

# Handbook 1.3

## Disclosure of Official Information

### Chapter 13

### Freedom of Information Act

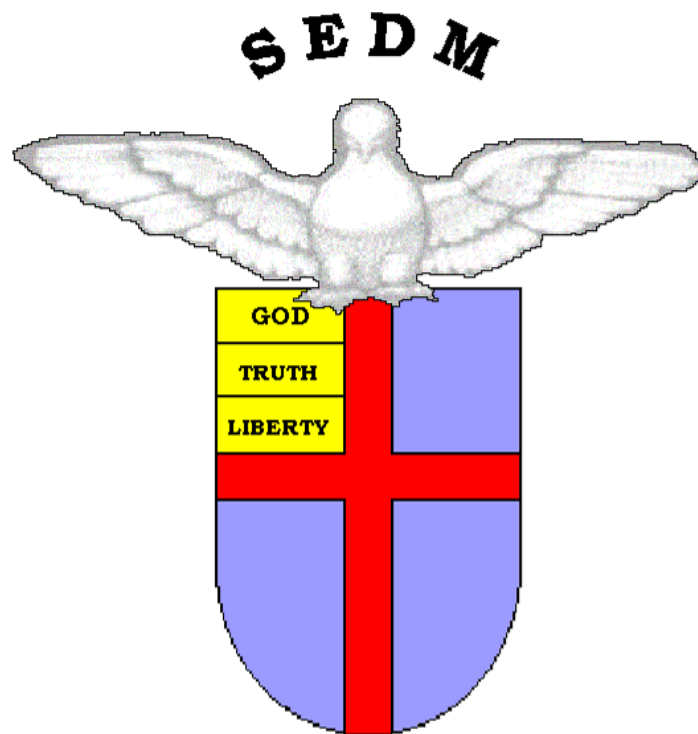
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### **[1.3] 13.1 (08-31-2000)**

#### **Background**

1. The Freedom of Information Act of 1966, (FOIA) 5 USC 552, as amended by the 1974 Amendments to the Freedom of Information Act (PL 93-502), the Freedom of Information Reform Act of 1986 (PL 99-570); and the Electronic Freedom of Information Act Amendments of 1996 (PL 104-231) provides for public access to records and information maintained by Federal agencies. The IRS Restructuring and Reform Act of 1998 (PL 105-206), as it pertains to the responsiveness to the American public, also affects the FOIA request process.
2. Prior to the enactment of FOIA, first effective July 4, 1967, there were no statutory guidelines to help a citizen obtain information about how the government operated, and no judicial remedies for those denied access to governmental records. With the passage of FOIA the burden shifted from the individual having to justify access to governmental records, to the government having to justify why information would not be released.
3. The premise of the FOIA is that the public has a right to know what goes on in government without having to demonstrate a need or reason, and a right to file an appeal if denied access to records. If the Agency denies the appeal, then requesters can file suit in U.S. District Court.
4. This Chapter deals primarily with processing requests pursuant to section (a)(3) of the Act for reasonably described records maintained by the Internal Revenue Service which are not required to be published or otherwise made available under sections (a)(1) or (a)(2) of the Act.
5. Treasury Directive 25-05, dated August 10, 1990 establishes policy and procedures and assigns responsibilities for carrying out the requirements of the Act as amended.
6. The Commissioner of Internal Revenue issued a FOIA policy directive that the agency will assert FOIA exemptions (other than those required by law) only when it is determined that disclosure would significantly impede or nullify IRS actions in carrying out a responsibility of function, or would constitute an unwarranted invasion of personal privacy.
7. In October, 1993, Attorney General Janet Reno issued a FOIA policy directive that the Department of Justice will defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by the exemption. In September, 1999, the Attorney General again emphasized the importance of applying the open government philosophy to discretionary disclosures by suggesting that management "maximize the level of cooperation" FOIA personnel receive when dealing with others in their agency. She suggests that the policy for discretionary disclosures be "widely publicized" along with the requirement for agencies to initiate electronic availability of frequently requested data. For more information regarding discretionary disclosures see 13.7.2 of this handbook
8. All actions taken and determinations made in response to FOIA requests will be in accordance with procedural rules appearing at:
  - A. 26 CFR 601.701 and 601.702; and
  - B. 31 CFR Part 1, and Appendix B thereto.

### **[1.3] 13.2 (08-31-2000)**

#### **Authority**

1. The following officials and their delegates have authority to make FOIA determinations concerning records under their jurisdiction.
  - A. National Director, Governmental Liaison and Disclosure;
  - B. Assistant Commissioner (International);
  - C. Regional Commissioners;
  - D. District Directors;
  - E. Service Center Directors;
  - F. Computing Center Directors; and
  - G. Director of Practice
2. Additionally, the National Director, Governmental Liaison and Disclosure, and his/her delegate, have concurrent authority with the above cited officials to make FOIA determinations concerning records under their jurisdiction.

3. Officials who make FOIA determinations should request the recommendation of the function having primary interest or issuing authority for the record(s) unless:

**EXCEPTION:**

The record(s) involved have, or substantially similar information has, already been made available to the public or to the subject requester (as appropriate), or

**EXCEPTION:**

The determination is consistent with an established practice.

4. If the deciding official disagrees with the recommendation of the affected function, discussions should be initiated with the function to resolve the disagreement or to provide a chance for the function to provide further justification regarding the recommendation.

**NOTE:**

The recommendations may be useful in considering the application of FOIA exemptions to the records or may help to identify the harm which would result from the release of the requested records.

**REMINDER:**

Recommendations are not binding upon the official who has the authority to make FOIA determinations and who must release or withhold records in accordance with his/her interpretation of the law.

5. Requests for records written by counsel or otherwise known to involve matters in litigation where the IRS is a party or otherwise has an interest to Counsel should be coordinated with Regional or District Counsel or Assistant Chief Counsel (Disclosure & Privacy Law).

**NOTE:**

In litigation not involving the IRS, coordination with Counsel is not required unless the responsive documents were written by Counsel or otherwise evidence Counsel interest or advice.

6. Requests for records originating in other Federal agencies which require coordination with the appropriate agencies should be forwarded to the: Office of Governmental Liaison and Disclosure Attn: FOIA Office P.O. Box 795 Washington, DC 20224
7. See section 13.5.3 and section 13.7.10 of this Handbook for further discussion related to records originating in another agency.
8. Requests involving the news media or subject matter believed to be of interest to the news media are to be coordinated with the National Director, Communications Division through the local communications manager.
9. FOIA requests for access to Internal Audit Reports issued by Treasury Inspector General For Tax Administration (TIGTA) after January 18, 1999, are processed by TIGTA's Disclosure Officer. Copies of Internal Audit Reports for audits conducted prior to the move of Inspection from IRS to Treasury (1/18/99) may occasionally be found in a field office file. For FOIA purposes, any determinations made regarding release of these pre- 1/18/99 documents should be coordinated with Disclosure Officer, TIGTA. The final determination will be made by the IRS after coordination with TIGTA.

### **[1.3] 13.3 (08-31-2000)**

#### **Responsibility**

1. FOIA requests should be considered as intended to access the records of the receiving official unless:

- A. The request contains some indication that access to records located elsewhere is desired, or
  - B. Research suggests that transfer to another office would provide better service to the requester. See subsection 13.5.4 below for instructions on transferring requests.
- 2. Requests for records of a Regional Counsel Office are processed by the Office of the Regional Commissioner. Requests for records of a District Counsel Office are processed by the District Director in whose jurisdiction the underlying tax case originated. Requests for records of an Appeals Office are processed by the District Director in whose jurisdiction the underlying tax case originated.
- 3. Requests concerning investigation records will be processed by the office where the records originated. Disputes concerning the release of documents will be resolved jointly by the Chief, Counsel Investigation, of the office conducting the investigation and the Disclosure Office where the records are maintained. See also 13.2(4) above.
- 4. Requests may involve records pertaining to more than one office. In such a case, processing responsibility should be determined on a basis of major interest (i.e., in terms of volume of documents, requester's address or location of any current activity). Hence, the response may be split among several offices or consolidated in one office. Disclosure Officers should discuss such situations prior to making transfers. See Section 13.5.4 for further discussion of transfers.
- 5. Complex situations may require the assistance of the Region or Headquarters Disclosure Office. See also 13.3.3 regarding requests sent to multiple offices.
- 6. Service Centers should not be considered the responsible processing office for records which may be in their possession for computer input or retention, but which are primarily district office records.

**NOTE:**

Requests for transcripts should not be transferred when they can be obtained by the recipient office.

- 7. Records retired to the Federal Records Centers are the responsibility of the originating office, and should be retrieved when needed to process a request.
- 8. A request for records received in the district after a case has been referred to the Tax Division of the Department of Justice remains the responsibility of the district office.
  - A. The district will make determinations as to the records which exist at the district office.
  - B. Any response should be coordinated with the assigned District Counsel attorney and the assigned attorney in the Department of Justice.
  - C. If the district has not retained copies of any records sent to the Department of Justice, the requester should be advised that other records are in the custody of the Department of Justice. With the permission of the assigned Department of Justice Attorney, the requester should be advised of the name, address and phone number of that attorney.

**NOTE:**

Disclosure personnel will not refer a third party requester to the Department of Justice. See 13.5.1 regarding imperfect requests.

### **[1.3] 13.3.1 (08-31-2000)**

#### **Disclosure Officers**

- 1. Disclosure Officers are responsible for administering the FOIA Program. Responsibilities related to processing FOIA requests may involve:
  - A. Establishing procedures ensuring uniform and consistent treatment of FOIA requests. Use of standardized language or paragraphs in communications with the requester should be encouraged as much as possible.
  - B. Educating requesters on the proper procedures for filing a valid FOIA request, and educating IRS employees on the provisions of FOIA that impact them.
  - C. Using EDIMS to control FOIA inventory to ensure timely responses.
  - D. Completing reviews of work in process for accuracy, completeness and timeliness.
  - E. Coordinating requests with the functions providing responsive data.

- F. Providing direction to functional coordinators on the procedures related to their responsibilities in the FOIA process.
  - G. Providing assistance to Headquarters personnel regarding administrative appeals and lawsuits.
  - H. Determining if documents marked "classified" should be declassified and released to a FOIA requester. See Chapter 12 of this handbook for further discussion regarding classification of documents.
2. In addition, each disclosure office should develop sufficient Functional Coordinators or other staff with an adequate level of disclosure experience to constitute a reliable reserve to assist Disclosure Officers in the event that unexpected increases in Freedom of Information Act requests cause inventories to build up more rapidly than new staff can be developed.
  3. Many Disclosure Officers have been delegated the authority by their District Director or heads of office to make agency determinations. This authority includes the responsibility for deciding what is releasable and includes signing the response letter to the requester.

### **[1.3] 13.3.2 (08-31-2000)**

#### **Functional Coordinators**

1. The role of Functional Coordinators in processing FOIA requests will depend upon local circumstances.
2. Generally, Functional Coordinators, subject to the direction of the Disclosure Officer, may:
  - A. advise on records which fall within the scope of the request;
  - B. conduct record searches;
  - C. obtain necessary copying services;
  - D. analyze records;
  - E. perform any necessary editing, sanitizing or segregating of records;
  - F. prepare the functional recommendation, if any;
  - G. assist in verifying requester identity;
  - H. prepare indexes; and
  - I. may possibly serve as a declarant in litigation regarding scope of search or regarding basis of certain exemptions claimed.
3. The functional coordinator, as the contact point between the Disclosure Officer and the function, will serve in whatever way is necessary to facilitate the disclosure process. As such, he/she will request or secure such functional resources and cooperation as may be necessary.
4. As the point of contact in that function the coordinator shall provide the following information with each response:
  - A. which offices were contacted and why;
  - B. person(s) spoken to in each office and who conducted the search;
  - C. files searched, if other than those initially recommended in the records search request;
  - D. terms searched under;
  - E. volume and location of records found; and
  - F. time spent by the function working the case (locating, reviewing, editing and copying documents).

#### **CAUTION:**

If total time is reported rather than separating search time, a requester could get overcharged. See 13.6.2(10) regarding the use of a search memo response questionnaire to ensure accurate reporting of time.

5. Functional Coordinators may occasionally be called upon to assume the total responsibility for responding to selected FOIA requests, subject to Disclosure Officer control and direction. Such assignments may develop the coordinator's expertise as an adequate backup or as a resource to reduce temporarily excessive inventories.

### **[1.3] 13.3.3 (08-31-2000)**

#### **FOIA Requests Sent to Multiple Offices**

1. IRS offices may receive requests (other than imperfect requests discussed in Section 13.5.5) which appear to be copies of requests addressed to other IRS offices. These requests may be identified as copies by their appearance.

#### **EXAMPLE:**

The requests may have a primary address other than that of the receiving offices, may be carbon or photo copies, or may not have original signatures.

2. Offices receiving this type of request should assume that the requester intended to request records from each office receiving a copy, and contact the primary receiving office to coordinate responses.
3. A mutual decision should be reached regarding whether to involve transfer procedures (see Section 13.5.4 of this handbook), or whether to provide a single combined response. Customer service should be a primary consideration in these decisions.

#### **NOTE:**

For discussion of pseudo requests received at multiple offices, see 13.5.5(10) of this handbook.

4. Generally, a combined single response should be sent by either the Disclosure Office in the district with the majority of the records or the Disclosure office serving the requester's current address.

### **[1.3] 13.3.4 (08-31-2000)**

#### **Unique FOIA Aspects**

1. Requests involving unique FOIA aspects, those requiring multi--office coordination or those having national implications should be brought to the attention of the Office of Governmental Liaison and Disclosure through appropriate channels.
2. A decision will be made as to the Office of Governmental Liaison and Disclosure's involvement in the coordination or final determination of such cases.
3. The Office of Governmental Liaison and Disclosure may determine that certain cases require special handling and may direct that cases be transferred accordingly. Requests involving the following should automatically be transferred to the Headquarters FOI Office.
  - A. Requests involving national contracts;
  - B. Requests involving background documents for Office of Management and Budget approval pertaining to a specific form; and
  - C. Requests for Chief Counsel Advice and background documents (see 13.9.1 for procedures related to Chief Counsel Advice).
4. Information obtained from Interpol may be included in enforcement action files. Coordination with the Office of Governmental Liaison and Disclosure is required before releasing Interpol information.

### **[1.3] 13.4 (08-31-2000)**

#### **Overview and Processing**

1. The processing of a request under the Freedom of Information Act consists of five basic steps:
  - A. Receipt and control - classification, assignment and logging of requests;
  - B. Analysis - review of the request for validity or other special features;
  - C. Search - search procedures for responsive documents;
  - D. Review - review of responsive documents and application of exemptions or exclusions;
  - E. Response and closing - drafting of response to requester and closing the case.
2. Each of the five basic steps has specific procedural and technical requirements, which will be discussed in detail in this chapter of the Handbook.

### **[1.3] 13.4.1 (08-31-2000)**

#### **Receipt and Control of FOIA Requests**

1. Receipt and control of requests for information under the Freedom of Information Act includes:
  - A. Date stamping the request to show receipt date.
  - B. Determining the type of request using definitions found in the Freedom of Information Act and in the Electronic Disclosure Information Management System (EDIMS) Training guide.
  - C. Inputting the request into E-DIMS, including the assigned caseworker, type of case and all other required information.
  - D. Foldering the request based upon local guidance, and forwarding to the assigned caseworker.
2. The date stamp should be placed on the request to establish the date the request was received in the Disclosure Office. This will begin the statutory 20 day time period for a response or a request for a voluntary extension.
3. Requests are classified as either an (a)(1), (a)(2) or (a)(3) request, depending upon the nature of the information requested.
4. (a)(1) requests are for agency records required to be published in the Federal Register.

#### **EXAMPLE:**

##### **IRS Regulations or Privacy Act System of Records Notice**

5. (a)(2) requests are requests for agency records required to be made available for inspection and copying.

#### **NOTE:**

##### **Reading Room materials such as IRMs, Field Directives, Memoranda to Chief Compliance Officers (MCCOs).**

6. The (a)(3) requests are specific requests for agency records that are not required to be made available to the public under (a)(1) or (a)(2). EXAMPLE: Requests for tax records fall under this category.
7. The order of priority for requests seeking records that fall under more than one category is (a)(3), (a)(2), and (a)(1). The request should be categorized and logged under the highest category of records requested, with (a)(3) being the highest.

#### **EXAMPLE:**

A request for IRM 1.3, Chapter 5 is an (a)(2), combined with a request for tax records is an (a)(3). The request will be logged as an (a)(3).

#### **CAUTION:**

The default on EDIMS is an (a)(3). If the request is not an (a)(3) type of request, care should be taken to ensure it is properly classified

8. The Disclosure Officer or other responsible employee should wherever feasible review the request after it is date stamped and prior to input to designate the assigned caseworker. The request will then be provided to the employee with input responsibility for input, foldering and forwarding to the assigned caseworker.

### **[1.3] 13.5 (08-31-2000)**

#### **Initial Analysis of FOIA Request**

1. Requests processed under the Freedom of Information Act should be thoroughly analyzed by the assigned caseworker to determine if a response is appropriate under the Freedom of Information Act. Analysis of the correspondence may reveal:
  - A. the request may be imperfect under the Freedom of Information Act (see 13.5.1 of this chapter);
  - B. the information requested may be under the jurisdiction of another agency or office (see 13.5.3 and 13.9 of this chapter);

- C. the request may be directed to multiple offices requiring coordination of efforts (see 13.3 of this chapter);
  - D. the request may be unclear as to the statute under which access is being sought (see 13.5.6 of this chapter); and
  - E. information requested may be able to be provided outside of the Freedom of Information Act under other provisions of the law or under routine established agency procedures (see 13.5.7 of this chapter).
- 2. Proper analysis of the request by the assigned caseworker will result in determining how best to handle the request and ultimately provide better customer service.
- 3. The initial review of any request should contain an analysis of the content of the request to determine if the request complies with FOIA regulations or if not, could the information be provided under other provision of law or under established agency procedures, as appropriate (See 13.5.6 and 13.5.7 of this chapter).
- 4. The Freedom of Information Act as implemented through Regulations found at 26 C.F.R. 601.702(c)(3) require that the request:
  - A. be made in writing and signed by the person making the request;
  - B. state that it is made pursuant to the Freedom of Information Act , or the regulations thereunder;
  - C. be addressed to and mailed or hand delivered to the Director of the Internal Revenue Service where the requester resides, or the office having control of the records;
  - D. reasonably describe the records;
  - E. in the case of records subject to IRC 6103 or the Privacy Act, establish the identity of the requester and the requester's right to receive the records;
  - F. set forth the address to which the response is to be sent;
  - G. state whether the requester wishes to inspect the records or have copies made without prior inspection;
  - H. state the requester's agreement to pay for search, review and reproduction charges as applicable; and
  - I. furnish an attestation under penalties of perjury as to the category of the requester (e.g. commercial user; media, scientific, educational, other, etc.).
- 5. When a FOIA request is received on behalf of a taxpayer for tax return information pertaining to that taxpayer, the tax authorization should be reviewed to ensure it is in compliance with the 60-day time limitation and other provisions of 26 CFR 301.6103(c)-1.
  - A. The 60-day limitation for tax authorizations commences with the date the authorization is signed by the taxpayer.
  - B. The date of receipt of the authorization by the Service must be within 60 days of the date the authorization was signed by the taxpayer.

**NOTE:**

FOIA requests accompanied by Form 2848 or other power of attorney that allows practice before the Service need not comply with the 60-day time limitation. Form 8821 is subject to the 60-day rule.

- 6. Upon receipt of a request that has an imperfect tax authorization, disclosure personnel should contact the requester for a timely authorization promptly. If the request is otherwise valid, search efforts should be initiated.
- 7. If the request does not meet one of the other provisions of the regulations, the request should be treated as an imperfect request and the requester so advised.

### **[1.3] 13.5.1 (08-31-2000)**

#### **Imperfect Requests**

- 1. The FOIA requires requesters to reasonably describe the records sought. While compliance with the procedural regulations is also required, disclosure personnel should take care not to read a request so strictly that the requester is denied information the agency knows exists. However, if the request is not specific enough to process or it is too broad in scope, including language such as "I request all records concerning me," or otherwise lacks specificity, it can be determined to be imperfect and closed accordingly. See 13.5.2 of this Handbook.

2. Letter 1526 (RO/DO/SC/IO), or similar format on word processing applications, can be used to notify the requester that the request does not meet certain requirements of the Act and that more information is needed before the request can be processed. The specific deficient item or items should be pointed out to the requester or a copy of 26 C.F.R. 601.702(c)(3) provided. The letter should advise the requester that they have 30 days to perfect the request. Requests that do not comply with FOIA regulations are to be closed as imperfect. Every effort should be taken to close requests deemed to be imperfect as soon as possible.

**NOTE:**

Responses to imperfect requests should not include Notice 393 because no appeal rights are available to imperfect requests. They should, however, include a statement that upon receipt of a perfected request, the response will be as prompt as possible.

3. Requests should not be determined to be imperfect if they do not state an agreement to pay fees if, based upon the information requested, it would appear a fee would not be charged.
4. Careful consideration should also be made with regard to the identification requirement. See 13.5.8(10) for items to consider relating to identification required.
5. Notwithstanding any imperfection under FOIA, if documents can be provided to the requesters that they would be otherwise entitled to receive under the provisions of some other statute or agency procedure, these documents should be provided.

**EXAMPLE:**

Even though the request is imperfect, if it includes a request for a transcript of account that can otherwise be provided under 6103(e), the inclusion of this document should be made part of the response. See 26.CFR 601.702(d)(1).

6. Verbal communication with the requester may be used to clarify the request or to ask for missing documentation necessary to process the request. Such verbal communication should be documented in the case file.
7. When the requester submits the information necessary to perfect a request or makes the payment necessary to eliminate an unpaid balance, the request should be promptly processed. See Chapter 5 of this Handbook for related actions concerning fees. A new case file should be opened rather than re-opening the imperfect case. However, it may be necessary to read all newly supplied information and the previously imperfect request together, as not all requesters will repeat all the elements required to constitute a perfect request.

**CAUTION:**

Care should be taken not to make further demands upon the requester if reference to previous correspondence would provide enough information to process the request.

**[1.3] 13.5.2 (08-31-2000)**

**Requests for "All Records Concerning Me"**

1. Usually, requests for "all records concerning me" or "all records containing my name" are not specific enough to process and should be rejected as imperfect. However, see 13.5.2(5), (8) and (9) below.
2. These requests should be thoroughly reviewed as they may contain minor references to records or enforcement actions that would help to identify the records requested.
3. Requests containing enough information to permit a reasonable identification of records should be processed.

**EXAMPLE:**

The information could include the function where the records may be found, the tax year or years involved, the type of tax, or the type and/or location of any investigation conducted by the Service.

4. Requesters will sometimes attach copies of IRS notices, correspondence or other records to their requests.
  - A. Attachments should be carefully examined as they may be helpful in processing the request.
  - B. In the absence of any indication to the contrary, it may be assumed that the requester is seeking access to underlying files related to the attachment.
  - C. Requesters need not provide their tax identification numbers, or specify the type of tax, tax year or location of the records if such information can be determined from the attachments.
  - D. Records submitted by a requester which originated in the Internal Revenue Service may be accepted as adequate proof of identity if the requester's name and address are consistent.
5. If the request is not otherwise imperfect and does not specify tax years, then disclosure personnel should review the last three tax years. See 13.5.2(8) &(9) below.
6. If the request cannot be processed, to assist the requester in perfecting the request, the requester should be informed, as applicable,:
  - A. the IRS does not maintain central files;
  - B. proof of identity is required if the request involves access to tax or Privacy Act covered records (e.g. personnel records);
  - C. a firm commitment to pay fees should be made if the request is expected to result in a fee;
  - D. of any other items lacking in perfecting the request, and
  - E. that a perfected request will receive the Service's close attention.
7. In some instances, it may be necessary to mention that the FOIA does not require agencies to answer questions, enter into doctrinal discussions, create records or perform research.

**NOTE:**

Transferring data into or out of electronic format does not constitute creating a new record.

8. Requesters should also be informed of the types of records maintained by the IRS, e.g. records concerning examinations of returns, collection actions, and criminal investigations. Inform the requester that perfected requests should include a specific reference to the types of records being requested.
9. If research reveals there is no open case or ongoing activity, the response should generally state that no records maintained by the Internal Revenue Service which appear to be specifically responsive to the descriptions in the request were located. Furthermore, a search of Service records indicates that there is no open Collection, Examination or Criminal Investigation case concerning the requester and consequently no records responsive to his/her request exist.
10. If research reveals that an open case or ongoing activity exists, the response should generally state that no record maintained by the Internal Revenue Service appears to be specifically responsive to the descriptions in the request, but that an open case concerning the requester has been identified.

**NOTE:**

Depending upon the type of request, prior experience with requests from the requester and other circumstances, the response should make available or withhold as appropriate the records identified, or the requester should be advised of the existence of files and how they may be requested if that is the requester's intent. Whether the availability of the case files is considered immediately or delayed until receipt of a further request should depend upon an analysis of the requester's intent, the adequacy of the request to extend to existing case files, and whether the anticipated costs would significantly exceed the requester's commitment to pay fees.

11. Requesters should also be advised that the statutory period for response does not begin until a perfected request is received.

### **[1.3] 13.5.3 (08-31-2000)**

#### **Requests for Other Agency Records**

1. The FOIA request should be reviewed to determine if records requested are under the jurisdiction of the Internal Revenue Service.
2. A request for records of another Federal agency should be transferred to that agency through headquarters in accordance with 31 CFR 1.5. See also 13.7.10 of this handbook.

### **[1.3] 13.5.4 (08-31-2000)**

#### **Transferring Requests**

1. The request should be analyzed to determine if the request contains some indication that access to records located elsewhere is desired or when research suggests that records could be located in another office. If this is the case disclosure personnel should:
  - A. if possible, respond to requests classified as (a)(2) when it involves documents such as local delegation orders or IRM information (see 13.6.7 of this chapter); or
  - B. transfer requests involving access to records classified as (a)(3), unless the information can be provided by the initial receiving office, such as a transcript of account.
2. Each case to be transferred will be controlled and closed as a transfer. The receiving office will control the case with the proper classification codes.
3. Whether transfer is appropriate will depend upon a number of factors. Disclosure personnel should use readily available resources (telephonic contact with other disclosure personnel, computer research and their own knowledge of IRS practices) in making the determination whether to transfer a request. Prior to transferring any case, the initial recipient must telephone the office to which transfer is proposed to make certain the transfer is appropriate.

#### **NOTE:**

Requests that are determined to be imperfect should not be transferred. The requester should be informed the request is not workable due to being imperfect. See 13.5.1(2) above.

4. Research should be limited to IDRS or other readily available tools. It is not intended that time consuming inquiries to master files or retention files be undertaken.
5. The initial recipient is responsible for the resolution of as much of the request as is practical before proposing transfer. If the request appears to seek access to the requester's own return information, the initial recipient should perform the necessary research to determine if open or closed case files likely to be responsive to the request exist. If research shows no such cases exist, the initial recipient should make a final response on that basis.

#### **NOTE:**

The requester should be advised in the response where to send future requests and the address of the proper office.

6. The Headquarters Office will transfer requests to the office of proper jurisdiction based upon the Headquarters Office disclosure personnel's knowledge. While Headquarters Office personnel currently do not have computer research capabilities, it is important that they transfer requests to the office maintaining jurisdiction so as to avoid further transferring.
7. If the request appears to seek access to records whose disclosure is legally prohibited or which are known not to exist, the initial recipient should make the final response, citing the proper exemptions or closing the case based upon "no responsive records". The requester should be advised of the address of the office which normally will process his/her request.
8. Whenever a transfer is made, the requester should be advised of the transfer by the initial recipient and both the response to the requester and the transmittal document to the new office should clearly identify the portions of the request which have been resolved and the portions which remain unresolved.

9. If a transfer is accepted and the request is later determined to have been imperfect, the receiving office should attempt to provide a response to the requester and coordinate the response with the initial receiving office.

### **[1.3] 13.5.5 (08-31-2000)**

#### **Pseudo Requests**

1. If the request is otherwise valid, it should be analyzed to determine if the request merely is citing the Freedom of Information Act, but in reality does not conform to the intended purpose of the Act and generally cannot be processed by locating, analyzing and releasing records.
2. Some characteristics which may assist in recognizing pseudo-requests.
  - The individual tends to ask questions rather than request records.
  - Questions are frequently phrased in an accusatory or devious manner, so that they appear to be intended to serve as harassment rather than to seek clarification of any tax related subject.
  - The correspondence consists of, or imitates, form letters and may be part of a coordinated campaign involving similar requests from different requesters.
  - The letters may contain references to constitutional rights, or obscure matters concerning silver or gold coinage and monetary policy.
  - Any requests for records included in the correspondence are usually extremely extensive, poorly described, incorrectly addressed or otherwise written so as to make it difficult to respond. The objective may appear to be to force a denial rather than to actually obtain access to any records.
3. Requesters may sometimes ask for all records concerning or serving as background materials for certain "Decisions" or "Determinations" concerning themselves. Some of the descriptions frequently encountered are:
  - A. ".... that I am a person required to file a tax return."
  - B. ".... that I didn't file a tax return."
  - C. ".... that I am a person as defined by the Internal Revenue Code."
  - D. ".... that my commercial activity or employment is taxable."
  - E. ".... that classifies my job description as a taxable activity for revenue purposes."
  - F. ".... that I am an employee or an employer or an individual engaged in a trade or business as a sole proprietor."
  - G. ".... that I received diversification of corporate profits."
  - H. ".... that I am required to possess a Social Security number absent any income derived from any source."
  - I. ".... that discloses that I am a fiduciary of a trust or estate."
  - J. ".... that a 'substitute for return' has been or will be prepared for me."
4. In order to make an appropriate response to a pseudo-request, it is necessary to clearly distinguish between those portions of the correspondence which constitute a valid FOIA request and those portions which consist of hyperbole and questions.
5. The Freedom of Information Act does not require agencies to:
  - A. respond to questions;
  - B. create records not already in existence in some format; or
  - C. or engage in doctrinal discussions with requesters.

#### **NOTE:**

Creating a document in paper format which exists in electronic format, and vice versa, does not constitute creating a record not already in existence.

#### **EXAMPLE:**

A request for a paper copy of an electronic audit trail should be granted. A request to create a list of employees who worked on an examination file need not be honored.

6. 31 C.F.R. Part 1, section 1.2 states that "Section 552 of Title 5 of the United States Code provides for access to Information and records developed or maintained by Federal Agencies." Requests that include questions or that seek records or information that do not exist are outside the scope of the Act.
7. When responding to the requester, you should state the response deals only with those portions of the request constituting a request pursuant to the Freedom of Information Act and which reasonably describe the requested records. While there is no requirement to respond to those portions of the correspondence which are irrelevant to the FOIA process, it may be appropriate to do so when it is in the best interest of the Service.

**NOTE:**

For an example of a situation where further discussion may be appropriate, see the discussions contained in this chapter involving 23C requests (13.9.4).

8. Pseudo-requests should not be permitted to drain disclosure resources needed to administer the FOIA and other programs. They should, however, be responded to in a fashion consistent with statutory requirements and be in a tone appropriately reflecting a spirit of openness in government.

**NOTE:**

Responses to inquiries similar to those quoted in (2) and (3) above are to be based upon research to determine if any open cases exist or if any responsive records exist concerning the requester. See 13.5.2 above.

9. Scheduling of inspections of open investigatory files located in the Collection, Examination or Criminal Investigation functions should be coordinated with those functions, since the presence of the request in a Service office may provide a convenient opportunity to make contact for tax administration purposes. Enforcement personnel may be present for such inspection.
10. Whenever the processing of a request uncovers an indication of a current enforcement action, a copy of the request and the subsequent written response should be forwarded to the function involved to alert the function that a FOIA request has been processed even though the request may not involve that function's records.

**NOTE:**

Requests may have been submitted because the requester intends to introduce the request or the response in some litigation. They may be helpful in establishing or illustrating the taxpayer's intent and attitudes that may be useful to government counsel.

11. Multiple requests from one requester asking for the same or similar records may be received by various offices.
  - A. In order to conserve resources and reduce the potential for a lack of conformity in responses, Disclosure personnel should coordinate their responses and, if practical, make a single combined response to multiple requests.
  - B. Whenever a request shows an out-of-district return address, the receiving disclosure office should coordinate with the disclosure office in the district having jurisdiction over that address.
  - C. The disclosure office in the district having residential jurisdiction will serve as the focal point for resolving all related requests.
12. If a single combined response is contemplated, it should generally be issued by the disclosure office in the district having residential jurisdiction unless the intent of the request pertains to an enforcement action which may have been undertaken in another district.
13. Although not directly related to the disclosure aspects of processing requests, consideration should be given to include in the response, information which might contribute to voluntary compliance with tax laws. Such information could include statements of the Service's positions, citations of court decisions, and explanations of possible consequences of the requesters' actions concerning their tax matters.

14. Correspondence may sometimes be received directly, as a courtesy copy, or forwarded from other Governmental agencies or officials in which the writer attempts to revoke his/her social security number, birth certificate, marriage license or other document and recites arguments which would appear to establish that the writer is not subject to some requirement of law. In the event this type of correspondence is received Disclosure personnel should:
  - A. Review it carefully to determine if the intent of the request would appear to be related to actual or intended non-compliance with tax return filing or payment requirements.
  - B. Review it for reference to a request pursuant to the Freedom of Information Act or Privacy Act. In the absence of such language or requests, no response is required. An acknowledgment, however, is appropriate.

**EXAMPLE:**

An original letter is received in Disclosure that appears to address issues related to taxpayer sovereignty, but does not relate to a request for information. The letter should be acknowledged but not considered a request for information. See subsection (d) below.

- C. Disclosure personnel may forward the correspondence to interested compliance functions, if it could be useful in helping to identify previously unknown non-filers.
  - D. If the correspondence is not forwarded to compliance functions or is found not to relate to non-filers, it should be maintained for a period not to exceed 90 days in compliance with IRM 1(15)59 31-130 regarding "transitory files" because they have no documentary or evidentiary value.
15. The Office of Governmental Liaison and Disclosure will forward correspondence described in (14) above to responsible Service Centers for disposal described in (14)(d) above.

**[1.3] 13.5.6 (08-31-2000)**

**Unclear Requests**

1. Analysis of the request may reveal the access statute is sometime unclear. The following variations may be encountered.
  - A. The request cites neither the Freedom of Information Act nor the Privacy Act.
  - B. The request cites both the Freedom of Information Act and the Privacy Act.
  - C. The request cites one Act, but the content of the request appears more appropriate to the other.
2. Any lack of clarity as to which statute is applicable should be resolved as closely as possible with the requester's stated intent, consistent with the law.
3. When the request cites neither the Freedom of Information Act nor the Privacy Act:
  - A. Review the request for any other reference to the statute or accompanying regulations which may provide additional information regarding the requester's intent.

**EXAMPLE:**

A request may simply state the statute such as 552 for the Freedom of Information Act or 552a for the Privacy Act, or may state the request is being made under 601.702(c) or 31 U.S.C. section 1, subpart (c) which are other references for the FOIA and Privacy Act respectively. There may be the letters FOIA on the envelope.

- B. Determine if records can be provided under a routine established agency procedure as set forth in 26 CFR 601.702(d), or under some other statute. They should be classified as that type of request and records provided under those provisions. See 13.5.6(4).
  - C. Requests for tax returns and return information during open enforcement activity, directed to the Service employee handling that open enforcement activity, and which do not cite the Freedom of Information Act or Privacy Act, may be handled by that Service employee, consistent with Delegation Order 156, as revised.
4. When the request cites both the Freedom of Information Act and the Privacy Act, and:

- A. the request is from a first party individual seeking access to his or her own records, classify as a request under the statute that will allow the greatest access. The Freedom of Information Act generally provides the greatest access.

**NOTE:**

Requests for records contained in an Examination administrative file which is a system of records that would be exempt from access provisions of the Privacy Act should be processed under the Freedom of Information Act.

- B. the request is from a third party or from an individual seeking records that are not maintained in a system of records, classify as a Freedom of Information Act request.

**EXAMPLE:**

A request is received for a delegation order, IRM, or Forms 23C, which are not maintained in a system of records. These would statutorily fall outside of the Privacy Act, but access should be granted to the extent possible through the Freedom of Information Act.

- 5. In situations where the requester cites the Privacy Act but would get greater access under FOIA and insists upon processing pursuant to the Privacy Act, log the case as a Privacy Act but provide the records which would be available under FOIA. The response letter should cite the Privacy Act section (t)(2).
- 6. Because the Privacy Act only applies to individuals, a request citing only the Privacy Act from a non-individual should be closed as imperfect.

**NOTE:**

An individual requesting records related to a sole-proprietorship would be considered an individual requester.

- 7. Requests which cite only the Privacy Act for records that are not maintained in a system of records, such as delegation orders, IRMs, or Forms 23C, should be processed as a FOIA request. See 13.5.6(4)(c). above.

**NOTE:**

These instructions are not intended to require that matters which could otherwise have been processed under the routine established agency procedures set forth in 26 C.F.R. 601.702(d) and discussed at 13.5.7, be treated as Freedom of Information Act requests.

- 8. In some cases, a single letter may contain some requests which are made pursuant to the Freedom of Information Act and which meet the procedural requirements of that Act and other requests which are made pursuant to the Privacy Act and which meet the procedural requirements of that Act. These requests should be treated as if both Acts were cited. For control purposes, they should be classified as a FOIA request.
  - A. For these instances, the request should be considered a split request so each portion may be afforded proper treatment, appeal rights and the correct application of fees.
  - B. Responses to such requests should distinguish the portions processed pursuant to each Act and the reasons therefor, to the extent practicable.

**NOTE:**

The instructions above are not intended to require disclosure personnel to distinguish between Freedom of Information and Privacy Act requests in situations where there is little or no significance to such distinction, such as when all requested records may be readily available and releasable and the differences in costs are minimal.

9. Regardless of what Act is cited, you should ensure the request satisfies the procedural requirements of whichever Act is applicable and that the commitment to pay fees is adequate to the services being requested.

**NOTE:**

A request which entails Freedom of Information Act search fees because it seeks records that are not maintained in systems of records, but contains an agreement only to pay Privacy Act (duplication) fees, is imperfect if it may result, based upon experience, in anticipated fees in excess of the commitment to pay (i.e. more than 2 hours of search will be involved).

**EXCEPTION:**

Freedom of Information Act search fees are not charged and only Privacy Act (duplication) fees apply in the case of first party requesters asking for records about themselves that are maintained in systems of records. See Chapter 5 of this Handbook for further information about fees.

### **[1.3] 13.5.7 (08-31-2000)**

#### **Routine Established Agency Procedures**

1. Requests for records which can be processed routinely in accordance with the established procedures set forth in 26 C.F.R. 601.702(d) are by statute specifically excluded from the processing requirements of the Freedom of Information Act. Requests should be analyzed to determine if the request should be handled according to these procedures. These types of requests should not be diverted to the Freedom of Information Act or Privacy Act simply because the requester cites such Acts.
2. Requests for tax returns and tax return information during open enforcement activity, directed to the Service employee handling the open enforcement activity, which cite the Freedom of Information Act and/or Privacy Act, are to be referred promptly to the Disclosure office for processing.

**NOTE:**

Disclosure personnel have the option of processing the request under the appropriate Act or contacting the requester to see if he or she will withdraw the request under the cited Act and work directly with the function which is delegated authority to release the records.

3. Routine established agency procedures will apply to requests for:
  - A. Inspection of tax returns and return information. Form 4506 requests for copies of tax returns and transcripts or the account fall under these types of requests.

**NOTE:**

Requests for access to open case files may be processed outside of FOIA, if in the best interests of customer service, the function with jurisdiction is agreeable to providing the requested information. It is suggested disclosure personnel provide assistance as necessary if the function is planning to withhold information under 6103(e)(7) due to an impairment determination. The functions should not insist a requester go through the FOIA process if the information could otherwise be provided through an informal process, consistent with Delegation Order 156. Once a FOIA has been filed, the requester may wish to withdraw the FOIA request and obtain the records from

the agent under the guidance of the disclosure office. Requests to access closed case files are to be processed under FOIA.

- B. Records of seizure and sale of real estate, found on Record 21, Part 2, are open to public inspection.
- C. Information returns of certain tax exempt organizations and trusts, applications by organizations granted tax exempt status and applications for certain deferred compensation plans and accounts. Accesses are granted through IRC 6104.
- D. Publication of statistics of income. Access granted through IRC 6108.
- E. Accepted offers in compromise. Access is granted by IRC 6103(k)(1).

**CAUTION:**

Requests for copies of accepted offers in compromise should be processed under FOIA. Routine procedures allow for inspection only, not for copies to be provided.

- F. Public inspection of written determinations under IRC 6110. See 13.9.1 of this Handbook for a discussion of requests for written determinations.
  - G. Requests for records pertaining to third party contacts under IRC 7602 (c).
4. The response to the requester should acknowledge the fact the records, while requested under the Freedom of Information Act or Privacy Act, are routinely available under established procedures and are being provided under those procedures. The appropriate citation, 26 C.F.R. 601.702(d), along with any procedures and the access statute under which the records have been disclosed, should be provided.

**[1.3] 13.5.8 (08-31-2000)**

**Identity of Requester**

- 1. The establishment of the identity of the requester is an important part of determining the overall validity of the Freedom of Information Act request. Identity must be established prior to releasing any records which would be available to the requester only, and not to the general public. Examples would be tax or personnel records.
- 2. If personal contact is established, the requester may establish his or her identity by presenting either one document bearing a photograph (such as a passport, driver's license, or identification badge) or two items of identification which do not bear a photograph, but do bear both a name and signature.
- 3. If contact is by mail, identity can be established by a signature, address, and one other item of identification such as a photocopy of a driver's license or other document bearing the individual's signature.
- 4. An individual may also establish identity by presenting a notarized statement swearing to or affirming his or her identity.
  - A. The notarized statement need not necessarily meet all the requirements of State law, so long as it appears to be adequate to establish the requester's identity.
  - B. The notarized statement need not be on the same sheet of paper as the request or bear the same date, as long as it is consistent with the request and is adequate to allow access to the records requested.
- 5. A sworn statement as to identity, under penalty of perjury, is acceptable in lieu of a notarized statement. The sworn statement must meet the requirements of 28 U.S.C. 1746. In order to meet these requirements, the sworn statement should include the following language: "I declare (or certify, verify or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]."
- 6. The Disclosure Officer may require additional proof of an individual's identity if it is determined to be necessary.
- 7. Consideration should be given to the consistency of names, addresses, Social Security Numbers and other identifying information in the request with similar items in the records requested. Copies of notices, correspondence and other records which were received from the Service can contribute to establishing identity, especially when the records requested are closely related to the subject matter of the record presented. See 13.5.2(4)(d).

8. If the request is generated in connection with a tax administration matter, a Service employee (such as the examining agent) may provide verification of the requester's identity if necessary.
9. Persons requesting records on behalf of or pertaining to another person must provide adequate proof of the legal relationship under which they assert the right to access the requested records. Such requests must meet the requirements of 26 C.F.R. 601.702(c)(4). Requests for tax return information must be consistent with the provisions of 26 C.F.R. 301.6103(c)-1 and IRC 6103(e).
10. In the event of multiple requests, it is unnecessary to provide separate documentation of identity for each request. Once the identity of the requester has been established, that identification should suffice for a continuing series of requests, as long as the thrust of the requests, the address, and the signature of the requester remain constant.

**EXAMPLE:**

A single envelope contains six specific requests for information from the same requester. One of the requests does not establish identity when the remaining five are adequate. You should not consider the one request imperfect for this reason alone.

**EXAMPLE:**

You receive requests routinely from the same requester and have been provided sufficient identifying information in the past. A recently received request does not adequately identify the requester. To the extent all other information is constant, you should not consider this request imperfect for this reason alone.

**NOTE:**

Disclosure offices are not required to maintain a system whereby a taxpayer's identifying information is maintained for later reference in the event a FOIA request is received. The above will apply only if it is readily apparent.

**[1.3] 13.6 (08-31-2000)**

**Search Process**

1. Upon determining that the request is valid in terms of meeting the requirements of the Act, disclosure personnel must decide the scope of the request and to what extent a search for responsive records will be conducted.

**[1.3] 13.6.1 (08-31-2000)**

**Documentation of Search Efforts**

1. When no responsive documents are located, requesters may appeal the scope and adequacy of the search for responsive documents. The logic behind both decisions should be documented clearly in the case file either by history note, check sheet or another readily understood method.
2. In the majority of cases, the incoming request, transcripts, the search memos, and the written response sufficiently document the file as to the search effort. See Section 13.6.2 below for a description of other data which may be necessary to properly document the file.

**[1.3] 13.6.2 (08-31-2000)**

**Search Efforts**

1. The IRS Restructuring and Reform Act of 1998 (RR1998) calls upon the Internal Revenue Service to place a greater emphasis upon serving the public and meeting the taxpayer's needs. In light of this, disclosure personnel should go as far as they reasonably can to ensure that they locate what the requester is seeking.
2. The FOIA statute requires requesters to "reasonably" describe what is being sought. Disclosure personnel must be careful not to read a request so narrowly that the requester is denied information that the agency

knows exists. Some requesters may have little or no knowledge of the types of records maintained by the Service where others have greater knowledge of what to request. See 13.6.3(12) addressing how to interpret "intent" in terms of what the requester truly seeks.

3. The amendments under Electronic Freedom of Information Act (EFOIA) amend the definition of the term "record" to include specifically information in an electronic format. Therefore, the Service is required to make reasonable efforts to conduct searches for records in electronic formats and to provide records in any format requested if readily reproducible in that format.
4. With respect to electronic format, records that are readily reproducible generally are those that can be downloaded or transferred intact to a floppy disk, compact disk (CD), magnetic tape, or other electronic media using equipment currently in use by the office(s) processing the request.
5. It is necessary for disclosure personnel to understand the types of records that may exist in the various functions in order to ensure an adequate search has been completed. Disclosure personnel may rely on their organizational knowledge, computer research, search memoranda, and any other resource available to determine how best to locate records responsive to the request.
6. It may become necessary to communicate with the requester to clarify what information is sought. Such communication is good customer service and may, in some instances, avoid unnecessary search and review procedures. Documentation of the communication should be placed in the case file.
7. Requesters should not be diverted to various public sources in lieu of processing requests.

**NOTE:**

Requesters should not be referred to courthouses for liens or copies of judicial tax decisions, to the Federal Register for copies of our systems of records notices, or to public libraries for designated Code or regulation sections.

8. Disclosure personnel should make every effort to encourage requesters to make use of the data electronically available via the IRS Website and specifically, the E-FOIA Reading Room. To access the IRS Website use [www.irs.gov](http://www.irs.gov). Scroll to bottom and select IRS "Newstand" and then select E-FOIA Reading Room for some items and select "Additional IRS Products" for other items (e.g. IRM or CCA's etc). If the requester insists on paper copy of items routinely made available online, disclosure personnel must make a local determination whether to:
  - A. download the information at the local office and provide it to the requester, or
  - B. transfer the request to the FOIA Reading Room.

**NOTE:**

The determination should be based on the volume of the data requested and on the best approach to customer service.

**EXAMPLE:**

When a requester asks for a small section of the manual or the Code, it should be photocopied or downloaded by the local office and supplied. Alternatively, If the requester agrees, he/she may be referred to the electronic service provided by the E-FOIA Reading Room. When the amount of photocopying would be burdensome to the processing office, and/or the requester cannot or will not download directly from the E-FOIA Reading Room online, a transfer of the FOIA request to the Reading Room in headquarters would be appropriate.

9. Some requests seek records from a certain time period to the "present." The "present" should be interpreted to be the date the request is received by the Disclosure Office. Records created after the receipt date of the FOIA request are generally considered unresponsive or outside the scope of the request. See 26 CFR 601.702(c)(8). For a discussion of when disclosure personnel may elect to include data outside the scope of the request see section 13.6.3(12).
10. Disclosure Officers should endeavor to meet both the letter and spirit of the statutes governing the FOIA process by applying liberal interpretation of the scope and intent of the requester. Communicating with the

requester to clarify what is requested as well as with those employees conducting the search may be necessary.

### **[1.3] 13.6.3 (08-31-2000)**

#### **Adequacy of Search**

1. The Disclosure Officer is responsible for ensuring the adequacy of search efforts. Subsection 13.3.1 and 13.3.2 above outlines the roles of the Disclosure Officer and the Functional Coordinator in completing the search.
2. The following information should be either apparent or documented in the case file:
  - A. which offices were contacted and why;
  - B. person spoken to in each office and who conducted the search;
  - C. files searched;
  - D. search terms utilized;
  - E. volume and location of records found; and
  - F. time expended in the search, copy, and review process.
3. In addition to the foregoing explanation of how the search was conducted, it is appropriate that the Disclosure Officer know, or have access to how the records are indexed within all the district functions.
4. The request itself is the best source for ideas regarding where any responsive data may exist. Disclosure personnel should carefully review the request and involve functional coordinators and other contacts in the various functions, if necessary, while determining the best course of action.
5. In many instances, the request contains the area or the employee that may have the responsive records. When the request involves tax records, it generally lists the tax periods covered. When the tax periods are not provided, see 13.5.6 of this Handbook pertaining to unclear requests.
6. The Integrated Data Retrieval System (IDRS) is the first step in the search for tax records, but may not be sufficient since certain types of investigations may occur in the compliance divisions which may not be reflected on the IDRS printout.

#### **EXAMPLE:**

Records relating to money laundering would not be identified from an IDRS search. Criminal Investigation functional coordinators need to search the Criminal Investigation Management Inventory System (CIMIS) in addition to IDRS for records under its jurisdiction.

#### **NOTE:**

Therefore, use of a search memorandum is recommended unless the request is very specific and the IDRS search reflects exactly what is requested. An example of such a specific request would be a request for a transcript for a specific tax return account.

7. In the case of requests for other than tax records, Disclosure personnel may want to consider doing an initial IDRS search for the purpose of determining whether any open compliance case is in process. Occasionally, the purpose of the requester is to obtain a statement in a FOIA response letter that may aid the requester in litigation or enforcement activities. The purpose of the request is irrelevant for FOIA processing purposes, but the affected functions may need to be notified about the request and given the opportunity to request a copy of the response letter for their files.
8. Exhibit 1.3.13-1 establishes guidelines for adequate research on IDRS. It should be used as a tool to establish the minimum required research on cases involving tax records. The exhibit is not all inclusive, however, and searchers should tailor the search on a case by case basis.
9. Disclosure Officers should take steps to maintain a general awareness of other automated systems which could assist in the location of information. Such steps may include:
  - A. Arranging to be kept informed by local Information Systems management of new systems being developed.
  - B. Mentioning during disclosure awareness presentations that Disclosure has an interest in knowing how the new automated tools are being used by the functions, or

- C. Collecting a library of the news about the latest technological advances in the Service so the disclosure staff may research it when necessary.
10. When search efforts require going beyond the initial IDRS research, disclosure personnel will make a request to appropriate offices for a records search. It should be in writing and provide guidance for conducting the search. Disclosure personnel should use a standard search request memo such as the sample shown in Exhibit 1.3.13-2. The use of a standard search memo is a good tool to properly document the search effort. The same memo can be directed to various offices and should include:
- A. a copy of the request which has been highlighted or otherwise marked to direct attention to the portion of the request that pertains to that function;
  - B. a request for suggestions of other areas which may have responsive documents;
  - C. a reminder that there is a requirement to provide electronic data in the format requested;
  - D. a response questionnaire assisting the function to document its actions and time spent on search, copy, and review (this also assists the disclosure office in computing applicable fees);
  - E. a request for a recommendation for release of located records;
  - F. a response due date; and
  - G. a point of contact for a clarification or a request for more time to respond.

**NOTE:**

The search memo may also, on a case by case basis, offer additional information which would assist the function in interpreting what is being sought.

11. Search memos may be a useful tool for control purposes to ensure timeliness of responses. The Electronic Disclosure Inventory Management System (EDIMS) will record search memo responses from the functions. Routinely following up on overdue responses to search memos will prevent long periods of inactivity on FOIA case histories.
12. Records created after the receipt date of the FOIA are generally considered to be outside the scope of the request and functions should be made aware of this fact. However, when appropriate in terms of good customer service and/or in the spirit of openness in government, disclosure personnel may make a determination to include data they locate which goes beyond the stated scope of the request. This determination is to be made on a case by case basis and may be based upon:
- A. experience with the requester's level of knowledge about what information is maintained by the Service;
  - B. ramifications of additional fee costs to the requester; and
  - C. the resources available to process requests beyond the stated scope.

**NOTE:**

A professional tax preparer who deals with the Service on a continuing basis may request a specific record or a specific file by the proper terminology. In such a request, it is not necessary to increase the responsive data by including related data in the spirit of good customer service. On the other hand, a request from a taxpayer reflecting a limited knowledge of our procedures may require a broader interpretation even if the taxpayer uses a specific term. Making an evaluation of a requester's level of knowledge on Service practices will not be an exact science, and will generally be left to local procedures. Occasionally, trends in requests which have been reported to Headquarters will trigger a national directive intended to achieve a level of consistency.

**EXAMPLE:**

(1) An individual reflecting unfamiliarity with Service procedures requests a transcript of his/her account on the "master file", but he/she lists a tax period which

has gone to retention. In such an instance, the microfilm data should also be provided from the retention register (as opposed to "master file").

**EXAMPLE:**

(2) A CPA who is a frequent requester and is familiar with our procedures requests a complete transcript from system 24.030 (Individual Master File) on behalf of his client. If the research shows that there is also retention data, then the response need not include the data from the Microfilm system (22.032). If that same CPA, however, requests the IMF transcripts for a span of years that includes a year that has gone to retention, then he, too, should be given the microfilm data for the year gone to retention.

**EXAMPLE:**

(3) A taxpayer representative familiar with our practices requests something specific like a Form X. He does not necessarily need to be provided the related Form Y or Z. However, see section 13.6.2(14) for discussion of the caution necessary in responding "no records" to certain requests which may be engineered for seeking just that kind of response.

13. Typically, reading files need not be searched as they contain duplicates of official agency records located in case or subject matter files. However, where official files are known to exist but cannot be located, reading files should be searched for a substitute for the missing official agency record.

**NOTE:**

This instruction is not intended to require search of reading files if the record should have been disposed of under routine distribution schedules (normal retention criteria). Distribution schedules may be verified with the records retention official serving the location of the disclosure office.

14. When agency knowledge indicates that documents responsive to the request would not exist, there is no need to perform futile search efforts. However, problems may arise when requesters are advised that no records exist in response to their requests.

**EXAMPLE:**

(1) Advising the requester that there are no records responsive to a request for "notice and demand" letters affords the requester the opportunity to challenge the validity of a lien or levy in the requester's substantive tax affairs.

**NOTE:**

The requester should be advised that the Service Center (or other office) does not routinely maintain hard copies of these notices, but an enclosed highlighted transcript of account reflects the issuance of these notices to the requester. Where these documents are available,(i.e. located in a collection file) they should be made available to the requester.

**EXAMPLE:**

(2) Another area in which "no record exists" responses are being used by requesters in their substantive tax affairs deals with requests for the delegation order to a specifically named IRS employee that "authorizes him or her to file tax liens."

**NOTE:**

Although it may be true that no delegation order to a designated employee by name exists, the more appropriate response would be that: "delegation orders are usually not issued to employees by name, but rather are issued to employees by position title. The attached copy of Delegation Order \_\_\_\_\_ is the authority for \_\_\_\_\_ to file tax liens."

15. 26 CFR 601.702(c)(12) requires that all correspondence related to FOIA requests, and all records processed pursuant to such requests, are to be preserved until such time as the destruction of the correspondence and responsive records is authorized under records disposition schedules; in no event will correspondence or responsive records be destroyed while they are the subject of a pending FOIA request, administrative appeal, or lawsuit.
16. Disclosure offices must maintain copies of all internal and external correspondence, as well as the records identified as responsive to the request, or which may be deemed by a court to be responsive, in the case file. The case file must be preserved, notwithstanding approved record disposition schedules, if the case is the subject of a pending FOIA request, administrative appeal, or lawsuit.

**NOTE:**

Search memoranda should also reference this regulation and instruct Functional Coordinators that correspondence between their offices and disclosure offices, as well as the records deemed responsive to the FOIA request, be preserved during the pendency of a FOIA request, administrative appeal, or lawsuit, notwithstanding record disposition schedules. Functional Coordinators should also be invited to discuss with Disclosure personnel whenever questions arise whether certain records are responsive, or may be deemed by a court to be responsive, to a particular FOIA request before record disposition schedules are followed. Whenever there are questions concerning the responsiveness of records, such records should be preserved, either by the Functional Coordinator or the disclosure office, for cases that are the subject of pending FOIA requests, administrative appeals, or lawsuits. The Functional Coordinator and Disclosure Officer or Specialist will determine where such records will be maintained.

**[1.3] 13.7 (08-31-2000)**

**Review and Editing**

1. Once the responsive information has been gathered, disclosure personnel will review the material and determine what should be released or withheld in total or in part.
2. The determination to grant or deny access to a specific record is made for each request on a case by case basis. It requires an understanding of:
  - A. the purpose the record serves;
  - B. the relationship the record has to the objective of tax administration;
  - C. the effect the disclosure of the record has in the administration of tax; and
  - D. the impact the disclosure of the information would have on ' the personal privacy of any individual weighed against the need for the public to have access to the information.

3. The determination also requires an understanding of the nine (9) FOIA exemptions, three (3) special law enforcement exclusions, applicable statutes, relevant court cases, precedents and Service-wide guidelines issued by the Headquarters Office of Freedom of Information.
4. The role of disclosure personnel in this process is two-fold:
  - A. The role of a taxpayer advocate in providing as much information as is legally possible, and
  - B. The role of a government advocate ensuring confidential information or information that may harm tax administration is not released.
5. Generally, the advice of the function maintaining or originating the record requested weighs heavily in the determination regarding release of the information by disclosure personnel. There are times, however, when the Disclosure Officer's interpretation of the facts of the case and the disclosure statutes may be different than the initial advice from the function. The ultimate responsibility for the disclosure resides with the Disclosure Officer pursuant to the disclosure authority outlined in 26 CFR 601.702 and, as appropriate, Delegation Order 156, as revised. See section 13.2.4 for procedures involving disagreements with the affected function over the release of records.
6. Disclosure Officers should make an independent judgment on the disclosure or withholding of records after considering the views of the affected functions and their understanding of the law. Disclosure personnel are responsible for balancing the two roles described in 13.7.4 above. They are also responsible for explaining the reasoning behind the final determination to withhold or release information. Some determinations are discretionary and some are clearly nondiscretionary by statute. For a discussion of discretionary vs. nondiscretionary disclosures, see 13.7.1 below.

### **[1.3] 13.7.1 (08-31-2000)**

#### **Approach to Exemptions**

1. The FOIA requires agencies to make the maximum possible information available to the public. Striving for the maximum responsible disclosure of information is the policy emphasized by both President Clinton and the Attorney General. Their policies were stated in memorandums for Heads of Departments and Agencies issued initially in October of 1993 and reemphasized subsequently in September of 1999 - consistent with the Service's own discretionary disclosure policy.
2. Under the FOIA, once a record is determined to be responsive, only such portion as falls within one of the nine (9) specific exemption categories or three (3) special law enforcement exclusions may be withheld. There is a presumption for release. Disclosure personnel must clearly document any decision to edit or withhold records. The decision must be made based upon the application of one of the exemptions or exclusions contained in the FOIA statute. Each of the exemptions and exclusions is listed and discussed in section 13.7.2 below.
3. Some exemptions are of a discretionary nature. Others are mandatory in nature. Exemptions 1, 3 and 4 of the FOIA are exemptions for which discretionary disclosures are not appropriate since there may be civil and/or criminal penalties for unauthorized disclosure of statutorily protected information.
4. After consideration of statutorily prohibited disclosures (mandatory) consideration will be given to the remaining (discretionary) exemptions.
5. Discretionary exemptions should not be asserted unless:
  - A. There is a substantial legal basis for withholding; and
  - B. A foreseeable harm can result from the disclosure.

#### **NOTE:**

This is referred to as the "harm" standard meaning that discretionary exemptions should not be asserted unless disclosure would significantly impede or nullify IRS actions in carrying out a responsibility or function, or would constitute an unwarranted invasion of personal privacy.

6. When considering discretionary disclosures related to personal privacy, disclosure personnel will weigh the public's right to the information against the privacy interests of the individual(s) affected.

### **[1.3] 13.7.2 (08-31-2000)**

#### **Exemptions**

1. The decision to edit or withhold records is generally made based upon the application of nine specific exemptions. These specific exemptions are listed in 5 USC 552(b) and form the legal basis for the IRS to withhold records or parts of records from the public. Careful consideration of the exemptions and the "harm" standard is required for reviews of responsive records.

### **[1.3] 13.7.2.1 (08-31-2000)**

#### **(b)(1)**

1. This exemption applies to classified records concerning national defense and foreign policy. This exemption generally refers to information which has been properly classified as confidential, secret, and top secret under the terms and procedures of the Executive Order establishing the classification system. It is seldom used by the IRS.

### **[1.3] 13.7.2.2 (08-31-2000)**

#### **(b)(2)**

1. This exemption covers matters which relate solely to the internal personnel rules and practices of an agency. Courts have interpreted the exemption to encompass two, alternatively, distinct categories:
  - A. internal matters of a relatively trivial nature (sometimes referred to as "low 2" information) and
  - B. more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement (sometimes referred to as "high 2" information).
2. Because of court interpretation and the application of Attorney General Janet Reno's and the Service's discretionary disclosure policies, records related to "low 2" matters must be released. Exemption (b)(2) is also seldom used by IRS.
3. Under the 1986 amendments to the FOIA, law enforcement manuals and other sensitive manual information that could reasonably be expected to risk circumvention of the law, previously withheld under high (b)(2) is now exempt under exemption (b)(7)(E) as amended.

### **[1.3] 13.7.2.3 (08-31-2000)**

#### **(b)(3)**

1. This exemption protects information specifically exempted from disclosure by statute (other than FOIA), provided that such statute:
  - A. requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
  - B. establishes particular criteria for withholding or refers to particular types of matters to be withheld.
2. Some examples are:
  - A. IRC section 6103 (most commonly used);
  - B. Rule 6 (e) of the Federal Rules of Criminal Procedure exempts grand jury information;
  - C. Title 15, section 1681 the Fair Credit Report Act exempts from disclosure credit reports found in IRS files;
  - D. Title 31, section 5319 exempts currency transaction reports themselves (see 13.7.5 in this Chapter);
  - E. Title 41, section 253(b) relating to contract proposals; and
  - F. Title 5, Section 7114 (b)(4)(c) exempting labor management guidance.

#### **NOTE:**

IRC 6103(b)(2) exempts from disclosure "...the standards used or to be used for selection of returns for examination, or data used or to be used for determining such standards..." This exemption would include data used to develop the current scoring formulas; the specific formulas; and the scores on tax returns.

### **EXAMPLE:**

IRC 6103(b)(2) would encompass, among other things, the DIF scoring systems presently in use as well as any other exam scoring system which may be used by the service in the future. FOIA exemption (b)(3) and (b)(7)(E) should be cited in denying this material. The statutory basis for the (b)(3) exemption is IRC 6103(b)(2).

Collection "RWMS" scores, however, are not exempt under this or any other exemption. For further information regarding DIF and RWMS scores. See 13.9.5

3. Generally, procedural rules are inappropriate as a basis for the (b)(3) exemption, except for those rules prescribed by law and having the effect of law such as Rules 6(e) and 16 of the Federal Rules of Criminal Procedure.

### **CAUTION:**

Do not cite 7213, 7213A, 7431, the disclosure penalty provisions, as supporting statutes to the (b)(3) exemption. The Privacy Act of 1974, IRC 6110, and IRC 6104 are also not appropriate citations.

4. This exemption, in conjunction with IRC 6103, is invoked to prevent disclosure of confidential tax information found in documents to those with no authority to receive such information.

### **[1.3] 13.7.2.4 (08-31-2000)**

#### **(b)(4)**

1. This exemption protects trade secrets and commercial or financial information obtained from a person which is privileged or confidential.
2. The exemption is intended to protect the interests of both the government and submitters of information. Its existence encourages submitters to voluntarily furnish useful commercial and financial information to the government and correspondingly provides the government with an assurance that such information will be reliable and complete.
3. The exemption also protects submitters who are required to furnish commercial and financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure.
4. Requests for competitive bids for government contracts may fall in this category. These requests are seen more often in the Headquarter FOIA Office but to a limited degree, similar types of requests may be received by field personnel.
5. This exemption relates to information submitted by individuals, corporations or partnerships. It does not apply to records which are generated by the government such as government prepared documents.
6. 26 C.F.R. 601.702(h) establishes certain notification and processing procedures for requests to which exemption (b)(4) might apply. This citation should be referenced as needed. For further information, see 13.9.2 of this Chapter.

### **[1.3] 13.7.2.5 (08-31-2000)**

#### **(b)(5)**

1. This exemption applies to inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the IRS. In other words, records that would be protected under discovery rules if they were part of a litigation.

### **EXAMPLE:**

Memorandums to or from District Counsel which reflect their recommendations. They may be protected if the release of such record would satisfy the foreseeable harm standard of the Administration's and Service's discretionary disclosure policies.

2. There are three primary privileges incorporated into exemption (b)(5).

- A. Deliberative process
  - B. Attorney work product
  - C. Attorney-Client
3. Deliberative process is the most commonly invoked privilege under exemption (b)(5). There are two fundamental requirements, both of which must be met, in order for the deliberative process to apply.
    - A. the communication must be predecisional; that is, it precedes the adoption of an agency policy or other final decision, and
    - B. the communication must be deliberative; that is, a direct part of the process in making recommendations or expressing opinion on legal or policy matters.
  4. The burden is on the agency to show the records meet both requirements. Many courts have questioned whether certain documents were properly protected by this exemption, particularly those routinely used by agency staff as guidance. Records that reflect agency policy or reflect an interpretation of law adopted by the agency should be disclosed because they are not predecisional, but discuss established policies and decisions.
  5. Generally, factual portions of internal agency documents which may fall within the deliberative process privilege are not exempt from disclosure. However, if the facts are inextricably intertwined with deliberative matter, or selectively culled as part of the author's deliberations on the facts, they may be exempt.

#### **EXAMPLE:**

Revenue Agent Form 4665 or "T-letters" transmitting information to Appeals do not have a blanket exemption but must be reviewed to allow disclosure of all or part of the document.

6. Another aspect of this privilege involves the element of time. Even where technically subject to the deliberative process privilege, records must be examined in light of the discretionary disclosure policy. A record may be protected if it relates to an open case or an issue that may involve a number of taxpayers where disclosure would adversely affect the open case or matter. In the case of a request for information contained in a closed file where administrative actions have been completed it is more difficult to demonstrate the foreseeable harm.
7. Attorney work product privilege protects documents and other memoranda prepared by an attorney during litigation or in reasonable contemplation of litigation. It does not cover records written by attorneys in the ordinary course of business (e.g. routine review of statutory notices of deficiency or summonses); only those records which, under the particular facts and circumstances, were created because of the reasonably imminent prospect of litigation. A discussion with the Counsel attorney is recommended to ascertain the foreseeable harm.
8. Attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. This includes communication from the attorney to his/her client and from the client to the attorney based on confidential facts conveyed to the attorney by the client. A discussion with the Counsel attorney is recommended to ascertain any foreseeable harm.
9. Section 3509 of the IRS Restructuring and Reform Act of 1998 now requires the IRS to publish Chief Counsel Advice. See 13.9.1 of this Chapter for further guidance.

### **[1.3] 13.7.2.6 (08-31-2000)**

#### **(b)(6)**

1. This exemption pertains to the protection of personal privacy. It protects personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. It is the exemption that requires a balancing between the right of privacy for individuals against the right of the public to be informed. The public interest to be considered in this balance, is whether the information will shed light on government operations (the core purpose of FOIA).
2. To accomplish the balancing of public interest and privacy interest, use the following formula:
  - A. If no privacy interest exists -- then release the data
  - B. If privacy interest exists at all, then check for public interest

- C. If no public interest (or public interest is not the kind of interest that sheds light on how the government operates), then withhold.
  - D. If there is both privacy and **qualifying** public interest -- then balance the two interests with a leaning toward releasing the information.
3. The phrase "similar files" as used in the (b)(6) exemption has been given a broad interpretation. The Supreme Court stated that Congress intended Exemption (b)(6) to cover detailed information on an individual which can be identified as applying to that individual, regardless of the type of file in which the information is maintained rather than just a narrow class of files.

**NOTE:**

See IRM 1.3.20.7.2 for items considered public information for most Federal employees.

4. Examples of items that are protected by this exemption are the real names of employees using pseudonyms, disciplinary action files and EEO complaint files sought by a third party requester.

**[1.3] 13.7.2.7 (08-31-2000)**

**(b)(7)**

1. Exemption (b)(7) exempts from disclosure records or information compiled for law enforcement purposes, but only to the extent that the production of such records:
  - A. Could reasonably be expected to interfere with enforcement proceedings;
  - B. Would deprive a person of a right to a fair trial or an impartial adjudication;
  - C. Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
  - D. Could reasonably be expected to disclose the identity of a confidential source, including state, local, or foreign agency or authority, or any private institution, which furnished information on a confidential basis. In the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, any information furnished by the confidential source;
  - E. Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
  - F. Could reasonably be expected to endanger the life or physical safety of any individual.
2. This exemption allows, but does not require, withholding of records or information compiled for law enforcement purposes. It does not permit a blanket denial of records. Records may be edited or withheld only if the production of such records would cause one of the six specifically enumerated harms described above. This threshold requirement encompasses records generated out of civil and criminal, judicial and administrative enforcement proceedings, or used in investigations such as manuals, guidelines and instructions to staff.

**[1.3] 13.7.2.7.1 (08-31-2000)**

**(b)(7)(A)**

1. (b)(7)(A) exempts data in open or prospective law enforcement files. Information contained in records compiled for a law enforcement purpose is not exempt unless disclosure would harm a protected interest. Thus, records may be withheld if disclosure could reasonably be expected to interfere with enforcement proceedings. This will apply to any ongoing enforcement or concrete prospect of future enforcement proceedings.
2. Records may be withheld if disclosure of the information unknown to requesters might impede the investigation or harm the government's case in that particular proceeding.
3. Grounds for the nondisclosure of records recognized by the courts include the harm in disclosing:
  - A. evidence;
  - B. identity of witnesses and their prospective testimony;
  - C. the reliance placed by the government upon the evidence;
  - D. the transactions being investigated;
  - E. the nature, direction and strategy of the investigation;

- F. identity of confidential informants;
  - G. the scope and limits of the investigation;
  - H. methods of surveillance and;
  - I. the subjects of surveillance.
4. The Supreme Court has stated that the exemption may also apply when release of requested information would give the requester earlier and greater access to the government's case than he would otherwise have. NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214 (1978).
  5. This exemption is commonly applied to open Criminal Investigation files, Examination, Collection, Appeals and Counsel files. Prior to withholding any information, disclosure personnel must be able to determine the harm to the government's interest and articulate how release would interfere with enforcement proceedings. The file should be adequately documented to reflect this determination.

### **[1.3] 13.7.2.7.2 (08-31-2000)**

#### **(b)(7)(B)**

1. Exemption (b)(7)(B) protects against prejudicial pre-trial publicity. This exemption provides for withholding if the records would deprive a person of a right to a fair trial or impartial adjudication. This is primarily a protection against prejudicial publicity in civil or criminal trials. In practice this exemption is rarely invoked by IRS.

### **[1.3] 13.7.2.7.3 (08-31-2000)**

#### **(b)(7)(C)**

1. Exemption (b)(7)(C) protects personal information found in law enforcement records. This exemption protects from disclosure records or information compiled for law enforcement purposes whose disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
2. This exemption differs from exemption (b)(6) in that it requires a different standard for evaluating the invasion of personal privacy. It requires only a reasonable expectation of an invasion of privacy rather than a clearly unwarranted invasion of privacy.
3. Prior to invoking this exemption, you must identify and evaluate the privacy interests implicated in the requested records. The Supreme Court held that whether disclosure is warranted within the meaning of the (b)(7)(C) turns upon the nature of the requested information and its relationship to the FOIA's central purpose of exposing to public scrutiny official information that sheds light on an agency's performance of its statutory duties. Disclosure personnel must balance competing privacy and public interests.
4. In IRS, this exemption is commonly used to protect the identity of lower level enforcement employees at the Federal, state or local level, names and other identifying information of taxpayers or other targets under investigation, and any witnesses or informants interviewed.

### **[1.3] 13.7.2.7.4 (08-31-2000)**

#### **(b)(7)(D)**

1. (b)(7)(D) protects the identity of confidential sources and in criminal cases, their information. This exempts from disclosure the name and any material which could reasonably be expected to disclose the identity of a confidential source. In criminal investigations, any information furnished by a confidential source whether or not identifying, may be exempt.
2. The first part of this provision, concerning the identity of confidential sources, applies to any type of law enforcement record, civil or criminal. The term confidential source refers not only to paid informants but to any person who provides information under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred. The factual basis for confidentiality, if not clear from the face of the records, should be documented in the case file.
3. A source can be confidential with respect to some items of information provided, even if other information is furnished on an open basis.
4. Sources have been interpreted to include local, state and foreign law enforcement agencies which provide information to an agency in confidence. This was codified by the 1986 amendments to the FOIA. It does not include Federal agency personnel.
5. The second part of the provision applies to the information provided by the confidential source. Generally speaking, with respect to civil matters, such information may not be treated as exempt on the basis of

exemption (D), except to the extent that its disclosure would reveal the identity of the confidential source. However, with respect to criminal investigations conducted by a criminal law enforcement authority, and lawful national security intelligence investigations conducted by any agency, any information provided by a confidential source is by that fact alone, exempt.

6. Under the discretionary disclosure policy, information furnished by a confidential source in a criminal investigation the disclosure of which would not reveal the source's identity, should be released unless other harms to pending law enforcement proceedings may be identified.
7. Use of this exemption by itself may also provide an indication that a confidential source may exist. It is recommended that use of this exemption be considered only where disclosure personnel are reasonably sure the requester knows a confidential source exists and it involves a closed case. This determination should be made in consultation with affected function(s). Where assertion of the exemption is believed to be inappropriate, (b)(3) in conjunction with IRC 6103(e)(7), (b)(7)(A) and (C) may be invoked.

### **[1.3] 13.7.2.7.5 (08-31-2000)**

#### **(b)(7)(E)**

1. (b)(7)(E) exempts from disclosure certain enforcement procedures. This exemption applies to records that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of law. As part of the 1986 FOIA amendments, law enforcement manuals, are clearly exempt from disclosure under this exemption.
2. This exemption has been applied to protect Discriminate Information Function or DIF scores (numeric), tolerances, and investigative or settlement criteria.

#### **NOTE:**

DIF Score of "000" is not a tolerance, so it should not be withheld

3. This exemptions may only be used to protect investigative techniques or guidelines not generally known to the public (e.g. LEM criteria).
4. After the passage of time, tolerances investigative and prosecutive criteria, and settlement guidelines may become known to the public or revised. Pursuant to the discretionary policy, such factors should be considered before invoking the exemption. The determination should be made in consultation with the affected function(s), and documented in the case file.

### **[1.3] 13.7.2.7.6 (08-31-2000)**

#### **(b)(7)(F)**

1. Exemption (b)(7)(F) applies to the life and safety of individuals. It exempts material the disclosure of which could reasonably be expected to endanger the life or physical safety of any individual.

#### **EXAMPLE:**

This exemption might apply to information that would reveal the identity of undercover agents (state or federal) working on such matters as narcotics, organized crime, terrorism or espionage. The exemption, however, is not limited to law enforcement personnel. The 1986 amendments to the FOIA broadened the scope of the exemption to encompass danger to any person.

### **[1.3] 13.7.2.8 (08-31-2000)**

#### **(b)(8)**

1. Exemption (b)(8) applies to reports related to the regulation of financial institutions. This exempts from disclosure matters contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. This exemption is not generally used by the IRS.

### **[1.3] 13.7.2.9 (08-31-2000)**

#### **(b)(9)**

1. (b)(9) applies to geological and geophysical information and data, including maps concerning wells. This exemption is generally not used by the IRS.

### **[1.3] 13.7.3 (08-31-2000)**

#### **Record Exclusions**

1. The Freedom of Information Reform Act of 1986 created an entirely new mechanism for protecting certain law enforcement records under subsection (c) of the FOIA.
2. Three special protection provisions, referred to as record "exclusions," expressly authorize federal law enforcement agencies to treat certain law enforcement records as not subject to the requirements of the FOIA. These provisions apply only to especially sensitive records in limited, specific circumstances.
3. Disclosure personnel should coordinate through channels any such consideration with the Office of Governmental Liaison and Disclosure in the Headquarters Office.
4. Disclosure personnel may thoroughly familiarize themselves with the exclusion guidelines found in the DOJ Freedom of Information Act Guide and Privacy Act Overview, published annually and distributed to all disclosure offices.

### **[1.3] 13.7.3.1 (08-31-2000)**

#### **(c)(1)**

1. The (c)(1) exclusion provides that when a request involves access to records described in subsection (b)(7)(A) and under certain conditions, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the FOIA.
2. The exclusion may only be applied when the following conditions exist:
  - A. The investigation or proceeding involves a possible violation of criminal law;
  - B. there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency; and
  - C. disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.
3. Where the excluded records are just part of other records subject to the request, the request will be handled as a routine request with the other responsive records processed as if they were the only responsive records.
4. Where the only records responsive to a request fall within the exclusion, advise the requester that no records exist.
5. Where all targets or subjects of an investigation are aware of its pendency, the excluded records should be identified as responsive to the request if the FOIA request remains pending either administratively or in court. However, there is no legal obligation to reopen a closed FOIA request after a response has been issued.

### **[1.3] 13.7.3.2 (08-31-2000)**

#### **(c)(2)**

1. The (c)(2) exclusion provides that whenever informant records maintained by a law enforcement agency under an informant's name or personal identifier are requested by a third party, the agency may treat the records as not subject to the FOIA unless the informant's status as an informant has been officially confirmed.
2. This does not preclude the Service from responding to such requests as we have in the past by denying third party investigative records without searching for or confirming or denying the existence of such records consistent with statutory or regulatory requirements.

### **[1.3] 13.7.3.3 (08-31-2000)**

#### **(c)(3)**

1. The (c)(3) pertains only to classified law enforcement records concerning foreign intelligence or counterintelligence or international terrorism that are generated by the FBI.

### **[1.3] 13.7.4 (08-31-2000)**

#### **Editing Records**

1. During the review and editing process, disclosure personnel are responsible for balancing their two roles as requester advocate and guardian of protected data. Sometimes those roles may appear to work against each other. Case files should reflect adherence to both roles, and explain the reasoning behind the final determination to withhold or release information.
2. Some exemptions are discretionary and some are clearly nondiscretionary by statute as discussed in 13.7.1(3) and (4) above. While citing the non-discretionary exemption is sufficient, clear case file documentation of the reasoning behind the application of the discretionary exemptions is crucial because the requester may appeal the final determination. See 13.8 for more information regarding the usefulness of indexing.
3. Any reasonably segregable portion of a record must be released after deletion of portions which are exempt. The deletion must be obvious to the requester and the applicable exemption cited at the point of deletion. The Act also requires explanation in the response letter for any items withheld. See section 13.8 below.

#### **NOTE:**

A reasonably segregable portion is any portion of a requested record which is not exempt from disclosure and which, after deletion of the exempt material, still conveys meaningful information which is not misleading.

4. When editing portions of a document being released, a reasonable effort must be made to clearly indicate to the requester that editing has been done and the extent of the editing. White outs are not permissible. Editing and its magnitude must also be apparent in electronic records.
5. The volume of information deleted on the released document must be indicated at the place in the record where the deletion was made. Use any suitable means that will clearly indicate that editing has been done and the extent of the editing.
6. Requesters must be able to identify the exemptions that apply to the information being withheld.

#### **NOTE:**

Annotate the exemption in the margin of the record being partially released, unless it is possible to annotate the exemption at the point of redaction. The response letter will describe the nature of the information being withheld and the exemption(s) being claimed.

### **[1.3] 13.7.5 (08-31-2000)**

#### **Open Investigatory Files**

1. Investigatory files generally include returns and return information compiled for law enforcement purposes.
2. Returns and return information are only available, under the FOIA, to those taxpayers and requesters who meet the criteria contained in IRC 6103(c) and (e). The following instructions apply to those requesters who meet the criteria under IRC 6103(c) and (e).
3. Records or information in open investigatory files, or portions thereof, may be exempt under (b)(7)(A) through (F). The other exemptions provided by the Freedom of Information Act may be applicable to some portions of the records, depending upon the specific records involved. In some cases, exclusions created by the Freedom of Information Reform Act of 1986 may be used (see subsection 13.7.2.7.1 above).
4. When a determination has been made to assert exemption (b)(7)(A), generally the (b)(3) exemption will also apply as a basis to withhold their records. The statutory basis for the (b)(3) exemption is IRC 6103(e)(7). IRC 6103(e)(7) authorizes the Service to protect tax return information relating to the taxpayer-requester when the Secretary of the Treasury or his/her delegate has determined that disclosure would seriously impair Federal tax administration.
5. FOIA exemptions should generally not be asserted by Disclosure personnel to deny records which would otherwise be available to the taxpayer during the course of an administrative proceeding (e.g., audit).

6. When processing a FOIA request for records relating to an open civil or criminal investigation, a blanket denial under the (b)(3) and (b)(7)(A) exemptions must not be made.

**NOTE:**

Requests for records from a Tax Court petitioner or the petitioner's representative should be treated in the same manner as other "open investigatory files."

Determinations should be coordinated with District Counsel.

7. A line by line review is necessary to determine whether a particular record is exempt from disclosure under the (b)(3) and/or the (b)(7) exemptions. See IRM Chapter 13.4(16), discussion of segregable portions.  
Note: If all the records within a particular category share characteristics which would warrant their exemption, they need not be individually analyzed. Example: Copies of selected canceled checks and bank statements which would indicate areas of interest, a series of memos between the Special Agent and the supervisor or Counsel, or memoranda of witness interview may be withheld in this manner.
8. The release of memoranda of interview with taxpayers and the underlying Special Agent's notes should be evaluated on a case by case basis as follows:
  - A. Service personnel should carefully examine the memorandum to determine whether its disclosure, or any portion thereof, could reasonably be expected to interfere with enforcement proceedings.
  - B. Specific line-by-line identification of contemplated interference, accompanied by specific justification for such interference, should be accomplished and documented in your history sheets.
  - C. Examples of the types of particularized line-by-line identification of contemplated interference may include admissions or confessions of the taxpayer or conflicting or contradictory statements, the disclosure of which would permit taxpayer or counsel to develop explanations negating the impeachment value of such admissions, confessions, or statements.
  - D. In contrast, general conclusory statements that disclosure of the memoranda, or any portions thereof, could reasonably be expected to interfere with enforcement proceedings or provide a "roadmap" to or reveal the "scope and direction" of the Service's investigation should not be accepted. The function must articulate how disclosure of each item of information could specifically cause the harms recognized in Subsection (b)(7).
  - E. Typically, the introductory and biographical sections of these memoranda should not be withheld.

**NOTE:**

Records of taxpayers' own statements can seldom be withheld; such withholding should not be attempted unless justified by the circumstances in a specific case. The agency has the burden in convincing courts of the interference caused by the full or partial release of memoranda of interview with taxpayers.

9. The following classes of records would generally be available to the taxpayer requester or authorized representative(s):
  - A. Transcripts of verbatim statements or affidavits taken from and signed by the subject taxpayer or authorized representative(s).
  - B. The subject taxpayer's prior criminal record after ascertaining its releasability from the agency from which it was obtained.
  - C. The taxpayer's tax returns without agents' marginal notations.

**EXAMPLE:**

A return containing markings made to illustrate or highlight those items which the agent considered to be consequential to the investigation may be partially or fully withheld.

- D. Correspondence between the taxpayer and the Service or material originally submitted voluntarily by the taxpayer.
- E. Transcripts of accounts of the taxpayer.

- F. News clippings relating to the taxpayer. However, there may be some instances where certain news clippings are withheld.
- G. Summonses or other records, copies of which were provided to the subject taxpayer in the course of the investigation.

**EXAMPLE:**

Where the agent has placed selected news clippings in the file which would reveal the areas of interest or may identify a related party in a separate investigation, withholding of that information may be appropriate.

- H. Transmittals such as routine standard forms used to request records, or case transfers.
- I. File debris and any other seemingly innocuous items like folders and routine forms which if released, would not indicate the scope or direction of an investigation.
- J. Any other items whose release is not prohibited by statute and in the opinion of the agent in charge of the case can be released without adverse effect to the law enforcement process.

**NOTE:**

The provider of information may receive a copy of that which he or she provided so long as there are no editorial markings made by the Service.

- 10. For other records, disclosure personnel in consultation with affected law enforcement personnel and/or Counsel, should determine whether disclosure meets the criteria of (b)(7).
- 11. Examples of interference with enforcement proceedings include, but are not limited to, the disclosure of records that would tend to alert the taxpayer to the:
  - A. nature and direction of the government's case;
  - B. type of evidence being relied upon;
  - C. identity of witnesses or informants;
  - D. specific transactions being investigated; and
  - E. scope and limits of the government's investigation.
- 12. The agent may be aware that a specific investigation may involve circumstances which would require a greater or lesser level of disclosure than the foregoing examples would indicate. Such special circumstances should be discussed prior to the Disclosure Officer's determination.
- 13. Facts which could affect the level of disclosure in a particular case include:
  - A. the submission or use of falsified records by the taxpayer or the possible use of the records for impeachment purposes during any judicial proceeding;
  - B. involvement of organized crime or narcotics figures;
  - C. a record of violence on the part of the taxpayer which indicates the possibility of threats toward Service employees or other persons or prior record of crime involving assaults; and
  - D. attempts to bribe or attempts to threaten the investigating officials.

**[1.3] 13.7.6 (08-31-2000)**

**Title 31 Reports -- CTRs, CMIRs and FBARs**

- 1. Under Title 31 of the United States Code, the following reports are made to the Secretary of the Treasury.
  - A. Form 4789, Currency Transaction Reports (CTR);
  - B. Form 4790, Report of International Transportation of Currency or Monetary Instruments (CMIR); and
  - C. Form 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR).
  - D. Form 8362, currency Transaction Report by Casinos
- 2. Generally, Title 31 information (CTR, CMIR, and FBAR reports, or information extracted from the reports which may appear on Information Return Master File extracts) is exempt from access under the Freedom of Information Act pursuant to 31 USC 5319.
- 3. A FOIA request which seeks access to CTRs, CMIRs, or FBARs, or information extracted from any of these reports only is to be denied under FOIA exemption (b)(3) in conjunction with 31 USC 5319.

4. If a FOIA request is made for tax investigatory files, which may include CTR, CMIR, or FBAR reports or information extracted therefrom, the CTR, CMIR, or FBAR reports or information may be released if the Service has no impairment call to make, or no other FOIA exemption is applicable. In such instances, the CTR, CMIR, or FBAR reports or information extracted from them are treated like any other return information.

**CAUTION:**

31 USC 5319 is not to be relied upon to deny access to Title 31 information found in tax investigatory files.

5. "Pure" Title 31 investigatory files, other than the CTRs, CMIRs, or FBARs themselves, or information extracted from these reports, are not exempt from access under 31 USC 5319 and FOIA exemption (b)(3). Requests for investigatory files related to "pure" Title 31 investigations must be evaluated under applicable FOIA exemptions (e.g., (b)(7)(A)).

**[1.3] 13.7.7 (08-31-2000)**

**Microfilm Requests**

1. Microfilm transcripts and similar documents sometimes included in Collection, Examination, and Criminal Investigation enforcement action files sometimes contain information about several other taxpayers in addition to the taxpayer with respect to whom the file pertains. This results from the physical limitations of microfilm copying equipment or other reasons not related to the administration of the case. These records require special consideration as follows:
  - A. Such extraneous information contained in the file must be withheld from the requester because it is third party return information which is prohibited by law from disclosure.
  - B. When withholding such extraneous portions of records, there will be no exemptions cited if the material is not within the scope of the request. If such information is the only material not disclosed, this is considered a grant-in-full for reporting purposes.
2. When the request is framed in terms of seeking information about the requester, such information is not within the scope of the request being processed. There will be no explanation made of the deletion in the response letter.
3. When the request is framed in terms of seeking "everything in the requester's file" or similar words, the existence of the third party return information should be considered within the scope of the request and withheld pursuant to exemption (b)(3) in conjunction with IRC 6103(a).

**[1.3] 13.7.8 (08-31-2000)**

**Records Concerning Personal Privacy**

1. The disclosure determination concerning records which relate to personal privacy require a balancing between the public's interest and the unwarranted invasion of personal privacy.
2. Exemption (b)(6) is available to withhold personnel or medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. See 13.7.2 of this Chapter.
3. "Similar files," has been broadly construed by the Supreme Court to apply to any data which applies to any individual. The exemption may apply not only to personnel files, but may include records such as reports of reviews made of an office if the narrative portion of the review focuses on a named official or uniquely titled official whose operation is being evaluated.
4. Exemption (b)(6) should not preclude the release of:
  - A. purely statistical information;
  - B. staffing patterns;
  - C. summaries of accomplishments;
  - D. graphs of units closed;
  - E. number of visitations;
  - F. overtime expenditures; or
  - G. other public information which may be included in such reports.

### **[1.3] 13.7.9 (08-31-2000)**

#### **Foreign Government Files**

1. In order to administer the tax laws of the United States, the Internal Revenue Service may on occasion receive information concerning taxpayers from foreign governments. Contacts with or information received may relate to:
  - A. Tax treaties provide that under some circumstances the Internal Revenue Service may provide similar assistance to foreign governments.
  - B. At times information may be exchanged or consultations may take place for purposes of coordination, such as may be necessary to determine the extent to which a taxpayer's affairs are subject to the jurisdiction of the United States or one or more foreign governments.
2. Records of contacts with foreign governments or records which infer the existence or anticipation of contacts with foreign governments concerning specific taxpayers, or records received from foreign governments, may become subject to disclosure determinations as a result of requests to access such records in particular or as a result of general requests which coincidentally extend to such records.
3. The complexity and sensitivity of disclosure determinations relating to records of contacts with foreign governments generally require extensive coordination between the Office of Governmental Liaison and Disclosure and the Assistant Commissioner (International) and Associate Chief Counsel (International).
  - A. Coordination may also be necessary with other Headquarters Office functions, other agencies of the United States Government and with the foreign government involved.
  - B. The unique aspects of such disclosure determinations may have national or international implications.
4. In view of the above, for disclosure purposes, records of contacts with foreign governments or records which infer the existence or anticipation of contacts with foreign governments, or records received from foreign governments, are not considered to be records under the control of field officials, regardless of their physical location.

#### **CAUTION:**

These records are considered to be under the control of the Headquarters Office and the initial determination to release these records is subject to the sole authority of the Assistant Commissioner (International), or his or her delegate, as provided by 26 CFR 601.702 (c)(7)(i).

5. These instructions are not intended to preclude or delay the prompt denial of access to records, which field officials have properly determined to be exempt from disclosure requirements for reasons other than the fact that the record involves contacts with, or information received from, foreign governments. Field officials may continue to deny access pursuant to applicable Privacy Act or Freedom of Information Act exemptions.
6. Whenever a field official has a request for access from a member of the public which extends to records of contacts with a foreign government, or records received from a foreign government and which is not being denied for other considerations, the following actions will be taken:
  - A. Dispose of as much of the request as does not relate to or infer the existence of contacts with, or information from, a foreign government, as may be done in accordance with appropriate procedures.
  - B. Advise the requester that his or her request extends to records under the control of Headquarters Office and that a further response will be forthcoming from the Assistant Commissioner (International).
  - C. Forward the records involved, copies of the request and response, any related information, and a recommendation (on the basis of the field activity's interests) to the headquarters FOIA office.

### **[1.3] 13.7.10 (08-31-2000)**

#### **Documents Created by Other Federal Agencies**

1. Records created by other Federal agencies or Treasury constituent units shall be referred to the other agency, or constituent units, for review, coordination, and concurrence. No determination, with respect to

the record, will be made without prior consultation with the other agency or constituent units. This will also apply to records created by the Service that includes information that originated in another agency.

2. IRS field offices should forward FOIA requests for records originating in other Federal agencies, including Treasury constituent units, to the Headquarters FOIA Office.

#### **CAUTION:**

IRS field offices should not seek disclosure recommendations directly from local offices of other Federal agencies.

3. The procedures for handling requests for records which are in the possession of the IRS, but which were created by another Federal agency, are detailed in 31 CFR 1.5(b).
4. The field office may close its file on this request after informing the requester of the referral and after making a disclosure determination for all IRS records.
5. The referral of a record to another Federal agency does not constitute a denial of access to such record. No appeal rights should be afforded the requester solely because a record has been referred to another agency.
6. Where the record is otherwise determined to be exempt from disclosure under the FOIA, the referral need not be made, but the Service shall inform the originating agency of its determination.

#### **NOTE:**

When the responsible official has reason to believe that notifying the requester of the referral may cause a harm to the originating agency or Treasury constituent unit which would enable the originating agency or constituent unit to withhold the records under 5 USC 552, then such referral need not be made. Such determination should only be made in consultation with the originating agency or Treasury constituent unit.

### **[1.3] 13.7.11 (08-31-2000)**

#### **Legibility of Copies**

1. Copies of records made in connection with FOIA matters must be as legible as possible.
2. The burden of proof in defending records rests with the Government; it is therefore important that copies which may ultimately be submitted to a court for in camera inspection must be legible.
3. When copies are illegible because originals are poor, the record should be stamped with the notation "best copy available".

### **[1.3] 13.8 (08-31-2000)**

#### **Response and Closing**

1. The response to the requester and the closing of the case are the final actions in completing a Freedom of Information Act request.
2. The response letter must contain specific items of information and be worded to explain the exemptions applied, if any, for records denied in full or partially denied. The date the request was received should also be referenced.
3. When the response includes records that have been edited in any fashion, the letter must reflect the reason and the associated exemptions applied. Records edited must also reflect the exemption applied at the point of extraction. For further discussion of editing requirements, see 13.7.11 of this Chapter.
4. Whenever a request seeks access to several different records or different classes of records, care must be taken to ensure the response clearly indicates which records and which exemptions claimed are applicable to which portions of the request.
5. Whenever an office has multiple requests from a single requester and one response to all requests is being made, the response should identify the relevant request by date, subject matter, certified mail number, or by attaching a copy of the request.
6. Responses in which records are denied in full or partially denied should include reference to the:
  - A. total pages responsive
  - B. number of pages denied in full

- C. number of pages partially denied; and
- D. the number of pages granted in full.

**NOTE:**

The sum total of the number of pages denied in full, partially denied and granted should equal the total number of pages responsive. It does not, however, have to total the number of records reviewed (noted on closing document for EDIMS input) because upon review a number of records provided by searchers may be considered by the disclosure office as nonresponsive or outside the scope of the request.

- 7. Case files should contain sufficient information to permit reviewers to determine precisely what was or was not released. In many cases the response letter itself may be adequate to determine the extent of records released.
- 8. The file should contain copies of the response letter, any edited records, any index which may have been prepared, and any other records which are necessary to document the processing of the request.

**NOTE:**

Complete copies of what was released in addition to items not released or edited may be necessary to support any administrative appeal. If the records reviewed are too voluminous to maintain a file copy, the records reviewed should be retained in the disclosure offices for a period 60 days from the date of the disclosure office's response before being returned to file. If the records are from an existing open administrative file controlled by a function such as Examination, disclosure personnel need not hold the file, but must be able to retrieve the file if necessary in event of an appeal.

### **[1.3] 13.8.1 (08-31-2000)**

#### **Indexing**

- 1. Indexing is a technique for creating a detailed list of records which were reviewed in response to a Freedom of Information Act request.
- 2. The index is useful in making the final FOIA determination whenever a case involves an extensive number of records, some of which may be granted and others denied in whole or in part. It is especially helpful if the records to be denied are subject to several exemptions.
- 3. Disclosure personnel should consider the preparation of an index whenever the case is sufficiently complex to warrant an index.
- 4. In some cases Disclosure personnel may determine that a partial index or a handwritten draft is adequate for an initial determination.

**NOTE:**

A partial or preliminary index may require further amplification if the case advances to the appeal level or results in litigation. See 13.8.3 of this Handbook.

- 5. The index should generally:
  - A. number the records reviewed;
  - B. identify the records by type, date, recipient, and originator; (the recipient and originator should be identified by title);
  - C. indicate the nature of the record, and if part of an investigatory file, indicate how the record related to the investigation;
  - D. identify the FOIA exemption asserted;

- E. provide justification for the assertion of the exemption and specify the anticipated harm which might result from release, unless assertion of the exemption is mandatory; and
  - F. indicate those items being withheld because exemption is mandatory and cite any applicable disclosure statutes.
6. Blocks of substantially identical records may be described generally rather than in individual detail.
  7. The index is not required to be provided to the requester and would generally not be attached to the response to the requester.

#### **EXCEPTION:**

In some instances, the Disclosure Officer may determine by providing all or part of the index as an attachment, the response would be simplified or would contribute to avoiding an unnecessary appeal.

#### **CAUTION:**

Care should be taken to ensure details of an index provided to the requester do not compromise the records or information being denied.

8. The index should generally be prepared by the function whose records are involved, pursuant to the advice and assistance of the Disclosure Officer.

### **[1.3] 13.8.2 (08-31-2000)**

#### **File Documentation**

1. History sheets should record and explain any actions taken or considered which cannot be inferred from other records in the file.
2. Notice 393 should be enclosed and referenced in the response letter for most Freedom of Information Act responses except Imperfect closures and full grant closures. The letter should contain a simple statement that Notice 393 is enclosed.
3. Any necessary entries on the control sheet should be made by the caseworker to reflect:
  - A. Total time spent by Disclosure personnel on the request.
  - B. Total time, if any, spent by Functional Coordinators or other functions reflected on search memorandums.
  - C. Number of pages reviewed, responsive, and released.
  - D. Type of closure (full grant, denial, partial denial, imperfect, or transfer)
  - E. Exemption or exemptions applied; and
  - F. If (b)(3) exemption applied, the supporting statute.

### **[1.3] 13.8.3 (08-31-2000)**

#### **Prompt Response**

1. Every effort should be made to meet the statutory 20 business day time limit for response. This in effect, provides at least 28 calendar days for a response to a request. Early identification and closure of imperfect requests is recommended.
2. If it is otherwise impossible to locate and review the records within 20 business days, Letter 1522, or its equivalent should be forwarded to the requester close to but no later than the expiration of the 20 day period.
3. The Treasury regulations no longer (for requests dated after 6/30/200) provide for an administrative appeal for failure to meet the statutory 20 business day time limit for response. See 31 CFR 1.5 and section 13.8.5(4) of this chapter.
4. The Treasury regulations at 31 CFR 1.5(j) provide for an automatic 10 additional business days for agencies to respond if they notify the requester that they need more time to:
  - A. search for and collect the requested records from other locations (e.g. Federal Records Center) separate from the responding office;
  - B. search for, collect and review a large volume of records which are responsive to the request; or

- C. consult with another agency or Treasury bureau which has a substantial interest in one or more of the responsive records.

If one of the above reasons applies, a notice to the requester identifying the reason for needing 10 more business days should be issued even if it is known that the delay will be more than 10 days. Near the end of the 10 day extended deadline, if more time will be needed, a letter requesting voluntary agreement to extend the time for response and providing an alternate time frame should be sent to the requester. The alternate time frame should be calculated on a case by case basis. The only time disclosure personnel should go directly to the requester for a voluntary extension of time without first sending the 10 day letter, is when none of the three situations outlined in the 10 day extension apply.

5. In the request for voluntary extension of time to respond, the requester should be provided an opportunity to:
  - A. limit the scope of the request; or
  - B. arrange an alternative time frame for processing the request.
6. Use of an extension letter requesting a voluntary extension of time is required even if there has been personal or telephone contact in which the requester has agreed to the additional time to respond. It is important to notify the requester in writing that he/she has a right to file for judicial review to obtain a response. Additionally, the requester should be notified that the court may find (if there is a refusal to either limit the scope or to accept a reasonable alternate timetable for response) that the agency's failure to comply with the statutory time frame for response is justified.
7. Where exceptional circumstances require more than 30 calendar days to respond, disclosure personnel should review open cases at least once every 30 days and take any action deemed appropriate to bring the case to a closure. These reviews and any follow-up activity, such as contact with the function regarding the status, should be recorded in the case history sheet.

### **[1.3] 13.8.4 (08-31-2000)**

#### **Expedited Response**

1. The Electronic Freedom of Information Act amendments provide for expedited processing if the requester asks for such processing in writing and demonstrates a compelling need for the information.
2. A compelling need may be applicable when:
  - A. failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
  - B. the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

#### **NOTE:**

The requester should fully explain the circumstances so that disclosure personnel may reason that a delay in providing the requested information could pose such a threat. The requester's statement should be certified by such person to be true and correct to the best of such person's knowledge and belief.

3. Notice of the determination made whether to grant expedited processing in response to a requester's compelling need must be provided within 10 calendar days after receipt of the request.

### **[1.3] 13.8.5 (08-31-2000)**

#### **Appeals**

1. Requesters may appeal determinations made under the Freedom of Information Act. Generally, the appeal must be submitted no later than 35 days after mailing of the FOIA determination.
2. Processing appeals under the Freedom of Information Act is currently the responsibility of the office of Assistant Chief Counsel (Disclosure & Privacy Law).
3. FOIA appeals processing personnel will be in direct contact with disclosure personnel on cases under appeal. Upon receipt of an appeal, FOIA appeals processing personnel will notify disclosure personnel.
4. FOIA appeals from constructive denials of records (i.e. lack of timely response) will no longer be processed at the initial request stage or monitored by appeals personnel. When any such appeal is received

by the office of Chief Counsel (Disclosure & Privacy Law) a copy of the appeal letter will be forwarded to the field offices for association with the case file. The office of Chief Counsel (Disclosure & Privacy Law) will respond to the requesters advising them that they have no appeal rights, but only a right to seek judicial review in court.

**NOTE:**

The field disclosure personnel should acknowledge the receipt of the request for appeal by providing the requester either a written or verbal status regarding the anticipated response date.

5. Treasury regulation 31 CFR 1.5 now provides for administrative appeal of the adequacy of the FOIA search only in cases where agencies locate no records at all. Requesters who believe that there may be more responsive records than those addressed in the FOIA response they receive may communicate their concern regarding the search to the field disclosure contact (FOIA caseworker). If the concern is not immediately resolved by the caseworker and local Disclosure Officer, then the requester has no administrative appeal right, but only a right to seek judicial review in court.
6. When an administrative appeal is being processed, disclosure personnel must promptly make requested records, history sheets, and other processing documentation available in order to permit the timely processing of appeals.
7. If informal or partial indexes are part of the file, amplified indexes may be required by appeals processing personnel in order to facilitate resolution of an appeal or because of anticipated litigation.

**[1.3] 13.8.6 (08-31-2000)**

**Declarations**

1. If litigation pursuant to the FOIA occurs, declarations will generally be used to establish the processing of the request and the scope of the search. Declarations will generally be prepared for the signature of disclosure personnel and/or functional coordinators.
2. A declaration to establish the factual basis for any law enforcement claims will generally be prepared for the signature of the revenue agent, revenue officer, or special agent who is most familiar with the underlying investigation, or his/her supervisor.

**NOTE:**

Where FOIA subsection (b)(3) in conjunction with IRC 6103(e)(7) is also claimed, a second declaration will generally be prepared for the signature of the District Director or other delegated official.

3. Declarations should be based upon the specific facts and circumstances of the particular case and should logically lead to the conclusion that based upon those facts, the release of the record could reasonably be expected to interfere with enforcement proceedings.

**NOTE:**

Declarations which merely state a conclusion, based upon the official's expertise or experience, that interference with enforcement proceedings could result from the release of a record are of limited value. The rationale must be articulated in case specific terms.

**EXAMPLE:**

Entries were found in an Examination administrative file that indicates the taxpayer is using a second set of books. This information was used in support of a fraud referral to Criminal Investigation. The declaration must articulate the nature of the information and reasons why the disclosure could impair tax administration.

4. The Disclosure & Privacy Law attorneys, who are responsible for the agency's defense in FOIA lawsuits, will prepare the declarations of agency personnel. Disclosure personnel should be available to assist the attorneys in:
  - A. gathering necessary facts for the declarations;
  - B. providing documentation as exhibits to the declarations, as appropriate; and
  - C. coordinating the execution of the declarations by agency personnel.

### **[1.3] 13.9 (08-31-2000)**

#### **Special Issues**

1. This section of the Handbook provides guidance related to some of the more complex or unusual issues encountered when processing FOIA requests.

### **[1.3] 13.9.1 (08-31-2000)**

#### **Written Determinations (Including Private Letter Rulings, Technical Advice & Chief Counsel Advice)**

1. The public may access "written determinations" and "background file documents" pursuant to IRC 6110. These terms are defined in IRC 6110(b)(1) and (b)(2) respectively. The underlying file may also contain records which are not available under IRC 6110 (e.g., internal memoranda, inter-agency memoranda, routing slips, e-mails, case control sheet etc.), but are subject to request under the Freedom of Information Act. See Chapter 8 of this handbook regarding processing requests pursuant to IRC 6110. This section of the handbook provides guidance related to the processing of FOIA requests for documents not covered by IRC 6110.
2. Section 3509 of RRA 98 amended IRC 6110 by adding "Chief Counsel Advice" (CCA) to the definition of written determinations open to public inspection. CCA includes written advice or instruction by any National Office component of the Office of Chief Counsel issued to the district, regional office, or service center relating to the interpretation or policy surrounding a revenue provision.
3. Written determinations include:
  - A. Private Letter Rulings (PLR)
  - B. Technical Advice Memoranda (TAM)
  - C. Determination Letter
  - D. Chief Counsel Advice
4. Chief Counsel Advice (CCA) includes but is not limited to:
  - A. Field Service Advice (FSA)
  - B. Technical Assistance (TA) to the field
  - C. Service Center Advice (SCA)
  - D. Litigation Guidelines Memoranda (LGM)
  - E. Tax Litigation Bulletins (TLB)
  - F. General Litigation Bulletins (GLB)
  - G. Criminal Tax Bulletins (CTB)
5. In order to comply with section 3509 of RRA 98, the Service places the above referenced material issued on or after October 20, 1998, in paper format in the Freedom of Information Act (FOIA) Reading Room, and Chief Counsel Advice are posted on the IRS Web site. The web site address to access this material is [www.irs.gov/news/foia/determine.html](http://www.irs.gov/news/foia/determine.html).
6. In addition, CCA issued between January 1, 1986, and October 20, 1998, are being released for public inspection (in the FOIA Reading Room only) on a staggered time schedule starting in July 1999 and ending July 2004.
7. Requests which seek these CCA should be answered by informing requesters that they are available for inspection pursuant to RRA Section 3509(d)(2) and can only be accessed under the timetable set forth in the statute. These CCA are not subject to FOIA. Moreover, background file documents to these CCA may only be accessed subject to written request after the CCA to which they relate is publicly available.
8. Written determination files are generally stored in the Headquarters Office, and FOIA requests for background files generally should be transferred to the Headquarters FOIA Office for processing.

#### **NOTE:**

If requester is seeking a copy of a written determination and he/she can provide the identification number, field disclosure personnel may advise the requester how to access the document on the website and/or download it themselves and provide it. See 13.6.1(8) for further discussion of the determinations involved in data electronically available to the requester. If, however, the request seeks a background file, that portion of the request should be transferred to Headquarters.

9. When a taxpayer makes a request for an investigative file pursuant to FOIA, and a third party written determination (example: FSA, TA, PLR or TAM) is located within the file, field disclosure personnel will coordinate the release of the written determination with the Headquarters FOIA office. The objective is to ensure that the written determination in question has been released for public inspection. If the written determination in the administrative file matches the version that was made available to the public, the document may be released in full. If the document does not match, the IRC 6110 version of the document should replace the file copy as the document released under FOIA. The requester should be notified of the substitution and the reason for it by using language similar to: "This document is the version, available to the public under IRC 6110, of the actual document contained in the file responsive to your request. The copy being provided meets the disclosure requirements of IRC 6110."
10. If the written determination located within a responsive file is the requester's own written determination, disclosure personnel must still coordinate the provision of that document with the Headquarters FOIA Office. Information subject to certain FOIA exemptions contained in Chief Counsel Advice must be coordinated with appropriate IRS and Counsel personnel.

### **[1.3] 13.9.2 (08-31-2000)**

#### **Contracts/Commercial Information**

1. Requesters sometimes seek access to information which may physically be in the Service's possession, but:
  - A. do not constitute an agency record subject to the Freedom of Information Act; or
  - B. may be exempt from access pursuant to 5 USC 552(b)(4) as trade secrets and commercial or financial information obtained from a person and privileged or confidential.

#### **CAUTION:**

Special care must be taken that information is not released without considering the commercial or proprietary interests of the originator.

2. Examples of information which may involve commercial or proprietary considerations include:
  - A. Studies provided by non-governmental sources.
  - B. Training materials prepared under contract.
  - C. Operating manuals for purchased or leased equipment.
  - D. Transcripts prepared by court stenographers.
  - E. Contracts and related records concerning the purchase of goods or services.
  - F. Computer software (off the shelf or not governmentally produced)

#### **NOTE:**

The IRS Restructuring and Reform Act of 1998 provides very specific circumstances under which a summons may be issued for the production and/or analysis of tax-related computer source code and related materials. Once in possession of the Service, the material effectively becomes IRC 6103 information. As such, it warrants the protections afforded by IRC 6103 plus any additional safeguards as found in the new IRC 7612. Willful unauthorized disclosures of this information subject an employee to penalty under IRC 7213, or civil damages under 7431.

3. Studies, training materials, operating manuals and computer software (when prepared by non-governmental sources) are frequently not agency records subject to the Freedom of Information Act and may frequently be the property of the originator.
4. Determinations should be based upon the provisions of the agreement whereby the Service obtained the materials, the presence or absence of copyright or other restrictive markings, and whether the Service obtained exclusive use of the materials.
  - A. If the Service has exclusive and unlimited use of the materials, they would generally be agency records.
  - B. If the Service has only temporary or limited use of the materials or if the originator exercises continuing control over the materials, they would generally not be considered agency records.
5. A single record may contain both materials which the Service prepared and which were obtained elsewhere. The segregability of such materials will depend upon practical consideration and physical constraints.
6. Materials may have been prepared for Service use by employees acting on their own initiative and on their own time. Such materials may remain the property of the employees and would not be agency records. This determination should be made based upon the terms of the use permitted by the employee. (See (4), *infra*).
7. The status of transcripts prepared by court stenographers will depend upon applicable law and the agreement under which the stenographer serves the court. Generally, transcripts would be agency records in those situations in which the stenographer's rights to exclusive distribution have terminated.
8. Contracts and related records, including evaluative records, concerning the purchase of goods and services are agency records, but they may contain trade secrets and commercial or financial information which is privileged or confidential. Vendors frequently provide the government with more information concerning their products or services than they would make available in ordinary trade.
9. Business information provided to the Service by a business submitter shall not be disclosed pursuant to a FOIA request except in accordance with 26 CFR 601.702 (h).
  - A. Paragraph (h) has been added to conform to Executive Order 12600 of June 23, 1987.
  - B. The provisions of 26 CFR 601.702(h) should be carefully followed.
  - C. Generally, they require that the provider of the business information be promptly notified in writing of the FOIA request and the information requested, and afforded the opportunity within ten business days to provide a detailed statement of any objection to disclosure. If no response is received within the time designated, an attempt should be made to contact the provider to ensure their receipt of the inquiry.

**NOTE:**

On September 30, 1997, Part 15 of the Federal Acquisition Regulation (FAR) was revised to make clear that unit prices of each award are to be disclosed to unsuccessful bidders during the post award notice and debriefing process. Most significantly, unit prices are to be made publicly available upon request under FOIA. Furthermore, the new FAR specifically provides the items, quantity, and any stated unit prices of each award shall be made publicly available. These new FAR provisions become mandatory for contracts solicited after January 1, 1998.

10. Certain business information provided to the Service by a business submitter is subject to statutory prohibition against disclosure, and must be withheld under FOIA exemption (b)(3) citing 41 U.S.C. 253(b) as the supporting statute. For more information, see Pub. L. 104-201, section 821, 110 Stat. 2422.
  - A. This statute applies only to contractor proposals (technical, business, management and cost proposals) submitted in response to a solicitation for competitive bid (Request for Proposal or RFP)
  - B. This statute provides blanket protection for proposals submitted by the unsuccessful bidders.
  - C. The statute also provides protection for a proposal submitted by the successful bidder, provided the language in the proposal is not actually incorporated in nor referred to in the contract. The determination to assert the (b)(3) exemption is whether the language in the proposal is actually set forth or incorporated into the contract.
11. A business submitter's objections to disclosure should be given considerable weight in making the decision, unless they are clearly in conflict with legal precedent or obviously lacking merit.

12. If the determination is made to release some or all of the business information over the objections of a business submitter, the business submitter will be notified, in writing, of:
  - A. the reasons why the objections to disclosure were not sustained;
  - B. the description of the business information to be disclosed; and
  - C. the specified disclosure date (not less than 10 business days after the notice of the final decision to release the information has been mailed to the submitter).
13. Whenever a requester brings suit seeking to compel disclosure of business information covered by 26 CFR 601.702(h)(4), the business submitter will be promptly notified thereof.

### **[1.3] 13.9.3 (08-31-2000)**

#### **Electronic Filing Program Request**

1. When requests for nationwide information related to Electronic Filing (ELF) are received in Headquarters, the Headquarters office will respond to the requester.
2. The processing of Headquarters requests will be coordinated (through the appropriate Functional Coordinator) with Headquarters Electronic Tax Administration (ETA). ETA will coordinate with Headquarters Information Systems and the Service Centers, as appropriate.
3. When requests for local information related to Electronic Filing (ELF) are received in the Service Center, the Service Center will respond to the requester.
4. The processing of Service Center requests will be coordinated (through the appropriate Functional Coordinator) with the Service Center Electronic Filing Office for extraction of data.
5. When requests for local information related to Electronic Filing (ELF) are received in the District Office, the District Office will officially respond to the requester.
6. The processing of District Office requests will be coordinated (through the appropriate Functional Coordinator) with the Service Center Electronic Filing Office for extraction of data.

### **[1.3] 13.9.4 (08-31-2000)**

#### **Requests for 23C Assessment Documents**

1. To ascertain assessment information, requests may be made for the documents used in Service Center processing of the taxpayer's accounts. These requests may contain language with one or more of the following phrases:
  - A. all my information in system of records 24.030
  - B. my 23C document
  - C. my summary record of assessment
  - D. copies of the Form 4340 prepared on me
  - E. my section 6203 information
  - F. the Summary Record of Assessment and all supporting documentation
  - G. my summary of account
2. Occasionally, requesters submit FOIA requests for such material to be used in the context of IRS enforcement activities. Therefore, responses that merely advise the requester that "there is no Form 23C with your name on it" open the door for the requesters to make a claim that the IRS has not made a valid assessment when challenging a statutory notice of deficiency.
3. To ensure consistency of treatment, and to avoid misinterpretation of the FOIA response, disclosure personnel should strictly follow this IRM Section.
4. Requests of the type listed above that are received in the District Offices should be reviewed and compared to the EDIMS database. If this is the first such request from a taxpayer, the district should respond by providing a transcript of the account and written explanation of the information (Document 10978). The response should be clear with an explanation that the information contained therein is the equivalent of what was requested.
5. The requester should also be informed, either by telephone contact or in the response letter, that if he/she insists on a Form 23C (or other information from the list in (1) above, that the request should be resubmitted to the appropriate Service Center. The address where the requester should submit the request must be provided.

6. Disclosure personnel can use the Document Locator Number for the assessment transaction code to provide information regarding the Service Center that would have the responsive documents.
7. Districts that receive subsequent requests from the same requester for the information listed in (1) above will transfer the request to the appropriate Service Center(s). Since there may be more than one assessment involved, or more than one tax year involved, it is possible that more than one Service Center will have to be contacted. Only the appropriate portion of the request should be sent to the involved Center.
8. The transfer procedures listed in (Section 13.5.4 ) of this Chapter should be followed, and the contacted Service Center(s) must accept the transfer.
9. When FOIA requests of the above type are received in the Service Centers, either by transfer or by direct submission from the requester, the Disclosure Officer will work the case and provide responsive documents in accordance with the procedures listed in Exhibit 1.3.13-4
10. If in all contacts with the requester it appears that the requester does not understand the Service's procedures on assessments, disclosure personnel will provide additional information as suggested in the sample paragraphs in Exhibit 1.3.13-5
11. In all instances, careful wording of the responses (either on the telephone or in writing) to the requester must be used. Even though the Form 23C is rarely used, and there is no identifying information on either the signed RACS Automated Summary or the paper Form 23C, disclosure personnel should avoid making statements like "there are no records responsive to your request."

### **[1.3] 13.9.5 (08-31-2000)**

#### **Requests for Transcripts**

1. The use of IDRS transcripts in responding to requests from taxpayers has become more and more frequent. Issues arise in determining what sections, if any, in transcripts responsive to requests should be redacted or released.
2. This section of the Chapter will provide information related to where protected data appears on certain transcripts, the actions necessary to release the data, the appropriate citations to use to support not releasing certain information and any additional remarks explaining the logic of the instructions. Instructions are being provided for:
  - A. Criminal Investigation indicators
  - B. Discriminant Function (DIF) Score
  - C. Resource Workload and Management System (RWMS)
  - D. Date of birth

### **[1.3] 13.9.5.1 (08-31-2000)**

#### **CID Indicators**

1. ) The "Z" freeze and transaction codes in the 900 series may (see (2) below) be required to be redacted, if present. These indicators and codes are found in the body of TXMODA, ACTRA, IMFOLT and BMFOL prints.
2. If the taxpayer is aware of the investigation, there is no need to redact the transcript. For situations in which the codes are present, disclosure personnel should obtain clearance from Criminal Investigation Division or contact the Special Agent assigned to determine if the taxpayer has been notified he or she is under investigation. This will apply even if the case is closed. The Criminal Investigation function may be able to articulate a harm related to the timing of another case related to the transcript in some fashion.

#### **EXAMPLE:**

In the course of investigating a refund scheme, some taxpayers who may have been considered as a target may cease to be considered a part of the scheme. When their particular case is closed, the related cases may still be in process. If there is concern that the disclosure of any refund investigation of any of a particular group of taxpayers would possibly alert others of the group of the investigation prematurely, then withholding the CI indicators on that closed case would be appropriate.

3. If the Special Agent advises for redaction, disclosure personnel should cite exemptions (b)(7)(E) and (b)(3) in conjunction with 6103(e)(7).

### **[1.3] 13.9.5.2 (08-31-2000)**

#### **DIF Score**

1. Discriminant Function or DIF scores found in AMDIS and AMDISA prints should not be disclosed. IRC section 6103(b)(2) contains the authority for protecting the numerical score. However, because a score of "000" reveals nothing, this should not be redacted. Disclosure personnel should cite exemptions (b)(3) in conjunction with 6103(b)(2) and (b)(7)(E) as authority to protect the DIF score.

#### **NOTE:**

Pursuant to the IRS Restructuring and Reform Act of 1998, the IRS must provide to taxpayers a notice explaining generally how taxpayers are selected for examination. The notice may not contain any information the disclosure of which would be detrimental to law enforcement. DIF formulas do not have to be disclosed. Disclosure personnel should encourage employees who receive the question "why was I selected for audit" to provide a copy of Publication 1 (which explains a general list of reasons) without giving any indication of which one caused their particular examination.

### **[1.3] 13.9.5.3 (08-31-2000)**

#### **RWMS Score**

1. The Resource Workload and Management System or RWMS score found in TDINQ prints is the scoring system used by the Collection function in the assignment of cases. Several factors, including the grade level of difficulty for Revenue Officer assignment affect the score. Since the numerical score assigned is not a dollar amount tolerance nor is it governed by national criteria, there is no harm in its disclosure and it should be released.

### **[1.3] 13.9.5.4 (08-31-2000)**

#### **DOB Indicator**

1. Date of birth indicators found in INOLE and RTVUE prints is considered to be Social Security Administration information. It may or may not be a factor in determining tax liability. Both the disclosure and privacy statutes apply to the release of this data. Disclosure personnel should release the information if a response is to be made to the taxpayer or authorized representative. The information should be redacted if the release is to anyone else. Exemptions which may be applicable are (b)(6) and (b)(3) in conjunction with 6103(a).

### **[1.3] 13.9.6 (08-31-2000)**

#### **SS-8 Requests**

1. Requests may be received for a Form SS-8, or for written determinations concerning Form SS-8. Requesters should be advised: a. That Form SS-8 does not come within the auspices of the Freedom of Information Act, but rather IRC 6110; and b. To the extent they wish to pursue their request for Form SS-8, they should make an IRC 6110 request.
2. Requests for and inquiries concerning Form SS-8 pertaining to rulings issued by Headquarters Office should be addressed to: Chief, Technical Services Staff Associate Chief Counsel (Procedure Administration) CC:PA:DU, 1111 Constitution Avenue, NW Washington, D.C. 20224
3. Requests pertaining to Form SS-8 determinations issued by the District Director should be addressed to the local district disclosure office for processing under IRC 6110.

### **[1.3] 13.9.7 (08-31-2000)**

#### **Petroleum Industry Records**

1. The nationwide authority to determine intercompany and intracompany transfer prices of foreign-produced crude oil and by-products, and the acceptance of the average freight rate assessment as an intercompany charge for shipping of foreign-produced crude oil and by-products were delegated to the Regional Commissioner, Midstates Region by Delegation Order 153 effective October 9, 1996.
2. FOIA requests for records pertaining to the methodology, formula, or general data used in the determination of pricing information relating to the Petroleum Industry Program (PIP) should be promptly referred to the Regional Disclosure Officer, Midstates Region, for necessary consideration and direct response to the requester.
3. When a request is for both records described in (2) above and for records unique to the initial recipient office, the request will still be promptly referred as described above. The initial recipient will then process that portion of the request that pertains to the initial recipient.

### **[1.3] 13.9.8 (08-31-2000)**

#### **Risk Analysis Reports**

1. Risk analysis reports and related documents and background papers are assessments of the security afforded information and assets in the custody of the Internal Revenue Service, and recommendations for maintaining appropriate levels of protection. Unauthorized disclosure of the content of such records could itself contribute to the threat of loss or destruction being guarded against.
2. The Privacy Act of 1974 provides at 5 USC 552a(e)(10) that each agency that maintains a system of records shall establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.
3. The sensitive nature of risk analysis reports and related documents require that any FOIA request and the records to which it pertains be referred to the Office of Governmental Liaison and Disclosure in the Headquarters Office prior to the release of any portion. The Office of Governmental Liaison and Disclosure will either advise on the proper disposition of the request or will make a direct response to the requester.
4. Requests need not be referred in accordance with (3) above when a determination is otherwise made to deny the requested records in their entirety on the basis of applicable exemptions.

### **[1.3] 13.9.9 (08-31-2000)**

#### **EMPP Expectations**

1. Executive/Managerial Performance Plans (Manager), Forms 9688, are available to the public when edited pursuant to exemption (b)(6) to preclude any unwarranted invasion of personal privacy.

#### **NOTE:**

The procedure for disclosing these documents is being rewritten. Any requests for such documents must be coordinated with the Headquarters FOIA Office.

### **[1.3] 13.9.10 (08-31-2000)**

#### **Joint Committee on Taxation**

1. The Joint Committee on Taxation can request access to returns or return information pursuant to IRC 6103(f)(2).
2. Joint Committee requests are not agency records and are not disclosable under the Freedom of Information Act (5 USC 552) without the prior approval from the Committee.

#### **NOTE:**

Procedures for processing FOIA requests for these records are being rewritten. Field disclosure personnel should coordinate any response with Headquarters Freedom of Information Office.

### **[1.3] 13.9.11 (08-31-2000)**

#### **Employee Privacy Matters**

1. The names, signatures, initials or other identifying details (but not name of office) of lower level Internal Revenue Service employees may be deleted from documents released when considered necessary in order to avoid any unwarranted invasion of personal privacy including threat of harassment or abuse of employees and their families.
  - A. In these cases, the identities of these lower level employees may be deleted from law enforcement documents, even where their identities are known to the particular requester.
  - B. These deletions should be supported by citing exemption (b)(6) and, when applicable, exemptions (b)(7)(C) and/or (b)(7)(F).
2. Generally, the identities of senior level officials (i.e., those management officials who are heads of office) may not be withheld pursuant to these privacy-based exemptions. However, employees who are the subject of alleged wrongdoing may have privacy interests that must be balanced against the public's interest. See 13.7.2.6 for guidance pertaining to balancing private and public interests. The result of that balancing will depend on the facts and circumstances of a particular employee case, except where the senior level official is discussed in the context of alleged wrongdoing.
  - A. Due to the IRS reorganization, the titles of senior level officials described below may not be all inclusive and are subject to change.
  - B. Any questions that may arise with regard to who is and who is not a senior level official should be directed to the Office of Governmental Liaison and Disclosure in the Headquarters Office.
3. Senior level officials in field offices are the:
  - A. Regional Commissioner;
  - B. ARC or Regional Chief Officer;
  - C. Regional Inspector;
  - D. Assistant Regional Inspector;
  - E. Regional Counsel;
  - F. Deputy Regional Counsel;
  - G. Regional Director of Appeals;
  - H. District Counsel;
  - I. District, Service Center, and Support Services Director; and
  - J. other heads of office (e.g., computing centers, etc.).
4. Senior level officials in the Headquarters office are the:
  - A. Commissioner;
  - B. Deputy Commissioner;
  - C. Assistants to the Commissioner;
  - D. Chief Officers;
  - E. Assistant Commissioners;
  - F. Executive Officer for Service Center Operations;
  - G. Chief Inspector;
  - H. Chief Counsel;
  - I. Deputy Chief Counsel;
  - J. Associates Chief Counsel;
  - K. Deputy Associates Chief Counsel;
  - L. Assistants Chief Counsel;
  - M. Revenue Service Representatives (RSRs); and
  - N. National and Division Directors.
5. The typed identities and signatures of Internal Revenue Service employees and witnesses shown on Form 61, Appointment Affidavits, may not be withheld pursuant to the privacy-based exemptions.

- A. Any privacy interest with respect to these typed identities and signatures is outweighed by the public interest in ensuring that agency actions were taken by duly sworn employees, as evidenced by the appointment affidavits. Disclosure personnel should release these documents in full.
- B. In those cases where the requester seeks the appointment affidavit of an employee who utilizes a registered pseudonym, the appointment affidavit should be furnished, with the real identity (typed identity and signature) of the employee redacted on the basis of exemption (b)(6).
- C. In the case of a request that asks for the appointment affidavit of an employee in the GS-1811 series (Criminal Investigator), the employee's identity should be redacted under exemptions (b)(6) and (b)(7)(C).

### **[1.3] 13.9.12 (08-31-2000)**

#### **Requests for Audit Trails**

1. FOIA requests for "who has accessed my account" or the "Audit Trail for my SSN", should be processed by the disclosure office serving the requester's address.
2. Upon receipt of a perfected FOIA request, disclosure personnel will prepare Form 6759 requesting an audit trail and forward it to the IS Security Officer of the service center serving the field office. The IS Security Officer will query both computing centers and respond back to the field Disclosure Officer.
  - A. The extract may provide the 2-digit POD location code, the functional organization code, the SSN and/or employee ID# of the person accessing the account, the command code used, definer, the SSN accessed, the date, the time and whether or not the information represents a positive finding for the request - "a hit". Y for yes- N for no).
  - B. IS Security has established procedures for providing the reports. Their response to Disclosure will include a statement that the report is not to be disclosed without coordination with the functions of the employees reflected as having accessed the account.
3. Upon receipt of the extract, disclosure personnel must analyze it as follows:
  - A. Locate the SSN of the employee accessing the account and redact it citing FOIA exemption is section (b)(6).
  - B. Pull any open IDRS or CFOL print to determine if there are any open investigations requiring coordination with the function performing the investigation. Use the additional information on IDRS to apply appropriately the normal considerations for deletion or release of the Org. Code or Command Codes contained on the extract. Do not consider IDRS as a responsive document unless it is otherwise requested in the letter.
  - C. If there is any indication of TIGTA activity (i.e.ORG CODE 920-929), coordinate with Disclosure Officer for TIGTA. There is no need to transfer the request - just obtain input regarding release of the information on the extract.
  - D. Apply the (b)(3)/ 6103 and (b)(7) exemptions as the situation dictates. When necessary, involve Headquarters FOIA in these determinations.
4. The response letter must be clear in advising the taxpayer that this trail of accesses covers only electronic IDRS accesses. Accesses to other computer systems and to paper records may not have a trailing system in place. There are no tools to use to trace all the employees who have seen an audit file for example. Criminal Investigation Division, however, may have audit trail for CIMIS.

#### **REMINDER:**

If the FOIA request letter also contains allegations regarding a possible unauthorized access to account information, follow the normal UNAX referral procedures in addition to addressing the FOIA issues. The response letter to the requester should reflect the referral of the UNAX issue and address the FOIA.

### **[1.3] 13.9.12.1 (08-31-2000)**

#### **Audit Trail Requests for Years Prior to 1998**

1. The above procedure will work for requests covering tax years 1998 and forward. The Service previously relied upon the assistance of Inspection to retrieve an audit trail. With the separation of Inspection from

IRS to TIGTA, that system is no longer available for processing IRS FOIA requests. The recently created system used by IRS's IS Security contains data beginning 1/1/1998.

2. Requests for years prior to 1998 may have to be transferred to TIGTA. If the procedure for IS security to manipulate the old system data (contained on weekly reels in multiple service centers) is going to be so burdensome to the Service that IS cannot accommodate the requests.
3. Interim procedure, until conclusive data may be documented, is to request the trail from IS Security and have them make the recommendation regarding the extent of the burden to their operation. Disclosure personnel should request that IS provide a written explanation detailing the burden in complying with the particular request.
4. If IS security's response is that the particular request is burdensome, the disclosure officer will have to deny the request. At that point, disclosure personnel have an obligation to advise requesters where they may get the information. TIGTA's new system is more capable of creating audit trails for past years quickly. For customer service reasons, disclosure personnel should transfer the request rather than refer the requesters to TIGTA. Refer to 13.5.4 of this handbook for proper transfer procedures.

### **[1.3] 13.10 (08-31-2000)**

#### **FOIA Report**

1. The Freedom of Information Act (FOIA) requires each agency to prepare an annual report of requests for access to agency records including FOIA and Privacy Act requests, for submission to the Attorney General of the United States on or before February 1, to report activity for the prior fiscal year.
2. The report is required by 5 U.S.C. 552(e)(1), and must be made electronically available to the public on the Internet. The IRS annual report is available on the IRS E-FOIA web site at <http://www.irs.gov> beginning with fiscal year 1998.

### **[1.3] 13.10.1 (08-31-2000)**

#### **Report Submission**

1. The report captures statistical data concerning the FOIA and Privacy Act requests processed by the Internal Revenue Service and follows the Department of Justice Guidelines published in FOIA Update, Spring 1997.
2. The report is prepared by the Director, Office of Freedom of Information, from the Electronic - Disclosure Information Management System (EDIMS) as of September 30, to reflect the cumulative activity for the fiscal year using national totals for cases logged on EDIMS, then transmitted to Department of Treasury, and posted on the EFOIA Web site.
3. All offices enter case information electronically on E-DIMS, with the exception of the Director of Practice, which will submit a paper report to the Director, Freedom of Information, upon request.
4. Information concerning FOIA appeals is a critical part of the report. The Assistant Chief Counsel (Disclosure & Privacy Law), provides input to the report concerning FOIA appeals.

### **[1.3] 13.10.2 (08-31-2000)**

#### **Data Capture**

1. The National Summary - FOIA/PA Performance Measures Report generated by E-DIMS provides the statistical information required for the report.
2. Case data entered on E-DIMS is the basis for the report. FOIA/PA data is captured as cases are received and closed. Care should be taken when closing out cases that accurate information is entered. All applicable FOIA exemptions and supporting statutes must be cited.
3. Individual offices may generate a FOIA/PA Performance Measures report for their offices at any time during the year.
4. All incoming FOIA/PA requests must be logged in a timely manner. When a final response is provided to a requester, the closing information must be fully completed.
5. All FOIA and PA requests require a closing disposition code. If records are withheld, the statutory FOIA exemptions relied upon must be cited and the supporting statute(s) noted when the (b)(3) exemption is cited.
6. Fees billed and payments received should be input as they are processed to ensure timely and accurate reporting.

7. All case time applied by Service functions should be captured. Functional coordinator time and Disclosure Office case time should be entered as the case is worked. This information is used to calculate the agency's total cost for processing FOIA/PA requests.
8. The report includes:
  - A. number of cases received, processed and outstanding at the end of the year;
  - B. all exemptions cited, statutes relied upon;
  - C. median number of days for processing requests; and
  - D. median number of days that open requests have been pending at the close of the fiscal year.

### **[1.3] 13.10.3 (08-31-2000)**

#### **Cost Data**

1. To comply with statutory reporting requirements, Disclosure Officers will ensure that all time devoted to FOIA requests by both Disclosure and non-disclosure personnel be captured and reported by function on each case worked. All offices shall prescribe appropriate reporting procedures to capture FOIA case related time for functional and disclosure personnel.
2. No clerical time shall be captured on FOIA cases. For the purposes of this report, photocopying done by clerical personnel would not be captured, but photocopying completed by a technical employee would be captured.
3. FOIA costs are computed from the hours applied, by disclosure and functional coordinators and calculating the number of staff years -then using the Service's standard cost factor per staff year. The standard cost factor includes salary, benefits, equipment, rent, supplies, etc.

### **[1.3] 13.11 (08-31-2000)**

#### **Citing Supporting Statutes**

1. The use of FOIA exemption (b)(3) indicates that another federal statute prohibits the disclosure of the withheld information; therefore, the applicable Federal statute must be specifically cited. The Service generally cites the following statutes to withhold records.  
 26 USC 6103  
 Confidential Returns and Return Information  
 5 USC 7114  
 Labor Management Guidance  
 31 USC 5319  
 Bank Secrecy Act records  
 43 USC 253(b)  
 Proposal information from business that submitted losing contract bids  
 Rule 6(e)  
 The Federal Rules of Criminal Procedure protects grand jury information  
 Tax Treaty  
 Information protected by Income tax conventions and tax information exchange agreements
2. The annual report requires a description of every statute relied upon to withhold records and whether a court has upheld the use of such statute. E-DIMS provides an additional category to capture additional statutes that may apply, however, 'Other' should be used only in consultation with the Director, FOIA.
3. When a situation arises where there is a need to cite a statute not in the above list, notify the Director, Freedom of Information, to ensure that an appropriate (b)(3) statute is cited and allow for accurate treatment on the annual report.

### **[1.3] 13.12 (08-31-2000)**

#### **Disposition Codes**

1. All closed FOIA/PA cases require a disposition code upon closing. The code indicates how the request was handled. The disposition codes defined below are used for reporting purposes.  
 I  
 Imperfect  
 T  
 Transfer

W  
Withdrawn  
G  
Grant  
P  
Partial Denial  
D  
Full Denial  
N  
No Records  
C  
Closed Prior to Initial Determination

### **[1.3] 13.13 (08-31-2000)**

#### **Annual TIGTA Reveiw**

1. The IRS Restructing and Reform Act of 1998 established a requirement for the Treasury Inspector General for Tax Administration (TIGTA) to conduct periodic audits of a statistically valid sample of the total number of denials (full and partial) of requests pursuant to the FOIA and section 6103.
2. The data used for the sample will be cumulated from EDIMS database for all offices. To ensure timely and accurate reporting to TIGTA, offices will maintain the information concurrently with the processing of the cases.
3. Accuracy of the data input is important and should be emphasized.

**Exhibit [1.3] 13-1 (08-31-2000)**  
**IDRS Research Guidelines**

For a FOIA request Not involving tax files: IDRS Research is optional but IMFOLI gives quick overview

**IDRS RESEARCH TO DOCUMENT ADEQUATE SEARCH**

For each FOIA request involving tax files

<b>Minimum Required</b>	<b>Recommended</b>
INOLE (&INOLEX)	SUMRY + N - for Non Master File (NMF)
IMFOLI	RMREQA (for NMF requests)
INFOLT for any year covered in the request	AMDIS OR AMDISA for Exam Files
SUMRY	UNCLER for Trust Fund Recovery files
ENMOD	TDINQ for Collection files

Microfilm can be ordered automatically by using MFTRA Specific for the period, or ESTABMY. However, if there is an "R" to left of years noted in IMFOLI as gone to retention, they can be retrieved by using IMFOLT to request that period, waiting a few minutes and requesting it again. This will eliminate the delay of awaiting the receipt of microfilm on years recently move to retention.

If the outcome of the above indicates need for further research, the following are:

**HINTS FOR RECOGNIZING LOCATION OF OTHER POSSIBLE RESPONSIVE DOCUMENTS**

**Collection Files**

Use TDINQ or Review transcripts for Collection Status Codes or transaction codes. For example, status 53 or TC 530 indicate a "currently not collectible" file exists in the office corresponding to the Document Locator Number (DLN) of the TC 530; TC 140 indicates a TDI file. See Document 6209, Chapter 8 for Collection Status Codes.

Trust Fund Recovery Files can be located by identifying MFT 55 on IMFOLI, then reading the IMFOLT specific transcript to check for a closing code of 618 pertaining to the TC 240. The DLN of the TC 240 will indicate where the penalty was assessed. Another method is to pull up UNLCER for either the EIN of the company or the SSN of the Officer.

**Examination Files**

Command Code AMDIS or AMDISA will show if a particular tax year is under examination. AIMS status code 12 indicates an open audit. TC 420 series indicate exam activity. TC 922 indicate IRP activity. The closing code will identify those with exams. TC's 976 and 977 indicate duplicate returns. To see if there was any exam activity, reference Document 6209, Chapter 12 for additional exam codes.

**Criminal Investigation Files**

TC in the 900 series, AIMS Status 17, or a "Z" freeze indicate CID Activity. Due to the expanded role CID is taking in various compliance activities, the division should also be searched for activity not reflected on IDRS. See 1.3.13.9.5 regarding the redaction procedures for TC 900 series located on transcripts.

**Taxpayer Advocate (PRP)Files**

Control history notes on TXMODA or assignment codes on ENMOD could indicate PRP activity. The 10-digit assignment code indicating PRP activity begins with a 2-digit office number, followed by a 3-digit number between 980-989. The PRP inventory clerk can also be contacted for information on open or closed cases including Congressional cases.

**Exhibit [1.3] 13-2 (08-31-2000)**  
**Search Memo**

TO: (Respective Officer)  
(Attn: Coordinator)  
From: Disclosure Office/Specialist Assistant  
(Respective Office Symbols)  
Subject: Search Pursuant to Freedom of Information  
Act Request  
Requester's Name & Case Control No.

We have received a Freedom of Information Act (FOIA) request covering information which may be under your jurisdiction. Please review the highlighted items in the attached request and search your files wherever possible, by manual or electronic means, to identify and locate records responsive to the request.

Provide any records to be responsive to this request, in duplicate, with your recommendations for releasing or withholding any records. If we are unable to concur with your recommendations, we will contact you to resolve any differences before releasing any records.

Search memorandums have also been set to xxxx. If you are aware of records located elsewhere, please advise us so that we may make the necessary inquiries.

The attached Response To Search Memo questionnaire must be completed to establish the extent and nature of the search conducted in your fiction, even though you may not have documents responsive to the request. Negative responses are required and should include the time expended in determining that no responsive documents exist. The 1996 amendments to the Freedom of Information Act provide that records must be provided in any form or format requested, including electronically, if the records are readily reproducible in that format.

Please respond by xxxxxxxxxxxxxx. If you are unable to respond by this date, please notify us. Questions regarding this search memo may be directed to (Specialist's name & contact information including phone number).

Attachments: FOIA request  
Response to Search Memo

**Exhibit [1.3] 13-3 (08-31-2000)**  
**Response to Search Memo**

FOIA CASE # \_\_\_\_\_

Name of Office: \_\_\_\_\_

Person conducting the search: \_\_\_\_\_ Phone Number: \_\_\_\_\_

File(s) searched: Types of records (Check those that apply)

Methods of access       ... alphabetical  
                              ... name individual or business  
                              ... subject  
                              ... project  
                              .... code section  
                              ... other (be specific) \_\_\_\_\_

Manner of storage:     .... paper  
                              .....electronic  
                              .....both

Describe electronic records:

- a. Name of the System: \_\_\_\_\_
- b. Type (indicate word processing, spreadsheet, database, other): \_\_\_\_\_
- c. Which software used to access the data: \_\_\_\_\_

Time spent in search: _____	Time spent in review: _____	Time spent in duplication: _____
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NUMBER OF PAGES LOCATED : \_\_\_\_\_

**Negative Responses ONLY:**

How did you determine that you do not have documents responsive to the request?  
(i.e. Personal knowledge of the files maintained, or Physical Search etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature

Title

Date

**RETURN TO :** Disclosure Caseworker's Name & contact address  
including Phone No.)

**PROCEDURES FOR HANDLING FOIA REQUESTS FOR 23C, SUMMARY OF ASSESSMENT**

<b>ALL MY INFO IN SOR 24.030</b>	<b>RECEIVING OFFICE</b>	<b>IF REC. OFFICE, WORK CASE</b>	<b>IF REC. OFFICE, WORK CASE</b>	<b>LITERAL TRANSCRIPT FOR AVAILABLE YEARS</b>
<b>MY 23C DOCUMENT</b>	<b>SERVICE CENTER</b>	<b>TRANSFER TO APPROPRIATE SERV. CNTR(S)</b>	<b>WORK CASE</b>	<b>23C OR RACS 006; LITERAL (IF AVAILABLE); TRANSCRIPT WITH DOCUMENT 10978</b>
<b>MY SUMMARY RECORD OF ASSESSMENT</b>	<b>SERVICE CENTER</b>	<b>TRANSFER TO APPROPRIATE SERV. CNTR(S)</b>	<b>WORK CASE</b>	<b>23C OR RACS 006; LITERAL (IF AVAILABLE); TRANSCRIPT WITH DOCUMENT 10978</b>
<b>FORM 4340</b>	<b>SERVICE CENTER</b>	<b>TRANSFER TO APPROPRIATE SERV. CNTR(S)</b>	<b>WORK CASE</b>	<b>FORM 4340 (IF IT EXISTS); IF NOT, 23C OR RACS 006; LITERAL (IF AVAILABLE); TRANSCRIPT WITH DOCUMENT 10978</b>
<b>SECTION 6203 INFORMATION</b>	<b>SERVICE CENTER</b>	<b>TRANSFER TO APPROPRIATE SERV. CNTR(S)</b>	<b>WORK CASE</b>	<b>23C OR RACS 006; LITERAL (IF AVAILABLE); TRANSCRIPT WITH DOCUMENT 10978</b>
<b>SRA AND <input type="checkbox"/>ALL SUPPORTING DOCUMENTS<input type="checkbox"/></b>	<b>SERVICE CENTER</b>	<b>TRANSFER TO APPROPRIATE SERV. CNTR(S)</b>	<b>WORK CASE</b>	<b>IF IT EXISTS, THE DOCUMENT(S) THAT SPECIFICALLY GENERATED THE ASSESSMENT BEING MADE</b>
<b>SUMMARY OF ACCOUNT</b>	<b>RECEIVING OFFICE</b>	<b>IF REC. OFFICE, WORK CASE</b>	<b>IF REC. OFFICE, WORK CASE</b>	<b>LITERAL TRANSCRIPT FOR AVAILABLE YEARS</b>

**NOTE: IN THE DISTRICT OFFICES ONLY, THE FIRST RESPONSE, IN ALL OF THE ABOVE INQUIRIES, SHOULD BE A TRANSCRIPT AND AN EXPLANATION OF THE INFORMATION THEREIN. LET THE REQUESTER KNOW, THAT IF HE INSISTS ON A FORM 23C, THE REQUEST SHOULD BE RE-SUBMITTED TO THE APPROPRIATE SERVICE CENTER FOR COMPLETION. ALL SUBSEQUENT REQUESTS FROM THE REQUESTER ARE HANDLED AS SHOWN ABOVE.**

**Exhibit [1.3] 13-5 (08-31-2000)**  
**Response to Requests for 23C**

"It is unclear to us what documents you are seeking. Your request appears to be based on your understanding that a signed assessment document would contain data about your specific and identifiable assessment(s). Such is not the case.

During processing at the IRS Service Centers, Summary Records of Assessment are automated listings of an entire day's or week's total amounts processed. They are listed by date, are signed by an authorized assessment officer, but **do not** contain data that would identify any individual taxpayer. This procedure is in accordance with Federal regulations and is effective in every IRS Service Center.

In the rare instances when our automated systems cannot be used (e.g., during power failures or in jeopardy assessments), we do prepare a paper Form 23C, strictly as a backup system. However, even in these instances, the Form 23C is a summary of assessment amounts and thus lacks data specific to any particular person."

