



CHIEF PRIVACY OFFICER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

March 7, 2019

MEMORANDUM FOR DISTRIBUTION

FROM: Edward T. Killen **Edward T. Killen** Digitally signed by Edward T. Killen
Date: 2019.03.07 14:05:17 -05'00'

SUBJECT: Freedom of Information Act Obligations and
Transparency

The IRS is committed to openness in government and this memorandum describes every employee's responsibility to promote transparency under the Freedom of Information Act (FOIA). The FOIA requires all federal agencies to respond timely to requests for records and information the agency maintains. Under the FOIA, we have 20 business days to respond to a requester. This statutory responsibility is shared by all IRS employees and we are committed to meeting this obligation. We need you and your staff to give FOIA requests a high priority by responding timely and providing requested documents on a "rolling production" schedule (as they become available and until all documents are delivered).

Treasury requires reports on IRS efforts to comply with the FOIA, including the time spent in researching, processing, and releasing documents. The Organization, Function and Program Code (OFP) 800-85330 on Single Entry Time Reporting (SETR) should be used by all employees who spend time on FOIA activities. Consistent use of this code by all IRS employees is critical, as it captures the overall time the agency spends on FOIA processing and is reported to both Treasury and the Department of Justice on the FOIA Annual Report. An accurate reporting of time spent on FOIA activities demonstrates IRS' commitment to openness and transparency.

Categories of Records Required to be Disclosed Proactively

To promote transparency and efficiency, the IRS should make appropriate information public without waiting for specific requests.

You can and should make the following categories of records available without requiring a formal FOIA request, to the extent their release does not seriously impair tax administration, compromise privacy interests, or fall within a FOIA statutory exemption:

- Final statements of agency policy and interpretations not published in the Federal Register.
- Final administrative staff manuals and instructions to staff that affect a member of the public. This category includes training materials that would not impair tax administration.¹
- Final opinions, including concurring and dissenting opinions, as well as orders, made in adjudication of cases.
- Records that have been released under the FOIA that are likely to become the subject of subsequent requests for substantially the same records or that have been requested three or more times.

Direct Release of Open Compliance Files

Open compliance files should be made available to taxpayers or their authorized representatives without directing them to the FOIA. Under IRC §6103(e), taxpayers have a right to receive copies of these files to the extent their release will not impair tax administration.

Discretionary Proactive Disclosure of Records to Promote Transparency

In addition to the proactive disclosure requirements mandated by the FOIA, discussed above, other opportunities exist to efficiently make records publicly available that otherwise might be sought through FOIA requests. Under DOJ's directive², agencies should exercise their discretion to make a broader range of records available beyond the minimum required by the statute. As with records required to be disclosed proactively, any records disclosed on a discretionary basis will be subject to line-by-line review; any material that would seriously impair tax administration, compromise privacy interests, or fall within a FOIA statutory exemption should be redacted.

¹ Generally, training materials falling within this category include formal, written training materials that have been fully vetted within the agency and subject to multi-level, high-level, and/or executive review. Examples include the Internal Revenue Manual, the Chief Counsel Directives Manual, formal training posted on the ELMS system, or training modules developed for internal use and posted on division intranet sites. Informal training materials, such as PowerPoints prepared by an attorney for a Continuing Legal Education session, handouts at CPE sessions, transcripts of oral presentations, SABA discussions, etc., do not constitute the functional equivalent of an administrative staff manual and therefore are not required to be proactively disclosed. However, informal training materials should be considered for discretionary proactive disclosure to promote transparency to the extent they do not impair tax administration.

² See United States Department of Justice, Agency Proactive Disclosures, at <https://www.justice.gov/oip/blog/oip-releases-new-guidance-agency-proactive-disclosures>, (Last accessed 11/9/2018).

If a business unit representative would like more information on proactive disclosures, please visit [FOIA resources](#) in the Disclosure and Privacy Knowledge Base Site. There you will find a listing of Disclosure's Policy & Program Operations staff available to address proactive disclosure inquiries.

Disclosure staff is available to provide guidance concerning all aspects of the FOIA program at XXXXXX or you may email XXXXX. By working together to promote public trust through government transparency, we enhance the integrity of tax administration. Thank you for your support.

If you have any questions, please contact us or a member of your staff may contact Phyllis Grimes, Director, Governmental Liaison, Disclosure and Safeguards at 202-317-4202.

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