONDENCE

- > Request amendments or clarifications
- > Consultations and referrals
- ➤ Submitter notices (E.O. 12600)
- ➤ Internal clearances
- ➤ Record custodian/SME emails re search parameters, agency records, sensitivities

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