

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

**Forest Service Handbook 6209.13 – Freedom of Information Act/Privacy Act Handbook
Zero Code**

Amendment: 6209.13-1994-1

Effective date: December 08, 1994

Duration: This amendment is effective until superseded or removed.

Approved by: Jack Ward Thomas, Chief

Date approved:

Responsible Staff:

Last Change:

Superseded Document(s): 6209.13-91-2, October 17, 1991; 1, February 1988; New, March 1986; Title page, 00--1 thru 27.2, ID 6209.13-94-1, ID 6209.13-94-2

Digest: Following is an explanation of the changes throughout the directive by section.

Zero Code: Makes minor editorial formatting changes throughout the chapter. Adds definitions for Attorney Work Product and Incident Investigation Documents, formerly in interim directives 6209.13-94-2.

11: Revises exhibit 02 to address situations on when to release records.

11.1 - 11.66: Adds direction in section 11.1 concerning application of Exemption 2 to release information related to an agency's personnel rules and practices. Recodes direction on Exemption 3 to section 11.2 (formerly section 11.1); Exemption 4.

11.22: Adds paragraph on requirements of National Historic Preservation Act of 1966 pertaining to Cultural Resource Information.

11.4: Adds direction concerning the application of exemption 5 to documents related to incident investigations, formerly in interim directive 6209.13-94-2.

11.53: Removes direction concerning application of Exemption 6 to Use of Information for Political Purposes (formally section 11.43) and retains and revises direction on Use of Information for Commercial Solicitation.

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11.7: Adds a new section to address direction on the foreseeable harm standard.

12.33 - 12.35: Adds a new section with procedures for releasing documents to Congress (section 12.33) and recodes subsequent section 12.34, Permitting Requester Access to Original Records (formerly section 12.33) and section 12.35, Creation of New Records (formerly section 12.34).

12.5: Revises direction on determining the date of receipt of a request or appeal.

13.04: Incorporates direction in Interim Directive 6209.13-94-1 which adds the delegated authority for signing Freedom of Information Act requests for law enforcement records to the Regional Special Agents in Charge and the Washington Office Staff Director of Law Enforcement and Investigations.

14.1: Adds direction for responding to a request for a list that requires a search through a unit's personnel folders.

14.73 - 14.73a: Revises criteria for non-profit organization status as related to fee waiver.

14.9: Clarifies billing procedures for search and duplication fees.

16.04 - 16.04b: Recodes reporting responsibilities of agency officials (formally in section 16.1 - 16.2).

20.4 - 20.43: Adds Privacy Act responsibilities for Freedom of Information Act/Privacy Act Officers in the Washington Office (section 20.41a); Field Units (section 20.41b); System Managers (section 20.42); and Employees (section 20.43).

21.3: Revises exhibit 01 - Forest Service Privacy Act Systems of Records.

22.1 - 22.4: Adds direction in section 22.1 on special exemption under Privacy Act to address information related to a civil action or proceeding and recodes subsequent sections 22.2, Two General Exemptions (formerly section 22.1); 22.3, Specific Exemptions (formerly section 22.2); and 22.4, Obtaining Exemption (formerly section 22.3).

24.63: Adds instruction for transmitting correspondence related to access and amendment of records.

27 - 27.1: Removes direction on obsolete Form OF-203, Privacy Act Information Request (formerly section 27.1). Recodes direction to section 27 on submission of Report FS-6200-F, Privacy Act Biennial Report (formerly this was an annual report and direction was in section

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27.3). Revises samples of responses and recodes exhibits to section 27.1 (formerly section 27.2).

This Handbook is now available electronically in the National Information Center in the same format as the paper copy. Henceforth, amendments to this Handbook will be issued to Forest Service units electronically on a document basis.

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01 - Authority

(FSM 6270.1).

02 - Objective

To provide guidelines for Forest Service personnel in administering the Freedom of Information Act (FOIA) and Privacy Act of 1974 (PA).

03 - Policy

All employees who administer the FOIA/PA shall comply with this handbook.

04 - Responsibility

(FSM 6270.4).

05 - Definitions

Attorney Work Product. Documents prepared in anticipation of litigation by an attorney or under an attorney's direction in connection with civil or criminal cases. Incident investigation documents are examples of attorney work products.

Computer Matching Programs. Procedure in which a computer is used to compare two or more automated systems of records or a system of records with a set of non-Federal records to locate individuals who are common to more than one system or set.

Confidential. One of the official categories ("Confidential," "Secret," and "Top Secret") used to classify documents for national defense purposes (FSM 6271.2, para. 1).

Confidential Source. An individual who provides information to a law enforcement official under the assurance of confidentiality. Such information is not classified "confidential" unless it qualifies for national defense purposes. The Freedom of Information Act (FOIA) restricts use of confidentiality and permits public access to certain investigative records; see information on exemptions 4 and 7 in chapter 10. Officials may promise a source only, "The government will protect the confidentiality of your statements to the maximum extent permitted by law."

Disclosure. Transfer of, or access to, a record.

Document Classifications.

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Enforcement Proceedings. Term includes (1) criminal, civil, and administrative proceedings, and (2) investigations preliminary to a proceeding.

Exemptions.

- a. The Freedom of Information Act makes Federal records available to the public while exempting certain material from release (sec. 11 and FSM 6271.2).
- b. The Privacy Act of 1974 (PA) provides individuals access to records the Government maintains on them and safeguards the privacy of these records. Exemptions to the PA cover records to which individuals may be denied access (sec. 22 and FSM 6272.1).

Homogeneous Class of Personnel. A group of employees of like rank, grade, pay or position.

Heterogeneous Class of Personnel. A group of employees of unlike rank, grade, pay, or position.

Incident Investigation Documents.

- a. **Factual Report.** A report that contains strictly factual information; for example, sequence of events, measurements, weather reports, statistical information. Factual reports are free of conjecture, conclusions, opinions, recommendations, evidential documents, subsequent remedial actions, disciplinary actions, and emotionally charged wording.
- b. **Letter of Transmittal.** A document that submits a report to the next level of review. This letter may provide peripheral information for consideration or further exploration.
- c. **Action Plan by Board of Review.** A report that identifies subsequent remedial actions, based on the board's evaluation of all the facts revealed by the investigation team.
- d. **Supporting Documents.** Any documents generated and/or compiled to produce the final investigation package; for example, witness statements, photographs, special analysis, and local authority reports.

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Law Enforcement Records. Records of criminal, civil, and regulatory proceedings, including records for

- a. Prevention, detection, and punishment of law violators, and
- b. Security purposes.

Personal Data. Records about an individual of a private nature, such as age, birth date, home address, physical features, marital status, photographs, medical history, and other identifying information. Personal data may include partnerships and sole proprietorships identified by an individual's name.

Record. Records are retained on a variety of media (such as paper, microfilm, tape, and computer). The records covered differ under the FOIA and PA:

- a. The Freedom of Information Act covers official records of Federal agencies, which are public records that belong to the office rather than an individual. They include books, papers, maps, photographs, computerized data, and other documents made or received by the Forest Service in conducting public business. Correspondence related to public business but designated by a non-Government source as "Personal," "Proprietary," "Private," and so on, still may be an official record.
- b. The Privacy Act covers records maintained on individuals, that are retrieved by name or personal identifier, including single descriptive items or a collection of information in a file, such as education, financial transactions, medical history, criminal history, and employment history. The record contains the individual's name, number, or other identifying characteristic.

Review Services (Clerical or Supervisory/Professional). Time spent examining records in response to a commercial use request to determine whether portions of documents located are permitted to be withheld. Includes all that is necessary to excise exempt portions. Time spent resolving general legal or policy issues is not a review service.

Routine Use. Use of a record according to the purpose for which it was collected.

Search Services (Clerical or Supervisory/Professional Salary Level). Time spent trying to find and examine records within the scope of the request. Also includes services to transport personnel to places of records storage or to transport records to the office for the purpose of conducting a search.

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Statistical Record. System of records maintained for statistical research or reporting purposes only and not used in making determinations about an identifiable individual.

Substantial Harm. Loss of sales for a product or the inability of a business to compete for any portion of an existing or future market.

System of Records. Term used under the Privacy Act for records containing personal information about individuals. Systems of records in the Forest Service that meet the following three criteria must be maintained in accordance with the Privacy Act:

- a. Consist of records,
- b. Are under the Agency's control, and
- c. Consist of records retrievable by name or another personal identifier, such as Social Security number.

System Manager. Official with administrative responsibility for a system of records under the Privacy Act.

Trade Secret. A commercially valuable plan, formula, process, or device resulting from innovation or substantial effort and used in making, preparing, compounding, or processing trade commodities.

Working Days. Working days exclude Saturdays, Sundays, and legal Federal holidays.

Vaughn Index. Itemized index, correlating each withheld document (or portion) with a specific FOIA exemption and the relevant part of the agency's nondisclosure justification. The Vaughn Index is only required to be prepared during litigation.