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DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

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Subject

1278 - EXTERNAL ACCESS TO BLM INFORMATION

1. Explanation of Materials Transmitted: This manual section describes the policies and authorities for managing access to the Bureau of Land Management (BLM) information recorded on all media. It also provides guidance for making determinations concerning the confidentiality of BLM information. This manual describes the procedures for processing all types of requests for access to BLM information under the Freedom of Information Act (FOIA) and the Privacy Act. It also provides procedures for the sharing and exchange of information with outside entities.
2. Reports Required: FOIA Annual Report to Congress, and Privacy Act Biennial Report to Congress.
3. Materials Superseded: None.
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REMOVE:

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Glossary of Terms

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.01 Purpose. This manual section provides guidance for managing access to the Bureau of Land Management (BLM) information recorded on all media and provides guidance for making determinations concerning the confidentiality of BLM information. This manual describes the procedures for processing all types of requests for access to BLM information. It discusses procedures for implementing disclosures under the Freedom of Information Act (FOIA) and the Privacy Act and the sharing and exchange of information with outside entities. These responsibilities are part of the BLM's overall Information Resources Management (IRM) program. Handbooks on External Access, and Minerals, and the Manual for Information Center and Public Records Access will provide more detailed information with illustrations.

.02 Objectives. The BLM Records Administration program will develop policies, procedures and standards that will guide BLM efforts in managing the life cycle and external access to the BLM's information. Specifically, this Manual will provide policies and guidelines to:

A. Define Bureauwide activities and program responsibilities for effective Life Cycle Management (LCM) of, and access to BLM information.

B. Ensure that BLM information is categorized as (1) public, (2) discretionary, or (3) non-public records.

C. Identify, use, and safeguard BLM non-public information which contains private, proprietary/confidential, or other sensitive information.

D. Facilitate data and information exchange within BLM, other Federal agencies, the public, and other organizations.

.03 Authority.

A. The FOIA of 1966, as amended, 5 U.S.C. 552.

B. Privacy Act, 5 U.S.C. 552a.

C. The Copyright Act of 1976, 17 U.S.C. Section 101 et seq.,

D. Federal Records Act of 1950, 44 U.S.C. Chapters 21, 29, and 31.

E. Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

F. Paperwork Reduction Reauthorization Act of 1986, (P.L. No. 99-591).

G. Act of 1980, 44 U.S.C. Chapter 35, Indian Minerals Development Act, 25 U.S.C. 2101.

H. Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. 201(b)(3) and 208-1(b)-(e).

I. Federal Oil and Gas Royalty Management Act of 1982 (P.L. 97-451).

J. Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh(a).

K. National Historic Preservation Act Amendments of 1980, 16 U.S.C. 470w-3.

L. Crimes and Criminal Procedures, 18 U.S.C. 1905.

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- M. Trade Secrets Act, 18 U.S.C. 1950.
- N. Computer Security Act of 1987 (P.L. 100-235).
- O. Federal Cave Resources Protection Act of 1988, (P.L. 100-691).
- P. Executive Order No. 12600, of June 23, 1987, Predisclosure Notification Procedures for Confidential Commercial Information (3 CFR, 1987 Comp., page 235).
- Q. Department Regulations, Title 43 Public Lands, Interior Subtitle A, Office of the Secretary of the Interior, Part 2, Records and Testimony. (43 CFR Part 2), Parts 1460, 1610, 1737, 1813, 1821.
- R. Department Regulations, Title 43 Public Lands, Interior Subchapter C, Section 3000 et seq., Mineral Resources Management (43 CFR 3000 et seq.).
- S. Office of Management and Budget (OMB) Circular No. A-130 Management of Federal Information Resources.

.04 Responsibility.

A. The Director and Deputy Director are responsible for ensuring that policy and guidance is established for the overall LCM and administration of all agency records. This responsibility includes ensuring that BLM records are preserved, and protected from unauthorized disclosure when records that are non-public BLM records that may contain proprietary/confidential or otherwise sensitive information is requested. This responsibility is exercised through the Assistant Director, Management Services, who is responsible for designating the denying official for denials of FOIA requests within the Washington Office (WO). The Director and Deputy Director are responsible for making final decisions about disclosure of all agency records and for solving conflicts that cannot be resolved at the Assistant Director level, or that affect the responsibility of more than one Assistant Director.

B. Assistant Directors, within their assigned areas of responsibility, make final staff decisions about the content of records and directives involving program policy and procedures which have application in a number of BLM offices under their direction. Assistant Directors ensure that records under their control are segregated and handled in accordance with the guidance in this manual. Assistant Directors ensure that records and case file guidelines are issued by Program Managers under their jurisdiction. Assistant Directors are responsible for designating Privacy Act System Managers within their area of responsibility.

C. Chief, Division of Information Resources Management, as the delegated program manager, is responsible for establishing an effective and efficient records access program that is consistent with the Administration's open information policy.

D. Chief, Branch of Records Administration and Management is responsible for the overall development of policies and procedures for LCM of the BLM's information access program. This includes providing management oversight in implementing these policies and procedures on a Bureauwide basis.

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E. Chief, Records Administration Section, as the Bureau Records Administrator, is responsible for providing assistance to headquarters and all field facilities concerning all phases of the LCM, administration, evaluation, and development of training for BLM's information access program. The Chief, Records Administration Section is the FOIA Officer and the designated BLM Privacy Act Officer.

F. Chief, Directives and Records Operations Section serves as the WO Records Manager responsible for policies and procedures in managing the effective operation of WO records systems. The BLM Records Manager is responsible for the operational changes required to implement policies developed by the BLM Records Administrator.

G. State Directors and Service Center (SC) Director are responsible for the establishment, and administration of practices and procedures for managing the LCM of records and access to BLM records within their areas of jurisdiction in conformance with established standards, and instructions contained in this manual. Directors are responsible for designating electronic records in the discretionary records access category. Directors are also the designated denying officials for denials of FOIA requests. The State Directors may redelegate responsibility for signing affirmative responses and denials to FOIA requests to the head of an area installation under their jurisdiction.

H. Records Administrators. State, Center, and District Records Administrators are responsible for developing, implementing, and administering the overall policies, and procedures within the records LCM process concerning access to BLM information. The Records Administrator reviews (or works with the FOIA Coordinator on) FOIA and Privacy Act requests and responses. Management of the FOIA, Privacy Act and external access to BLM information specifically includes the development of Statewide policy, and operational guidance to:

1. Apply LCM principles to ensure that records or systems are developed which meet the original needs of the user, access to the records are managed, security measures are applied, and disposition is accomplished;
2. Execute responsibilities for developing and maintaining Records Access Categories as identified in section .1 of this manual;
3. Establish procedures for access to public records, to include public room/access area procedures;
4. Ensure data collection for calculating current Bureauwide cost recovery rates to requests for BLM information (public room, FOIA, data sharing, requests for digital data, et cetera);
5. Establish procedures for access to non-public records under FOIA requirements, including maintaining FOIA and Privacy Act case files that require complete documentation related to requests for information in accordance with FOIA, and providing statistics necessary for completing the FOIA Annual Report to the BLM FOIA Officer;
6. Establish Privacy Act procedures for access to records, including completing the Privacy Act System Notice procedures and other requirements of the Act, and providing statistics necessary for completing the Privacy Act Biennial Report to the BLM Privacy Act Officer;

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7. Coordinate Computer Security Act requirements relating to identification and categorization of sensitive systems in conjunction with other IRM activities;

8. Facilitate data and information exchange within the BLM, other Federal agencies, the public and other organizations;

9. Ensure that an inventory of all agreements to share data will be developed and updated for their area of oversight, and

10. Provide training for all persons authorized to have access to proprietary/confidential or otherwise sensitive information to include guidance and instruction in the policies and procedures required for the identification, use, and safeguarding of sensitive information.

I. FOIA Coordinator is responsible for tracking and responding to FOIA and Privacy Act requests, and for coordinating with Records Administrators on policy issues.

J. Data Steward is the designated agency official responsible for implementing the policies and practices governing a Privacy Act system of records. They will also coordinate issues and requests for access to Privacy Act systems with Records Administrators.

K. Local Officials are responsible for ensuring that LCM principles are applied to BLM information by: (1) Managing the information access program in accordance with this manual; (2) applying applicable cost recovery to requests for BLM information; (3) ensuring Computer Security Act requirements are adhered to; (4) safeguarding all non-public records in their custody, including records containing proprietary/confidential or otherwise sensitive information and for protecting these records from unauthorized disclosure; (5) assuring that the procedures set forth for proprietary/confidential information be strictly adhered to at all times, and (6) ensuring that training is provided to employees authorized to have access to proprietary/confidential or otherwise sensitive information to include guidance and instruction in the policies and procedures required for the identification, use, and safeguarding of sensitive information.

L. Employees. Employees are responsible for following BLM policy and guidance contained in this manual when responding to requests for information. This includes knowledge of access categories for the records within their respective program area; Privacy Act, sensitive, or proprietary/confidential information, and which records are protected by specific statutes. Employees are also responsible for safeguarding all records they use during the everyday flow of paperwork and those within their custody. This includes protecting these records from unauthorized disclosure.

.05 References.

- A. BLM Manual 1270, Records Administration.
- B. BLM Manual 1270-1, Electronic Records Administration.
- C. BLM Manual 1270-3, Cost Recovery.
- D. BLM Manual 1372, Collections.

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E. BLM Manual 1510, Procurement.

F. BLM Handbook H-1510-7, Contracting for Automated Data Processing.

G. BLM Manual 1511, Assistance Agreements.

H. The BLM Manual 1786, Memorandums of Understanding (MOU). Appendix 2 contains listings of MOU's, and are maintained by the Division of Congressional Affairs (WO-150).

I. Department Manual 383 DM 15, FOIA Handbook.

J. Department Manual 383 DM 1-14 on the Privacy Act.

K. Department of Justice, FOIA and Privacy Act Case List.

L. 43 CFR Part 2, Subpart D, Department of the Interior (DOI) Regulations on the Privacy Act.

M. 43 CFR Part 2, Subpart A & B DOI Guidelines on the FOIA.

N. 4 CFR Chapter II, Federal Claims Collection Standards

O. 36 CFR 1220, Subpart B, National Archives and Records Administration regulations on records management.

.06 Policy. Records should be made available to the public to the greatest extent possible in keeping with the spirit of the FOIA while at the same time preserving essential confidentiality, protecting sensitive information when appropriate under the law, and applying a presumption of disclosure when required.

.07 Files and Records Maintenance. Case files are required to be established which document all requests and procedures followed in responding to a FOIA or Privacy Act request. See General Records Schedule 14, Items 11-15 for retention and disposition of FOIA request case files, and Items 21-26 for retention and disposition of Privacy Act request case files. Data Sharing documents should be maintained by designated custodians which may vary from State to State. Refer to the Records Schedule to determine the disposition of each type of document. Records Administrators will ensure that an inventory of all such agreements will be developed and updated.

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.1 Records Access Categories. Based on requirements established by the FOIA, the Privacy Act, and other statutes that apply, all Federal agencies are required to make certain information available for public inspection, and other information exempt from disclosure to the public. Therefore, it is the policy of the BLM to make records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA, while at the same time protecting sensitive information. In addition, when a discretionary exemption can be applied under the FOIA, the information will be presumed releasable unless a specific harm to Government operations or personal privacy can be identified. Based on these records administration statutes, all BLM information is reviewed and segregated into one of three records categories as follows: (1) Public - Category 1 (traditionally available-electronic records or computer generated outputs); (2) Discretionary - Category 2 (nontraditional-electronic records and outputs, and State-specific information determined releasable to the public), and (3) Non-Public - Category 3. All category listings serve as a foundation for managing access to BLM information.

.11 Responsibilities. BLM State Records Administrators are responsible for:

- A. Reviewing and updating existing records access category listings;
- B. Designating records access categories following consultation with custodians or data stewards (also see section .13C below);
- C. Submitting designated records or suggested changes to the Director (WO-870), which if approved, will be added to the Bureauwide listing;
- D. Clearing with the Director (WO-870), State specific records being considered for designation on State lists within records access Category 2;
- E. Identifying any potentially non-public categories which are currently commingled with public records - e.g., mineral reports filed within serialized case files (see section .27 below);
- F. Nominating records currently contained in the non-public category that could be designated as public;
- G. Determining whether records systems are "draft" records; and
- H. Review listings for any record series missing from any category.

.12 BLM Public Records - Category 1. Public Records (traditionally available/unlimited access records) are those BLM records for which the entities outside of BLM have the right to view/inspect without charge. Records in this category are not required to be physically maintained in the Public Room/area; however, they must be available (brought to the Public Room/area) to view/inspect upon request. Procedures for responding to written requests for Public Room information are addressed in .2 above.

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A. Category 1 - Electronic Records. The four BLM electronic systems which are public records currently accessible for on-line viewing in BLM public rooms at no cost are: (1) Case recordation; (2) On-line Record Case Access System (ORCA); (3) Alaska Automated Land and Mineral Record System; and (4) mining claim recordation. Costs should be recovered for providing this service from one custodial office to another and for providing copies of these reports. For this purpose, "custodial offices" means all BLM locations (Districts and Resource Areas) within the jurisdiction of a BLM State Office. Refer to .2 below for detailed policy on management of public records, handling outside requests, and cost recovery.

1. Disclaimer Labels. Disclaimer labels are required for electronic records that are provided to anyone outside the BLM. The following language should be used with Category 1 records: "NO WARRANTY IS MADE BY THE BLM FOR USE OF THE DATA FOR PURPOSES NOT INTENDED BY BLM." A separate sheet with the appropriate information will accompany products in digital form when there is no provision for including this information in the header file.

B. Category 1 - Computer Generated Outputs. Copies of printouts from the automated systems listed in Records Access Category 1, are available at cost recovery rates through BLM Public Room/access areas upon request. Refer to section .2 of this manual for additional information on processing requests, and cost recovery.

1. Disclaimer Labels. The following language should be used with Category 1 computer generated outputs: "NO WARRANTY IS MADE BY THE BLM FOR USE OF THE DATA FOR PURPOSES NOT INTENDED BY BLM." The disclaimer label should be placed where clearly visible on each page of the hard-copy product.

.13 Discretionary Records - Category 2 (Electronic Records and Outputs and State-specific information determined releasable to the public). The records placed in this Discretionary Records Category are records which BLM has chosen to make available to the public at a cost (as opposed to the free for view records in Category 1). The electronic records placed in this category are records which BLM has chosen to make available to the public for on-line viewing at a cost, at the discretion of the State Director if the BLM office has the capability. Printouts also may be viewed or purchased at current cost recovery rates. In cases where a record placed in Category 3 has been determined by the State or Center to contain no information protected by a FOIA exemption (or by other statute), the Records Administrator can place information specific to that State (or Center) on the State (or Center) Discretionary List, and a FOIA would not be required for this information. Fees shall be determined in accordance to fee guidelines set forth in .23 of this manual.

A. Disclaimer Labels. The following label should be used with Category 2 electronic records: "NO WARRANTY IS MADE BY THE BLM FOR USE OF THE DATA FOR PURPOSES NOT INTENDED BY BLM." As with Category 1, the disclaimer label should be placed where clearly visible on hard-copy products. A separate sheet with the appropriate information will accompany products in digital form when there is no provision for including this information in the header file.

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B. Creation of New Discretionary (Category 2) Records for Electronic Records. The BLM offices must first review electronic records to determine whether the records may be released. Refer to section .3 of this manual for guidelines on reviewing data for FOIA exemptions, and section .7 for Privacy Act procedures. Field Offices are responsible for evaluating information access regarding local systems. States should develop their own Records Access Category 2 list for local data. The category list should be posted in the local Public Room/access area as discretionary records which have been approved by the State Director. Decisions concerning Bureauwide systems will be made at the WO level. Automated Resources Data themes are included as State systems. States may nominate Bureauwide systems for the Records Access Category 2 list by submitting a proposal to WO-870 for approval. Once approved, these records may be available in the Public Room/access area.

C. Steps for Designating Discretionary Records. The following steps must be applied, and documented when making determinations for new designations of Discretionary - Category 2 status records:

1. Determine if the records contain any proprietary/confidential or privacy information that must be withheld under the FOIA, the Privacy Act, or other statute. All public requests for electronic records containing this type of information must be processed through FOIA, and Privacy Act procedures. Refer to section .3 of this manual for guidelines on reviewing data for FOIA exemptions;

2. Determine if the database contains other information of a sensitive nature which the BLM is not required to make publicly available under its various laws and/or regulations, using guidelines in section .3 of this manual and section .7 for Privacy Act procedures. These records which do not contain any sensitive information may be made publicly available for a fee as Category 2 records at the discretion of the State Director; and

3. Once the records have been reviewed and an analysis completed, Field Offices shall compile two lists for State data; those records that are not sensitive will be placed in Discretionary - Category 2 Records. Those records, which may be exempt from disclosure under statute will be placed in Non-Public - Category 3 Records, and requests shall be handled under FOIA procedures.

.14 Non-Public Records - Category 3 (Limited Access Records). These records include all records not designated in publicly available records categories.

A. Reasons for Designating Category 3 Records. Records are placed in this category because: (1) A FOIA exemption may apply to all or portions of the record (see section .3 of this manual); (2) the Privacy Act is applicable (see section .7 of this manual); (3) the records are of little or no interest to the public; or (4) administratively, it would not be feasible to house a grouping of numerous files in the Public Room. If an outside request is made for non-public records, and the FOIA or Privacy Act have not been cited, the Records Administrator for that office must be contacted.

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B. Determining Category 3 Records. The Records Administrator using guidelines provided in section .3 of this manual, will review the requested Category 3 documents for information considering the FOIA exemptions, or Privacy Act procedures, and will determine if a FOIA and/or Privacy Act request is required to obtain access to any releasable portions of these records. Guidelines on Privacy Act procedures can be found in section .7 of this manual. The Minerals Handbook to this manual will facilitate in the review for releasable minerals records. In cases where a record has no applicable FOIA exemption (e.g. is not proprietary/confidential information), the Records Administrator can follow the procedures necessary to place information specific to that State (or Center) on the State (or Center) Discretionary list, and a FOIA would not be required for this information placed in access Category 2.

C. Disclaimer Labels. Disclaimer labels are also required for Category 3 electronic records (such as draft databases), which may be required to be released by court order and/or under the FOIA.

1. Unverified Data. The following label should be used on unverified data that must be disclosed to the public: "NO WARRANTY IS MADE BY BLM AS TO THE ACCURACY, RELIABILITY, OR COMPLETENESS OF THESE DATA FOR INDIVIDUAL USE OR AGGREGATE USE WITH OTHER DATA";

2. Internal Use Data. The following should be used on products for internal BLM use only: "FOR INTERNAL BLM USE", and

3. Products for No Intended Distribution. This label should be used for products for review or display with no intended distribution: "REVIEW AND/OR DISPLAY COPY - NOT FOR DISTRIBUTION." (See .32E.1.c. for handling of draft databases).

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.2 Access to BLM Public Records. Sections 552(a)(1) and (a)(2) of the FOIA identify material which agencies are required to make available "for public inspection and copying". Information such as: (1) Final opinions made in the adjudication of cases; (2) statements of policy and adopted interpretations not published in the Federal Register; and (3) administrative manuals and staff manuals that affect a member of the public are available without requiring a FOIA request. Categories 1 and 2 are records access categories which list such records which may be available to the public, and for which a FOIA request is not necessary. However, Section 552(a)(3) of the FOIA provides that any person has the right, enforceable in court, of access to Federal agency records, except to the extent that such records or portions thereof may be protected from disclosure by one of nine specific exemptions. Such records are located on record access Category 3. See section .3 for information regarding specific FOIA exemptions, and 43 CFR 2.13.

.21 Public Room Policy. Regulations regarding BLM Public Room records, Public Room locations, office hours and filing procedures can be found in 43 CFR 1813 and 1821. Public Room procedures should afford the greatest level of external access possible to BLM records that are determined to be publicly available. Requesters should be encouraged to use BLM's Public Room procedures, and requests for external access under these procedures should be processed in a prompt and efficient manner.

.22 Access Requests for Public Information. The following procedures should be made available to all external access requesters.

A. External Requests. External requests made for BLM records that are available via Public Room/access areas or for Category 2 Records may be either oral or in writing (FOIA requests always have to be made in writing). Each BLM office must develop procedures for tracking external requests to aid in calculating current Bureauwide cost recovery rates for these records.

B. Freedom of Information Act Requests for Category 1 and Category 2 Records. The FOIA does not need to be cited for records listed in these categories. However, should external entities choose to request these records under the FOIA, BLM must process those requests using FOIA procedures. Requests for public interest fee waivers under the FOIA will be reviewed on a case-by-case analysis using the criteria set forth in 43 CFR 2.21(a), and 383 DM 15, Section 4.10. Requests for a fee waiver will be denied if the requester has not provided sufficient justification for the fee waiver.

.23 Public Room/Public Access Area Fees. Authority to charge for copies of any official books, records, papers, documents, maps, plats or diagrams within the custody of BLM is provided in 43 USC 1460. The BLM may charge the sum equal to the cost of production plus the cost of administrative services involved in handling the records for the purpose of providing copies. The BLM's Cost Recovery Program ensures that the BLM's charging system is equitably based on the costs of providing products and services to the public.

A. Authority to Recover Fees. Fees can be recovered only for the actual costs associated with providing access to BLM records (43 USC 1460). All BLM offices will utilize the established Bureauwide rates. See the BLM Cost Recovery Manual, 1270-3; and Handbook H-1270-3.

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B. Standard Fees. Approved standard fees will be charged for providing copies of all records using BLM Public Room/access procedures, in accordance with the BLM's Cost Recovery Program. Where specific BLM regulations require that copies will be provided without charge, (e.g., Resource Management Plans and amendments, 43 CFR 1610.2), the provisions of the regulation should be followed. However, if additional copies are requested outside the scope of the regulation, the Cost Recovery policy applies. Discretion should be used in determining whether or not to charge fees to other Government entities for access to BLM records available in Public Room/access areas. This will be based on an analysis of mutual benefit (also see procedures for agreements to share data in .6 of this manual).

C. Copy Fee Account. The BLM will retain all fees recovered from providing access to records in BLM's copy fee account (5700).

.24 Level of Access Available to External Parties.

A. On-line Read Only Access. Read only access is the only option available for external access to BLM on-line records from BLM Public Room/access areas. Each BLM site should develop local procedures for managing heavy use of Public Room/access area terminals to ensure that all requesters are afforded equal access.

B. Subscriptions to BLM Records. Requesters may subscribe or make ongoing requests for BLM publicly available records on any media available through Public Room/access areas. These subscriptions should be documented in writing. Subscriptions should also be used to document remote on-line services, should a BLM office choose to provide that level of service as part of their Public Room/access area procedures.

.25 Special Formatting Services. Offices are not required to do special formatting in the delivery of data to the public. However, if a State, the SC, NIFC or the WO chooses to perform those services, they must be consistent from one request to another. Information may be requested in raw data file format or in special formats. The term "no formatting" refers to the raw data file. The term "special formatting" refers to the manipulation of data, i.e., a specialized report generated by an ad hoc query with results downloaded to either paper or stored on a magnetic media. Separate cost recovery fees apply.

A. Requests for Public Records in Special Mediums. Field offices may receive requests for public records to be provided in electronic format or on special mediums (i.e., request for a final Resource Management Plan (RMP) on a floppy diskette). It is the discretion of the office receiving the request to comply to such a request, and cost recovery guidelines would apply.

B. Providing for Special Requests. Because of various impacts associated with providing records in special mediums or providing enhanced records, BLM offices must take into consideration the following:

1. Enhanced electronic record capabilities may be time consuming and costly to the BLM. Offices must weigh the request against their existing workload and ability to produce the product;
2. Photocopying large volumes of material, may be more costly, and

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3. Offices must be consistent, once this information is provided in a particular format, precedence is set and all other requests for identical products must be honored,

C. Documentation of Determination. An analysis of the determination to provide records in a particular format must be documented. This documentation process assists in the consistency and precedent setting in the event of similar requests in the future.

.26 Access to Spatially Derived Public Information. States, SC, NIFC, and WO shall develop local policies for the production and distribution of spatially derived information products. Spatially derived information includes Geographic Information Systems (GIS), satellite imagery, autocad, cadastral plats, aerial photography, video imagery, scanned graphics, video tapes, etcetera. Requests for spatially derived information may or may not originate in the Public Room/access areas. Employees at any level of the organization may receive a request for spatially derived information products. It is the BLM's policy to create a means of fair and equal access to these public information products. Local policies for production and distribution of these products must be consistent, and appropriate cost recovery applied.

A. Tracking Costs. Records Administrators must develop procedures for tracking external requests. Tracking requests is required from a cost recovery standpoint in order to forecast workload.

B. Disclaimers. Appropriate disclaimers should be included with the documentation provided with any electronic records. Required labels such as those indicated in Sections .12, .13, and .14 should be used.

.27 Screening of Files for FOIA Exempt Information. Because public files and case files may contain some information which may be considered exempt under the FOIA, it is important to review each file for any information before it is provided to a requester. (See section .3 of this manual for information on FOIA exempt information, and section .7 for Privacy Act protected information).

A. Public Files. In the Records Access Category 1 Listing of Public Records, those records noted with an asterisk must be screened for FOIA exempt material. Public files may contain some information concerning ongoing negotiations, financial information, business information, personal, privacy information, investigations, internal memoranda, drafts, and working documents, proprietary, geological and geophysical information relating to wells, or other sensitive information.

1. Segregating Information. The above information, if it exists, shall be segregated within the file. This information should be removed from the file before providing access to the public and requests for this type of information must be made under the FOIA because an exemption would apply.

B. Case Files. Case files are classified and arranged by serial number, name, or other case identifier and contain material relating to a specific action, event, person, organization, location or product. Case files shall only contain that information necessary for administration of the case. General correspondence, employee notes, handwritten notes, and sticky notes of a general nature or correspondence not specifically related to the administration of the case shall not be filed in the case file. The Washington Office programs are responsible for issuing guidance for specific case file management within their areas or responsibility.

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.3 BLM Non-Public Information - Category 3. Records that are generally not publicly available include internal memoranda, staff working materials, draft documents (except published draft Environmental Impact Statements (EIS's) and published draft RMP's), and documents containing proprietary/confidential or otherwise sensitive information. Information is placed in this category following the review criteria as identified in .14B above.

.31 Requests for Non-Public Information. The Records Administrator using guidelines provided in section .3 and .7 of this manual, will review the requested Category 3 documents for information considering the FOIA exemptions, or Privacy Act procedures, and will determine if a FOIA and/or Privacy Act request is required to obtain access to any releasable portions of these records. All FOIA requests must be made in writing, and the information reviewed for one or more of the nine specific FOIA exemptions as described below to determine if the records can be released. See .4 below for information on handling congressional requests, and .5 for other special requests for information.

.32 Freedom of Information Act Exemptions. The following are the nine exemptions under the FOIA which serve as a basis for withholding information from the public (5 USC 552(b), and 43 CFR 2.13(c)). Records (or portions of records) that meet the following exemptions criteria may be withheld from public disclosure. In cases where exemptions may be discretionary, such as Exemptions 2 and 5, a specific harm to Government operations or personal privacy must be identified if the information were released to the public. A list giving the statutory citation and the reason for withholding each item, and copies of withheld documents must be maintained in the FOIA Case File. The FOIA exemptions (1), (2), and (8) are not normally applicable to BLM documents, and are only listed and not included for further explanation.

A. Exemption 1 - Classified Secret Matters Of National Defense or Foreign Policy.

B. Exemption 2 - Internal Personnel Rules And Practices of an Agency. The exemption encompasses (1) internal matters of such a trivial nature, that there could be no genuine or significant public interest (such as regulation of lunch hours, sick leave policy); or (2) more substantial internal matters, the disclosure of which would allow circumvention of statute or agency regulation (such as crediting plans used in job selection, or audit procedures).

C. Exemption 3 - Matters Specifically Exempted From Disclosure by Statute. The intention of this exemption is to allow statutes which require or authorize the withholding of confidential information (and to which there was left no discretion on the issue) to remain unaffected by the disclosure mandate of the FOIA. The Privacy Act and the Trade Secrets Act are not Exemption 3 statutes. At present those statutes affecting BLM which prohibit release of specific information include:

1. Indian Minerals Development Act, 25 U.S.C. 2101;
2. Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. 201(b)(3) and 208-1(b)-(e). et seq;
3. Archaeological Resources Protection Act of 1979 16 U.S.C. 470hh(a);

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4. National Historic Preservation Act Amendments, 16 U.S.C. 470w-3, and

5. Federal Cave Resources Protection Act of 1988 (P.L. 100-691).

D. Exemption 4 - Trade Secrets and Confidential Business Information. Exemption 4 protects trade secrets and commercial or financial information obtained from a person and privileged or confidential. The exemption is intended to protect both the interests of commercial entities that submit proprietary information to the Government, and the interests of the Government in receiving continued access to such data.

1. Exemption 4 Categories. The exemption covers two broad categories of information in Federal agency records:

a. Trade Secrets. Trade secrets are considered to be: "A secret, commercially valuable plan, formula, process or device that is issued for the making, preparing, compounding or processing of trade commodities that can be said to be the end product of either innovation or substantial effort" (Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983)), and

b. Commercial or financial. This information would relate to business or trade, in which the submitter has a commercial interest. This category of information also must be:

(1) Obtained from a person (not generated by the Federal Government), and

(2) Privileged or confidential. When determining confidentiality the Bureau must now establish first whether the information is provided because it is "required" for a certain benefit, or provided "voluntarily", because there is a different test for confidentiality for each category.

(a) Test for Confidentiality of "Required" Information. Only commercial or financial information that the company is required to provide is tested for confidentiality in the following manner:

(1) Release of the information would impair the Government's ability to obtain similar information in the future; or

(2) Release may cause substantial harm to the competitive position of the person from whom the information was obtained.

(b) Test for Confidentiality of "Voluntary" Information. Information which is provided voluntarily to the Government (above and beyond what is required, and derives no benefit from the Government for doing so) may be considered confidential only if that information can be proven to be routinely treated by the company as confidential.

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2. Notification to Submitter of Proprietary Information. The Trade Secrets Act, 18 U.S.C. 1950, makes it unlawful for agency employees to disclose proprietary information filed with an agency and provides penalties for unauthorized disclosure (see .86 below). Similarly, Executive Order (EO) 12600 mandated submitter notification when an agency contemplates releasing arguably confidential commercial information that they believe is confidential. However, all information that is submitted to BLM must be reviewed by BLM personnel regardless of submitter identification as to confidentiality and a determination made as to its confidentiality before the information can be made available in a public room. Similarly, all information identified as confidential must be reviewed when a FOIA request is received to determine if competitive harm would result from its release as discussed below. The submitter's identifying information as sensitive when it is submitted does not relieve the BLM of the responsibility of determining the accuracy of such designations before releasing or withholding information.

3. Review of Records. In compliance with the Trade Secrets Act, the FOIA, and EO 12600, it is imperative that potentially proprietary confidential information submitted to BLM must be identified and treated in accordance with the requirements of the law. In order to make correct determinations concerning submitted information, the information must be reviewed applying court interpretations of what constitutes a trade secret and what constitutes proprietary confidential commercial information.

4. Release of Record Over Objection of Submitter. The BLM has the final determination as to the confidentiality of information regardless of the submitter comments following review of submitted information which is being considered for release under the FOIA. If a requested record is being made available over the objection of a submitter, both the requester and the submitter shall be notified in writing of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include: (1) a statement of the reasons why the submitter's objections were not sustained; (2) a specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part, and (3) a specified disclosure date.

5. Frivolous Claim of Confidentiality. The BLM has the final determination as to the document's confidentiality regardless of how the information was marked by the submitter when provided to BLM. If a claim of confidentiality is found to be unsubstantiated, and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefore. The submitter must be notified a reasonable number of days prior to the date on which disclosure is to be made.

6. Release of Software. Software may be considered responsive to a FOIA request if it is determined that the information should be released in computerized format dependent on the software. Whenever release of software is considered, a determination must be made regarding its proprietary value. If the software is a commercial product with copyright protection, the software should be withheld under Exemption 4 since release could cause competitive harm to the owner. However, if the software was produced by the Government or for the Government, and no rights were reserved, the software could be released along with the information that it concerns if it has been determined that release in a computerized format is the appropriate method of disclosure.

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E. Exemption 5 - Internal Memoranda. Exemption 5 protects interagency or intra-agency memoranda that would not be routinely available by law to a party in litigation with the Bureau. Below are the three most frequently invoked Exemption 5 privileges:

1. Deliberative Process Privilege. This privilege is also referred to as the predecisional privilege. It applies to documents generated by the Executive Branch that reflect..(a) advisory opinions, (b) recommendations, and (c) deliberations...and are part of an internal decisionmaking process. A document may lose its predecisional status if it is adopted, formally or informally, as the Bureau's position, and also released previously outside the Executive Branch. The BLM documents that will fall in this category will generally be drafts, working papers and handwritten notes.

a. Factual Portions. Reasonably segregable factual portions of predecisional documents should be released. Courts consider factual portions releasable unless they are stated along with nonfactual material in a single sentence.

b. Protection From Exploitation. Exemption 5 may also protect information created by the Government in its own interest for the purpose of gaining full value for its resources or for protecting those resources from exploitation.

c. NOTE On Draft Databases. Determine if the database is considered to be in "draft" status. This means that the data contained in the system: (1) Has not been verified to the satisfaction of the appropriate BLM Manager (i.e., State Director, NIFC Director, or appropriate WO Assistant Director); (2) the system is still in a developmental stage, and (3) release of the records would affect BLM decisions regarding the verification of the data or development of the project. In order to be considered a "draft" record, all three standards must be met. Once the decision has been made to release specific records, those records may not be withheld in the future. "Draft" records may not be used internally for decision making purposes. The following disclaimer statement must accompany the release of draft databases:

"No warranty is made by the BLM as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data."

Once databases have been designated as Official Agency Records according to manual section 1270-1 on Electronic Records Administration, and Handbook section H-1270-1, they will no longer have "draft" status.

2. Attorney Work Product Privilege. Exemption 5 also provides protection for the attorney-work product privilege. This privilege applies to documents prepared by an attorney in contemplation of actual litigation; or by staff at the request of an attorney in contemplation of litigation.

3. Attorney-Client Privilege. This protects confidential facts divulged by BLM or the Department as client to Office of the Solicitor or Department of Justice as attorney; and it also encompasses opinions given by the Office of the Solicitor or Department of Justice to BLM for the Department based upon those facts. The Bureau must indicate an effort to protect this information's confidentiality by allowing internal access only to authorized parties.

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F. Exemption 6 - Personal Privacy. Exemption 6 protects personnel, medical and similar files (of individuals), disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The exemption does not apply to corporate records or to information concerning professionals in their professional capacity. Exemption 6 involves a balancing of interests between an individual's right to privacy and the public's right to Government information, and thus differs from other exemptions. Because a balancing is required, any invasion of privacy can prevail, provided that the public interest is distinctly weaker. Moreover, it should be remembered that the "public interest" must actually be in the interest of the overall public.

1. Protected Information. The kinds of information which have been protected by Exemption 6 are the personal, intimate details of an individual's life, the release of which is likely to cause distress or embarrassment. Examples of such details include information concerning marital status, legitimacy of children, medical condition, welfare payments, family fights and reputation. Mailing lists are frequently considered under this exemption and may be withheld under Exemption 6 when they are concerning individuals. The courts do not allow for the withholding of names and identifiers concerning companies. However, information should not be withheld if the records are publicly available in BLM Public Rooms. Once information is publicly available further release would not constitute an invasion of privacy. Each request requires a case-by-case analysis of the circumstances before a determination concerning release can be made.

G. Exemption 7 - Investigatory Files. Exemption 7 permits an agency to withhold investigatory records compiled for law enforcement purposes to the extent that production of such law enforcement records or information would cause the following six harms:

1. 7(A) - could reasonably be expected to interfere with enforcement proceeding;
2. 7(B) - would deprive a person of a right to a fair trial or an impartial adjudication;
3. 7(C) - could reasonably be expected to constitute an unwarranted invasion of personal privacy;
4. 7(D) - could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
5. 7(E) - would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
6. 7(F) - could reasonably be expected to endanger the life or physical safety of any individual.

H. Exemption 8 - Records of Financial Institutions.

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I. Exemption 9 - Geological and Geophysical Information.

Exemption 9 protects geological and geophysical information and data, including maps concerning wells. Although this exemption has rarely been interpreted by the courts, one court has held that it applies only to well information of a technical or scientific nature. This exemption protects the technical or scientific information concerning wells without the requirement to prove competitive harm. Therefore, geological and geophysical information concerning wells may be protected by Exemption 9 and may also be protected by Exemption 4 if the competitive harm standard is met.

.33 Screening of Files for FOIA Exemptions. Because public files and case files may contain some information which may be considered exempt under the FOIA, it is important to review each file for any information before it is provided to a requester.

.34 Requirements of a FOIA Request. In accordance with 43 CFR 2.14, written requests shall be made to the office where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the requester, the requester may direct a request to the head of the BLM. Requests shall be in writing and must specifically invoke the FOIA. However, discretion should be used in responding to requests which do not specifically invoke the FOIA but are seeking records which would require a FOIA request because some of the documents may be exempt under one of the nine FOIA exemptions. Therefore, if a request concerns internal records, and records which fall under Category 3 listing, it should be handled as a FOIA request and the requester should be so advised.

A. Other Procedural Requirements. Other procedural requirements for submission of FOIA requests include:

1. Reasonable Description of the Record. The request must reasonably describe the requested record. This means that the requester must describe the records in a manner that will enable an employee of the BLM familiar with the subject area of the request to locate the record with a reasonable amount of effort.

2. Fee Category. A request must specify the fee category of the requester, e.g., commercial use, news media, educational institution, noncommercial, scientific institution, or other, in which the requester claims the request to fall, the basis of this claim, and how much the requester is willing to pay (see .36 of this manual).

3. Records in Existence. A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request. For example, combining or compiling selected items, responding to a questionnaire, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons, would not be required (43 CFR 2.14(c)).

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4. Records Disclosed in Another Format. An agency may determine the format in which a record will be disclosed and is not required to provide the requested records in any particular format. Thus, if a requester asks for computerized records, the requested information may be provided in paper format if it is determined that paper is the most efficient and appropriate method to provide the records. However, in instances where the BLM determines that creating a new record or providing records in a particular format will be less burdensome and more cost effective than disclosing large volumes of unassembled material, the BLM may, in its discretion, agree to creation of a new record or to release in a particular format as an alternative to disclosing existing records or records in a different format. See .32D6 concerning release of software.

5. Documentation of Determination. An analysis of the determination to create records or to provide records in a particular format must be documented and the requester should be advised that such requests are handled on a case-by-case basis. This documentation process avoids precedent setting in the event of similar requests in the future.

6. Time Limit for Acting on FOIA Requests. The time limit for acting on an initial request is 10 working days (43 CFR 2.17)). The 10-day processing time will be delayed:

a. If the requester has not sufficiently identified the fee category applicable to the request;

b. If the requester has not stated a willingness to pay fees as high as anticipated by BLM, or;

c. If the requester has not reasonably described the requested record to enable an employee of the BLM familiar with the subject area of the request to locate the record within a reasonable amount of effort;

d. If the request has not been submitted to the office responsible for custody of the records responsive to the request, and

e. A fee waiver is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by BLM.

7. Scope of Request. Unless a request clearly specifies otherwise, requests to field installations of the BLM may be presumed to seek only records at that installation and requests to the BLM head or the BLM FOIA Officer may be presumed to seek only records of the BLM (43 CFR 2.15(a)(1)).

8. Request for Records at Other Installations. If a request to a field installation of the Bureau specifies that it seeks records at other installations of the Bureau, the installation shall transfer the request to the other installation(s). The 10-day response time does not start until the request is received at the installation having the records (43 CFR 2.15(a)(2)).

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9. Requests Concerning Other Bureaus. If a request concerns records in the possession of BLM that originated with or are of substantial concern to another Bureau, BLM shall consult with that Bureau before deciding whether to release or withhold the records. As an alternative to consultation, BLM may refer the request to the Bureau that originated or is substantially concerned with the records. Such referrals shall be made expeditiously and the requester shall be notified in writing that a referral has been made. A referral, however, does not restart the 10-day response time (43 CFR 2.15(b)).

10. Record Originated With Another Federal Agency. If a requested record in the possession of the Bureau originated with another Federal agency, the request shall be transferred to that agency unless:

- a. The record is of primary interest to the Bureau;
- b. The Bureau is in a better position than the originating agency to assess whether the record is exempt from disclosure, or
- c. The originating agency is not subject to the FOIA.

.35 Action on Initial Requests. Requests to field installations shall be decided by the head of the installation. Requests to the headquarters office shall be decided by the official whom the head of the Bureau has designated as the FOIA Officer. Appropriate Bureau staff should be consulted for recommendations on release of internal records. Decisions to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the office of the appropriate Associate, Regional, or Field Solicitor.

A. Form of Grant. When a requested record or part of a record has been determined to be available, the official processing the request shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the official shall state the amount of fees due and the procedures for payment.

B. Form of Denial. In accordance with (43 CFR 2.16(c)), a decision to withhold a requested record (or portion of a record) shall be in writing and shall include: (1) A reference to the specific exemption or exemptions authorizing the withholding; (2) if neither a statute or an EO requires withholding, the sound ground for withholding; (3) a listing of the names and titles or positions of the official responsible for the denial; and (4) a statement that the denial may be appealed to the Assistant Secretary, Policy, Management and Budget, and a description of the procedures in 43 CFR 2.18 for appeal. A list of documents, and portions of documents being withheld, and the FOIA exemption applied must be maintained in the FOIA Case File. In addition, copies of the withheld documents (and portions of documents) must also be maintained in the Case File for the disposition of the file.

1. Failure to Reasonably Describe Record. A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency, or because requested records cannot be located shall be in writing and shall include: (1) A description of the basis of the decision; (2) a list of the names and titles or positions of each person responsible, and (3) a statement that the matter may be appealed to the Assistant Secretary, Policy, Management and Budget, and a description of the procedures for appeal (43 CFR 2.18(a)(2)).

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C. Time Limits for Processing. Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than 10 working days after receipt of a request. This determination shall be communicated immediately to the requester (43 CFR 2.17(a) & (h)).

1. Beginning of 10 Working Day Time Limit. The 10 working day time limit begins to run when a request meeting the requirements discussed above is received at a field installation or Bureau headquarters designated to receive the request. The running of the basic time limit may be delayed or tolled as explained above.

D. Extensions of Time. The time limit for acting on an initial request may be extended to the extent reasonably necessary for the proper processing of the request, but in no case may the time limit be extended for more than an additional 10 working days. The FOIA provides for extensions of the time limit in only the following specific situations (43 CFR 2.17(c)).

1. Records Located at Other Facilities. The need to search for and collect the requested records from field facilities or other establishments that are separate from the installation processing the request;

2. Voluminous Records. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request, or

3. Consultation. The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Department having substantial subject-matter interest therein.

E. Notification in Writing of Extension. The requester shall be notified in writing of an extension of time. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made. If no determination has been reached at the end of the 10 working day period for deciding an initial request, or an extension thereof, the requester may deem the request denied and may exercise a right of appeal. If a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and right to treat the delay as a denial for purposes of appeal, including a description of the procedures for filing an appeal (43 CFR 2.17(d) - (f)).

F. Appeals. A requester may appeal when: (1) Records have been withheld; (2) a request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located; (3) a fee waiver has been denied, or (4) a request has not been decided within the time limits required (43 CFR 2.18(a)).

1. Time Limit for Appeals. An appeal must be received no later than 20 working days after the date of the initial denial in the case of denial of an entire request, or 20 working days after records have been made available, in the case of a partial denial.

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.36 Fees. Unless waived, fees for responding to FOIA requests shall be charged in accordance with the provisions set out below (43 CFR 2.20), and the schedule of charges contained in 43 CFR Part 2, Appendix 1, and the Appendix to BLM Handbook on Cost Recovery, H-1270-3. Fees shall not be charged if the total amount chargeable does not exceed \$15.00. Fees are applicable according to the class of requester.

A. The Four Fee Classes. The four fee classes (or categories) include: Commercial use requesters, educational and noncommercial scientific institution requesters, news media requesters, and other requesters (43 CFR 2.20).

1. Commercial Use Requests. A requester seeking records for commercial use shall be charged fees for costs incurred in document search, duplication and review. A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records. A commercial use request is one from or on behalf of a person 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. The intended use of the records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information. An example of a commercial requester would be a law firm requesting materials for private litigation that does not involve a public interest.

2. Educational and Noncommercial Scientific Institution Use Requests. This category of requesters will be provided with 100 pages of free duplication. Copying fees will be charged for all pages above that number. These requesters may not be charged for any costs incurred in searching for documents, examining documents to determine whether they are exempt, or other processing which may be required or for time spent resolving legal and policy issues affecting access to requested records. The requesters in this class include: Educational institutions which operate a program of scholarly research; noncommercial scientific institutions operated for the purpose of conducting scientific research, not intended to promote any particular product or industry.

3. News Media Use Requests. This category of requesters will be provided with 100 pages of free duplication. Copying fees will be charged for all pages above that number. These requesters may not be charged for any costs incurred in searching for documents, examining documents to determine whether they are exempt, or other processing which may be required or for time spent resolving legal and policy issues affecting access to requested records. The requesters in this class include: Any person actively engaged in gathering news for an entity organized to publish or broadcast news to the public.

4. Other Requesters. Other requesters include all requesters not covered by the above categories. Other requesters shall be charged fees for document search and duplication, except for the first two hours of search time and the first 100 pages of paper copies, or the equivalent thereof if records are in some other form. Other requesters may not be charged for any costs incurred in examining documents to determine whether they are exempt, or other processing which may be required or for time spent resolving legal and policy issues. Public interest organizations would generally be in this class.

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B. Determination of the Class. The identity of the requester and other information submitted by the requester should permit a reasonable inference of the appropriate class. However, where a request does not provide sufficient information to determine the appropriate class, the requester should be asked to provide clarification. If such clarification is required, the request may be deemed not to have been received until the clarification is received. Requests for clarification shall be made promptly (43 CFR 2.20(f)).

C. Aggregating Requests. The OMB "Uniform Freedom of Information Act Fee Schedule and Guidelines", Section 9(C) (52 FR 10012) provide that the Federal agencies may presume that multiple requests for documents that could reasonably have been the subject of a single request and which occur within a 30-day period are made to avoid paying fees. Therefore, BLM has the discretion to aggregate fees for FOIA requests believed submitted for the purposes of avoiding fees. This policy has been upheld in District Court (Edward P. Atkin v. Equal Employment Opportunity Commission, Civil Action No. 91-2508, U.S. District Court for the District of New Jersey, Dec. 27, 1992).

D. Advance Payment. Where it is anticipated that allowable fees are likely to exceed \$250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing the request. Where a requester has previously failed to pay a fee within 30 calendar days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request. Advance payment may not be required except for the above reasons. Issuance of a notice requiring payment of overdue fees or advance payment shall suspend the time limit until receipt of payment (43 CFR 2.20(h)).

E. Form of Payment. Payment of fees should be made by check or money order payable to DOI BLM. Credit cards are also accepted where the capability exists. The response letter to the requester should contain an explanation of how applicable fees were calculated, and that a bill will follow. Billing form DI-1040 must be used and the letter or the bill shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. Section 3717 and implementing regulations 4 CFR Section 102.13 if the fees are not paid within 30 calendar days.

F. Fee Waiver. Requests for public interest fee waivers under the FOIA will be reviewed on a case-by-case analysis using the criteria set forth in 43 CFR 2.21(a), and 383 DM 15, Section 4.10. Documents shall be furnished without charge or at a reduced fee if disclosure is in the public interest. To determine if the disclosure would be in the public interest, specific factors relating to public interest must be applied. In particular, public interest factors to be considered are whether the record concerns Government activities, if so, whether disclosure will likely contribute to public understanding, and whether that understanding will be significant (43 CFR 2.21)). Similarly, commercial factors to be considered are whether the requester has a commercial interest that would be furthered by the requested disclosure and, if so, would disclosure be primarily in that interest. Often the requester may need to be consulted to gain enough information to make this determination. See Section .22B of this manual, for guidance on fee waiver requests under the FOIA for information available to the public.

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G. Reduction of Fees. As stated previously, fees may be determined to be waived or reduced. Thus, after the above criteria have been applied, it may be determined that a total waiver is not applicable but fees could be reduced as to certain records which meet the specific requirements outlined above. For example, if a requester seeks a voluminous amount of repetitive records, a reduced fee may be appropriate only with respect to a reasonable sampling of the records since a sampling would contribute to public understanding of Government operations and activities but records beyond a reasonable sampling would not. Similarly, after reviewing materials responsive to a request, it may be determined that some of the documents warrant a fee waiver while others may not. Therefore, a reduced fee would be appropriate in such cases.

.37 Annual Reporting Requirement. Each State, SC and NIFC shall submit an annual report of its activities involving the FOIA to the Director (WO-870). Reports are due each January. The WO consolidates Bureau information and submits it to the Department. Agencies are required to report annually to the Congress an inventory of FOIA activities for the calendar year. The report includes data on the number of FOIA requests received and the number of denials.

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.4 Congressional FOIA Requests. Access requests from individual Congressmen are handled like other FOIA requests; however, requests from a committee or subcommittee of Congress are treated separately, because the FOIA does not give authority to withhold information from a Congressional Committee. Therefore, if a request is received from a Congressional Committee or Subcommittee for proprietary/confidential or otherwise sensitive information, the request should be granted. However, the following procedures must be followed to protect the proprietary/confidential information.

.41 Procedures for Congressional Committee Requests. Each sheet of the proprietary/confidential information shall be stamped "For Official Use Only" at the time transmitted.

A. Cover Sheet. Proprietary/confidential or sensitive information shall be accompanied by a cover sheet describing such information as proprietary/confidential or sensitive information and containing a list which enumerates each item transmitted. At the conclusion of the list, the following shall be stated:

The above records contain proprietary/confidential or sensitive information which is not available for public disclosure. Penalties for unauthorized disclosure provided in Section 1905 of Title 18 United States Code apply to this information. The information is being forwarded to _____ (A committee of Congress) in compliance with 5 U.S.C. 552(d).

B. Cover Letter. A cover letter to the Committee should be prepared advising the Committee that the request is granted because it is an official request of a Congressional committee or subcommittee, notwithstanding the exempt status under the FOIA of materials containing privileged confidential information (5 U.S.C. 552(d)). The committee should also be advised that because information being provided in response to the request would not be available to the public under the FOIA, that BLM requests that no further disclosure of the material be made.

C. Inform Appropriate Officials. Any office requested to furnish proprietary/confidential or sensitive information to a committee of Congress shall immediately inform the Assistant Secretary, Land and Minerals Management, through the proper channels, of the information requested, the requesting party, and the date of the request. A list of all information furnished in compliance with a request shall be forwarded by memorandum through proper channels, to the Assistant Secretary, Land and Minerals Management, as soon as possible thereafter.

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.5 Special Requests for BLM Information. This section identifies requests for information which may require special handling aside from the previously mentioned access procedures.

.51 Requests by Employees of a Federal Agency or Office. In accordance with the Departmental FOIA Handbook, 383 DM 15, 1.7A(1), and the Department of Justice (DOJ), a request by an employee of a Federal agency acting in an official capacity is not covered under the FOIA. The FOIA does not govern the exchanges of information between Federal agencies. However, according to the DOJ's interpretation of the FOIA, State agencies can make FOIA requests. One-time requests for information shall be provided to other Federal requesters under non-FOIA procedures. Multiple requests for information by a Federal requester shall be made under data sharing procedures (see Section .6).

.52 Disclosure of Confidential Information to Other Federal Government Offices. Authorized officials of other Federal Government offices, inside and outside BLM having demonstrated a need-to-know the content of proprietary/confidential or other confidential information, will be provided with technical advice and counsel upon interpretation of such information. These officials may be given access to such information for the purpose of inspection and for making notes when feasible, subject to the condition that the information so obtained is not to be published and will not be subject to public disclosure.

A. Office of Control Responsibilities. The Office of Control will explain to the authorized officials of other Government offices which parts of the records are to be safeguarded and which parts are common knowledge or public information. Where proprietary/confidential or other confidential information is contained in the requested materials, the requesting office must be established as an Office of Secondary Control; the agency must accept liability for the confidential information; a data sharing agreement or MOU (negotiated at the State Director level) governing the exchange of the confidential information between BLM and the agency is established; and an Information Security Agreement signed by the authorized official(s) of the agency is completed before transmitting confidential information. Requests to receive copies of confidential materials must be coordinated by the FOIA Officer who will arrange for completion of the data sharing agreement or MOU, Security Agreement, and response.

B. Liability. Whenever another agency has obtained possession of information pursuant to an MOU and Security Agreement, the individual agency shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the BLM, and shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to BLM.

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.53 Disclosure to a State or Local Agency. Release of BLM information to a State or local agency which include proprietary/confidential or other confidential information must be reviewed under the FOIA for applicable FOIA exemptions. Discretionary disclosure to the state of information protected by FOIA Exemption 4 is only allowed when a specific statute authorizes disclosure. See Chrysler v. Brown, 441 U.S. at 295-96. The BLM cannot release proprietary/confidential information to State and local agencies even under an agreement unless a specific statutory and regulatory authority can be cited. On the other hand, when information is received from State and local sources BLM cannot agree to maintain the confidentiality of this information except to the extent that it is permitted under the FOIA.

.54 Court Orders to Produce Documents. Occasionally BLM offices may be requested to produce information by "compulsory process", e.g., a subpoena. The State Records Administrator should be notified, as well as the Chief, Records Administration Section, WO-873. Such requests do not follow normal BLM FOIA and Privacy Act procedures. The Records Administrator should immediately contact the Regional Solicitor concerning the order, and shall work with the Office of the Solicitor in preparing the materials requested. (See also procedures set forth in 43 CFR 2.80, Subpart E - Compulsory Process and Testimony of Employees.)

.55 Requests for Equal Employment Opportunity (EEO) Documents. The FOIA requests for EEO documents are handled in compliance with Equal Employment Opportunity Commission (EEOC) Federal Complaint Processing Manual (EEO MD-110, October 1992), and DOI EEO procedures. The FOIA Coordinators must be contacted immediately when such a request is received, and a response must be coordinated with the Office of the Solicitor. Prior to an issuance of a final agency decision of a formal complaint, Exemption (7)(A) can be cited to withhold all complaint/investigatory material. Such information is withheld regardless of whether the request is made by the complainant, a witness, or another third party. After the EEO investigation has been closed and a final agency decision is issued, information that is responsive to a FOIA request should be analyzed on a case-by-case basis. Sound grounds such as a FOIA Exemption, other statute, or EO should exist in order to withhold information after the EEO investigation has been closed. The BLM may share internal information with other Federal, State, and local agencies and Congressional Committees under certain conditions. Such disclosures are considered non-public and therefore require that the requesting agency agree to maintain the confidentiality of the requested information.

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.6 Agreements to Share Data. The Bureau's policy is to share and exchange records to the maximum extent possible in order to enhance operations and to provide the most effective access and use of Bureau information. Policy guidance must be followed to document the sharing or exchange of Bureau data and records with external parties. Records Administrators shall facilitate data and information exchange with the BLM, other Federal agencies, the public, and other organizations; shall be consulted on proposals to share or exchange information with any Federal or outside entity; and shall coordinate activities with procurement personnel, who shall be consulted early on in developing these documents when funds or property are exchanged.

.61 Criteria. An agreement is not necessary to exchange ideas and is only required when data is actually shared or exchanged. An agreement would be appropriate to document the testing of new BLM procedures with another entity whereby the other party would be provided a unique level of access to Bureau records that is not or cannot be provided to others. An agreement should not be used if Public Room or FOIA procedures are appropriate. A Federal agency which desires BLM information on a one-time basis, and requests that it be provided without an agreement, is only allowed this privilege on a one-time basis. The FOIA will not be used to determine costs in this case, but routine cost recovery procedures will be followed, because Federal agencies cannot file FOIA requests. If a Federal agency desires information on more than a one-time basis, then an agreement must be used. State agencies can make FOIA requests, and are covered under FOIA procedures.

.62 Data Not Available for Exchange. The BLM may not share or exchange records/data that are either: (1) Involved in litigation; (2) covered by a Privacy Act system notice in which the receiving party does not fall under the prescribed "Routine Use" designations; or (3) in which there is proprietary data protected under the Trade Secrets Act, EO 12600, and the FOIA. This requirement applies to the private sector and non-Federal parties. In most cases this applies to Federal Agencies. Local Records Administrators or the WO Section of Records Administration should be consulted in these matters.

.63 Documentation for Data Sharing with Non-Federal Entities. Agreements to share or exchange data with non-Federal (State, local or private) entities when funds are involved shall be documented either as a contract or assistance agreement (cooperative agreement or grant). Contracting Officer's signatures are required on these documents. Agreements to share or exchange data when funds are not involved shall be documented as a data share agreement. BLM cannot release proprietary/confidential information to state and local agencies even under an agreement unless a statutory and regulatory authority can be cited. On the other hand, when information is received from state and local sources BLM cannot agree to maintain the confidentiality of this information except to the extent that it is permitted under the FOIA.

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C. Data Sharing Agreement with Federal Agencies. When the fundamental purpose of the agreement is to share and exchange information between Federal entities when no funds are involved, a data sharing agreement is used. The MOU's are also acceptable in these situations. However, data sharing agreements shall be used when more specific information on the data is required. States may use existing MOU tracking procedures to number and track data sharing agreements (i.e. BLM MOU NM930-9401, BLM DS NM940-9402, BLM MOU NM923-9403, etcetera).

.65 Arrangements with Multiple Parties. If the arrangements to share or exchange data with multiple parties are exactly the same, then one instrument may be used to document the data sharing arrangement. However, if the specific data being shared or exchanged will be different for each of the parties involved, or if both Federal and non-Federal entities are involved, then separate instruments should be developed to thoroughly document each agreement. In the latter case, an umbrella agreement such as a MOU may be used to document the overall purpose of the multi-party arrangement. However, an appropriate separate instrument must be developed documenting specific data sharing or exchange arrangements. Sharing or exchanging data under an agreement, however, is not authority for sole source contracts or non-competitive grant or cooperative agreement.

.66 Format and Content of Agreements. Format for agreements used for the purpose of sharing or exchanging Bureau data should conform as appropriate to requirements outlined in BLM Manuals 1510, 1511 and 1786, and this manual section. Local Records Administrators and Procurement personnel should be consulted early on for assistance. The following information shall be addressed in the agreement:

A. Authority. All agreements to share or exchange Bureau data must cite 43 USC 1737 (section 307 of FLPMA) as authority to enter into the agreements, unless other program legislation, some of which are listed in BLM Manual 1511, is more appropriate.

B. Description of Data. All agreements to share or exchange Bureau data must contain a detailed description of the specific data to be shared as well as important metadata. This documentation ensures data integrity and protects the Bureau against potential unauthorized release of data (e.g. privacy data, proprietary data, data involved in litigation, etcetera).

C. On-line Access. If on-line access to Bureau data is anticipated to occur under the agreement, standard security measures must be documented, including:

1. Method of access (telecommunications);
2. Measures in accordance with the Computer Security Act of 1987;
3. Requirements for identifications and passwords, and
4. Level of access (read, write, edit).

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D. Confidentiality Statement. Some agreements may require a confidentiality statement. Specifically, if certain types of BLM non-public data is being shared or exchanged, the following statement should be included:

"The data provided pursuant to this agreement contains non-public BLM information and information derived therefrom. The recipient is prohibited from disclosing this information to the public or other parties, and the recipient of this information agrees not to transmit or otherwise divulge this information. If the recipient receives requests for this information or wishes to disclose the information, the recipient agrees to request BLM to make a decision on whether the information may be released."

1. State governments can be requested to maintain the confidentiality of non-public information under an agreement. Although confidentiality is requested, and agreed upon, there is no assurance that confidentiality will be maintained.

2. The Bureau may only agree to maintain the confidentiality of information received from other entities to the extent permitted by the FOIA.

E. Exclusive Right to Data. No agreement to share or exchange Bureau data should confer an exclusive right to Bureau data by the other party. The BLM is free to negotiate similar arrangements to share or exchange the same BLM data with other parties.

F. Examples of Agreements. There are a variety of purposes for agreements. However, it is likely that the predominant number of agreements to share or exchange Bureau data will fall into the assistance agreement or MOU category. Illustrations will be provided in a forthcoming External Access Handbook.

G. Files Maintenance. Signed originals of contracts, assistance agreements and interagency agreements shall be maintained in the Procurement Office. Signed originals of Memorandums of Understanding and data sharing agreements shall be maintained by designated custodians which vary from State to State. Refer to the Records Schedule to determine the disposition of each type of document. Records Administrators will ensure that an inventory of all such agreements will be developed.

H. Disclaimer Statements. Electronic records or their printouts released for external use should be labeled in accordance with guidance provided in Sections .12, .13, and .14 of this manual.

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.7 Privacy Act. The purpose of the Privacy Act is to ensure public notice of systems of records that contain information about individuals; to ensure that only information which is legally authorized and necessary is collected, and to ensure that such information is maintained in a manner which precludes unwarranted intrusions upon individual privacy. The Privacy Act imposes severe restrictions on the collection, maintenance, use and dissemination of information concerning individuals that is found in "systems of records" as defined in the Act. In addition, procedures have been established under the Act that govern the ability of individuals to gain access to such records.

.71 Procedures of the Privacy Act. This Manual section sets forth procedures to be used by staff when collecting, maintaining, using, or disseminating personal information contained in a system of records maintained by BLM. The Department's Rules in 43 CFR Part 2, Subpart D, establishes procedures for individual access. Any individual may obtain access to their records in all systems of records maintained by BLM, except those set forth in Section 2.79, as exempt from disclosure. Subpart D permits individuals to: (1) request notification whether BLM maintains a record pertaining to him/her in any system of records; (2) request access to such record or to any accounting of its disclosure; (3) request that the record be amended or corrected, and (4) appeal an initial adverse determination of any such request.

.72 Privacy Act Statutory Definitions. The following terms are defined by the Privacy Act as follows:

A. Individual. Means a natural person who is a citizen of the United States or an alien lawfully admitted for permanent residence (includes BLM employees). It does not include proprietorships, businesses or corporations.

B. Record. Means any item, collection, or grouping of personal information about an individual that is maintained by BLM, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains a name, or identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. A record may include as little as one descriptive item about an individual.

C. System of Records. Means a group of any records under the control of BLM from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual, for which notice has been published by BLM in the Federal Register pursuant to 5 U.S.C. 552a(e)(4).

1. Criteria for System of Record. To qualify as a system of records, the system must be one from which "records" are retrieved by an individual identifier--i.e., a name, social security number, other identification number, etcetera. A qualified system would have an indexing or retrieval capability using identifying particulars built into the system, and records about individuals could be, in fact, retrieved by reference to the personal identifier.

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2. Indexing Systems. In keeping with the Act's goal of protecting privacy, staff should not use filing or indexing systems that use personal identifiers when retrieval of personal information by personal identifier is not necessary to their work. Filing or indexing systems that do not incorporate personal identifiers are always preferred when such will suffice.

D. Maintain. Means collect, use, or disseminate. With reference to a record subject to the Act, "maintain" means the collection, use, or dissemination or any combination of these record keeping functions. It also connotes control over, responsibility, and accountability for systems of records.

E. Disclosure. Means release of information contained in a system of records to any person (other than the person to whom the information pertains), including any member of the public, any employee of BLM, the DOI, and employees of other Federal Departments and agencies.

F. Routine Use. Means, with respect to the disclosure of a record, the use of such record for a purpose compatible with the purpose for which it was collected.

.73 Collection and Maintenance of Personal Information. The BLM may maintain in its systems of records only such information about an individual as is relevant and necessary to accomplish a BLM function required to be accomplished by statute or EO. The BLM must collect this information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, or privileges under Federal programs.

A. The Information Disclosure Statement. The Privacy Act requires that the individual, from whom information is being solicited for incorporation into a BLM system of records, be informed of the authority for collecting the information; whether disclosure of the information is mandatory or voluntary; the principal purposes for which the information will be used; the routine uses that may be made of the information; and the effects on the individual, if any, of not providing the information. Information Disclosure Statements should be tailored to fit the particular circumstances of the solicitation. The information called for in this statement should be provided when an information collection form is being used. This can be done on the form itself, on an attached tear-off sheet, or on a separate sheet that the individual can retain, whichever is most practical.

1. Information Disclosure Form. The disclosure called for by the Information Disclosure Form may be provided in written paragraph format, when this is more practical or would result in greater clarity under the circumstances. Privacy Act notices have been developed by other Federal Agencies for most of the standard Government forms under the responsibility of those agencies, such as the Office of Personnel Management and the Treasury Department. These notices should be used when they exist.

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2. Authority for Collecting Information. The authority for collecting information can be a constitutional provision, statute, or EO authorizing or directing the agency to perform a function, the discharge of which requires the maintenance of a system of records. Generally, the furnishing of information solicited by BLM from individuals is voluntary, not mandatory. A response to a solicitation should be described as mandatory only when the information is required by law to be furnished to BLM.

3. Principal Purpose for Information Collection. The principal purpose(s) for which the information will be used is generally a purpose directly related to, and necessary for the purpose authorized by the statute or EO cited as the authority for collecting the information. The description of routine uses in Information Disclosure Forms should be a summary of the entry for routine uses published in the Federal Register for the pertinent systems of records. The effects, if any, on the individual of not providing all or any part of the requested information should be carefully but concisely explained so that the individual can make an informed decision as to whether to provide the information requested.

B. Disclosure of Privacy Act Systems of Records to Persons Other Than the Individual. Generally, no record in a system of records maintained by BLM may be released to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. There are specific exceptions when disclosure of Privacy Act records would be permitted and the written request or consent of the individual is not required. These exemptions are as follows:

1. Performance of Official Duties. To officers or employees of BLM who need the information in the performance of their official duties. This includes all employees who may need information to complete official duties, such as the Privacy Act Officer in responding to requests, of the EEO Officer in complaint resolution proceedings.

2. Requirements Under FOIA. Under the provisions of the FOIA, 5 U.S.C. Section 552; when a FOIA request is received for information in Privacy Act Systems, this provision permits release of the information if a FOIA Exemption is not applicable. Generally, Exemption 6 will afford protection of all private information that would be protected under the Privacy Act.

3. Routine Use. For a routine use as published in the Federal Register of systems of records maintained by BLM, each BLM Privacy Act System of Records lists specific routine uses applicable to that system. Under this exception, BLM may make disclosures under any routine use that is described in a system notice without violating Privacy Act provisions. For example, many BLM systems include as a routine use disclosure to the public, such as the grazing files. Therefore, in these instances disclosure may be made to the public without violating Privacy Act provisions.

a. Census or Survey. To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, which are as follows:

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b. Statistical Research. To a recipient who has provided BLM with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, if the record is to be transferred in a form that is not individually identifiable;

c. Historical Value. To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or his/her designee to determine whether the record has such value;

d. Law Enforcement Activity. To another agency or to an instrumentality of any Governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Bureau specifying the particular portion desired and the law enforcement activity for which the record is sought;

e. Health and Safety. To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if such disclosure notification is transmitted to the last known address of such individual;

f. Congress or Subcommittee. To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof and any joint committee Congress or subcommittee of any such joint committee. As noted in .4, individual members of Congress are not covered under this exception;

g. Court. Pursuant to the order of a court of competent jurisdiction, and

h. Consumer Reporting Agency. To a consumer reporting agency in accordance with Section 3711 of Title 31.

C. Information Concerning BLM Employees Available to the Public. The following information regarding BLM employees is available to the public and may generally be released without obtaining prior written employee consent: name of employee, present and past position titles, grades, salaries, and duty stations. The expression of opinion about an employee to a prospective employer may also be made without the prior written consent of the employee.

D. System Manager Responsibilities. It is the responsibility of each system manager, as designated in the applicable system notice, to ensure that such disclosures of records in the system are accounted for.

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E. Accounting of Disclosures of Privacy Act Systems Records. Except for disclosures to BLM employees who have a need for the record in the performance of their duties, or disclosures required by the FOIA, 5 U.S.C. Section 552, an accounting of all disclosures, including public requests, of records in Privacy Act systems of records maintained by BLM shall be made. The system manager can devise a system for keeping notations of disclosure provided that such system can provide a listing of all disclosures made of any individual record within the system of records, including the date, nature and purpose of each disclosure and the name and address of the person or agency to which the disclosure was made. Thus, the accounting need not take the form of a notation on or with each record in a system of records when it is customary that disclosures requiring accounting include groups of records rather than individual records, such as release of a mailing list. The accounting, or the system devised for constructing an accounting, must be retained or maintained for five years or the life of the record, whichever is longer, after a disclosure for which an accounting is required. Form 1274-11, Examination of Case Card Record Request, is used for accounting requests of individual records and is filed in the case file.

F. Publication Requirement for Each System of Records. The Privacy Act requires publication of a notice in the Federal Register describing each system of records subject to the Act. Publication of a new or revised system notice is also required before any new system or major change to an existing system can be implemented. The Records Administrator is involved in the creation of new systems. The publication process is another phase of the life cycle management process when developing new systems or revising existing systems.

1. Purpose of Publication. The purposes of the publication requirement are to: (1) Help individuals locate systems of records that are likely to contain personal information pertaining to them, and (2) prevent the use of a system of records without first giving individuals an opportunity to review the purpose and routine uses of the information.

2. No Notice Published. Maintenance of a system of records for which no notice has been published is a violation of the law. Criminal Penalty provisions provide for misdemeanor charges and a fine of not more than \$5,000 (see .77).

G. Notice Content. The required contents of and format for Privacy Act system notices are described in the Department of Interior guidelines, 383 DM 1-14 on the Privacy Act.

H. Reports on New or Altered Privacy Act Systems. OMB Circular No. A-130 describes detailed procedures for reporting an Agency's intention to establish a new system or alter an existing system of records. A new system is any system for which no Federal Register Notice has previously been published. Each State, SC and NIFC will submit reports on new or altered Privacy Act Systems to WO-870.

1. Reporting Requirements. A report to OMB and Congress must be prepared when a new system of records is proposed, or when a change to an existing system is proposed which significantly alters the character of the system by:

a. Significant increase or change in the number or types of individuals on whom records are maintained;

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- b. Expanding the types or categories of information maintained;
- c. Altering the purposes for which the information is used;
- d. Changing the equipment configuration (i.e., hardware and/or software) on which the system is operated so as to create the potential for substantially greater access to the records in the system; or
- e. Exempting the system of records from any provisions of the Privacy Act pursuant to 5 U.S.C. Section 552a(j) or (k).

2. Time frame for Submitting Report. The report on a proposed new or altered system must be submitted to OMB and Congress at least 60 days prior to establishment of a new system or the implementation of an altered existing system. In order for the Department to meet this requirement, BLM must submit this report to the Departmental Privacy Act Officer at least 90 days before the proposed implementation date. The OMB requires that specific information be included in the report. This report must be prepared by the office maintaining and operating the system of records and shall be submitted to the BLM Privacy Act Officer (WO-873), for approval 60 days prior to submission to Departmental Privacy Act Officer. The report will be forwarded to the Department by the BLM Privacy Act Officer.

I. Minor Changes to Systems of Records. Other changes to existing systems of records, other than those described in .63H1, which are minor editorial changes do not require the publication of an amended notice in the Federal Register.

J. Mailing Lists. The Privacy Act specifically prohibits Agencies to sell or rent an individual's name and address unless specifically authorized by law. This restriction does not preclude release of names and addresses otherwise permitted to be made public upon request, and does not preclude charging for the recovery costs of reproduction of such records. (5 U.S.C.552a(n)).

1. Sale or Rental for Commercial or Solicitation Purposes. This provision seeks to preclude the sale or rental of lists of names and addresses for commercial or other solicitation purposes not related to the purpose for which the information was collected. The provision does not require the withholding of names and addresses otherwise required to be disclosed under the FOIA. Thus, fees permitted to be charged for materials required to be disclosed under the FOIA would not be precluded.

2. Requests for Mailing Lists. Requests for mailing lists should be handled on a case-by-case basis. Mailing lists may be released under routine use provisions of the Privacy Act if the requested lists are part of a Privacy Act system with an appropriate routine use. Similarly, mailing lists could also be released under the FOIA if it is determined that release of the information would not constitute an unwarranted invasion of personal privacy of the individuals concerned, and no other FOIA exemptions would be applicable (see Exemption 6). For example, such a disclosure would be appropriate if the information requested was otherwise publicly available, such as the addresses and phone numbers of businesses, or individuals acting in an entrepreneurial capacity. Federal employees names and office telephone numbers have been found by the courts to be public information. However, other information such as social security numbers, home addresses, and phone numbers is protected under Exemption 6 of the FOIA. See OMB Guidelines, 40 FR 28,948, 28,976 (1975).

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K. Social Security Numbers. The Privacy Act contains specific provisions regarding agency requirements for individuals to disclose their social security account numbers. These provisions apply to Federal agencies irrespective of whether the requested numbers are intended to be in a system of records subject to the Act.

1. Refusals to Disclose. No right, benefit, or privilege provided by law may be denied an individual because of the individual's refusal to disclose a social security account number. This prohibition against penalizing an individual for refusing to disclose his/her number does not apply if:

- a. The disclosure is required by Federal statute, or
- b. The disclosure is to an agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required by statute or regulation adopted before that date to verify the individual's identity.

2. Notice to Individuals. The Act requires that individuals who are asked to disclose their social security account numbers be informed whether disclosure is mandatory or voluntary, by what authority the number is solicited, and what uses will be made of it. Whenever individuals are asked to provide social security numbers, they must be advised of this information through an explanation on the data collection form.

.74 Access to Privacy Act Records. Unless records in Privacy Act systems are exempted, as explained below, the Act gives individuals the right to: (1) Know of the existence of records containing information about themselves (notification through publication of System Notice in the Federal Register); (2) inspect the records to ensure their relevance, necessity, and accuracy (access); and (3) request changes in the information in the records when the information is irrelevant, unnecessary, or inaccurate (amendment).

A. Form of Request. To claim the rights afforded by the Privacy Act, an individual should be advised of, and must follow the formal procedures established by the Department's regulations. 43 CFR, Section 2.60 (notification), 2.63 (access), and 2.71 (amendment) and the "Records Access Procedure" section of the notices describing systems of records instruct individuals how to submit their inquiries if they wish to invoke the Privacy Act. The system notices also instruct individuals as to where their written requests are to be addressed. It is not necessary to require individuals to invoke the Privacy Act. However, all requests require documentation and verification of requester.

B. Exempted Records. The Privacy Act recognizes that some records on individuals should not be made available to the individuals. These exemptions from the notification and access provisions of the Act primarily involve records gathered in the course of criminal investigations, during the recruitment of new employees, or involving tests which would be compromised if shown to individuals. These exemptions apply only if adopted through rulemaking by the Secretary. The BLM systems of records which have been exempted in whole or part from notification, access and amendment are Criminal Case Investigation System, Interior/BLM-18; Civil Trespass Case Investigations, Interior/BLM-19; and Employee Conduct Investigations, Interior/BLM-20. These systems are listed in 43 CFR Section 2.79.

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C. Authority to Deny. The Departmental regulations, 43 CFR 2.61(b), 2.64(b) and 2.72(b), require that denials shall be made by the System Manager responsible for the system of records and shall be concurred in by the Bureau Privacy Act Officer.

D. Combined FOIA/Privacy Act Requests. Individuals may seek access to their records by citing both the FOIA and Privacy Act. In such cases, the request must be handled so that the individuals are granted the greatest access to their records that either Act provides. In processing a combined request, the Department's fee provisions applicable to Privacy Act requests should be followed to the extent that the requested records are part of a system of records (i.e. 43 CFR Section 2.64(d), the individual may only be charged for reproduction of the records and not for search time).

.75 FOIA Requests for Privacy Act Systems of Records. If records contained in Privacy Act Systems are requested under the FOIA, the procedures for handling FOIA requests should be followed and if the records requested under FOIA do not fall within any of the exemptions to the FOIA, the FOIA requires the disclosure of requested records, and the Privacy Act disclosure restriction is not applicable. In such case, a written FOIA request must be in hand before making a disclosure from a Privacy Act System of records.

.76 Biennial Privacy Act Reporting Requirement. Each State, SC and NIFC shall submit every other year, a report of its activities involving the Privacy Act to the Director (WO-870). This report is submitted during the third quarter of the reporting fiscal year. This information will then be provided to OMB.

.77 Criminal Penalties. The Privacy Act provides for criminal penalties for knowing and willful disclosure of individually identifiable information for which disclosure is prohibited by the Privacy Act, or for knowing and willful maintenance of a system of records without meeting the notice requirements of the Act. Under the Privacy Act such knowing and willful conduct may result in being found guilty of a misdemeanor and fined not more than \$5,000 (5 U.S.C. Section 552a(i)).

.78 Civil Remedies. Whenever an agency makes a determination not to amend an individual's record in accordance with his request, or fails to make a review of such determination; refuses to comply with an individual's request for access to his/her records; fails to maintain any record concerning any individual with accuracy, relevance, timeliness, and completeness and consequently a determination is made which is adverse to the individual; or fails to comply with any other provisions of the Privacy Act, the individual may bring a civil action against the agency in district court and the court may award litigation costs and actual damages.

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.8 Safeguarding Records. Departmental Manual 383 DM 1-14 describes procedural requirements for the maintenance of appropriate administrative, technical, and physical safeguards for records subject to the Privacy Act. These requirements are established to ensure the security and confidentiality of records and to protect against hazards to their integrity. Proper safeguarding practices are intended to protect individuals on whom records are maintained in records systems subject to the Act from substantial harm, embarrassment, inconvenience, or unfairness.

.81 Unauthorized Disclosures. Bureau records are to be safeguarded from inadvertent or unauthorized disclosure i.e., Privacy Act records should not be left unattended or in open view of unauthorized personnel. Privacy Act or proprietary/confidential records may only be used by or disclosed to individuals with a need-to-know in the performance of their duties. "Need-to-know" is defined as a need by an authorized officer/agency employee for access to proprietary/confidential or otherwise sensitive information of material sought in connection with the performance of official duties or contractual obligations. The determination of that need will be made by officials having responsibility for proprietary/confidential or otherwise sensitive information or material.

A. Access to Official Personnel Records. The Privacy Act permits disclosure to employees who have a legitimate need for a record in the performance of their duties. Official Personnel Folders (OPF's), merit promotion case files, performance evaluations, and related data will be made available for inspection upon request by Department or Bureau Special Agents, Department Personnel Appeal Examiners, EEO Specialists, Investigators and Counselors. Supervisors may also obtain access to records pertaining to employees under their supervision.

1. The Servicing Personnel Officer (SPO) will make materials available for review in a secure area of the Personnel office and will furnish copies of needed documents upon request by the reviewing official. The copying will be done by the SPO. When an OPF is requested by an authorized official from another employing office, it shall be sent to the SPO of the receiving office which will assume temporary custody of the folder during the inspection process. Requests for complete copies, or nearly complete copies of OPFs should rarely, if ever be necessary. SPO's must question the need for such extensive copying of confidential records and obtain approval of the responsible Personnel Officer before complying with such a request. A photocopy of a file is considered the same as the original file in safeguarding the privacy of employees.

B. Access to Official Proprietary/Confidential Information. When proprietary/confidential information is covered by a FOIA request, the FOIA Officer is an authorized official entitled access to the requested material in order to properly respond to the FOIA request. However, the FOIA Officer shall consult with mineral resources staff when making decisions concerning accessibility of mineral resources records.

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.82 Safeguarding Paper Records. When maintained in hard copy form, records subject to the Privacy Act shall be safeguarded in a manner commensurate with the sensitivity of the information contained in the system of records. The Privacy Act requires records subject to the Act be maintained with safeguards to ensure the security and confidentiality of the records. During working hours, the area in which the records are maintained or regularly used shall be occupied by authorized personnel or access to the records shall be restricted by their storage in locked metal file cabinets or a locked room. During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room. These specific safeguards are not necessary for Privacy Act records that include a routine use of disclosure to the public.

A. Employee Responsibility in Safeguarding Records. Employees need to be especially conscious of possible unauthorized disclosure in the everyday flow of paperwork. Any documents containing privacy information must be maintained securely to prevent access by unauthorized persons. Some examples of forms covered by the Privacy Act are:

1. The BLM 1341-1, Time and Attendance Report;
2. The SF-182, Request, Authorization, Agreement and Certification of Training;
3. The SF-52, Request for Personnel Action;
4. The SF-50, Notification of Personnel Action;
5. The DI-1020, Travel Authorization;
6. The SF-1012, Travel Voucher, and
7. The SF-1038, Advance of Funds

.83 Disposal of Privacy Act Records. Records subject to the Privacy Act must be disposed of in accordance with the provisions of National Archives and Records Administration regulations, 36 CFR 1228.74. Records containing social security numbers and other Privacy Act Records must be shredded within the organization.

.84 Safeguarding Automated Records. The Computer Security Act of 1987, (P.L. 100-235), requires agencies to protect information residing in computers. The Act requires agencies to identify all systems containing "sensitive" information, prepare security plans for each system, and provide mandatory periodic training for all persons involved in use or operation of computer systems that contain sensitive information.

A. Responsibilities. The Chief, Branch of IRM Technology (WO-872), is responsible for implementation of the Computer Security Act. Records Administrators will work with the Computer Security Officer to:

1. Inventory the record systems created by the Bureau;
2. Categorize information on a system basis based on assigned value and establish information security policies consistent with the values placed on the information (categories);
3. Determine retention policies and schedules for information on all media based on legal requirements;

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4. Coordinate training and all activities designed to protect information systems, and

5. Coordinate contingency planning and disaster recovery.

.85 Criminal Penalties. The Privacy Act provides for criminal penalties for knowing and willful disclosure of individually identifiable information for which disclosure is prohibited by the Privacy Act, or for knowing and willful maintenance of a system of records without meeting the notice requirements of the Act. Under the Privacy Act such knowing and willful conduct may result in being found guilty of a misdemeanor and fined not more than \$5,000 (5 U.S.C. Section 552a(i)).

.86 Employee Liability. 18 U.S.C. 1905, creates criminal liability for employees of the Government that unlawfully disclose proprietary information:

Whoever, being an officer or employee of the United States or any Department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such Department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than \$1,000, or removed from office of employment.

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Glossary of Terms

-A-

access: the ability to view, inspect, or copy Bureau records.

administratively controlled information: privileged or other nonsecurity-classified information in records sometimes bearing designations, such as "For Official Use Only," to prevent its unauthorized disclosure.

agreements to share/exchange data: these terms are used to categorize and document various types of partnerships the Bureau forms with other entities to share or exchange records or information. Documents to share or exchange data with groups outside the Federal Government include contract or assistance agreements, or data sharing agreements. Documents to share or exchange data with Federal groups include interagency agreements, data sharing agreements, and memorandum of understanding.

appeal: under the FOIA, is a written notice the Department receives when (1) records have been withheld in a FOIA request; (2) a request has been denied because of failure to describe requested records or for other procedural deficiency, or when it has been determined that the requested records do not exist or cannot be located, and (3) a fee waiver has been denied, and a request has not been decided within the time limits provided according to FOIA procedures in 43 CFR 2.17.

assistance agreement: a grant or cooperative agreement used between the Bureau and a non-Federal entity, which reflects the relationships prescribed by the Grant and Cooperative Agreement Act of 1977, and which involves funds.

authorized officer: those officers authorized by the head of respective agencies to receive proprietary/confidential or other sensitive information. Responsibility for determining whether a person's duties require that he/she possess, or have access to any proprietary/confidential or otherwise sensitive information, and whether he/she is authorized to receive it rests with the individual who has possession, knowledge, or control of the information involved, and not upon the prospective recipient, except that the Freedom of Information Act (FOIA) Official, is an authorized officer when the information is covered by a FOIA request.

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-B-

Bureau Records: recorded information that is either created or obtained by the Bureau and is in the control of the Bureau at the time a request is made. Bureau records include all books, papers, maps, photographs, machine readable materials, electronically stored data, or other documentary materials, regardless of physical form or characteristics, made or received by BLM under Federal law or in connection with the transaction of public business. This also includes software created or enhanced by the Bureau. For the purposes of this policy, the terms "records" and "data" are synonymous. The Freedom of Information Act makes no distinction between an agency "record" or agency "data". Any recorded information within the Bureau's custody that can be articulated by a requester (e.g. Legal Land Description, Status, or Automated Resources Data) falls into the category of an agency "record" and is therefore, subject to the requirements of the law. This definition excludes library reference materials and museum exhibits.

-C-

commercial information: records are commercial so long as the submitter has a "commercial interest" in them. Commercial information consists of "intrinsically valuable" materials pertaining or relating to commerce. Examples of commercial information include: Business sales statistics; research data; technical designs; customer and supplier lists; profit and loss data; overhead and operating costs, and information on financial condition.

confidential agreement: is made between BLM and another Federal agency when there is an exchange of information which is proprietary/confidential, and with State and local governments only when a statute and regulatory authority can be cited. The agreements require the requester to agree to maintain the confidentiality of the BLM information and to make no public disclosure of the information.

contract: the legal instrument used to reflect a relationship between the Federal Government and a state or local Government or other recipient whenever the principal purpose of the instrument is the acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government.

cooperative agreement: a legal instrument that reflects a relationship between the U.S. Government and a State or local Government or other recipients, when: (a) The principal purpose of the relationship is to transfer a thing of value to the recipient or to carry out a public purpose of support or stimulation authorized by a law of the U.S. instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the U.S. Government, and (b) substantial involvement is expected between the executive agency and the recipient(s) when carrying out the activity contemplated in the agreement.

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copyright: the Copyright Act of 1976, 17 U.S.C. Section 101 et seq., essentially grants the holder of a copyright an exclusive right to reproduce and distribute copies of his work. Under this Act protection attaches automatically as soon as the work is "fixed" in any tangible medium; neither registration nor any type of designation or notice is necessary to trigger it. Thus, the potential for copyright protection exists in virtually every original work of authorship. However, the Act specifically codifies the common law doctrine of "fair use" which permits the reproduction of copyrighted materials "for purposes such as criticism, comment, news reporting, teaching scholarship, or research" without liability for infringement.

custodial offices: this term is defined as it relates to applying appropriate charges/fees for the on-line viewing or inspection of Bureau records within the custody of the BLM from one BLM jurisdiction to another. For the purpose of viewing electronic records, a custodial office is defined as all Bureau locations (Districts and Resource Areas) within the jurisdiction of a BLM State Office.

custody: guardianship, or control, of records, including both physical possession (physical custody) and legal responsibility (legal custody), unless one or the other is specified.

-D-

data sharing agreements: documentation of agreements to share or exchange data with Non-Federal Entities (state, local, or private) entities.

denial: a letter informing a FOIA requester that either part or all the record(s) requested have been withheld because certain FOIA exemptions apply, or a fee waiver has not been approved.

developmental electronic records: category of electronic records where the data has not been verified, integrated and approved for use in Bureauwide decisions. Draft data would be included in this category. This information is not considered publicly available. A disclaimer statement is required on the database or hardcopy of such information if it is being released outside of BLM.

disclosure-free extract: a copy of a record that excludes all exempted information; that is, information deleted or otherwise concealed under provisions of the Freedom of Information Act (FOIA) or the Privacy Act.

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discretionary records: this list of records, also known as Category 2 Records, is a category of selected manual, electronic, or electronically generated outputs chosen to be made available to the public at the discretion of the State or Center Director for which cost recovery can be applied (as opposed to free-for-view records in Category 1). Provided in this category are: (1) The on-line viewing of nontraditional or enhanced records (ARD themes or various prototype products) either at a BLM public room/access area or from a remote site; (2) viewing electronically generated hard copy outputs (batch reports from case recordation) that contain publicly available information but are not able to be viewed electronically in the public room/access areas; and (3) information which has no FOIA exemptions or other withholding statute restricting release.

duplication: refers to the process of making copies of documents in response to an request. Such copies can take the form of paper, microform, audiovisual materials, or machine-readable documentation. The Bureau will provide materials in the form in which they are stored and maintained, unless it is feasible to provide them in another form.

-E-

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

external access: means access to Bureau recorded information by other Government (Federal, State, local or foreign) agencies or organizations as well as private sector organizations or members which includes private industry, news media, special interest groups, private educational institutions, commercial entities and members of the public.

-F-

financial information: records that concern a submitter's revenues or pecuniary resources such as sales statistics; profit and loss data; overhead and operating costs; and information on financial condition.

FOIA Request: a written request for records made by the public that specifically invokes the Act, reasonably describes the records sought, and states a willingness to pay fees. However, the Bureau may treat a request for records that does not specifically invoke the Act as a FOIA request when the information requested may require a FOIA review for statutory exemptions.

for official use only: See administratively controlled information.

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-G-

grant: the legal instrument used to reflect a relationship between the Federal Government and a State or local Government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local Government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, or property or services for the direct benefit or use of the Federal Government or other recipient during performance of the contemplated activity. The Federal Government will not be substantially involved.

-I-

individual: for purposes of the Privacy Act refers to a citizen of the United States, or an alien lawfully admitted for permanent residence. This definition does not include an individual acting in an entrepreneurial capacity. For purposes of the FOIA refers to any person, institution, or company; a State, local, or foreign Government; or any Indian tribe.

Information: Knowledge which can be communicated or received by any means concerning a particular fact or circumstance. For purposes of this manual information and records are synonymous.

inspection: the opportunity to view records and to use records to conduct research. Records may not be altered, removed or destroyed.

interagency agreement: a document used in an agreement to share or exchange data with another Federal agency in cases where funds are being transferred.

-L-

life cycle of records: the management concept that records pass through three stages: creation, maintenance and use, and disposition.

-M-

memorandum of understanding (MOU): the MOU is a written agreement between BLM and other Federal Government entities which confirms cooperative policies or procedures to promote mutual endeavors when no funds are involved. The MOU outlines the general terms and conditions of a particular information exchange, and covers a broader purpose than data sharing agreements. If the information exchange includes proprietary/confidential information, a Confidentiality Agreement must also be completed.

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-N-

need-to-know: concerning records security, a determination that a person must have access to privileged or confidential information in connection with the performance of official or contractual obligations. In addition to being an authorized officer, an agency employee must have a need for access to proprietary/confidential or otherwise sensitive information of material sought in connection with the performance of official duties or contractual obligations. The determination of that need will be made by officials having responsibility for proprietary/confidential or otherwise sensitive information or material. The Freedom of Information Act Official has a need-to-know for information covered by an FOIA request. Additionally, need to know applies to other Federal agency requesters seeking access to information pursuant to MOU's or other intra-agency agreements.

non-public records (Category 3 Records): a limited access record category which includes all records not designated in publicly available records categories (see Public and Discretionary Records Categories), or those records that must be reviewed prior to release because: (1) A FOIA exemption may apply to all or portions of the record, or (2) the Privacy Act or other statute is applicable which may restrict access.

-O-

office of control: the BLM office directly receiving proprietary/confidential or otherwise sensitive information is the Office of Control. Any office to which proprietary/confidential or otherwise sensitive information is later transferred becomes a Secondary Office of Control. For the purpose of this Manual Section, BLM personnel physically located in the same geographic city, and under the same major office head's area of responsibility as the office receiving proprietary/confidential or otherwise sensitive information will be regarded as part of the original Office of Control, as appropriate, and will have access to such proprietary/confidential or otherwise sensitive information in the performance of duties. For example, Washington, D.C., employees in the Main Interior Building and those located in the "L" Street Building who are officially assigned or are on official detail to the headquarters office and which office is utilizing proprietary/confidential or otherwise sensitive information will be regarded as a part of the Office of Control or Secondary Office of Control.

-P-

person: encompasses individuals (including foreign citizens), partnerships, corporations, associations and foreign, State or local Governments. It does not include Federal agencies or offices.

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personal papers: nonofficial, or private papers relating solely to an individual's own affairs. Must be clearly designated as such and kept separate from the agency's records. Also called personal files or personal records.

Privacy Act: a law (5 U.S.C. 552a) providing that no agency shall disclose any record that is contained in a "system of records" by any means of communication to any person, or to another agency, except pursuant to a written request by, with the prior written consent of, the individual to whom the record pertains. However, disclosure of a record without a written request or consent is provided for by both general and specific exceptions written into the Act.

Privacy Act System of Records: a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual, for which notice has been published by the agency in the Federal Register pursuant to 5 U.S.C. 552a(e)(4).

proprietary/confidential information: for the purposes of this Manual, proprietary/confidential information is information submitted to the Government in expectation of confidentiality, the release of which would result in substantial competitive harm to the submitter.

public records (Category 1): (1) An unlimited access category of records for which the private sector has the right to view/inspect without charge. Records in this category are not required to be physically maintained in the public room/area; however, they must be available (brought to the public room/area) to view/inspect upon request; and (2) records open to the public for inspection by law or custom.

public room/area access: in the context of this policy, this term is used to describe the Bureau's primary procedure for providing external access to BLM records. The term also describes centralized physical locations within BLM State, District or Resource Area offices that are designated as areas where the private sector or other external entities may obtain access to the Bureau's publicly available records.

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-R-

record: See Bureau record in this glossary above

records access categories: the division and designation of records series into distinct categories that establishes specific access rights and procedures. Three categories exist in BLM: (1) Public Records; (2) Discretionary Records, and (3) Non-Public Records.

Records Custodian: See custodial offices above.

read only access: records that can only be viewed and copied onto some medium. There is no ability to enter, edit or delete data.

remote on-line: means access to BLM records in electronic form from a location other than a BLM site or transmitting records electronically from one BLM custodial office to another.

requester: is an individual who has asked to see or receive a copy of an agency record. (All FOIA and Privacy Act requests should be in writing).

review: refers to the process of examining documents located that are responsive to a request to determine whether any portion of any document located is permitted to be withheld, and the subsequent processing of documents for disclosure by excising exempt material or otherwise preparing them for release. Review does not include time spent in resolving general legal or policy issues regarding the application of exemptions.

-S-

screening: reviewing files to apply access restrictions or to identify FOIA exemptions or Privacy Act protection requirements.

search: refers to all the time spent looking for material that is responsive to a request, including line-by-line or page-by-page search to determine whether a record is responsive, even if the search fails locate records or the records located are determined to be exempt from disclosure.

security: the safeguarding of restricted-access information against unlawful or unauthorized dissemination, duplication, or observation.

security agreement: a written document that requires the requester to agree to maintain the confidentiality of BLM information and to make no public disclosure of the information. Usually associated with an exchange of information that includes proprietary/confidential information.

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sensitive information: information or data that requires protection due to the risk and magnitude of loss or harm which would result from inadvertent or deliberate disclosure, alteration, or destruction. The term includes information or data whose improper use or disclosure could adversely affect the ability of an agency to accomplish its mission, privileged data, records about individuals requiring protection under the Privacy Act, and data not releasable under the FOIA.

submitter: any person or entity who provides proprietary/confidential or otherwise sensitive information to the Government. The term "submitter" includes, but is not limited to, corporations, State Governments, and foreign Governments.

subscriptions: refers to ongoing requests for publicly available BLM records made through public room/access area procedures. This term is used to distinguish ongoing requests from one time requests for Bureau records. Private sector requesters may not subscribe to BLM non-public records as they are subject to the FOIA and the FOIA does not permit requests of an ongoing nature.

substantial competitive harm: substantial competitive harm is the harm that may occur when commercial or financial information concerning one company or person is made available to a competitor. Information that could cause competitive harm is information which could be used by a competitor to his/her advantage causing financial and economic loss which would harm the competitive position of the person the information concerns. Determining substantial competitive harm must be done on a case-by-case basis and may often require that the decision-maker be fully apprised of the views of the submitter as to the data's sensitivity. Conclusory allegations of harm are unacceptable, therefore, a clear articulation of the harm that could result if the information were released is required. Competitive injury has been identified with the disclosure of: assets, profits, losses, market shares, selling prices, and purchase activities.

system manager: a system manager is an official who has been designated in a system notice as having administrative responsibility for a system of records.

system of records: according to the Privacy Act is a group of any records of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

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-T-

trade secret: a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.