

§ 212.7

The FOIA Officer is responsible for program direction, original denials, and policy decisions required for effective implementation of USAID's FOIA program. The FOIA Public Liaison serves as a supervisory official to whom a FOIA requester can raise concerns about the services received, following an initial response from the FOIA staff. In addition, the FOIA Public Liaison assists, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes.

(f) The General Counsel to the Inspector General serves as the OIG's FOIA Officer and FOIA Public Liaison.

(g) The Supervisory FOIA Team Lead is the Principal Operations Officer within the component's FOIA office for the processing of FOIA requests and release determinations.

(h) The FOIA Specialist also known as the Government Information Specialist (GIS) is responsible for processing requests and preparing records for release when such releases are authorized by the FOIA. They do not have the authority to make denials, including "no records" responses.

(i) The General Counsel (GC), FOIA Backstop Attorney Advisor has responsibility for providing legal advice on all USAID matters regarding or resulting from the FOIA (other than OIG matters). Upon request, GC advises M/MS/IRD on release and denial decisions, and apprises the FOIA Office of all significant developments with respect to the FOIA.

(j) OIG attorneys have responsibility for providing legal advice on all requests and appeals related to OIG records.

(k) Each Attorney Advisor designated to provide legal advice to USAID Bureaus/Independent Offices (B/IOs) is responsible for providing, at M/MS/IRD's request, legal advice on FOIA requests assigned to those B/IOs.

(l) The designated FOIA Liaison Officer (FLO) in each USAID Bureau and Office is responsible for tasking and facilitating the collection of responsive records and monitoring the production of records to M/MS/IRD.

22 CFR Ch. II (4-1-25 Edition)

§ 212.7 Processing of request.

(a) *In general.* In determining which records are responsive to a request, the component's FOIA office ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component's FOIA office shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The FOIA Officer is authorized to grant or to deny any requests for records that are maintained by the Agency (other than OIG records). The OIG FOIA Officer is authorized to grant or to deny any requests for records maintained by OIG.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Agency in response to a request, the component's FOIA office shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. All consultations and referrals received by the Agency will be handled according to the date that the first agency received the perfected FOIA request. As to any such record, the component's FOIA office shall proceed in one of the following ways:

(1) *Consultation.* When records originated with USAID, but contain within them information of substantial interest to another agency, or other Federal Government office, the component's FOIA office should consult with that other agency prior to making a release determination.

(2) *Referral.* (i) When a component's FOIA office believes that a different Department, agency, or component, is best able to determine whether to disclose the record, the component's FOIA office will refer the responsibility for responding to the request regarding that record, as long as the referral is to an agency that is subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the component's FOIA office and the originating agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the component's FOIA office refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(iii) Where a component's FOIA office determines that a request was misdirected within the agency, the receiving component's FOIA office must route the request to the FOIA office of the proper component within the agency.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component's FOIA office will coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by the component's FOIA office.

(d) *Classified information.* On receipt of any request involving classified information, the component's FOIA office must determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the component's FOIA office must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever USAID's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the component's FOIA office must refer

the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Furnishing records.* The component's FOIA office shall furnish copies only of records that the Agency has in its possession. The Agency is not compelled to create new records. The Agency is not required to perform research for a requester. The component's FOIA office is required to furnish only one copy of a record. If information exists in different forms, the component's FOIA office will provide the record in the form that best conserves government resources. Requests may specify the preferred form or format (including electronic formats) for the records sought by the requester. The component's FOIA office will accommodate the form or format request if the record is readily reproducible in that form or format.

(f) *Archival records.* The Agency ordinarily transfers records in accordance with its retirement authority, included in ADS 502, to the National Archives and Records Administration. These records become the physical and legal custody of the National Archives. Accordingly, requests for retired Agency records should be submitted to the National Archives by mail addressed to Special Access and FOIA Staff (NWCTF), 8601 Adelphi Road, Room 5500, College Park, MD 20740 by fax to (301) 837-1864 or by email to specialaccess_foia@nara.gov.

(g) *Poor copy.* If USAID cannot make a legible copy of a record to be released, the Agency is not required to reconstruct it. Instead, the component's FOIA office will furnish the best copy possible and note its poor quality in the component's FOIA office reply.

Subpart E—Timing of Responses to Requests

212.8 Time limits.

(a) *In general.* The component's FOIA office ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The component's FOIA office shall designate a specific track for requests that are