



[4310-10]

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**43 CFR Part 2**

**Docket No. DOI-2018-0017**

**RIN 1093-AA26**

Freedom of Information Act Regulations

**AGENCY:** Office of the Secretary, Interior

**ACTION:** Proposed rule.

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**SUMMARY:** This rule would revise the regulations that the Department of the Interior (Department) follows in processing records under the Freedom of Information Act. The revisions clarify and update procedures for requesting information from the Department and procedures that the Department follows in responding to requests from the public.

**DATES:** Comments on the rulemaking must be submitted on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on the rulemaking by either of the methods listed below. Please use Docket No. DOI-2018-0017 in your message.

1. Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions on the website for submitting comments.
2. U.S. mail, courier, or hand delivery: Executive Secretariat – FOIA regulations, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Cindy Cafaro, Office of Executive Secretariat and Regulatory Affairs, 202-208-5342.

**SUPPLEMENTARY INFORMATION:**

**I. Why we are publishing this rule and what it does.**

In late 2012, the Department published a final rule updating and replacing the Department's previous Freedom of Information Act (FOIA) regulations. In early 2016, the Department updated that final rule, primarily to authorize the Office of Inspector General (OIG) to process its own FOIA appeals. In late 2016, the Department updated that final rule again, primarily in response to the mid-year enactment of the FOIA Improvement Act of 2016. The Department is fully committed to an equitable FOIA program that ensures compliance with the statutory requirements of transparency, accountability, and prompt production. In light of the unprecedented surge in FOIA requests and litigation (discussed further below), the Department has determined the following changes are necessary to best serve our customers and comply with the FOIA as efficiently, equitably, and completely as possible.

Exponential increases in requests and litigation have made updates to these regulations a priority. From Fiscal Year (FY) 2016 to FY 2018, incoming FOIA requests to the Department increased 30 percent (from 6,428 to over 8,350). Some bureaus and offices have been hit especially hard. The Office of the Secretary (OS) FOIA Office, for example, has received a 210 percent increase from FY 2016. The Department's attempts to respond accurately, completely, and in a timely manner to every request have been further hindered by the dramatic increase in litigation, particularly over agency non-response to initial FOIA requests. For example, at the close of FY 2018 the Department had 129 active FOIA cases in litigation (39 in OS alone) compared to just 6

cases in litigation in total at the close of FY 2015 and 30 cases in litigation in total at the end of FY 2016. The Department processed over 6,900 requests in FY 2018, compared to 6,437 in FY 2016. Despite the increased production, the Department's backlog of requests without at least a partial response has also increased. The Department's FOIA processing therefore must be more efficient if the Department is to meet its statutory obligations.

Because of this background, the structure of the Department's FOIA program and FOIA Public Liaison function is changing. Additionally, FOIA case law continues to evolve and the Department of Justice has recently issued guidance on *The Importance of Quality Requester Services: Roles and Responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons*. In light of these factors, the Department is proposing to make the following changes to its FOIA regulations:

- Section 2.2 would be amended to reflect the changing structure of the Department's FOIA program.
- Section 2.3 would be amended to streamline the FOIA submission process in order to help the Department inform requesters and/or focus on meeting its statutory obligations.
- Section 2.3, 2.5, 2.19, 2.21, 2.37, 2.49, and 2.66 would be amended to reflect the changed structure of the Department's Public Liaison function and/or clarify the role of FOIA Requester Centers.
- Section 2.4 and 2.17 would be amended to eliminate the obligation to forward requests to another bureau or component in order to help the Department focus on meeting its statutory obligations. Instead, the bureau will respond to the request as

appropriate and inform the requester of the availability of the FOIA Requester Centers for further assistance.

- Section 2.5, and 2.70 would be amended to streamline and/or clarify what the requester may receive and how they may ask for it in order to help the Department inform requesters and/or focus on meeting its statutory obligations.
- Section 2.6, 2.45, 2.48, 2.49, 2.54, and 2.70 would be amended to streamline and/or clarify issues involving fees in order to help the Department inform requesters and/or focus on meeting its statutory obligations.
- Section 2.12 and 2.13 would be amended to streamline and/or clarify the Department's consultation and referral process in order to help the Department inform requesters and focus on meeting its statutory obligations.
- Section 2.14, 2.15, and 2.20 would be amended to streamline and/or clarify the Department's multitrack processing provisions in order to help the Department inform requesters and focus on meeting its statutory obligations. Section 2.27 and 2.29 would be amended to streamline and/or clarify the Department's submitter notification provisions in order to help the Department inform submitters and requesters and focus on meeting its statutory obligations.
- Section 2.16, 2.18, 2.19, 2.28, 2.37, 2.51, 2.57, 2.58, 2.59, and 2.62 would be amended to replace a single word.
- Section 2.18 and 2.47 would be amended for technical clarifications.
- Section 2.20, 2.23 and 2.24 would be amended to adjust the role of the Department's Office of the Solicitor in order to ensure legal input is required when it is most equitable and effective.

## **II. Compliance with laws and executive orders.**

### *1. Regulatory Planning and Review (Executive Orders 12866 and 13563).*

Executive Order (E.O) 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### *2. Regulatory Flexibility Act.*

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

### *3. Small Business Regulatory Enforcement Fairness Act.*

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*4. Unfunded Mandates Reform Act.*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

*5. Takings (E.O. 12630).*

In accordance with E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

*6. Federalism (E.O. 13132).*

In accordance with E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It would not substantially and directly affect the relationship between the Federal and state governments. A federalism summary impact statement is not required.

*7. Civil Justice Reform (E.O. 12988).*

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

*8. Consultation with Indian Tribes (E.O. 13175).*

Under the criteria in E.O. 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

*9. Paperwork Reduction Act.*

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

*10. National Environmental Policy Act.*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Pursuant to Department Manual 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement “policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject late to the NEPA process, either collectively or case-by-case.”

*11. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required. This rule will not have a significant effect on the nation’s energy supply, distribution, or use.

*12. Clarity of this regulation.*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*13. Public availability of comments.*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**List of Subjects in 43 CFR Part 2**

Freedom of information



For the reasons stated in the preamble, the Department of the Interior proposes to amend part 2 of title 43 of the Code of Federal Regulations as follows:

## **PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY**

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

### **Subpart A—INTRODUCTION**

#### **§ 2.2—[Amended]**

2. In § 2.2, remove the words “Office of the Solicitor” and adding in its place “Deputy Chief FOIA Officer”.

### **Subpart B—HOW TO MAKE A REQUEST**

#### **§ 2.3—[Amended]**

3. Amend § 2.3 by:

a. Adding in paragraph (b), to the end of the sentence the words: “by utilizing the electronic portals listed on the Department's FOIA Web site, *https://www.doi.gov/foia*, or utilizing physical addresses of the appropriate bureau FOIA Officer or other appropriate FOIA contact, located at *http://www.doi.gov/foia/contacts*”

b. Removing paragraph (c).

c. Redesignating paragraph (d), as paragraph (c), and removing the words “FOIA Public Liaison” and adding in its place “FOIA Requester Center”.

#### **§ 2.4—[Amended]**

4. Amend § 2.4 by:

a. In paragraph (a), after the words “a particular” adding the words “bureau or a particular”; after the words “that particular” adding the words “bureau or particular”. At the end of the paragraph adding the words “and will not be forwarded to another bureau or component”.

b. Removing paragraphs (e) and (f).

**§ 2.5—[Amended]**

5. In § 2.5:

- a. In paragraph (a), after the word “effort”, add the following phrase “and identify the discrete, identifiable agency activity, operation, or program in which you are interested”.
- b. In paragraph (c), remove the phrase “FOIA Public Liaison” and add in its place “FOIA Requester Center”.
- c. Revise paragraph (d).
- d. Add paragraph (e).

The revision and addition read as follows:

**§ 2.5 How should you describe the records you seek?**

\* \* \* \* \*

(d) You must describe the records you seek sufficiently to enable a professional employee familiar with the subject to locate the documents with a reasonable effort. Extremely broad or vague requests or requests requiring research do not satisfy this requirement. The bureau will not honor a request that requires an unreasonably burdensome search or requires the bureau to locate, review, redact, or arrange for inspection of a vast quantity of material.

(e) If the bureau determines that your request does not reasonably describe the records sought, the bureau will return the request to you; notify you that it will not be able to comply with your request unless you sufficiently clarify your request, in writing, within 20 workdays; notify you that you may appeal its determination that your request does not reasonably describe the records sought; and inform you, when practicable, what additional information you need to provide in order to reasonably describe the records that you seek so the requested records can be located with a reasonable amount of effort. If you receive this type of notification, you may wish to discuss it with the bureau's designated FOIA contact or FOIA Requester Center (see §2.66 of this part). If the bureau does not receive your written response containing the additional information within 20 workdays after the bureau has requested it, the bureau will presume that you are no longer interested in the records and will close the file on the request

#### **§ 2.6—[Amended]**

6. In § 2.6 paragraph (f) add the wording “or a different fee category placement” after “partial fee waiver”.

### **Subpart C—PROCESSING REQUESTS**

#### **§ 2.12—[Amended]**

7. Revise § 2.12 paragraph (d) to read as follows:

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**(d) If a bureau receives a request for records in its possession that primarily concern another**

bureau or a Federal Government agency that is subject to FOIA, it may undertake consultations and/or referrals as described in §2.13.

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## § 2.13—[Amended]

8. Revise § 2.13 to read as follows:

### **§2.13 How do consultations and referrals work?**

(a) When a bureau (other than the Office of Inspector General) locates responsive records that primarily concern another bureau or Federal Government agency that is subject to FOIA, the bureau will determine whether that bureau or agency would be better able to determine whether the record is exempt from disclosure.

(b) If the bureau processing the request believes that another bureau or agency would be better able to determine whether the record is exempt from disclosure, the bureau will contact that bureau or agency to determine whether it should refer the record to that bureau or agency or consult with that bureau or agency.

(1) If the bureau processing the request refers a record to another bureau or agency, that other bureau or agency will respond to you directly about that record. If the bureau processing the request consults with another bureau or agency, the bureau processing the request will respond to you directly.

(2) If the bureau receives a request for records that another agency has classified under any applicable executive order concerning record classification, it must refer the request to that agency for response.

(3) Whenever a bureau refers any part of the responsibility for responding to a request to another bureau or agency, it will document the referral; maintain a copy of the referred record; and notify you of the referral, including the name of the bureau or agency to which the record was referred and that bureau or agency's FOIA contact information.

(4) If the 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 exemption that protects ongoing law enforcement investigations, a referral would be inappropriate and the bureau will consult with the agency instead.

(c) When a bureau receives a referral, the bureau will assign the referral to the appropriate processing track (see § 2.15 of this part) and process it according to the date that the consulting or referring bureau or agency received your request (see §2.14 of this part).

(d) Bureaus may establish written agreements with other bureaus or agencies to eliminate the need for consultations or referrals for particular types of records.

## **Subpart D—TIMING OF RESPONSES TO REQUESTS**

### **§ 2.14—[Amended]**

9. In § 2.14, add the following sentence at the end “The bureau may impose a monthly limit for processing records in response to your request in order to treat FOIA requesters equitably by responding to a greater number of FOIA requests each month.”

**§ 2.15—[Amended]**

10. In § 2.15 paragraph (c)(1), (2), (3), and (4) remove the word “will” adding in its place the words “would generally”; removing in paragraph (c)(4) the words “Exceptional/Voluminous” and adding in their place the word “Extraordinary”.

**§ 2.16—[Amended]**

11. In § 2.16:

a. Revise the section heading

b. In paragraph (b) remove the word “limit” and add in its place the word “frame”.

The revision reads as follows:

§2.16 What is the basic time frame for responding to a request?

**§ 2.17—[Removed and Reserved]**

12. Section 2.17 is [Removed and Reserved].

**§ 2.18—[Amended]**

13. In § 2.18:

a. Revise the section heading,

b. In paragraph (a) and (b) remove the word “limit” adding in its place the word “frame”.

c. In In paragraph (b) add the words “of this part” after the words “in § 2.16”.

The revision reads as follows:

§2.18 When can the bureau suspend the basic time frame?

**§ 2.19—[Amended]**

14. In § 2.19:

a. Revise the heading to read as set out below;

b In paragraph (a) and (c) remove the word “limit” and adding in its place “frame”.

c. In paragraph (b)(2), remove the wording “its FOIA Public Liaison”, adding in its place the wording “the FOIA Public Liaison”.

The revision reads as follows:

**§2.19 When may the bureau extend the basic time limit?**

**§ 2.20—[Amended]**

15. In § 2.20:

a. In paragraph, (a)(1) and (2), remove the word “Where” and capitalize “Failure” and “There”, respectively.

b. In § 2.20(a)(2)(iii), remove the wording “; this ordinarily refers to a breaking news story of general public interest”.

c. In § 2.20(b)(1), after the word “how”, add the wording “all elements and subcomponents of” and after the word “meets”, add the wording “each element of”.

d. In § 2.20(c), add a new second sentence between “request.” and “When” that reads as follows: “Bureaus will consult with the Office of the Solicitor before granting expedited processing requests and will include in its response to you the name and title of the Office of the Solicitor or Office of General Counsel attorney consulted.”

**Subpart E—RESPONSES TO REQUESTS**

**§ 2.21—[Amended]**

16. In § 2.21 paragraph (a), remove the wording “its FOIA Public Liaison” and adding in its place “the FOIA Public Liaison”.

**§ 2.23—[Amended]**

17. In § 2.23 paragraph (c), removing the word “record.” adding in its place the wording “record unless the Office of the Solicitor has expressly preapproved such a withholding”.

**§ 2.24—[Amended]**

18. In § 2.24 paragraph (b)(4), removing the wording “unless including” adding in its place the wording “unless the bureau notes that it does not have or could not locate responsive records or that including” in paragraph (b)(5), removing the word “record”, adding in its place the wording “record unless the Office of the Solicitor has expressly preapproved such a withholding”.

**Subpart F—HANDLING CONFIDENTIAL INFORMATION**

**§ 2.27—[Amended]**

19. In § 2.27 paragraph (a), adding the wording “exercise due diligence to” following the wording “must”.

**§ 2.28—[Amended]**

20. In § 2.28 paragraph (d), removing the wording “limit” adding in its place “frame”.

**§ 2.29—[Amended]**

21. In § 2.29:

- a. In paragraph (a), remove the second “or”.
- b. In paragraph (b), add the wording “or prohibited” after the word “required” and change the existing period to a semicolon and add the word “or” after the semicolon.
- c. Add a new paragraph (c).

The revision and addition read as follows:



§2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?

\* \* \* \* \*

(c) The bureau has excised due diligence to notify the submitter, but its efforts were unsuccessful.”

## **Subpart G—FEES**

### **§ 2.37—[Amended]**

22. In § 2.37 paragraph (f) and (f)(2)(i), removing the wording “limit” adding in its place “frame”; in paragraph (i), removing the wording “FOIA Public Liaison” adding in its place “FOIA Requester Center”.

### **§ 2.45—[Amended]**

23. In § 2.45:
- a. In paragraph (a), removing the wording “based on all available information” adding in its place the wording “considering the information you have provided and verifying it as appropriate”.
  - b. Removing paragraph (f).

### **§ 2.47—[Amended]**

24. In § 2.47 paragraph (d), removing the number “30” adding in its place the number “90”.

### **§ 2.48—[Amended]**

25. In § 2.48:

a. Adding in paragraph (a)(1), the following as new sentence two “The subject of the request must concern discrete, identifiable agency activities, operations, or programs with a connection that is direct and clear, not remote or attenuated.”.

b. Adding in paragraph (a)(2), after the word “contribute”, the word “significantly”.

c. In paragraphs (a)(2)(i), after the word “informative”, add the wording “--the disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public’s understanding”.

d. In paragraphs (a)(2)(iv), removing the word “Your” adding in its place the word “Your expertise in the subject area as well as your”, replace the words “expertise regarding the requested information and information that explains how you” with the word “your”, and replace the wording “to your” with the wording “to furthering your”.

e. Removing paragraphs (a)(3), (a)(3)(i), (a)(3)(iii), and (a)(3)(iv) and redesignate current paragraphs (a)(3)(ii) as paragraph (a)(2)(vi) and adding the word “and” after the semicolon.

Redesignate current paragraphs (a)(4) to paragraphs (a)(2)(vii).

f. Adding a new second sentence to introductory paragraph (b) to read as follows, “To determine whether disclosure of the requested information is primarily in your commercial interest, the bureau will consider:”, and add new paragraphs (1) and (2) to read as set out below.

g. Redesignate paragraphs (b)(1), (2) and (3) as (3), (4), and (5).

h. Redesignated paragraph (b)(5)(ii), adding the word “ordinarily” before the word “presume” and add the following sentence to the end “Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.”

The revisions and additions read as follows:

**§ 2.48 How will the bureau evaluate your fee waiver request?**

\* \* \* \* \*

**(b)** \* \* \*

(1) Whether the requested disclosure would further any commercial interest of yours.

(2) If you have a commercial interest, the bureau must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraph (a) are satisfied and any commercial interest is not the primary interest furthered by the request. Bureaus ordinarily will presume that, when a news media requester has satisfied paragraph (a) above, the request is not primarily in the commercial interest of the requester.

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**§ 2.49—[Amended]**

26. Amend § 2.49 by,

- a. Adding a new paragraph (a)(3) and redesignate paragraph (a)(3) as (4).
- b. In the newly redesignated (a)(4), replacing the word “previously” with “already”.
- c. In paragraph (e), replace the wording “FOIA Public Liaison” with the wording “FOIA Requester Center”.

The additions read as follows:

**2.49 When will you be notified of anticipated fees?**

(a)\*\*\*

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(3) Your request does not reasonably describe the records sought and/or does not resolve all issues regarding the payment of processing fees; or

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**§ 2.51—[Amended]**

27. In § 2.51 paragraph (b), (b)(1), and (b)(3), removing the word “limit” adding in its place the word “frame”.

**§ 2.54—[Amended]**

28. In § 2.54 paragraph (a), removing the words “charge accordingly” adding in its place the words “charge fees accordingly” and removing the words “attempting to avoid fees by”.

**Subpart H—ADMINISTRATIVE APPEALS**

**§ 2.57—[Amended]**

29. In § 2.57 paragraph (a)(7) and paragraph (c), removing the word “limit” adding in its place the word “frames”.

**§ 2.58—[Amended]**

30. In § 2.58 paragraph (c), removing the word “limit” adding in its place “frame”.

**§ 2.59—[Amended]**

31. In § 2.59 paragraph (f), removing the word “limit” adding in its place “frames”.

**§ 2.62—[Amended]**

32. In § 2.62 paragraphs (a) and (b), removing the word “limit” adding in its place “frame”.

**Subpart I—GENERAL INFORMATION**

**§ 2.66—[Amended]**

33. Revise § 2.66 with the following:

**§ 2.66 What are FOIA Requester Centers and the FOIA Public Liaison?**

(a) Employees at FOIA Requester Centers typically serve as your first point of contact for questions about how the FOIA works. Even before you make a request, employees at FOIA Requester Centers can assist you by: identifying information that is already posted and available; informing you about the types of records maintained by the bureau; providing suggestions for formulating requests; describing the Department’s various processing tracks and the average processing times for the various tracks; and answering questions about expedited processing standards and the FOIA’s fee provisions. After you make a request, questions about its status can also be answered by employees at the applicable FOIA Requester Center.

(b) If you need further information or assistance after contacting the applicable FOIA Requester Center, the FOIA Public Liaison reports to the Department's Chief FOIA Officer and is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes between the you and the agency (including notifying you of your right to seek dispute resolution services from OGIS).

(c) If you need further information or assistance after contacting the applicable FOIA Requester Center and the FOIA Public Liaison, you may wish to seek dispute resolution services from OGIS.

(d) Contact information for the FOIA Requester Centers and the FOIA Public Liaison is available at <https://www.doi.gov/foia/foiacenters>.

**§ 2.70—[Amended]**

34. In § 2.70:

a. In the definition of “Educational institution”, add the following sentence after the words “further scholarly research.” “Teachers (if they demonstrate how the requested records will further their teaching, scholarly research, or production of scholarly works) and students (if they demonstrate how the requested records will further their coursework or other school-sponsored activities) may also qualify as an educational institution for the purposes of this definition.”

b. In the definition of “Multitrack processing”: after “first-in/first-out basis” add the words “, but other factors, such as litigation, may affect the sequence and/or timing of processing”.

c. In the definition of “Record” remove “means an agency record” and add in its place “is any item, collection, or grouping of information that already is recorded, is reasonably encompassed by your request, and”.

d. In the definition of “Representative of the news media”, add the following new sentence two after the phrase “work to an audience.”: “Distributing copies of released records, electronically or otherwise, does not qualify as using editorial skills to turn the raw materials into a distinct work.”

Dated: December 14, 2018.

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Daniel Jorjani

Principal Deputy Solicitor, Exercising the Authority of the Solicitor

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