

Model Guide for Government Employees Concerning the Processing
of Requests for Environmental Information

*Building Environmental Citizenship to Support Transboundary
Pollution Reduction in the Danube: A Pilot Project in Hungary
and Slovenia*

Prepared by the Regional Environmental Center, Resources for
the Future and New York University Law School

HANDBOOK:
**PRACTICAL GUIDANCE FOR ADMINISTERING
ACCESS TO INFORMATION**

This Handbook contains guidance and information that will help government employees manage their responsibilities for responding to citizen requests for environmental information. It contains answers to commonly asked questions about how to implement legal authorities for information access. The Handbook identifies and explains specific procedures for accepting, logging, routing and responding to information requests. Discussions of legal questions are found in the document, when legal analysis is appropriate and useful.

In addition, the Handbook has a number of sample letters and forms that can be used as models for responding to requests. The model letters will reduce the workload of government employees as specific requests are received, and will provide standardized guidance that will facilitate responses.

Much of the material in this Handbook was adapted from U.S. EPA's Freedom of Information Act Manual (1992 Edition), but formatted so that country-specific information can be inserted. In the absence of country-specific policies, examples from U.S. law and practice are provided. The purpose of doing this is to provide ideas and guidance; however, it is understood that each country must develop its own policies and laws to fit its own needs. Each part of the Handbook that has

information specific to U.S. practices is highlighted in yellow, to alert the reader.

Many of the issues that are addressed in the Handbook require government decision makers to make policy judgments and decisions specific to the needs of their own country and circumstances. We therefore recommend that the Handbook be considered a "living" document, and that sections be amended and updated or deleted (and the U.S. information deleted) as specific country policies and practices are formulated.

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¹ The relevant country statute should be inserted as Appendix III

² The relevant country regulations should be inserted as Appendix IV

CHAPTER 1: GENERAL INFORMATION

1. PURPOSE

This Handbook provides guidance on policy and procedures for implementing [insert Slovenian law] [insert Hungarian law]

2. POLICY

It is the [Ministry's] policy to make the fullest possible disclosure of Information without unjustifiable expense or unnecessary delay to any requester.

All documents containing policies, procedures and guidance relating to public access to Ministry records must be submitted to the Ministry Information Officer for review and concurrence prior to issuance and implementation.

3. AUTHORITY

a. The legal authority for providing environmental information upon request is found at [insert relevant legislative acts].

b. Regulations concerning implementation of these legal requirements are found at [insert relevant regulations or guidance].

4. DEFINITIONS & OPTIONS

a. **Definitions**

- 1) What is a valid request for environmental information? It is a request for [insert Aarhus language] The request need not specifically refer to the specific legal provisions.
- 2) What is an Ministry record? "Record" means [insert Aarhus language] (for discussion about personal notes, see Chapter 3, Section 1.g).
- 3) Who can make a request for environmental information? Any individual (including non-citizens), corporation or association, public interest group, and local, State or foreign government can make a request.

b. **Options for Handling Requests.** Generally speaking, an office has four options in handling a request for existing, located records. These options may be applied singularly or in combination for a given request:

- 1) Release documents. Make all records available to the requester upon receipt of a request (see Chapter 5) unless they fall under one of the legal exemptions.
- 2) Withhold documents. An office may withhold records only if they fall under one of the legal exemptions (see Chapter 7).
- 3) Partially withhold documents. If documents contain both exempt and non-exempt information, the non-exempt information must be disclosed if the exempt material is reasonably capable of being separated, and the necessary deletions can be made without making the document unintelligible (see Chapter 6, Section 6).
- 4) Discretionary release. [US policy: An office may release internal Ministry rules, inter- and intra-Ministry memos, and records or information compiled for law enforcement purposes, even though they legally can be denied. As a matter of policy, EPA encourages disclosure of these records if no important government purpose is served by withholding, (i.e., release would not cause significant harm to the Ministry). (See Chapter 9.)

5. TIME REQUIREMENTS

a. **Initial Determinations.** [U.S. policy: Ordinarily, there is a 10-workday time limit in which to make an initial determination on whether to release or withhold records requested under FOIA. The first day is the date when the Ministry or Regional Information Office receives the request. Excluded from that period is any time taken by the requester to provide EPA with additional information needed to identify the records or the time required by the Ministry to secure prepayment of fees or assurance of payment.]

b. **Appeals.** [U.S. policy: Any person whose request for an existing, located records has been denied, in whole or in part, has a right to appeal the determination. This appeal

should be mailed to the Ministry Information Office no later than 30 calendar days after the day the requester receives the Ministry's denial. The Legal Office then has 20 workdays to review the appeal and to determine whether the records were properly withheld.]

c. **Extensions.** [U.S. policy: An extension of up to 10 workdays total may be taken on the due date for the initial determination or appeal determination. For the initial determination, an extension may be taken only if the search involves extensive records, physically distant records, or consultation with another Ministry or another office within the Ministry. Total extension time taken on initial determinations and appeal determinations may not exceed 10 workdays.]

For example, if an extension of three workdays is taken for issuing the initial determination, an extension taken during the appeal period can only be for seven workdays or less. If an initial determination cannot be issued in 10 workdays, the action office should provide written notice to the requester concerning the status of the request by the tenth day. The written notice should inform the requester that an extension is being taken, cite the reasons for the extension, and give the date by which the Ministry reply will be made.

6. **RESPONSIBILITIES**

a. **Ministry Information or Public Relations Office.** [U.S. policy: Coordinates and oversees Information Release program, develops and reviews information procedures, policies and guidance, provides advice to Ministry Information personnel in the program and Regional offices, coordinates initial fee waiver decisions, routes and tracks FOIA requests, monitors Ministry information activities, maintains official and public files related to the Ministry's information access program, monitors quality and timeliness of responses, and provides training or training opportunities to Ministry information personnel.]

b. **Legal Office.**

c. **Office of Communications, Education and Public Affairs.**

d. **Program Office Information Coordinators.** Route requests to appropriate action offices within their program, track requests for timeliness, monitor quality of response, and provide guidance to program personnel (with help if needed from the Ministry Information or Public Relations Office or

from the Legal Office).

e. **Regional or District Information Offices.** Route requests to appropriate action offices within their Region or district, track information requests, provide guidance to Regional personnel (with help if needed from the Ministry Information Office), coordinate initial fee waiver decisions, submit materials for the annual information report, keep official files, monitor quality and timeliness of responses, and provide training and current information to Regional information personnel.

f. **Action Offices.** Analyze requests, locate records, contact requester as needed, examine records, delete exempt material, prepare and issue responses, release records, and when appropriate, prepare and issue Bill for Collection, and issue initial fee waiver decisions.

g. **Financial Management Offices.** Ensure all bills for collection related to Information requests are recorded promptly. Prepare follow-up billing for all uncollected information requests. Reconcile receivables against information provided by Information Offices. Collect fees related to information requests.

7. **DELEGATION OF AUTHORITY** provide information on what levels of officials/employees can make particular decisions about release or withholding documents.

a. **Authority to Issue Information Policies and Procedures.** The [insert name of appropriate Officer] is the Ministry official authorized to [insert responsibilities]

b. **Authority to Issue Initial Determinations.**

This authority (insert specific name of or citation to legal authority) may be re-delegated to [identify appropriate re-delegation levels].

Any re-delegation of authority must be written and copies of the official re-delegation must be kept on file.

c. **Authority to Issue Determinations on Appeals**

- 1) [U.S. policy: The Chief Lawyer in the Legal Office is the Ministry Official authorized to make legal determinations on written appeals of initial denials of records and fee waiver denials. This authority has been redelegated in writing to [insert titles of appropriate persons]. These re-

delegations are on file in the Legal Office and the Ministry Information Office.

- 2) The Associate Administrator for the Office of Communications Education and Public Affairs is the Ministry official authorized to review records for discretionary release on appeal as required (see Chapter 9). This authority may be redelegated to the insert title of appropriate person].

8. ACCOUNTABILITY

Ministry employees will be held accountable for their decisions with respect to the release or withholding of information, the waiver of payment, and/or the appeals process. [mention any special laws or provisions about how government employees are held accountable]

9. OVERVIEW

This section provides a checklist for responding to information requests. Offices may find this useful as a summary of the steps in the process.

a. **Checklist for Responding to an information Request**

- 1) Read the request.
 - o Is it a request for records?
 - o Does it "reasonably describe" the record(s) sought? Is it clear what the requester wants?
 - o Is the request overly broad in scope or is it well defined?
 - o Would discussion with the requester help to define, clarify or narrow the scope of the request?
- 2) Determine the Category of the Request.
 - o Is the identity of the requester clear?
 - o Which fee category does the requester fall into?

- o Does the identity of the requester or the use of the documents requested need further clarification?

3) Resolve questions about fees with the requester.

- o Has the requester indicated a willingness to pay the cost of searching for, reviewing and copying records, as appropriate?
- o Has the requester asked for a fee waiver?
- o Should you obtain prepayment or an assurance of payment?
- o Have you charged the appropriate fees for the assigned category?

4) Identify and locate the records.

- o Do the records exist?
- o Are the records in the Ministry's possession and control?
- o Should another Ministry be consulted and/or deferred to?
- o Was your search for the records adequate to ensure that all records within the scope of the request were identified and located?
- o If your office and another Ministry office both have copies of the records, consult to determine which office would be the more appropriate office to determine the release status of the records.

5) Review the records.

- o Are there any exempt records or portions of records?
- o Do any of the records contain Confidential Business Information (CBI)?

6) Prepare the response.

- o Itemize records or portions of records to be

disclosed.

- o Itemize records or portions of records to be withheld and cite the statutory authority for withholding them (i.e., applicable exemption(s)).
 - o Include names and titles or positions of each person responsible for the denial.
 - o Include procedures for appealing the denial.
- 7) Purge exempt portions of information.
- o Prepare the records for disclosure/non-disclosure by segregating exempt records or portions of records from non-exempt portions.
- 8) Prepare the Bill for Collection Form according to government rules.
- 9) Issue the response, enclosing records to be disclosed and the Bill for Collection Form (if appropriate).
- [U.S. Policy:
- o Maintain one copy of the response and bill (if appropriate) for the action office file.
 - o Send two copies of the response and one copy of the bill (if appropriate) to the Information Officer.
 - o Send one copy of the response to the Information Coordinator (if appropriate).
 - o Promptly send three copies of the bill (if appropriate) to the Servicing Financial Office, along with a copy of the initial request and response.
 - o Maintain a copy of the withheld records for 60 days so they can be made available promptly upon request to the Legal Office in the event of an appeal.

CHAPTER 2: RECORD KEEPING, LOGGING, ROUTING AND FILE-KEEPING OF FOIA REQUESTS

1. PROCEDURES FOR MINISTRY INFORMATION OFFICES REGARDING INITIAL HANDLING OF REQUESTS

a. **Register the Request.** A request must be:

- o date stamped,
- o assigned a Request Identification Number (RIN),
- o assigned a response due date,
- o assigned a fee category,
- o entered on the Information Request Register,
- o attached to a completed Control Form,
- o attached to a Bill for Collection Form, and
- o delivered within 24 hours (preferably hand-carried) to the office responsible for preparing the reply.

b. **Acknowledge the Request.** Upon receipt of an information request, the Ministry Information Office should acknowledge receipt of the request to the requester immediately after carrying out the log-in procedures described above. The acknowledgement informs the requester of the date of receipt and the assigned RIN number.

c. **Multiple Responsible Offices.** If more than one office will provide material for a reply, one office [insert name of central ministry office] should coordinate the overall response.

d. **Route the Request to the appropriate office for reply.**

- 1) U.S. EPA procedures: Route a Request from headquarters to [District] [Regional Offices]. When a request is routed from headquarters to a regional or district office, the recipient office [insert name of central ministry office] takes the steps outlined in 1.a and 1.b above (assigning the RIN number, logging and acknowledging the

request) and faxes the request to the District or Regional Information Office for proper routing within the Region using the same RIN number.

- 2) Route a Request from Regional/District Offices to HQ. If a District/Regional Information Office receives a request for records that are held only in Headquarters, another Regional Office, or a field office, the office should immediately remove the request from its tracking system and fax the request to the [insert name of central ministry office]. At the same time, the requester must be notified that the request is being transferred to the [insert name of central ministry office] for response.

- 3) Never Re-Route Between Program Offices. Offices should never re-route requests directly to other Program Offices. All re-routing should be through the [insert name of central ministry office] or Regional Information Office as appropriate.

2. REQUESTS ADDRESSED DIRECTLY TO ACTION/FIELD OFFICES

a. **Action Offices.** If an organizational unit or Ministry official receives correspondence directly that is identifiable as an information request, the recipient should be immediately transferred, if possible hand-carried, to the Central Information Office. NOTE: No response should be sent out until the office is actually assigned responsibility by the Information Office to respond to the request.

3. KEEPING RECORDS AND FILES OF INFORMATION REQUESTS AND RESPONSES

Applicable laws concerning the handling of government records and files include [insert specifics].

a. **Types of Files.**

- 1) Official Files. The Ministry and Regional Information Offices should maintain an official file on each information request they receive. The official file should include copies of the incoming request, the Control Form, the Ministry's response, the Bill for Collection Form (if appropriate), follow-up correspondence, any appeal and appeal determinations, and any intra-Ministry

communications concerning the request.

- 2) Public File. Each Information Office may maintain, at its own option, a separate public file to help facilitate processing responses for information requests for Ministry files. The public file shall include only the copies of each information request, the Ministry's response, and any appeal and appeal determination. These documents shall be purged of any personal information.
- 3) Information Coordinators' Files. Information Coordinators may keep files to facilitate their responsibilities for routing and tracking requests assigned to action offices. However, Coordinators' files are not a substitute for official files.
- 4) Request Log. Each Information Office shall maintain an Information Request Log, purged of personal information.
- 5) Action Office Files. Each action office shall maintain the incoming request, Control Form, a copy of the response, a copy of the withheld documents or a list adequate to identify the records, the Bill for Collection Form, follow-up correspondence and any communications concerning the request which may be needed in the event of an appeal or litigation.

b. Disclosure to the public of files related to the information request process.

- 1) Rule. Such files may not be made available to a member of the public without a written request from the person seeking the records.
- 2) Background. [U.S. policy: The Privacy Act prohibits the disclosure of information in systems of records to the public unless the FOIA requires disclosure. The FOIA requires disclosure of certain Ministry FOIA files which have been purged of personal Information (e.g., Public File, Request Log).
- 3) U.S. policy: Purging FOIA Files. Before disclosing files concerning information requests,

the files must be reviewed and purged of:

- o Home addresses and phone numbers and other personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy within the meaning of Exemption [insert number of exemption].
- o Any other information, such as confidential business information or internal communications reflecting Ministry deliberations, which is exempt from disclosure under the law.

NOTE: Corporate account numbers should also be purged.

CHAPTER 3: GUIDANCE TO ACTION OFFICES ON INITIAL RESPONSE TO REQUESTS

1. MAKE SURE THE REQUEST IS ONE THAT IS AUTHORIZED UNDER THE LAW

a. **General Guidelines.** Always contact the Ministry or Regional Information Office as appropriate when there is doubt with respect to the cases described below.

U.S. rule:

- 1) Inquiries for Documents that are not government Records. Requests for records that are published by non-government organizations and are readily available to the public are generally not handled under FOIA. The response to the requester should indicate that the documents are not government records.
- 2) Inquiries for Answers to Specific Questions. If the requester seeks answers to specific questions, the Ministry is not required to respond, except to indicate that it is not responding, and why. However, if the questions can fairly be read as constituting a request for access to records, the action office should process the request under FOIA.

b. **Responding to Oral Requests.** [insert appropriate Hungarian/Slovenian rule] FOIA requests must be in writing. In certain cases, offices should ask that oral requests be put in writing and treated as FOIA requests. Those special circumstances are discussed below.

- 1) If the record is unquestionably releasable and readily available, (e.g., EPA publications, press releases, information sheets prepared for general distribution), release the record but do not treat it as a FOIA request. Fees shall be assessed in accordance with the FOIA policy and billing procedures (see Chapter 4).
- 2) If the record (or part of the record) may be subject to withholding and/or is not readily available, ask the requester to submit a written request to the appropriate Ministry or Regional Information Office.

NOTE: Whenever there is any doubt about the releasability or the availability of information requested orally, ask that the request be made in writing.

c. **Responding to Requests from Other Federal Agencies.** [insert local rule]

d. **Responding to Congressional Requests.** Congressional requests are of two types:

1) A written request from an individual Member of Congress is treated as a FOIA request.

2) A request is considered to be from the Congress if it is a written request signed by the Speaker of the House, President of the Senate, or chair of a committee or subcommittee concerning matters within their jurisdiction. Such requests are not processed as FOIA requests.

e. **Responding to Requests from the General Accounting Office (GAO)³.** Requests from GAO must be answered but not as FOIA requests.

f. **Future Records.** The authority allowing citizens to request information only establishes requirements for disclosure of existing records. It does not require the government to place a requester's name on a distribution list for records as they become available. Sample letter **A** provides language for responding to requests for future records.

g. **Personal Records of Employees.** The Information Act only applies to Ministry records, not to the personal records of individual Ministry employees. If personal records are responsive to an information request, the Ministry should notify the requester that the personal records exist but are not covered by the Information Law since they are not Ministry records, and accordingly that they will not be provided.

1) "Personal Record" Considerations. In determining whether documents are personal records, the following criteria be considered.

o Creation - Was the document created by an Ministry employee on Ministry time, with Ministry materials, at Ministry expense? If not, then it probably is not an Ministry

³ The General Accounting Office is the investigative arm of Congress and supports the Congress in meeting its Constitutional responsibilities and to help improve the performance and accountability of the federal government. GAO examines the use of public funds, evaluates federal programs and activities, and provides analyses, options, recommendations, and other assistance to help the Congress in its oversight, policy, and funding decisions.

document on that basis alone.

- o Content - Does the document contain substantive information? If not, then it probably is not an Ministry record, on that basis alone.
- o Purpose - Was the document created solely for an individual's personal convenience? Alternatively, to what extent was it created to facilitate government business?
- o Distribution - Was the document distributed to anyone else for any reason, such as for a business purpose? How wide was the circulation?
- o Use - To what extent did the document's author actually use it to conduct government business? Did others use it?
- o Maintenance - Was the document kept in the author's possession, or was it placed in an official Ministry file?
- o Disposition - Was the document's author free to dispose of it at his or her personal discretion? What was the actual disposal practice?
- o Control - Has the Ministry attempted to exercise control over the document by requiring that it be retained on file for a specified time? Did it do so by requiring the document be created in the first place? If so, such records are always Ministry records.
- o Separability - Is there any practical way to segregate any personal information in the document from official business information?
- o Revision - Was the document revised or updated after the fact for recordkeeping purposes?

2) Application of the Considerations. The following examples illustrate the analysis and application of the considerations to be made.

- o Example 1. An employee brings a paper to the office that has been prepared for a class she

is attending at a local university. The employee shows the paper to her friends during lunch and asks for their comments. The subject matter of the paper relates to her work in the government.

The paper is a personal record and not an Ministry record. The document was not created on Ministry time, with Ministry materials nor at Ministry expense. While the content relates to Ministry matters, it was not created to facilitate Ministry business nor was it relied upon or used in conducting Ministry business. The distribution was limited to friends and was not for any business purpose. The record was not placed in Ministry files, and the employee was free to remove it from the Ministry's offices and to dispose of it at her discretion.

- o Example 2. An employee keeps old yellow telephone message slips that indicate the names of the callers, the dates and times of the calls, and the telephone numbers where the callers can be reached.

The message slips, in this instance, are not Ministry records. Although created by the employee's secretary at Ministry expense, the documents contain no substantive information, i.e., why the call was made. The documents were created solely for the employee's personal convenience and were not used by anyone other than the employee. The message slips, in this instance, were retained by the employee and not placed in Ministry files. The employee was free to destroy the notes at his or her discretion.

- o Example 3. A supervisor keeps an appointment calendar on her desk on which she notes upcoming meetings. On occasion, she notes personal meetings. Her secretary notes appointments that have been scheduled for her supervisor.

The calendar is not an Ministry record. As in the previous example, the record was created by Ministry employees on Ministry time and at Ministry expense. However, the calendar

contains little, if any, substantive information. The calendar was created for the supervisor's personal convenience so that she could organize both her personal and business appointments. It was not intended for use by other office employees and was not distributed to other employees. The Ministry did not require the supervisor to maintain the appointment calendar. The calendar could be destroyed at any time by the supervisor.

NOTE: When calendars are maintained on a Local Area Network (LAN) and can be accessed by others, the calendars are Ministry records.

- o Example 4. An Office Director has a daily agenda prepared listing the activities for each day of the upcoming week. The agenda is circulated to his staff to inform them of the schedule.

The daily agenda is an Ministry record. The document, created at Ministry expense by an Ministry employee, was in fact circulated to the staff for a business purpose. It was created for the express purpose of facilitating the daily activities of the office. Any personal matters could be easily segregated from the business material.

U.S. EPA policy:

NOTE: Administrators of EPA make copies of their official appointment calendar available to the public, and require political-level appointments in the Agency (e.g. the Deputy Administrator, Assistant Administrators, Associate Administrators, Regional Administrators, the General Counsel, and Staff Office Directors), to do the same.

- 3) Assistance. If any action office is having difficulty determining whether a particular document is an Ministry record or a personal record, it should contact the appropriate legal office for guidance.

2. PROCEDURAL GUIDANCE FOR RESPONDING TO INFORMATION REQUESTS

a. **Make Sure the Request Adequately Describes the Records.** Carefully read the description of the records sought. If the description of the records is not sufficient to identify and locate the records, contact the requester (by telephone if possible) and assist him/her in the identification of the

records sought and in formulating the request (see sample letter B, Appendix I). If the description remains insufficient to reasonably identify and locate the records, notify the requester in writing and send a copy to the appropriate information Office so that the request may be closed out. Before doing this, make every reasonable effort to identify and locate the requested records.

b. **Discuss Requests for Voluminous Records.** If the request is extremely broad or involves a substantial number of records (e.g. ten file drawers of records on the XYZ Superfund site), contact the requester (by telephone if possible) and provide him/her with a full description of the records and the estimated costs (which may include search, copying and review depending on the category of the request) of the records to ensure that the requester wants all records (see sample letter B, Appendix I).

c. **Locate the Records.** Locate the records as promptly as possible. A list of possible outcomes to the search for records follows. The appropriate response to each outcome is either described or referenced.

For records believed to be within the Environment Ministry's possession:

- 1) The records requested are believed to be within the Environment Ministry's possession and may be obtained promptly. The next step is to make an initial determination as to whether (or what portion of) the records may be released (see Chapters 5 and 6).
- 2) The records requested are believed to be within the Environment Ministry's possession but cannot be obtained promptly. When a record cannot be obtained promptly by the action office (e.g., the records are located in a separate storage area), the action office should call and write the requester (see sample letter C, Appendix I), notify him/her of the delay and provide a projected date when the record is likely to be sent. If, after a thorough search, the records are determined not to exist, follow the instruction for requested records that do not exist (see Section c.7 below).
- 3) Some or all of the records exist but are in the possession of another office of the same Ministry.

In this case, promptly contact the appropriate Information Office for rerouting or coordinating of the Ministry's response.

- 4) The records are available in a public reading room. Call the requester, inform him/her of the availability of the documents in a public reading room, and ask whether he/she would prefer to have the documents sent or to review them in the public reading room. If the requester chooses to use the public reading room, confirm this in writing and send a copy of the confirmation to the information Office. If the requester prefers to have the records sent, follow normal Information Act procedures.
- 5) For records held by the Environment Ministry, but originating in another government office. When a request for records includes records originating in another Federal Ministry either: 1) respond to the request after consulting with the originating Ministry on whether the records should be releasable, if necessary, or 2) transfer responsibility for responding to the other Ministry. Whenever the request is referred to another Ministry, the requester should be notified in writing with a copy sent to the appropriate Information Office so that the request may be closed out.
- 6) The records have been published by the Government. Information may be sent to the requester if readily available within the Environment Ministry (e.g., a Notice already provided to the public). If the information is commonly available outside of the Environment Ministry (e.g., a manual available from a different government office), notify the requester where he/she may obtain it and what it will cost (see sample letter D, Appendix I). Send a copy of the letter to the appropriate Information Office so that the request may be closed out.

For records not in the Environment Ministry's possession:

- 7) The records requested do not exist. After thoroughly searching for the requested records and determining that they do not exist, write the requester that the records do not exist and include appeal language (see sample letter E,

appendix I). Send a copy to the appropriate Information Office so that the request may be closed out of the information tracking system.

- 8) The records exist but are, for example, in storage. Records that have been retired for storage are still considered government records. These records must be obtained and processed according to normal information request procedures. (See section c.2 above.)
- 9) The records exist but are only in the possession of another government office or a local or district office. Notify the requester in writing (see sample letter F, Appendix I) that the requested records are not in the government's possession and indicate that they can contact the appropriate Ministry or local office in question. A copy of the letter should be sent to the appropriate Information Office so that the request may be closed out.
- 10) The records exist but are in the possession of a government contractor. If requested records are held by a contractor but are not located at the Environment Ministry, as a general rule, they are not Ministry records. This would be true, for example, of contractor working papers that have not been turned over to the Ministry. Such requests should be closed out of the Information Act tracking system following the procedures discussed in Section c.7 above for records that do not exist. Records in the possession of a contractor may be Ministry records when the contractor is functioning as a custodian of the records for the Ministry.

CHAPTER 4: FEES AND FEE WAIVERS

1. GENERAL PROCEDURES

U.S. rule: The Ministry is authorized to charge requesters the direct cost for document search, duplication and review. In some cases (for reasons discussed below), these costs are not charged. The law also provides for a public interest fee waiver or fee reduction. The requirements for these waivers are listed in Section 2 later in this Chapter.

a. **Initial Review**

instructions below reflect EPA policy and should be modified for Hungarian or Slovenian policy

1) The action office should first estimate as accurately as possible the cost to the government of conducting a search, reviewing and copying costs, if appropriate, (using the fee schedule in Section 1.f below).

2) If the fees are less than [\$25.00 or insert appropriate number] or if the cost of collecting the fees would otherwise exceed the amount collected, no fees will be charged.

3) If the request falls within one of the following categories, no fees will be charged. (Note that some of the categories are not considered as requests subject to FOIA [see Chapter 3]).

o Requests by individuals for records about themselves. Fees will be waived only for the first copy.

o Requests by the Congress.

o Requests by another Federal Ministry including the supervisory and investigatory offices such as General Accounting Office.

o Requests by a government contractor or assistance recipient (e.g., a grantee) when the records are needed in order to perform work required by the contract, grant or cooperative agreement.

4) If the request asks for a public interest fee waiver or reduction in fees, the action office, in conjunction with the Information Office and the

appropriate legal office, should determine whether the fee waiver or fee reduction request should be granted. (See Section 2, page 4-14)

b. **Categories of Requests.** **U.S. Policy:** All requests must be assigned to one of the following four categories:

- o Commercial Use
- o Educational and Non-Commercial Scientific Institution
- o Representative of the News Media
- o All Other

Each category of request has a corresponding fee level. How requests should be categorized and the fee level associated with each category are outlined below.

c. **Determining the Category of the Request.** Consider both the identity of the requester and the requester's intended use of the information requested. To help the Information Office make an accurate determination of a request's category, the following definitions are provided.

Commercial Use: a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

Non-Commercial Scientific Institution: an institution that is not operated on a commercial basis as that term is defined above and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Educational Institution: a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

Representative of the News Media: any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public.

d. **Fees to be Charged.** **U.S. Policy:** Using the above

definitions as a guide in categorizing a request, fee levels will be determined based upon the following schedule:

- 1) Commercial Use Requests. If the request is for records for a commercial use, the requester is charged for the time spent searching for the requested records, reviewing the records to determine whether any should be disclosed and for the cost of each page of duplication. Fees will also be charged for search and review of records even if there is ultimately no disclosure of records. If total fees are less than \$25.00, no charge will be made (see administrative fee waiver, page 4-23).
- 2) Requests From Educational and Non-Commercial Scientific Institutions. If the request is from an educational or non-commercial scientific institution involved in scholarly or scientific research and is not for a commercial use, the requester will only be charged for the duplication cost of the records. No charge will be made for the first 100 pages of duplication or for the time spent searching for and reviewing responsive records. Final charges should be calculated by totaling the cost of duplication and then subtracting the cost of 100 pages of duplication. If this amount is less than \$25.00, no charge will be made (see administrative fee waiver, page 4-23).
- 3) Requests From Representatives of the News Media. If the request is from a representative of the news media and is not for a commercial use, the requester will only be charged for the duplication cost of the records requested. No charge will be made for the first 100 pages of duplication or for the time spent searching for and reviewing responsive records. The final charge should be calculated by totaling the cost of duplication and then subtracting the cost of 100 pages of duplication. If this amount is less than \$25.00, no charge will be made (see administrative fee waiver, page 4-23).
- 4) All Other Requests. If the request cannot be categorized under the three types of requests defined above, the requester will only be charged for the search and duplication costs of the records requested. No charge will be made for the

first two hours of search time and the first 100 pages of duplication or the time spent reviewing the record to determine whether it should be disclosed. The final charges should be calculated by totaling the fees for search time and duplication and then subtracting the cost of two hours of search time and 100 pages of duplication. If this amount is less than \$25.00, no charge will be made (see administrative fee waiver, page 4-23). Fees will be charged for the search of records even if there is ultimately no disclosure of records.

e. **Evaluating the Determination.** Once the Information Office has carefully considered both the identity of the requester and the intended use of the information, an accurate determination of a request's category will usually be made.

- o Example 1: A local newspaper requests the release of records for use in a story they are doing on an environmental issue. Such a request should be considered as being made by a representative of the news media and not for commercial use. The newspaper should be charged accordingly (i.e., for the duplication costs of the records excluding the first 100 pages).

At the same time the newspaper has been cited by EPA for a number of violations at one of its facilities. The newspaper has requested records to use in the course of any legal action that might be brought involving the alleged violations. Though the request is from a representative of the news media, the records requested are for a commercial use. The request should be treated as a commercial use request and the newspaper should be charged accordingly (i.e., for the search, review and duplication costs of the records).

- o Example 2: A professor at a graduate institution of higher learning has submitted two separate requests for records. One request is for records that will be used in a university-sponsored research project. This request is made on behalf of an educational institution involved in scholarly research. The requester should be charged for the duplication costs of the records excluding the first 100 pages.

The second request is for information the professor is going to incorporate into a database which he plans to market to the general public. The information requested is for a commercial use and the professor should be charged accordingly (i.e., for the search, review and duplication costs of the records).

- o Example 3: A university student requests records that she needs to complete her doctoral dissertation. Though the student is enrolled at an educational institution, her request for records is being made solely for her personal use and not on behalf of the university which she attends. Also, the records requested are not for commercial use but for a scholarly purpose. The request should be categorized under all other requests and the requester should be charged accordingly (i.e., for the search and duplication costs of the records excluding the first two hours of search time and the first 100 pages of duplication).

f. **Calculating the Fees.** After determining the category of the request and the corresponding fee level, a calculation of fees should be made. The fee schedule is as follows:

- 1) Search Time. Search time--both manual and computer-- includes all time spent looking for material that is responsive to a request including page-by-page or line-by-line identification of material within documents. Charges for search time will be made as follows:

- o Manual search for records.

U.S. Federal Personnel pay category GS-8 and below. \$4.00 will be charged for each 1/2 hour or any portion thereof.

Personnel GS-9 and above. \$10.00 will be charged for each 1/2 hour or any portion thereof.

(Example: If a GS-11 employee spends 40 minutes locating responsive records, the cost for searching is \$20.00.)

Contractor. When a search for records is performed by a contractor, requesters will be

assessed actual direct charges up to but not exceeding \$10.00 per 1/2 hour.

o Computer Search for records.

Personnel GS-8 and below. \$4.00 will be charged for each 1/2 hour or any portion thereof.

Personnel GS-9 and above. \$10.00 will be charged for each 1/2 hour or any portion thereof.

PLUS

o Computer System Time. Charges will be made for actual computer resource usage as indicated on the computer run printout, when available.

o Other Search Costs. Other search costs may include, but are not limited to, computer system time, contractor programming time, and the transportation of records (when required as a part of the search). These should be charged at the actual direct cost to EPA.

2) Review Time. Review time is the time spent examining records responsive to a request to determine whether any portion of the records should be withheld. It also includes the process of excising and otherwise preparing a document for release. Review time can only be charged to commercial users. (NOTE: Review time does not include the time spent resolving legal or policy issues regarding the application of exemptions).

Personnel GS-8 and below. \$4.00 will be charged for each 1/2 hour or any portion thereof.

Personnel GS-9 and above. \$10.00 will be charged for each 1/2 hour or any portion thereof.

3) Duplication Costs

o Paper Copy of Paper Original. 15 cents per copy.

o Computer Printout. 15 cents per page.

o Other Duplication Costs. Other duplication costs may include, but are not limited to, the

reproduction of photographs, microfilms, microfiche, or magnetic tapes; computer printouts; and the transportation of records (when required in order to reproduce documents). These will be charged at the actual direct cost to EPA.

NOTE: Two-sided copying is considered 2 copies or 30 cents.

- 4) Certification or Authentication of Records. \$25.00 will be charged per certification or authentication regardless of the volume of records being certified or authenticated.

g. **Costs not chargeable.** No charge may be made:

- 1) for the delivery of records to the requester (e.g. mailing costs).
- 2) for the time spent purging documents of exempt information (except for commercial use requests).
- 3) for the time spent duplicating records (this is included in the 15 cents per copy charge).
- 4) for preparing and reviewing the information request response.
- 5) for materials prepared for free distribution to the public. A charge for duplication may be made when printed copies are exhausted and additional photocopies are necessary.
- 6) for responding to a request by an individual for one copy of a record retrievable by the requesting individual's name or personal identifier from a Privacy Act System of records.

h. **Assure Payment of Fees.** If the action office estimates that the request would require payment of fees equal to or greater than \$25.00, and a fee waiver has not been requested, (see Section 2, page 4-14), the action office should see if the requester's letter assures that fees will be paid up to the estimated amount.

If the letter does not provide the assurance of payment, the action office should check with the requester (by telephone if possible) to see if he/she agrees to pay up to the estimated amount. Normally, the requester is not required

to make the actual payment in advance (see section i. below).

NOTE: The requester may wish to modify the request and limit the records sought to bring the fees to an amount he or she is willing to pay. Action offices should be prepared to assist requesters in modifying their requests. In having a requester assure payment of fees, observe the following guidelines:

- 1) If the final fees to be charged exceed the amount agreed to by the requester, contact the requester again to obtain a revised assurance to pay.
- 2) All discussions with the requester concerning fees should be documented in writing by the action office (offices may want to document such conversations using Conversation Record Form, OF-271).
- 3) The records may be released only after the requester has agreed (verbally or in writing) to pay the fees.
- 4) Time used by the action office to secure pre-payment or assurance of payment is excluded from the mandatory 10-workday response period.
- 5) The action office must keep the appropriate Information Office apprised of all actions taken with respect to the payment of fees. This includes furnishing a copy of all correspondence to the Information Office.

i. **Prepayment of Fees.** US Policy: An action office may require a requester to make a prepayment of fees equal to the estimated amount only if:

- 1) a requester has previously failed to pay a fee in a timely fashion; see Section 4, page 4-23 on Delinquent Requesters), or
- 2) the action office estimates or determines that the actual amount of fees will exceed \$250.00 and the requester has no history of payment. If the prepayment is not received within 30 days after the date of billing, the request will not be processed and will be closed. (NOTE: If the fees will exceed \$250.00 and the requester has a history of prompt payment of fees, the action office will notify the requester of the anticipated charges and obtain an assurance of

payment. If no assurance is given, the request will not be processed and will be closed).

j. Billing Requesters

this is how billing is handled by US EPA:

- 1) **Billing Procedures.** If the requester has assured payment of fees, the action office shall determine the fees, complete the Bill for Collection (EPA Form 2505-4) and enclose it with the response letter and requested records. The Bill for Collection Form must be typed and completed as follows:

- o Enter U.S. Environmental Protection Ministry in the block captioned "Bureau/Office for Remittance Payable."

- o Enter the "lock box" address in the block captioned "Address for Mailing Payment." (See Lock Box Addresses under Section j.4, page 4-13.)

- o Enter the assigned RIN number in the block captioned "Bill No."

- o Enter the date of response in the block captioned "Date." (The Bill for Collection should be dated the same date as the reply letter.)

- o Enter the name and address of the requester in the inset block under the heading "Payer."

- o In the block under the heading "Description," type "FREEDOM OF INFORMATION ACT PAYMENT REQUEST." Give all the details relating to information requested and fees charged for search, review or duplicating records (as appropriate) including such items as: computer system time; contractor computer programming time; reproduction of photographs, microfilms, or magnetic tape; computer printouts; and transportation of records.

- o Enter the total amount of payment requested in the columns under the heading "Amount Due."

- o Enter, at the bottom of the form, the name and telephone number of the responsible official to contact if there are any questions.

- o Include with the bill the Fee Schedule and Payment and Procedures form.

- o Make sure to remind the requester in the response letter to refer to the RIN number when paying the bill.

A Sample Bill for Collection Form is attached at Appendix II.

2) Simultaneously Distribute the Bill for Collection as follows:

- o Mail the original to the information requester along with the prompt payment procedures form, reply letter and records.

- o Forward copies to the appropriate Headquarters Financial Management Office (Attention: Accounts Receivable) (see Contact List, Appendix VI) and to the appropriate Freedom of Information Office together with two copies of the response letter.

- o Retain a copy together with a copy of the response letter, request letter and other documents for action office files.

3) Billing for Prepayment. If the requester has not paid timely or has no history of payment and the action office estimates the fees will exceed \$250.00, an advance payment may be requested before proceeding with the search for records (see sample letter H, Appendix I).

Ask the requester to please include the RIN number on the check or money order.

If after 30 days the action office has not been notified by the Financial Management Office of receipt of advance payment, the action office should call the Financial Management Office and confirm that no payment has been received. The action office shall close the file on the request and forward a written notification to the appropriate Freedom of Information Office and the appropriate Financial Management Office.

If the advance payment is more than the actual cost, a refund shall be made in accordance with

the procedures described in Section j.6,
page 4-14.

- 4) Method of Payment. All payments shall be in the form of a check or money order payable to the "U.S. Environmental Protection Ministry."

ADDRESSES FOR PAYMENTS

[insert addresses here]

- 5) Tracking Payments. [insert procedures for tracking payments]

- 6) Refund of Payment. If a refund is due, the action office shall notify the appropriate Financial Management Office and the appropriate Freedom of Information Office in writing (see sample memo K, Appendix I). Upon receipt of written notification from the action office that a refund is due, the Financial Management Office initiates a refund and prepares EPA Form 2500-3, General Ledger Code Sheet, to record the transactions in the accounting system. As a matter of policy, refunds of amounts under \$1.00 are not issued unless specifically requested.

2. PUBLIC INTEREST FEE WAIVERS OR FEE REDUCTIONS

a. **General Requirement.** The Information Law provides that documents shall be furnished without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

b. **Fee Waiver Policy.** Requesters asking for a fee waiver or reduction must present information in support of such a request. The mere fact that a fee waiver or reduction has been requested does not automatically mean that a fee waiver or reduction should be granted.

c. **Procedural Guidelines**

- 1) Initial Decision on Waiver. The action office assigned responsibility for responding to an initial request, in conjunction with the

Information Office and legal office if guidance is needed, makes the initial decision on any request for a public interest fee waiver or reduction. This decision requires full understanding of the records being requested.

- 2) Obtain Needed Information. The Information Office will communicate with the requester if additional information is needed to determine whether the fee waiver or reduction is to be granted (see Section 2.e, page 4-16 and sample letter I, Appendix I). Upon receipt of additional Information the Information Office will send a copy to the action office and coordinate the fee waiver determination.
- 3) Documentation. A decision to deny a fee waiver request or to grant only a portion of the fee waiver request (a fee reduction) must be promptly communicated to the requester by telephone if possible, with subsequent written documentation. Any fee waiver request denial must include the reason for the denial and mention the right to appeal (see sample letter J, Appendix I). The requester should be informed that if an appeal is made, the appeal letter should be addressed to the Ministry Information Officer.
- 4) Multiple Copies. The Ministry will consider waiving or reducing fees only for single copies of documents. The Ministry is not legally required to make multiple copies. If additional copies are requested and are provided at the Ministry's discretion, full duplication fees will be charged.
- 5) Delays. The decision to grant or deny a fee waiver request may be delayed if it is necessary to identify, by searching, the records requested.
- 6) Waiver Requests Must Be Written. The requester must ask for the waiver or reduction of fees in writing. The Ministry has no responsibility to ask a requester if a fee waiver is desired.
- 7) Precedents. FEE WAIVER DETERMINATIONS ARE MADE ON A CASE BY CASE BASIS. The granting of a fee waiver for one request does not mean that a fee waiver will automatically be granted on a later, related request.

- 8) Voluminous Records. When a request involves a voluminous amount of material and a fee waiver is requested, the action office should consider asking the requester to review releasable records at an EPA location convenient to the requester and the Ministry, or consider tailoring the request to only those records actually sought.

d. **Assistance in Making Decisions.** Action offices wishing additional guidance on the Ministry's public interest fee waiver policy should contact their Information Coordinator or Information Officer. If additional consultation is needed, the action office and Information Coordinator or Information Officer should contact the legal office.

e. **Substantive Criteria for Fee Waivers.** Requests for public interest fee waivers or reductions must be decided on a case-by-case basis. A request for a reduction or waiver of fees can only be granted if it meets the following two requirements:

- 1) disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of government activities and operations and
- 2) it is not primarily in the commercial interest of the requester.

This section discusses how to administer a U.S. legal/policy issue:

The six enumerated factors elaborated upon below are those which the new statutory standard, by its plain language, requires action offices to take into consideration in determining whether the two basic requirements for a fee waiver or reduction are met. A careful analysis of the factors, in sequence, is necessary to lead to a proper determination of whether a request satisfies the statute's specific "public interest" requirement.

- 1) The Subject of the Request: Whether the Subject of the Requested Records Concerns "the Operations or Activities of the Government."

The subject matter of the requested records must specifically concern identifiable operations or activities of the federal government.

In most cases records possessed by EPA will likely

meet this threshold. There are cases in which requested records do not directly concern government operations or activities, and therefore would fail to meet it. Requests seeking records for their intrinsic content rather than their value with respect to specific government operations or activities, are not usually expected to contribute to public understanding of those operations or activities.

2) The Informative Value of the Information to be Disclosed: Whether the Disclosure is "Likely to Contribute" to an Understanding of Government Operations or Activities.

This requires an analysis of the substantive content of the disclosable portions of the requested records in order to determine whether their disclosure will in fact be informative regarding the particular government activities or operations that are connected to the subject matter of the request. The action office is in the best position to make this determination.

If the records (or record portions) which can be released in response to that request contain nothing that is meaningfully informative on government operations or activities, then the requested FOIA disclosure would not contribute to an understanding of them. The foundations for a proper fee waiver analysis must be a close appraisal of the Information to be disclosed with careful attention to the potential that it holds for contributing to the public understanding of government operations or activities.

If the requested Information is already in the public domain in substantially identical form, then disclosure of the Information would not be likely to contribute to an understanding of government operations or activities, as nothing new would be added to the public record.

3) Contribution to Understanding of the Subject by the Public Likely to Result from Disclosure: Whether Disclosure of the Requested Information will Contribute to "Public Understanding."

Will disclosure contribute to the understanding of the public at large, as opposed to the individual

understanding of the requester or a narrow segment of interested persons. The proper focus must be on the contribution to public understanding, rather than personal benefit to be derived by the requester. Thus, a requester's indigence, for example, does not entitle him to a fee waiver; there must be a credible showing of a contribution to the public's understanding that would result from the disclosure.

A requester's identity and qualifications (e.g., expertise in the subject area and ability and intention to disseminate the information to the general public) should be evaluated. Specialized knowledge is often required to extract, synthesize and effectively convey information to the public and requesters vary in their ability to do so. Where not readily apparent, requesters should be asked to describe with specificity their qualifications, the nature of their research, the purpose for which they intend to use the requested information, and their intended means of dissemination to the public.

Bare assertions by requesters are insufficient evidence that a contribution to understanding by the general public will ultimately result from a disclosure. Generally, representatives of the news media will be able to satisfy this statutory requirement.

4) Significance of the Contribution to Public Understanding: Whether the Contribution to Public Understanding of Government Operations or Activities Will be "Significant."

Finally, will an identified contribution to public understanding of government operations or activities will be a "significant" one, i.e., such that the general public's understanding of the subject matter in question likely will be enhanced by the disclosure to a significant extent.

This final step in the "public interest" analysis requires an Ministry to focus as realistically as possible on the precise nature of the public contribution likely to result from a disclosure. It involves an assessment of the likely impact of the disclosure on the public's understanding of the subject in question, as compared to the level

of public understanding of that subject existing prior to the disclosure.

If the action office determines that the likely contribution to public understanding is significant, then the "public interest" requirement for fee waiver determinations is fully satisfied.

Once an action office is satisfied that the first requirement for a fee waiver has been met, the statute then requires a determination of whether disclosure of the requested information is primarily in the commercial interest of the requester.

5) The Existence and Magnitude of a Commercial Interest: Whether the Requester has a Commercial Interest that Would be Furthered by the Requested Disclosure.

Does the request involve any commercial interest of the requester and, if so, determine does the requester's commercial interest outweighs the public interest. A "commercial interest" is one that furthers a commercial, trade or profit interest as those terms are commonly understood.

Where an action office reasonably believes that such circumstances suggest the existence of a commercial interest in disclosure, the requester should be given an opportunity in the administrative process to provide further information rebutting such reasonable inferences or clarifying the circumstances of the request where necessary.

Where a commercial interest is found to exist, and it would be furthered through the disclosure, the magnitude of that commercial interest must be assessed.

6) The Primary Interest in Disclosure: Whether the Magnitude of the Identified Commercial Interest of the Requester is Sufficiently Large, in Comparison with the Public Interest in Disclosure, that Disclosure is "Primarily in the Commercial Interest of the Requester."

Once it has been determined that the requester has

a commercial interest, the action office must then determine whether disclosure of the information would be "primarily" in that interest. This requires a balancing of the requester's commercial interest against the public interest in disclosure.

If the public interest can fairly be regarded as outweighing the requester's commercial interest, a fee waiver or reduction should be granted.

For example, although newsgathering organizations usually have a commercial interest in obtaining information, the traditional process of newsgathering and dissemination by established news media organizations, as a rule, should not be considered to be "primarily" in their commercial interest. On the other hand, the disclosure of Ministry records to data brokers or others who compile and market government information for direct economic return can more readily be considered as primarily in the commercial interests of the requester, depending on the nature of the records and the exact circumstances of the enterprise.

f. **Reduction in Fees.** If only a portion of the requested records for which a fee waiver has been requested will meet the criteria for granting a waiver, a reduction in fees may be granted. Examples of when a reduction in fees would be appropriate include:

- 1) Part of the records may already be in the public domain;
- 2) Some of the records may relate only to the personal interests of the requester;
- 3) Some records would have little or no value to the public if disclosed; or
- 4) Some records may involve a subject that is not of public interest.

Fees in these cases should be prorated based on the percentage of records that meet the fee waiver criteria.

h. **Fee Waiver or Fee Reduction Appeals.** When an action office denies a request for a public interest fee

waiver or reduction, the requester must be informed in writing of the decision and of the right to appeal.

3. ADMINISTRATIVE FEE WAIVERS

this section reflects U.S. EPA policy (the policy is under review and may be changed):

a. **Fees Less Than \$25.00 Are Waived.** EPA does not collect fees totaling less than \$25.00 per request. This reflects the EPA's determination that the cost to the government of billing and recording the payment of FOIA fees is at least \$25.00. If the total fee is less than \$25.00, the Ministry's response should include a statement that the fees are waived as de minimis.

b. **Difference Between Advance Fees and Final Fees Is Less Than \$25.00.** If the difference between the advance fees and the actual fees is less than \$25.00, the difference is waived and not billed. This reflects the Ministry's determination, in accordance with [insert appropriate legal citation], that the costs of collecting the remaining fees would exceed the amount outstanding.

c. **Each Request Is Separate.** As a general rule, each written request for records will be viewed as a separate request for fee calculation purposes. However, in cases in which it appears that a requester has divided the request into several parts in an attempt to avoid paying fees, the parts may be considered together for billing purposes. The parts of the request should relate to records existing in the Ministry at the time of the first part of the request.

4. DELINQUENT REQUESTERS

Requesters who have not submitted payment within 60 days are considered "delinquents". The Information Offices will maintain and share lists of delinquents. If a requester whose name appears on the delinquent list makes a new request, the Information Office shall inform the requester that EPA will not process the request until payment of the overdue fee from the earlier request is submitted (see sample letter G, Appendix I).

CHAPTER 5: RELEASING RECORDS

1. WHO MAY RELEASE RECORDS

a. **Authorized Officials.** [name the specific ranks of officers] are authorized under [insert appropriate legal citation] of the Ministry's Information Act regulations to issue initial determinations to release records in response to information requests.

b. **Re-delegation of Authority.** For responses when records are to be released in full, the officials named above may re-delegate their authority downward to any level of Ministry staff. Chapter 1, Section 7.a, describes the re-delegation process.

2. WHAT MAY BE RELEASED

a. **Presumption to Release.** [Hungary] [Slovenia's] information law is intended as a disclosure law, not a withholding law. There should be a presumption in favor of releasing information. Information must be released unless it falls into one of the nine exemptions or the exclusions (covered in Chapter 7).

- o All releasable records are subject to public disclosure on request, regardless of whether the requester has shown any justification or need for the documents requested.
- o Some information that is legally exempt is, by government policy, normally released to the public. Such discretionary release is discussed in Chapter 9.

b. **Existing Records.** Only existing Ministry records are subject to release. Offices need not create records or compile new information to respond to an information request.

c. **Cut-Off Date for Search.** Ordinarily, the Ministry is responsible for releasing only those records that exist as of the date of receipt of a request by the Information Office.

d. **Examples of Releasable Records**

- 1) As a general rule of thumb, the following should

be released: final orders and opinions in administrative actions; official policy statements, interpretations and guidelines that have been adopted by the Ministry; official government manuals and similar instructions; and job position descriptions.

- 2) The type of document per se is not the sole factor in determining whether records should be released to the public. Each document--e.g., memo, drafts, notes--needs to be analyzed on its own merits for releasability.

e. **Consultation.** If there are any questions concerning a document's releasability after reading Chapters 6 and 7, consult with the appropriate Information and/or legal office.

3. TIME FRAME FOR RELEASING RECORDS

U.S. policy/law:

a. **10-Workday Time Limit**

An initial determination to release a requested record must be made and a letter mailed to the requester by the tenth workday after receipt of a request by the Information Office. While this does not mean the requested record must be released by that date, (e.g., if copying is not yet completed), the record should be forwarded to the requester promptly thereafter.

b. **Extensions.** Under [insert appropriate legal citation] the 10-workday time limit may be extended up to an additional 10 workdays if it is "absolutely necessary" because of:

- o the need to search for and collect records from field or other separate offices;
- o the need to search for, collect and examine a voluminous amount of information;
- o the need to consult with another Ministry or office within the Ministry.

If an extension is necessary, the responsible action office should notify the appropriate Information Office and then contact the requester in writing (see sample letter L, Appendix I) prior to the end of the initial 10-workday response period, informing him/her of the extension, why it is necessary and when the office expects to issue its determination. A copy of this letter should be sent to the

appropriate Information Office and Program Information Coordinator.

c. **Legal Recourse.** All government personnel responding to information requests should bear in mind that if a request is not answered within 10 workdays (or 20 workdays if extended), the requester may initiate legal action.

4. **PREPARING RELEASE LETTERS**

a. **Basics.** Every government information release letter should:

- o be cordial and convey an attitude of cooperation;
- o include the applicable RIN number;
- o include an itemized enclosure list; or
- o include necessary cc/bcc information for recordkeeping purposes;

b. **Sample Release Letter.** A sample full release letter, acknowledging a positive determination and enclosing the requested record(s) and index, is included at sample letter M, Appendix I.

c. **Sample Release Letter Without Records.** When the requested record(s) cannot be released simultaneously with the release determination, language to that effect should be included in the release letter. A sample release letter without records is included at sample letter N, Appendix I.

5. **RECORDKEEPING**

[set our procedures for retaining and storing copies of response letters.]

CHAPTER 6: WITHHOLDING RECORDS

1. WHO MAY WITHHOLD RECORDS

a. **Authorized Officials.** The authority to make initial determinations to withhold records is delegated to [specify specific levels by title].

2. WHAT MAY BE WITHHELD

This section discusses U.S. law exemptions; this should be modified to fit Hungarian/Slovenian law:

a. **Exemptions to the right to obtain information.** Records must be released unless they fall into one or more of the exemption categories established by the law.

b. **Partial Denial.** If records contain both exempt and non-exempt information, the non-exempt information must be disclosed if it is reasonable and possible to separate out the exempt material, and the necessary deletions can be made without making the record unintelligible. Section 6 of this chapter (page 6-6) sets out the procedures for partial denial.

c. **Discretionary Release.** If a record in EPA's possession does not fall into one of the exemption categories or exclusions, its release is mandatory. If the record is legally exempt by virtue of Exemption 2, 5 or 7 (with the exception of 7(C) or (D)) of the Act, it nonetheless may be released at the Ministry's discretion (see Chapter 9).

3. PRIOR DISCLOSURE

a. **Effect of Prior Disclosure.** If a document has already been disclosed to the public, depending upon the circumstances of the release, that fact may impair the ability of the Ministry to withhold the records in response to a future request, even if an exemption would otherwise apply.

In general, once a record has been official released in response to an information request (even mistakenly), that record cannot later be withheld from a subsequent requester. An exception would be where, for example, confidential business information can be released to the business that submitted the information, but would still be withheld from other requesters.

b. **General Rules Regarding Prior Disclosure**
U.S. Policy:

- 1) Circulation of records within an Ministry or between Ministries (i.e. solely within the government) does not prohibit the Ministry from subsequently withholding the records.
- 2) Disclosure of predecisional and deliberative records to advisory committees or to the Congress does not prevent future withholding.
- 3) When an Ministry is compelled to release a document under limited and controlled conditions (e.g., release of documents under protective order in an administrative proceeding), it is not barred from later invoking applicable exemptions.
- 4) Where a prior disclosure has fulfilled a legitimate government purpose (e.g., disclosure of enforcement information to a delegated State), a waiver has not necessarily occurred and the records may be withheld.
- 5) Where a prior disclosure was unauthorized (e.g., a "leak"), a waiver has not occurred and the records may be withheld.

4. TIME FRAME FOR DENYING REQUESTS

a. **10-Workday Time Limit.** An initial determination to deny requested records must be made and mailed to the requester by the tenth working day after receipt of a request by the information Office.

b. **Extensions.** As in the case with releasing records, the 10-workday limit may be extended for up to an additional 10 workdays while considering withholding records if it is "absolutely necessary" because of:

- o the need to search for and collect records from field offices or other separate offices;
- o the need to search for, collect and examine a voluminous amount of information; or
- o the need to consult with another Ministry or office of the Ministry.

If an extension is necessary, the responsible action office should contact the requester in writing (see sample letter L, Appendix I) prior to the end of the initial 10-day

response period, informing him/her of the extension, why it is necessary, and when the office expects to issue its determination.

c. **Legal Recourse.** All government personnel responding to information requests should remember that if a request is not answered within 10 workdays (or 20 workdays if extended), the requester may initiate legal action.

5. **DENIAL LETTER**

a. **Basics.** Every Ministry information denial letter should:

- 1) be cordial and convey an attitude of cooperation, even if the response is a denial;
- 2) include the applicable document tracking (RIN) number;
- 3) include an itemized list of the withheld records, a reference and summary of the applicable Information Act exemption(s) for each (use the statute for reference purposes), and any additional information that may help the requester understand the Ministry's denial. The itemized list should normally include the type of record, the author's name (the "to" and "from" in the case of letters and memoranda), the date, the subject, the number of pages, the specific statutory exemption(s), and the reason(s) for withholding.

NOTE: An itemized index should not be included if there is concern that the denial may disclose the existence or non-existence of records, see Section 5.c below.

If Exemption 5 or 7 is the basis for the denial (see Chapter 7), the letter should specify the particular privilege or Exemption 5 relied upon (e.g., the deliberative process privilege) or the particular sub-section of Exemption 7. Ministry personnel have a duty to apprise the requester of the bases for the withholding.

In the case of a large number of similar records, the records may be listed by general category (for example, 30 bills of lading submitted by company X relevant to the XYZ Superfund site);

- 4) include the name and position of the government employee responsible for denying a request, if that person is different from the signer of the determination letter. NOTE: This requirement is particularly important in instances where a request requires multiple action directed by a lead office;
- 5) state that the requester has the right to appeal the initial denial by sending a written appeal to the Ministry Information Officer within 30 days of receipt of the denial letter;
- 6) include the signature and title of the duly authorized Ministry employee issuing the denial (generally at the [insert appropriate title] level or higher); and
- 7) include necessary cc/bcc information for record-keeping.

b. **Special Circumstances.** In some instances, merely revealing to the requester the existence or nonexistence of records would mean disclosing information that an exemption is designed to protect. Under these circumstances action offices should avoid disclosing the existence or nonexistence of the records requested. They should issue a denial stating that the request is denied because "either the records do not exist or they are exempt from mandatory disclosure under the applicable legal provision." (See Chapter 7, "Glomar", page 7-9.) U.S. policy: Do not issue such a determination without the concurrence of the Legal Office.

In certain circumstances action offices may deny the existence of law enforcement records or information that are excluded from the disclosure requirements of the Information Act (see Chapter 7, "Exclusions" page 7-14). U.S. policy: Do not issue such a determination without the concurrence of the Legal Office and the Ministry of Justice.

c. **Sample Denial Letter.** A copy of a sample denial letter is included at sample letter O, Appendix I.

d. **Reminder.** Since denial letters usually form the basis of the Ministry's position during subsequent appeals (and often in litigation as well), they should be clear, well-reasoned and comprehensive.

6. PARTIAL DENIAL OF RECORDS

a. **Policy.** Some requested documents contain both exempt and non-exempt information. In such cases, the non-exempt portion(s) should be forwarded to the requester after the exempt portions have been deleted.

For example, records or information compiled for law enforcement purposes that contain both exempt and non-exempt information should be purged of the exempt information, and the remainder released. Delete only those portions of the record that would interfere with or harm the government's enforcement action and release the portions that would not harm the enforcement action.

b. **Guidelines**

- 1) [insert appropriate legal citation] states that all "reasonably segregable" material should be disclosed.
- 2) Deletions of portions of a record of less than a sentence in length are encouraged if the meaning of the sentence is not obscured.
- 3) Any information otherwise disclosable that is "inextricably intertwined" with exempt information may be withheld.
- 4) To determine which portions of a record must be deleted, see the discussion of the Information Act exemptions in Chapter 7.
- 5) Do not purge proprietary information that belongs to the specific requester. For example, confidential business information is generally available to the submitter of the information. Personal information about an individual (such as a Social Security number) is generally available to that individual.
- 6) Doubts about the intelligibility of a document after all necessary deletions have been made should be resolved in favor of release.
- 7) Normal fees should be charged for those requests where records are denied or partially denied (see Chapter 4, Section 1.f).

c. **Sample Partial Denial Letter.** Guidelines under Section

5.a. of this chapter, should be followed in preparing a partial denial letter. A sample partial denial letter is included at sample letter P, Appendix I.

d. **Reminder.** Like full denial letters, partial denial letters usually form the basis of the Ministry's position during subsequent appeals (and often litigation as well). They should, therefore, be clear, well-reasoned and comprehensive.

7. **RECORDKEEPING**

a. [insert Hungarian or Slovenian rules concerning keeping copies of information act responses]

CHAPTER 7: EXEMPTIONS AND EXCLUSIONS

1. OVERVIEW

The Information Act establishes [fill in correction number] exemptions which provide the only basis for withholding information. The exemptions may apply singly or in combination to a given request. The exemptions are listed in the box below and discussed at length in the body of the chapter. If you have questions concerning whether specific documents may fall under any of the exemptions, consult the appropriate information or legal office.

U.S. law/policy:

	Exemption 1 - Matters of National Defense or Foreign Policy
	Exemption 2 - Internal Ministry Rules
	Exemption 3 - Information Exempted by Other Statutes
	Exemption 4 - Trade Secrets, Commercial, or Financial Information (Confidential Business Information)
	Exemption 5 - Privileged Inter- or Intra-Ministry Memoranda
	Exemption 6 - Personal Privacy
	Exemption 7 - Records or Information Compiled for Law Enforcement Purposes
	Exemption 8 - Records of Financial Institutions

2. THE EXEMPTIONS

a. **Exemption 1 - Matters of National Defense or Foreign Policy.** This exemption authorizes a Ministry to withhold information concerning national defense or foreign policy.

- 1) To qualify under this exemption, the information

must fall under the criteria established by [insert relevant legal authority] to be classified in the interest of national defense or foreign policy.

- 2) [insert any special rules about classification]

b. **Exemption 2 - Internal Ministry Rules.** This exemption protects records "related solely to the internal personnel rules and practices of a Ministry."

- 1) Internal matters of a relatively trivial nature for which there is no substantial and legitimate public interest in disclosure are encompassed under this exemption. Examples include: documents governing staff use of parking facilities; statements of policy as to sick leave; and file numbers, routing stamps and other administrative markings. The rationale for such withholdings is to prevent unwarranted administrative burden.
- 2) As a matter of policy, a Ministry can decide to release records of a trivial nature, even though such records fall within a legal exemption (see Chapter 9).

c. **Exemption 3 - Information Exempted by Other Statutes.** Under this exemption, information that is specifically exempted from disclosure by other laws is also exempt from disclosure under the Information Disclosure Act [insert appropriate legal name of law or citation].).

- 1) [if relevant, provide example and explain the details].
- 2) U.S. rule: The statute in question must (1) leave no discretion as to the requirement that matters be withheld from the public or (2) establish particular criteria for withholding or refer to particular types of matters to be withheld.

d. **Exemption 4 - Trade Secrets, Commercial or Financial Information (Confidential Business Information).** This exemption authorizes the withholding of trade secrets and commercial or financial information obtained from a person and privileged or confidential. [Hungarian] [Slovenian] regulations elaborating on Exemption 4 are located at [insert name of law or regulation]. See Chapter 8 for a detailed discussion of

procedures to be followed in responding to requests involving Confidential Business Information (CBI).

e. **Exemption 5 - Privileged Inter-Ministry or Intra-Ministry Memoranda.** This exemption allows the Ministry to withhold from disclosure inter-Ministry or intra-Ministry memoranda or letters which fall under one or more of the following privileges:

these reflect U.S. law and policy:

- o the deliberative process privilege;
- o the attorney work-product privilege;
- o the attorney-client privilege;
- o the government commercial information privilege;
- o the expert witness report privilege;
- o the investigative report privilege; and
- o the confidential informant privilege (see also Exemption (b)(7)(D)).

1) Ministry Discretion and Waiver. Following is U.S. EPA policy: The government is encouraged to release such documents, unless release would significantly harm the decisionmaking process. All of these privileges may have been waived if the Ministry has disclosed the document to third parties (see Chapter 6, Section 3 on Prior Disclosure).

2) Inter- or Intra-Ministry Records. Exemption 5 only applies to records within or between government agencies.

- o Inter-Ministry Records include only those transmitted between Federal agencies.

- o Intra-Ministry Records are those transmitted within the Environment Ministry and include reports prepared by outside consultants at the request of the Ministry.

3) The Privileges under Exemption 5.

The following details the U.S. rules:

- o The Deliberative Process Privilege. The purpose of this privilege is to protect the quality of the government's decisionmaking process (i.e., to protect against premature disclosure of proposed policies before they are adopted), to encourage candid and frank discussions among government officials, and to avoid premature

disclosure which could mislead the public.

o Predecisional, Deliberative Documents.

Predecisional, deliberative documents are written prior to the Ministry's final decision and usually contain recommendations or express opinions on that decision. These documents typically discuss the pros and cons of adoption of one viewpoint or another. In determining whether a document is predecisional, consider the document's language and its place in the Ministry's chain of decisionmaking. Documents written by a subordinate and transmitted to a superior are more likely to be predecisional than those written by a person with final decision-making authority.

o Drafts of Documents are Often Predecisional.

They must be part of the decisionmaking chain and either (1) contain language which discusses or debates the decision being made, or makes recommendations, such as a memorandum from a subordinate to a superior which discusses the effects and pros and cons of the decision; or (2) represent a tentative expression of the Ministry's position, as in a draft administrative order or memorandum which is being reviewed prior to the adoption of a final Ministry position.

o Factual Portions of Deliberative Process

Documents Must Ordinarily be Released. Purely factual portions of documents must not be withheld, unless they reveal the Ministry's deliberations or involve some subjective opinion. Purely factual portions of these documents must be released if they can be segregated from the remainder of the document (see Chapter 6, Section 6).

o Final and Post-Decisional Documents. Final decision documents and post-decisional documents may not be withheld under the deliberative process privilege. These include post-decisional analyses or explanations of a final decision as well as descriptions of Ministry efforts to enforce current Ministry policies. Documents lose their predecisional status if they are adopted, either formally or informally, as the Ministry's final position on a matter, or

if they are specifically incorporated by reference in a final Ministry decision.

- o Settlement Documents. Some courts have held that documents transmitted between the government and third parties during settlement negotiations are not inter- or intra-Ministry documents, but have indicated much sympathy for withholding such documents from public disclosure for policy reasons. The Department of Justice has indicated that settlement documents may be withheld by agencies at the administrative level, particularly where strong policy interests militating against disclosure are present.

- o The Attorney Work-Product Privilege. This privilege allows the withholding of documents prepared by, or at the direction of, an attorney in anticipation of possible litigation. Litigation need not have commenced but it must be reasonably contemplated. This means that a specific claim must exist that is likely to lead to litigation. The privilege is still applicable after a legal case has ended or even if it was never begun, as long as the documents were prepared in reasonable contemplation of litigation.

Segregable factual materials need not be deleted from attorney work-product documents since the facts are generally intertwined with an attorney's evaluation of the case. The privilege, however, does not extend to purely factual documents unless the documents reflect the results of an attorney's evaluation, or reveal his/her strategy or thought process.

- o The Attorney-Client Privilege. This privilege applies to confidential communications between attorney and client. An attorney-client relationship exists for communications between an Ministry attorney and an Ministry employee. The application of this privilege requires that the communications between the parties be of a confidential nature. The availability of the attorney-client privilege is not limited to the context of litigation. The privilege still applies when this information is disseminated within the Ministry to persons involved with the

matter in question. However, unrestricted distribution within the Ministry would preclude the Ministry from claiming the privilege.

- o The Government Commercial Information Privilege. A privilege is available to the government for information it generates in the process leading up to the award of a contract. This privilege expires once the contract is awarded or upon withdrawal of the contractual offer. An example of this privilege is cost estimates prepared by the government and used to evaluate the construction proposals of private contractors.
- o The Expert Witness Report Privilege. Another privilege that is commonly invoked allows the withholding of records generated by an expert witness.
- o The Investigative Report Privilege. This privilege has been applied to protect witness statements in Inspector General investigations.
- o The Confidential Informant Statement Privilege. Statements obtained from confidential informants such as statements given to the Inspector General by witnesses who have been granted confidentiality, may be withheld.

f. **Exemption 6 - Personal Privacy.** Exemption 6 permits the withholding of all information about individuals in "personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

1. Threshold test: The record must be a personnel, medical or similar file. This is a relatively easy test to meet.
 - o The actual label assigned to the file is of no significance. Nor does the information have to be of a highly sensitive or intimate nature.
 - o If a record can be sanitized so that the identity of the individual cannot be determined from the record itself, or from the record in conjunction with publicly available information, the record is not a similar file and does not meet the threshold test for Exemption 6.

Accordingly, a sanitized copy of the record should be disclosed.

2. Balancing test: Information that meets the threshold test may be withheld under Exemption 6 if the invasion of privacy resulting from disclosure would be clearly unwarranted. To determine this, the individual's privacy interest must be balanced against the public interest in disclosure.

Privacy interest: Encompasses the individual's reasonable expectation of privacy and control over the dissemination of personal information about himself. Individuals have an expectation of privacy with respect to information which, by its nature, is personal, embarrassing or otherwise injurious to the individual.

- o Individuals may have a privacy interest in information which is publicly available, e.g., marital status or home address, but there is no privacy interest in information which is very well known and clearly in the public domain.
- o Businesses and other entities do not have privacy rights.

Public interest: There is a public interest in a particular Ministry record if disclosure of that record sheds light on the operations or activities of the government. The interest is that of the general public in knowing what its government is doing. The information requester's identity, personal motives or interests (including commercial interests) in seeking the information are *not* relevant to the issue of public interest and must *not* be considered in determining if a public interest exists.

Balancing process: First, determine if the individual has any privacy interest in the information. If there is none, the information must be released even if there is no public interest. Second, if there is a privacy interest, determine whether any public interest in the information exists. If both privacy and public interests exist, the competing interests must be weighed against each other and the stronger

interest prevails. If the privacy interest outweighs the public interest, the Information is exempt under Exemption 6 and may not be released in the Ministry's discretion.

3. Glomar: Occasionally a request for information is worded in such a way that it would not be possible to deny the record under Exemption 6 without revealing the very information which is protected under the Exemption. For example, drug counseling records maintained by EPA's Employee Counseling and Assistance Program are normally withholdable under Exemption 6. However, if the government denied an information request for such records in reliance on Exemption 6, it would be revealing the existence of such records, the very information which is protected. To guard against such inadvertent disclosures, the Ministry may provide a "Glomar" response; that is, it would neither confirm nor deny the existence of records in response to all requests for counseling records.
4. Law Enforcement Records: Exemption 6 would normally be applicable to protect the personal privacy of individuals named in law enforcement files if there is no countervailing public interest. Exemption 7(C), which protects personal privacy in the law enforcement context, would also be applicable
5. Personnel-Related Records on Federal Employees: the government frequently receives information requests for personnel-related information on current and former Ministry employees. Government employees have privacy rights with respect to the personal details of their employment and there is frequently little or no public interest in this information. However, other personnel information on government employees is considered available to the public upon request because it has been determined by the courts, other authoritative bodies and/or common practice that there is little if any privacy interest in this information. Many records, such as employee applications and official personnel folders, contain both exempt and non-exempt information. The following lists describe the types of personnel-related information which is frequently subject to information requests and whether such information is customarily considered exempt or not under

Exemption 6.

U.S. policy:

<u>EXEMPT</u>	<u>NOT EXEMPT</u>
Social Security No.	Name/position/organization *
Home addresses & Telephone No.	Office addresses/ Tel. No. *
Salaries in the Private Sector	Fed./State Gov. salaries (past and present)/amounts of awards and within grade increases
Evaluations/appraisals	Position descriptions/job standards
Employment/Education data not related to qualifications for Federal employment	Employment/Education data <u>related</u> to qualifications for Federal employment
Identities of unsuccessful applicants for employment or promotion	Identities of <u>successful</u> applicants for employment or promotion
Recommendations for promotions, awards	
College grades	Approved promotions, awards.

<p>Birth date/Marital status/ similar personal or family data</p> <p>Life/health/charity/thrift savings options and withholding data</p> <p>Citizenship</p> <p>Reasons for terminating past employment</p> <p>Leave records</p>	<p>including employee grade and step</p> <p>Past Federal/State/Military service and dates of service *</p> <p>* With the exception of certain sensitive positions</p>
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9. **Exemption 7 - Records or Information Compiled For Law Enforcement Purposes.** U.S. policy: Records or information compiled for law enforcement purposes need not be disclosed in six specific instances (discussed below).

- 1) Exemption 7(A): Interference with Law Enforcement Proceedings. Records or information compiled for current, pending or anticipated law enforcement purposes may be withheld where disclosure "could reasonably be expected to interfere with enforcement proceedings." Harm to the government's case in court by premature release of evidence or information, or damage to the Ministry's ability to conduct an investigation, constitutes interference under this exemption. Damage to a related or similar enforcement proceeding also constitutes interference.

The government must be able to specifically articulate the kind of harm that would affect its case, for example: premature disclosure of the government's evidence and strategy or the focus of its investigation, and the possibility that potential witnesses and sources of information would be inhibited.

- 2) Exemption 7(B): Deprive a Person of the Right to a Fair Trial. Records or information compiled for law enforcement purposes may also be withheld if their disclosure "would deprive a person of the right to a fair trial or an impartial adjudication."

- 3) Exemption 7(C): Unwarranted Invasion of Personal Privacy. Records or information compiled for law enforcement purposes may be withheld if disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." The public interest in the disclosure of a document must be balanced against the invasion of privacy that would result from disclosure. This exemption pertains to any personal information compiled for law enforcement purposes.

Courts have recognized the danger of damage to an individual's reputation simply because his or her name is mentioned in a record compiled for law enforcement purposes even though he or she is not charged. Such information may be released only

where exceptional interests weigh in favor of disclosure.

Exemption 7(C) is also used to protect the identities of law enforcement officials who are personally involved in compiling records or information for law enforcement purposes, and to withhold the names of informers who may not technically qualify as confidential sources under Exemption 7(D).

- 4) Exemption 7(D): Disclose Identity of A Confidential Source. This allows withholding of information provided by a confidential source even if the information was obtainable by other means.

There is no balancing test used in applying this exemption. To receive protection under this Section, the Ministry must have given sources an express promise of confidentiality, or there must be circumstances from which assurances of confidentiality reasonably may be inferred.

- 5) Exemption 7(E): Reveal Techniques, Procedures or Guidelines. This exemption permits the withholding of records or information compiled for law enforcement purposes that "would disclose techniques and procedures for law enforcement investigations or prosecution, or would disclose guidelines for law enforcement investigation or prosecution if such disclosure could reasonably be expected to risk circumvention of law."

- 6) Exemption 7(F): Endanger Life or Safety of Any Individual. Under this exemption any records or information compiled for law enforcement purposes may be withheld if disclosure "could reasonably be expected to endanger the life or physical safety of any individual." No balancing test is required.

- h. **Exemption 8 - Records of Financial Institutions.** This exemption applies to reports prepared for agencies responsible for the regulation or supervision of financial institutions (such as the Federal Reserve Board).

CHAPTER 8: BUSINESS CONFIDENTIALITY

The rules set out below are U.S. rules. It appears that under current Hungarian and Slovenian rules, it may not be possible to exempt CBI from disclosure, and that the only remedy for mis-use of proprietary information may be a civil law suit. In the event that either country re-thinks this position, the procedures below will be useful and relevant.

1. AUTHORITY

[Hungary's] [Slovenia's] basic rules concerning Confidential Business Information (CBI) are set out in [insert references to relevant laws and regulations]. These special rules incorporate, modify, or replace the basic rules for information gathered under these statutes. When basic rules and the special rules conflict, the provisions of the special rules should be followed.

2. INTRODUCTION

In the course of its work, the government receives information that may be entitled to protection from disclosure for reasons of business confidentiality. In defining what constitutes "confidential business Information," a reasonable definition is found in Exemption 4 [insert legal reference], which allows an Ministry to withhold from disclosure "trade secrets and commercial or financial Information obtained from a person and privileged or confidential."

Under Exemption 4, commercial or financial information is determined to be confidential if its disclosure would be likely to: (1) impair the government's ability to obtain necessary information in the future or (2) cause substantial competitive harm to the person/business from whom the information was obtained. The second test, that of substantial competitive harm, is the one most commonly applied to information in the government's possession because many of our statutes give us the authority to mandate businesses to give us information.

3. ACTION BY EPA OFFICE TO DETERMINE CONFIDENTIALITY

a. **Initial Determination.** An EPA office that possesses information obtained from a business may need to make an initial determination of whether the information is entitled to confidential treatment. This need will arise if a request for the information is received, or anticipated, or if for any other reason the office desires to ascertain the confidential

status of the information. Absent an information request, there is normally no requirement that an office initiate the process of making an initial determination of confidentiality.

Under EPA's regulations, business information may not be disclosed unless EPA has ascertained that there is no claim of confidentiality applicable to the information (or unless a final determination of non-confidentiality has already been made and the appropriate period allowed for comment by the business has ended).

If an examination of business information reveals that, even though no applicable confidentiality claim exists, the affected business might be expected to assert a claim if it knew the Environment Ministry proposed to disclose the information, the Environment Ministry office must contact a responsible official of the business to determine whether the business asserts a claim. The submitter bears the burden of substantiating confidentiality. This inquiry can be made by telephone or equally prompt means, and must inform the responsible official from the business that any claim the business wishes to assert must be brought to the action office's attention by the third working day after such inquiry. The office should keep a record of the result of this inquiry (see [insert appropriate legal reference]).

The action office need not inquire whether a confidentiality claim exists if (1) the business failed to assert a claim at the time the information was provided to the government, as long as the business was notified at that time that failure to assert a claim would mean that the government could make the information available to the public without notifying the business; (2) the business failed to assert a claim after receiving the same notice at some other time; or (3) the business has otherwise waived or withdrawn a claim covering the information.

Except where the information is clearly not entitled to confidential treatment (see section 3.b, below), each business that has asserted a claim should be furnished an opportunity to comment on (i.e., substantiate) its claim, if such opportunity has not been furnished previously (see sample letter Q, Appendix I).

If an information request is pending, the action office should also send the requester an initial determination that the records requested may be entitled to withholding under Exemption 4, and notify the requester that a final confidentiality determination will be issued by the Ministry's legal office (see sample letter R, Appendix I). The

information request is therefore initially denied (see Chapter 6, Section 5).

b. Final Determination (By Action Office). If the EPA action office determines that business information claimed to be confidential "clearly is not entitled to confidential treatment," it may issue a final confidentiality determination and notify the business of its decision by means of the notice procedures outlined in section 4.b, below. (Note that the notice period must expire before the information may be released.)

Such determinations of clear lack of entitlement to confidential treatment may only be made by the action office in such clear-cut cases as, for example, where the office knows that the claimed information is publicly available elsewhere. In such cases, no opportunity to comment need be furnished the business. A copy of any such notice shall be forwarded promptly to the appropriate legal office.

c. Notice of Opportunity to Comment. When the action office determines that business information in its possession may be entitled to confidential treatment (see section 3.a, above), the office shall provide each affected business with notice that the Environment Ministry is making a final confidentiality determination and provide them with an opportunity to comment (if such notice and opportunity have not previously been provided). This manual outlines what is required in connection with such notice, but the action office should consult [insert appropriate regulations or guidance] for specific instructions.

The action office must send the notice by certified mail (return receipt requested), by personal delivery, or by other means allowing verification of the fact and date of receipt. At or about the time the written notice is sent, the action office should also call a responsible official of the business to let that person know that the business should expect to receive the notice shortly and to request that the office be contacted if the notice does not arrive within a few days.

The written notice should ask the business to comment on (i.e., substantiate) specific points regarding its confidentiality claim. Those points are spelled out in [insert reference to specific law or regulation].

If a request for the information prompted the need to determine confidentiality, the period for comments should be

fifteen working days from the time the business received the written notice. In other cases, the action office should establish a reasonable period for comment of not less than fifteen working days from the time of receipt of the notice.

The comment period may be extended at the request of the business (before the comment due date) with approval by the appropriate legal office. However, if an information request for the information is pending, the legal office will not approve an extension, except in extraordinary circumstances, without the consent of all persons making the information request.

The written notice should state that the business's comments will be treated as entitled to confidential treatment if so marked unless already possessed by the Ministry in non-confidential form [reference relevant legal citation]. It should also state that the government will consider a business's failure to furnish timely comments as a waiver of the business's confidentiality claim and that, in such event, the government may release the information in question with no further notice to the business.

If a business's comments have not been received by the specified environment ministry action office by the due date (including any extension), the office should promptly contact the business to inquire whether it was granted an extension of time or whether its comments were lost in transmission. If the comments were lost, duplicate comments should be forwarded immediately by the business (add relevant legal citation if any exists).

When comments are received by the action office, it should forward all relevant materials to the appropriate legal office so that a final determination of confidentiality may be made.

4. FINAL CONFIDENTIALITY DETERMINATION BY LEGAL OFFICE

Final confidentiality determinations are made by the Legal Office in accordance with the criteria set out in [add legal citation]. The Legal Office makes its final determination in accordance with [add legal citation] under which commercial or financial information has been held to be confidential if its disclosure would be likely to either (1) impair the government's ability to obtain necessary information in the future, or (2) cause substantial competitive harm to the person from whom the information was obtained. The government's inquiry usually focuses on the second prong of the test, that of substantial competitive harm, since the

first prong applies only to information voluntarily submitted to the Ministry (i.e., information which the government cannot require).

a. **Final Determination by Legal Office of Entitlement to Confidential Treatment.** If the Legal Office makes a determination that business information is entitled to confidential treatment, it informs the business of its determination, and EPA must maintain the information as confidential. If a request for the information is pending at the time, the Legal Office issues the requester a final determination denying the request [add legal citation].

b. **Final Determination by Legal Office of Non-entitlement to Confidential Treatment.** If the Legal Office determines that business information is not entitled to confidential treatment, it issues a notice to each affected business of the denial of the claim. The notice must state the basis for the determination, that it is a final Ministry action, and that it is subject to judicial review [add legal citation]. The notice must also state that the government will not disclose the information until the tenth working day after the business's receipt of the notice of denial of its claim.

5. PREVIOUS CONFIDENTIALITY OR CLASS DETERMINATION

In some cases, information claimed as Confidential Business Information may be the subject of a previous final confidentiality determination or "class determination". A class determination is a final confidentiality determination issued by the legal office covering certain identifiable items of information and which may be applied thereafter to information falling within the class.

An action office can check with the appropriate legal office to find out whether particular claimed information is the subject of a previous final determination or class determination.

a. **Previous Final Determination.** If a previous final determination exists on particular information, then that determination controls and no further inquiry of the business should be made [add legal citation]. If the determination held that the information was not entitled to confidential treatment, and the appropriate notice was provided the business, the information may be disclosed without further notice. A previous final confidentiality determination may be modified by the legal office under [add legal citation].

6. DISCLOSURE WITH CONSENT OF AFFECTED BUSINESS

Before initiating a confidentiality determination, the government office should consider whether it is possible to obtain the affected business's waiver, modification, or withdrawal of its claim of confidentiality in such a way that will allow disclosure of the needed or requested information without the necessity of a final determination. For example, the action office may be able to obtain the affected business's consent to disclose the useful portion of the information while the government continues to protect from disclosure information that is claimed as confidential but the disclosure of which is not presently needed or requested.

7. DISCLOSURE OF CBI OTHER THAN UNDER FOIA

Business information that is not available to the public because it has been claimed or determined to be CBI may nonetheless be disclosed to certain persons in special circumstances, as set out in [add legal citation] and the modifications in the special rules. For example, the rules state the circumstances under which CBI may be disclosed to other Federal agencies, to authorized representatives, and to the Congress. These provisions of the regulations should be consulted to determine when such disclosures are permitted and the procedures that must be followed. Note especially that certain conditions must be met before CBI may be disclosed to Ministry contractors or subcontractors (and that in some cases such disclosure is not permitted). The special rule provisions for each statute should be consulted.

CHAPTER 9: DISCRETIONARY RELEASE

1. WHEN TO USE DISCRETION TO RELEASE RECORDS

a. **Policy.** As a matter of policy, the Environment Ministry encourages release of records that are legally exempt under [add legal citation] unless an important Ministry purpose is served by withholding the documents.

b. **Procedures.** In making any discretionary release of documents, the standard release procedures outlined in Chapter 5 should be followed carefully.

2. WHEN NOT TO USE DISCRETIONARY RELEASE

a. **Policy.** The Ministry has no discretion to release a record if a court has prohibited the Ministry from releasing the record to the public.

3. DISCRETIONARY RELEASE ON APPEAL

Discretionary release on appeals is discussed in Chapter 10, section 4.c.

CHAPTER 10: APPEALS

1. RIGHT TO APPEAL

Any person whose request for records has been denied in whole or in part by an initial determination may appeal that denial. In addition, a person has the right to file an appeal whenever the Ministry response has indicated no responsive records have been located. (see sample letter O, Appendix I).

2. TIME FRAME FOR RECEIVING APPEALS

U.S. law and policy:

a. **Timely Appeals.** To be timely, an appeal must be mailed to the government within 30 calendar days of the receipt of an initial denial or a no record response.

b. **Untimely Appeals.** Appeals mailed to the Environment Ministry more than 30 calendar days after the receipt of an initial denial or a no record response may be treated either as a timely appeal or as an entirely new information request at the discretion of the Ministry Information Office.

3. TIME FRAME FOR RESPONDING TO APPEALS

a. **20-Day Time Limit.** The Legal Office has 20 workdays from the date the Ministry Information Office receives an appeal in which to issue a written determination stating which of the requested records under appeal shall be disclosed and which shall not be disclosed.

b. **Extensions.** This time limit may be extended up to an additional 10 workdays, unless the total of all such extensions including any used during the initial determination period would exceed 10 workdays.

c. **Backlog.** Due to the Ministry's backlog of information appeals, the Legal Office will apprise the appellant (in writing) of the backlog and the Ministry's policy of processing appeals on a first-come, first-served basis. The backlog letter does not predict an appeal decision date, but indicates that the Ministry will issue its determination as quickly as possible.

4. APPEAL PROCEDURE

a. **Legal Office.** [set out internal government routing procedures when an appeal is received]

b. **Determinations.** The Legal Office makes one of the following legal determinations in connection with every appeal for an existing, located record:

- 1) the record must be disclosed;
- 2) the record must not be disclosed because a statute or provision of the regulations so requires; or
- 3) the record is exempt from mandatory disclosure, but may legally be disclosed at the Ministry's discretion.

c. **Discretionary Release.** [insert internal government procedures for deciding when to make a discretionary release]

5. ISSUING APPEAL DETERMINATIONS

a. **Release on Appeal.** If the Legal Office's determination holds that a record is to be disclosed, the record will be enclosed with Legal Office's determination letter (and Bill for Collection, if fees are assessed) to the appellant.

b. **Appeal Denials.** If the Legal Office's determination is to deny an appeal in whole or in part, the Legal Office sends the appellant a copy of its determination, in which the rationale for withholding the record (or portions of the record) is explained. It also forwards a copy of the determination to the appropriate action office and Information Program Coordinator and sends two copies to the Ministry Information Officer.

6. JUDICIAL REVIEW

a. **Judicial Review.** Whenever the Legal Office issues a determination denying an appeal, or indicating no responsive records exist, it states that the appellant has the right to seek judicial review of the final Ministry decision by complaint filed in the [insert name of appropriate court].

b. **Action Office's Role.** U.S. policy: In the event an appellant files suit against the Ministry under the information law, the Department of Justice represents the Ministry with assistance from EPA attorneys. The action office responsible for responding to the initial request is actively involved in the preparation of submissions to the

court such as affidavits and indices.

CHAPTER 11: ANNUAL REPORT AND RECORDKEEPING

1. ANNUAL REPORT TO CONGRESS [this section sets out responsibilities among government offices if an annual report is required.]

3. RECORDS RETENTION SCHEDULES FOR FILES RELATED TO INFORMATION REQUESTS

Files related to information requests are maintained by calendar year, and should be retained in accordance with [insert appropriate authority for records retention requirements]. The schedules below are maintained by the [insert name of the office in the Ministry that takes this responsibility].

1. MINISTRY AND REGIONAL INFORMATION OFFICES

a. Information Request Control Files.

Files maintained for control purposes in responding to requests, including registers and similar records listing date, nature, and purpose of request and name and address of requester.

- | | |
|---|---|
| 1. Registers or listing.
(e.g., log) | Destroy 6 years after date of last entry. |
| 2. Other files. | Destroy 6 years after final action by the Ministry or after final adjudication by courts, whichever is later. |

b. Information Request Report Files.

Recurring reports and one-time information requirements relating to the Ministry implementation of Information Act requirements, including

annual reports.

Permanent.

1. Annual reports at Departmental/Ministry level.

Destroy when 2 years old or sooner if no longer needed for administrative use.

2. Other reports.

c. Information Act
Administrative Files.

Destroy when 2 years old or sooner if no longer needed for administrative use.

Records relating to the general Ministry implementation of its information responsibilities, including notices, memoranda, routine correspondence, and related records.

2. HEADQUARTERS AND REGIONAL PROGRAM OFFICES (Action offices)

a. Information Requests
files.

Files created in response to requests for information under the Information Act consisting of the original request, a copy of the reply thereto, and all related supporting files which may include official file copy of requested record or copy thereof.

- 1) Correspondence and supporting documents
(EXCLUDING the official file copy of the records requested

if filed herein).

- o Granting access to all the requested records. Destroy 2 years after date of reply.
 - o Responding to requests for non-existent records; to requesters who provide inadequate descriptions; and to those who fail to pay Ministry reproduction fees.
 - Request not appealed. Destroy 2 years after date of reply.
 - Request appealed. Destroy 6 years after final determination by Ministry or 3 years after final adjudication by courts, whichever is later.
 - o Denying access to all or part of the records requested.
 - a. Request not appealed. Destroy 6 years after date of reply.
 - b. Request appealed. Destroy 6 years after final determination by Ministry or 3 years after final adjudication by courts, whichever is later.
- 2) Official file copy of requested records. Dispose of in accordance with approved Ministry disposition instruction for the related records, or with the related

information requests,
whichever is later.

3. LEGAL OFFICE

a. Appeals from Ministry decisions about information requests.

Files created in
responding to
administrative appeals
under the Information Act
for release of
information denied by the
Ministry, consisting of
the appellant's letter, a
copy of the reply
thereto, and related
supporting documents,
which may include the
official file copy of
records under appeal or
copy thereof.

Destroy 6 years after
final determination by
Ministry or 3 years after
final adjudication by
courts, whichever is
later.

- 1) Correspondence and
supporting documents
(EXCLUDING the file
copy of the records
under appeal if filed
herein).

Dispose of in accordance
with approved Ministry
disposition instruction
for the related record,
or with the related
information requests,
whichever is later.

- 2) Official file copy of
records under appeal.

Information Act files are maintained by calendar year and
should be retained in accordance with the Ministry's Records
Retention Schedules. The Schedules are included in Appendix
V.

NOTE: Once a record is responsive to an information request,
the records retention schedules for information requests
dictate how long that record must be retained by the action
office.

APPENDIX I: SAMPLE LETTERS AND FORMS

SAMPLE LETTER A

RESPONSE TO REQUEST FOR FUTURE RECORDS

(insert correct date)

Re: Information Request # [RIN]

Dear Mr./Mrs./Ms. (name of requester):

This is in response to your request for information pursuant to [insert name of appropriate law] dated (date of request), regarding (nature of request).

The [insert appropriate name of law] Act does not require the government to place a requester's name on a distribution list for automatic receipt of certain kinds of records as they become available. The Act only establishes requirements for disclosure of existing records.

However, you may submit future requests under the [insert appropriate legal reference] Act, if you desire to ascertain whether such records have been created and are available. Any such letter(s) should reference the period of time for which records are being requested.

Sincerely,

Signature and Title

bcc: Ministry Information Office

SAMPLE LETTER B

CLARIFYING A VAGUE OR OVERLY BROAD REQUEST

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This letter concerns your [insert appropriate name of legal] Act request of (date of request), regarding (nature of request).

In reviewing your request, we find your description of the records is not sufficient to allow us to identify and locate the records you seek. We have tried unsuccessfully to reach you by telephone to clarify your request. We cannot process your request without further information. Please contact (name of employee) of my office at (telephone) at your earliest convenience.

If we have not heard from you by (insert date*), we will assume that you are no longer interested in pursuing your request, and your file will be closed.

Sincerely,

Signature and Title

bcc: Ministry Information Office

*Normally, 30 days should be adequate.

SAMPLE LETTER C

NOTIFYING REQUESTER THAT RECORDS CANNOT BE OBTAINED PROMPTLY

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This letter concerns your [insert appropriate name of legal] Act request of (date of request), regarding (nature of request).

I wish to advise you that we have not been able to obtain the record(s) you requested due to (reason for delay). We are making every effort to obtain the record(s) and hope to complete our response to you by (projected date of release).

I regret the inconvenience this may have caused. Please contact (name of employee) of this office at (telephone) if you have any questions.

Sincerely,

Signature and Title

bcc: Ministry Information Office

SAMPLE LETTER D

**NOTIFYING REQUESTER THAT RECORDS ARE AVAILABLE FOR SALE
ELSEWHERE**

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This is in response to your [insert appropriate name of legal] Act request of (date of request), regarding (nature of request).

The information you requested may be purchased from (e.g., the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Their telephone number is 703-487-4600. (Indicate the cost of the document(s), if known.))

Any further questions regarding this information should be directed to (NTIS).

Sincerely,

Signature and Title

bcc: Ministry Information Office

NOTE: Many services can provide documents only if an identification or order number is known. Provide the requester with the document order number and price if available.

SAMPLE LETTER E

NOTIFICATION THAT RECORDS DO NOT EXIST

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This is in response to your [insert appropriate name of legal] Act request of (date of request).

I wish to advise you that the Ministry has no records responsive to your request. If you consider this response to be a denial, you may appeal it by addressing your written appeal to the [insert name and address of appropriate person].

Sincerely,

Signature and Title

bcc: Ministry Information Office

SAMPLE LETTER F

**NOTIFICATION THAT RECORDS ARE POSSESSED ONLY BY ANOTHER
MINISTRY OR AUTHORITY**

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This is in response to your [insert appropriate name of
legal] Act request of (date of request), regarding (nature of
request).

This is to advise you that the records you requested are not in the possession of the Environment Ministry, but may be available from (name and address of other Ministry or Office).

You may wish to contact (name of other Ministry or Office) directly.

Sincerely,

Signature and Title

bcc: Ministry Information Office

SAMPLE LETTER G

REQUEST FOR PAYMENT OWED ON EARLIER REQUEST

(insert correct date)

Re: Information Request RIN (RIN number of
request on which payment is still due)

Dear Mr./Mrs./Ms. (name of requester):

We have received your letter of (date) requesting information from the Ministry of Environment under the [insert appropriate name of legal] Act. A review of our records indicates that you made another request that was assigned Request Identification Number RIN (number of request on which payment is still due). You were billed (amount) for costs related to processing that request. Attached is a copy of the Bill for Collection sent to you at that time requesting payment. There is no indication in our records that you have paid the amount due.

Pursuant to [insert appropriate legal reference], we will not process your current request until you pay the amount due on your earlier request or furnish proof (in the form of a receipt or cancelled check) that the bill was paid.

Please make your check or money order payable to the [insert appropriate office name], refer to the RIN number indicated above, and attach the top portion of the enclosed Bill for Collection.

Sincerely,

Signature and Title

Enclosure

bcc: Financial Management Division

SAMPLE LETTER H

REQUEST FOR PREPAYMENT

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This letter concerns your [insert appropriate name of legal] Act request of (date of request).

Pursuant to [insert appropriate legal reference], "Prepayment or Assurance of Payment," it will be necessary for you to prepay the costs associated with your request. Upon receipt of your payment, we will complete the processing of your request and forward the requested records to you.

Enclosed is a Bill for Collection requesting prepayment. This represents our best estimate of cost at this time. Please return the top portion of the form with your check or money order payable to [insert appropriate office and address]. Your check or money order should refer to the [insert appropriate name of legal] Act Request Number (listed above).

Sincerely,

Signature and Title

Enclosure

bcc: Ministry Information Office

SAMPLE LETTER I

FEE WAIVER JUSTIFICATION LETTER

(insert correct date)

Re: Information Request

Dear Mr./Mrs./Ms. (name of requester):

Your [insert appropriate name of legal] Act request did not contain sufficient information to enable the Ministry to make a determination on your fee waiver request.

The [insert appropriate name of legal] Act of 1986 provides that "Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." In order to evaluate whether the statutory standard authorizing a fee waiver or reduction has been met, we will need additional information upon which to base our determination. Your response should include:

- (i) A clear statement of your interest in the requested documents, the use proposed for the documents and whether you will derive income or other benefit from such use;
- (ii) a statement of how the public will benefit from such use and from the release of the requested documents;
- (iii) if specialized use of the documents or information is contemplated, a statement of your qualifications that are relevant to the specialized use;
- (iv) a statement indicating how you plan to disseminate the documents or information to the public; and
- (v) additional information you deem relevant to your request for a fee waiver

If we have not heard from you by (15 working days), we will issue a determination based upon the information provided in your request letter.

Sincerely,

Signature and Title

SAMPLE LETTER J

LANGUAGE FOR FEE WAIVER/REDUCTION DENIAL

The following provides some guidance concerning what wording should be used in release, partial release and discretionary release letters that also acknowledge a fee waiver/reduction denial.

The statutory test for evaluating fee waiver requests is whether release of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." I have considered six factors in determining whether your request satisfies this statutory standard: (1) whether the subject of the requested records concerns the operations or activities of the government; (2) whether the disclosure is likely to contribute to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the general public; (4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations and activities; (5) whether you have a commercial interest that would be furthered by the requested disclosure; and (6) whether any such commercial interest outweighs the public interest in disclosure.

On the basis of all of the information available to me I have concluded that your fee waiver request (or a portion of your fee waiver request) must be denied because (state the basis for denying the fee waiver for all or part of the requested records). If you desire to appeal this fee waiver (or reduction) denial, you should submit a written appeal to [insert name and address of appropriate office]. Any appeal should refer to the Request Identification Number listed above, the date of this determination, and my name, title and address (or the name, title and address of the person directing issuance of the denial).

SAMPLE MEMO K
REQUEST FOR INFORMATION REQUEST REFUND

(insert correct date)

SUBJECT: Request for information payment refund

FROM: (Responding Office)

THRU: Information Officer

TO: Financial Management Office

Please process a refund check in the amount of \$_____to the following individual:

Mr. John Doe
Jane Doe, Inc.
123 Anywhere Lane
Anytown, U.S. 56789

RIN #:

TYPE REASON FOR REFUND HERE
(see example below)

Advance payment of \$_____ was received on (date).
Actual charges of \$_____ were incurred in filling the
information request.

If you need further information, please contact (name)
on (telephone #).

cc: Information Coordinator

(TO BE COMPLETED BY Information OFFICE)

REFUND APPROVED IN THE AMOUNT OF: \$

INFORMATION OFFICER

DATE OF APPROVAL

NOTE: After approval, the Information Office will send this
memo to the Financial Management Office.

SAMPLE LETTER L

EXTENSION OF TEN-DAY TIME LIMIT

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This is in response to your [insert appropriate name of legal] Act request of (date of request). An extension of the time required to comply with your request is necessary.

The reason for the extension is (are):

- +---+
+---+ The need to search for and collect the requested records from offices that are physically distant from this office. [insert appropriate legal citation]
- +---+
+---+ The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records involved in your request. [insert appropriate legal citation]
- +---+
+---+ The need for consultation, which shall be conducted with all practicable speed, with another Ministry or office having a substantial subject-matter interest in your request. [insert appropriate legal citation]

An initial determination is expected by (date of expected determination).

Sincerely,

Signature and Title

bcc: Ministry Information Office

SAMPLE LETTER M

RELEASE LETTER WITH RECORDS

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs. Ms. (name of requester):

This is in response to your Information request of (request date), regarding (nature of request).

I am enclosing a copy/copies of the records which is/are responsive to your request. The cost of providing this information is _____. An itemized invoice covering the charges for processing your request is enclosed. Please forward your check or money order, made payable to the [insert name of Ministry], within 30 days of the date of this response. Your check should refer to the RIN number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated.

Sincerely,

Signature and Title

Enclosures: (index of documents and Bill for Collection.)

bcc: Ministry Information Office

SAMPLE LETTER N

RELEASE LETTER WITHOUT RECORDS

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This is in response to your Information request of (request date), regarding (nature of request).

My office has determined that the record(s) you requested can be released under the [insert appropriate name of legal] Act. We are currently copying the information you requested and will forward it to you (along with an itemized invoice covering the charges for processing your request by (estimated date of completion)).

Sincerely,

Signature and Title

bcc: Ministry Information Office

SAMPLE LETTER O

DENIAL LETTER

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This is in response to your Information request of (request date), concerning (nature of request).

We are unable to provide you with the requested records because they are exempt from mandatory disclosure by virtue of [insert appropriate legal citation] (cite the exemption or exemptions). An itemized list of the records which are being withheld along with the basis for withholding is provided on the enclosure to this letter.

You may appeal this denial by addressing, within 30 days of your receipt of this letter, your written appeal to the Information Officer [insert appropriate address]. Your appeal should include the RIN number listed above, the date of this determination, and my name, title and address (or the name, title and address of the person directing issuance of the denial).

Please contact (_____) at (_____), should you have any questions concerning this matter.

Sincerely,

Signature and Title

Enclosure: (index of withheld documents)

bcc: Ministry Information Office

NOTE: If you are relying on exemption 5, cite the specific privilege (e.g., deliberative process privilege). If you are relying on exemption 7, cite the particular subsection of 7

(i.e., (A), (B), etc.).

SAMPLE LETTER P

PARTIAL DENIAL LETTER

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This is in response to your Information request regarding (nature of request).

Enclosed you will find copies of some of the documents responsive to your request.

We are unable to provide you with the documents, or portions of documents, which have been determined to be exempt from mandatory disclosure by virtue of [cite exemption or exemptions; insert appropriate legal citation] An itemized list by categories of the withheld material along with the basis for withholding is provided on the enclosure to this letter.

You may appeal this partial denial by submitting a written appeal to the Information Officer [insert appropriate address], within 30 days of receipt of this partial denial. Your appeal should refer to the RIN number listed above, the date of this determination, and my name, title and address (or the name, title and address of the person directing issuance of the partial denial).

Please contact (_____) at (_____), should you have any questions concerning this matter.

Sincerely,

Signature and Title

Enclosures: (index of documents released and withheld)

bcc: Ministry Information Office

SAMPLE LETTER Q

REQUEST FOR SUBSTANTIATION FROM AN AFFECTED BUSINESS

(insert correct stamp)

Certified Mail
Return Receipt Requested

(Addressee)

Re: (Reference the RIN number and or the information which is the subject of the final confidentiality determination.)

Dear (name of the representative of the Affected Business):

The Environmental Protection Ministry (EPA) has received a request under the Information Act [insert appropriate legal citation] for certain records pertaining to (description of the information which is the subject of the final confidentiality determination). You asserted a business confidentiality claim covering (all or part) of this information. In accordance with Information Act regulations [insert appropriate legal citation], the request has been initially denied to afford you an opportunity to substantiate your claim before a final determination is made.

This letter is to notify you that the (insert name of appropriate legal office) will be making a final confidentiality determination concerning this information. If you feel that some or all of the above information is entitled to confidential treatment, please specify which portions of the information you consider confidential. Please be specific by page, paragraph and sentence when identifying the information subject to your claim. Any information not specifically identified as subject to a confidentiality claim will be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to your claim, please answer the following questions:

1. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the

- need for confidentiality, please specify that event.
2. Information submitted to the government becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
 3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
 4. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
 5. Is the information contained in any publicly available material such as promotional publications, annual reports, articles, etc.? Is there any means by which a member of the public could obtain access to the information?
 6. For each category of information claimed as confidential, discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
 7. Do you assert that the information is "voluntarily submitted" as defined at [insert appropriate legal citation]? If so, explain why, and how disclosure would tend to lessen EPA's ability to obtain similar information in the future.
 8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality claim pursuant to [insert appropriate legal citation]. Conclusory allegations will be given little

or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in [insert appropriate legal citation]. If you fail to claim the information as confidential upon submission it may be made available to the public without further notice to you.

Your comments must be postmarked or hand delivered to this office by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments, but the request must be made to the (appropriate legal office) before the end of the 15-day period. Except in extraordinary circumstances, no extension will be made without the permission of the requester. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim, and EPA will be free to release the information.

Should you have any questions in this matter, please call me at (telephone).

Sincerely,

Signature and Title

NOTE: Please be sure to check with your Information Officer or Information Coordinator to determine whether the affected business has designated a specific person or office to receive this letter. If they have, you must address the request for substantiation to the designated person or office (see [insert appropriate legal citation]).

SAMPLE LETTER R

INITIAL DENIAL BASED ON CLAIM OF BUSINESS CONFIDENTIALITY

(insert correct date)

Re: Information Request RIN

Dear Mr./Mrs./Ms. (name of requester):

This is in response to your request of (request date) in which you requested (describe the requested records). I have determined that the records in question have been claimed confidential and may contain trade secrets or commercial or financial information which is exempt from disclosure under [insert appropriate legal citation]. Pursuant to [insert appropriate legal citation], your request is being initially denied because further inquiry by the Ministry of the Environment is required before a final determination can be made. We will consult with the third party(ies) in connection with their business confidentiality claim(s) covering these records and (the appropriate Ministry legal office) will issue a final confidentiality determination.

You may appeal this initial denial of your request by writing to the Information Officer, [insert appropriate address]. Any appeal must be made within 30 days after your receipt of this initial denial. A final confidentiality determination will be made by the (appropriate Ministry legal office) whether or not you file an appeal, and you will be notified of the final determination.

You should refer to RIN _____ in any further correspondence concerning this matter. Please contact (_____) at (_____) if you have any questions.

Sincerely,

Signature and Title

bcc: Ministry Information Office

APPENDIX II - V to be inserted

HANDBOOK APPENDIX VI:

PRACTICAL GUIDANCE FOR RECORDS MANAGEMENT⁴

What is Records Management?

Records Management is a way of establishing uniform rules for systematic handling, control and disposition of government documents and records, so that offices across the Ministry and government are doing this in consistent ways. Effective records management should start at the time of the creation of the documents and end with rules for disposition of documents, sometimes known as "cradle to grave" control of records.

Why is Records Management Important?

Records Management preserves knowledge as a resource. Government offices produce papers that contain the history of their existence and decision process. Preserving those papers preserves a unique record. The preserved and properly stored documents make it easier to understand agency action and decisions.

The maintained records can also help current decisionmakers make better informed decisions. Good record will help them understand better the actions of their predecessors.

If government offices anticipate that they will face legal challenges to, or intra-government investigations of some of their actions, records management will help preserve necessary documents to provide a contemporaneous record of their activities.

A government employee has the responsibility to protect records in his/her custody, and there may be legal implications for destroying records without the proper authority.

⁴ This section was adapted from materials provided by Chris O'Donnell at the U.S. EPA.

Following good records management practices will benefit employees and the government in many ways such as:

- Improving access to information;
- Controlling the growth of materials taking up valuable office space;
- Reducing operating costs;
- Minimizing litigation risks;
- Safeguarding vital information;
- Supporting better management decision making; and,
- Preserving government history.

What is the connection between Records Management and Access to Information?

A government body that has clear rules for and organizes its documents in systematic ways will be able to be more quickly and efficiently responsive to citizen requests for documents.

It will be more likely to avoid problems such as the release of inappropriate documents, because the documents will have been stored and managed in ways that make clear which documents have been designated as sensitive or containing confidential information.

Government bodies that have rules for records management will be more confident that their various sub-components will be more consistent in responses to requests for information, because offices will be using consistent systems and consistent rules.

What is a Record?

Possibly use Aarhus definition here? Each country must define records according to its own laws and policies. A record can be anything made or received, in any medium (paper, electronic, video, etc), that is created in the course of government business and is necessary to document agency activities. Records document the organization, functions, policies, decisions, procedures, operations and other activities of a government body.

Some examples of records include memoranda created in the course of government business, personnel records, financial records and data bases. Records document or facilitate

- Ministry actions;

- The formulation of policies and decisions;
- Committee or staff meetings.

What is a Record Schedule?

A record schedule provides mandatory instructions on

- how long materials are to be kept in the office;
- what happens to materials after they are no longer needed in the office; and
- how to preserve historically valuable records for transfer to storage.

Learning from U.S. EPA's Experience

U.S. EPA has a web site -- <http://www.epa.gov/records> -- that has questions and answers for records management, best practices and an electronic newsletter. Although the basic ground rules are based on U.S. law and policy, they are helpful for other governments who want to set up basic records management systems.

A Ten-Step Records Management Plan for Your Office

This document outlines the primary steps to follow to establish and maintain a records management program for your office.

Step 1 - Determine who will be responsible and what resources will be needed.

Establish a project team with representatives from all sub-units and job series (not just clerical staff) to oversee the project. The project team should:

- Set up a network of "records liaisons" with a lead person and liaisons for each office.
- Decide if everything will be done "in house" or if outside help (e.g., contractors) will be needed.
- Select one office or sub unit in which **to initiate the project.** Based on the experience obtained in this one office, you can estimate the resources needed to do other offices.

Step 2 - Identify records needed to document the activities and functions of your office.

Conduct an inventory of the materials in your office. Don't forget to include empty offices, closets, and other areas where things may have been stored.

Document, at a minimum, where materials are located, how much there is, and the format (e.g., paper, electronic, maps, etc.). (When you have a "snapshot" of the scope of materials in your office, you may need to go back to Step 1 and review the resources available to complete the project.)

An inventory will help you identify which materials are:

- Records,
- Reference materials (non-records),
- Personal papers (non-records),
- Extra copies of documents, publications, and forms (non-records).

The inventory will also help you identify which records would need to be immediately available in the event of an emergency (vital records).

Step 3 - Establish your procedures (recordkeeping requirements).

Now that you know what you have in your office, the project team needs to determine:

- If records will be kept in a "centralized" area, or "decentralized" at individual work stations;
 - The type of documents that are included in the record files;
 - How draft documents, working papers, and concurrence copies will be handled.
- Who will be responsible for maintaining the record copy (records custodian).

Remember - Non-record materials such as convenience copies and personal papers need to be maintained separate from records.

Step 4 - Match your records to the records schedules.

The next step in the project is to match the records identified in your inventory with available *records retention and disposition schedules*, if such exist. Records schedules provide information on how long records are to be kept in the office and what happens when they are no longer needed in the office. If the government has not yet established retention periods, careful judgments will need to be made about what kinds of documents are most important to retain. It would be better to make these judgments with the assistance of high-level officials in the Ministry and with the support of the Ministry Legal Office.

Step 5 - Prepare a "file plan."

Now that you know what records you have and what the appropriate records schedules are, you can begin to organize them. U.S. EPA records are organized using the Agency file codes to provide the first level of organization or the "main category." For example, the file code for Program Management Files is: PROG 006.

Once you have identified the file code, place them in alphabetical and numerical order (e.g., CONT 003, PROG 006).

Then, determine if there will be sub-categories or sub-folders and what they will be. For example:

ADMI 110 - Reports and Statistics

- 1.0 Annual activity reports
- 2.0 Personnel reports
 - 2.1 Training
 - 2.2 Travel

Step 6 - Document your recordkeeping requirements and procedures.

Prepare a document, a file plan, which gives details on:

- How your records are organized and maintained;
- Who is responsible for doing what;
- When it should be done (e.g., annual file retirement);
- What happens to the records when they are no longer needed in the office.

Include all the decisions you made in steps 1 through 5 (e.g., what happens to draft documents).

Step 7 - Clean out old records with no good reason for retention, using if possible the approved retention periods.

Once you have documented your file plan you can begin to organize your records. First, however, it is a good idea to get rid of those materials in your office which are not needed. If authorized by the records schedule, you can:

- Retire records to offsite storage which are no longer needed in the office;
- Transfer permanent records to the National Archives, if appropriate;
- Recycle materials which have passed their approved retention period. Remember to shred materials containing confidential or personal information.

Step 8 - Organize your records.

Now you can begin to implement your file plan.

Prepare folders and organize documents within the folders. Follow the procedures established in your file plan.

Place reference sheets in folders, when necessary, to refer users to the location of related non-paper materials such as maps, drawings, videotapes, etc.

Organize electronic documents (e.g., WordPerfect documents, e-mail messages) residing on individual computer or local network directories using Ministry file codes, if such are available.

Remember to spend the majority of your time on the

"mission-related" records and less on administrative or "house keeping " records such as routine correspondence.

Step 9 - Maintain your records on an on-going basis.

Once everything is organized, it is important to keep it current and up to date. Be sure to:

- File new materials on a regular basis (e.g., weekly).
- Protect records containing confidential information such as confidential business information (CBI) or personal information.
- Establish a check-out system (e.g., "out" cards) to track the location of your records so you always know where they are.
- Clean out inactive materials on a regular basis, usually at the end of the year (as per your written procedures).
- Retire eligible records to appropriate storage or Archives.
- Clean out superseded or obsolete reference materials.

Step 10 - Train, train, train.

Congratulations! Now you have a file plan. You've cleaned out all the unnecessary materials and organized the necessary materials. Your job isn't over yet! You need to be sure all staff members (and contractors) know about their recordkeeping responsibilities. Records liaisons need to brief senior management on the importance of your records management program and train office staff on how it works.

If you can, help develop training sessions, including basic records management and records retirement; "Tool kits" giving more details on how to complete each of these steps; and, Presentations and handouts you can tailor for your particular office.

Resources

- This Handbook
- <http://www.epa.gov/records>