



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

11.3.7

AUGUST 11, 2023

## EFFECTIVE DATE

(08-11-2023)

## PURPOSE

- (1) This transmits revised text for IRM 11.3.7, Disclosure of Official Information, Freedom of Information Act Reading Room Operations.

## MATERIAL CHANGES

- (1) IRM 11.3.7.1(3) and (4), Updated Program Scope and Objectives, to align the Program and Policy owner sections to be in line with all other Disclosure IRMs.
- (2) IRM 11.3.7.1(5), Updated Program Scope and Objectives, to align with the Primary Stakeholders section to conform with the internal controls requirement.
- (3) IRM 11.3.7.1.4, Program Controls, were added in order to incorporate relevant internal controls. These items identify information about the program and procedures covered within this section.
- (4) Reviewed and updated the IRM where necessary for the following types of editorial changes: legal citations, published forms and documents and web addresses.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 11.3.7, Disclosure of Official Information, Freedom of Information Act Reading Room Operations dated November 08, 2017.

## AUDIENCE

All Operating Divisions and Functions.

## RELATED RESOURCES

- (1) The Disclosure and Privacy Knowledge Base can be found at: <https://portal.ds.irsnet.gov/sites/vl003/pages/default.aspx>.

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Safeguards



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11.3.7

Freedom of Information Act Reading Room Operations

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11.3.7.1  
(11-08-2017)  
**Program Scope and Objectives**

- (1) Purpose: This IRM provides an introduction to the Freedom of Information Act (FOIA) Reading Room Operations and provides a general overview of every IRS employee's responsibility to protect confidentiality of records and information entrusted to the IRS, while balancing the expectation of openness and transparency in government.
- (2) Audience: These procedures and guidance apply to all IRS employees and contractors.
- (3) Policy Owner: The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) Program Owner: The Disclosure office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensuring its employees are aware of and follow Servicewide Disclosure policy.
- (5) Primary Stakeholders: Privacy, Governmental Liaison and Disclosure (PGLD) makes the FOIA Library available and provides procedures and guidance on its use by all IRS organizations and business units that create and maintain records that should be proactively made available to the public.
- (6) All IRS Business Units may have a responsibility for making their records available in the FOIA Library. Any posting of agency records to the FOIA Library on IRS.gov will be made in coordination with the Senior Disclosure Analyst over the FOIA program.

11.3.7.1.1  
(11-08-2017)  
**Background**

- (1) The *Freedom of Information Act, (FOIA) 5 USC 552*, as amended provides for public access to records and information maintained by Federal agencies.
- (2) Subsection (a)(1) of the FOIA requires agencies to publish certain information relating to the transaction of agency business in the Federal Register, including:
  - a. Descriptions of agency organizations, functions, and procedures
  - b. Substantive agency rules and
  - c. Statements of general agency policy
- (3) Subsection (a)(2) of the FOIA requires agencies to make available for public inspection and copying:
  - a. Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases
  - b. Those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register (e.g., revenue rulings, Coordinated Issue Papers, Actions on Decisions, field directives)
  - c. Administrative staff manuals and instructions to staff that affect a member of the public (e.g., IRM, Interim Guidance, etc.)
- (4) In 1996, subsection (a)(2) was amended to require agencies to include in their reading room any records processed and disclosed in response to a FOIA request which "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records" under 5 USC 552(a)(2)(D). The Director, Governmental Liaison, Disclosure and Safeguards (GLDS), makes this determination.

**Note:** Based on guidance from the Department of Justice, while records placed in reading rooms under subsection (a)(2) cannot ordinarily be the subject of regular FOIA requests under subsection (a)(3), this rule does not apply to records that are in the FOIA Library because they have been requested frequently.

- (5) Subsection (a)(2) of the FOIA requires each agency to maintain a current index of the material available for public inspection and also make the index available for public inspection and copying.
- (6) Internal Revenue regulations appearing at 26 CFR 601.702 require IRS to make the records mentioned above and their indexes available for public inspection.
- (7) In 1996, the FOIA was also amended to require agencies to use electronic information technology to enhance the availability of the records required to be made available for public inspection and copying that were issued after November 1, 1996. The IRS maintains a "FOIA Library" at <http://www.irs.gov/uac/IRS-Freedom-of-Information> to fulfill this requirement. See IRM 11.3.7.2 for additional information. The **FOIA Library** shall provide electronically accessible indexes for any subsection (a)(2) records issued after November 1, 1996.
- (8) The FOIA Library also serves as a place of inspection for:
  - a. Written determinations (e.g., private letter rulings, technical advice memoranda, determination letters, and Chief Counsel advice) subject to public inspection under IRC 6110
  - b. Exempt and political organization information subject to public inspection under IRC 6104
  - c. Employee plan information subject to public inspection under IRC 6104 and
  - d. Limited information made available under subsection (a)(1) of the FOIA, but not mandated for inclusion in reading rooms
- (9) In 2016, subsection (a)(2) was further amended to require that agencies make available for public inspection in an electronic format, records that have been requested three or more times under the FOIA. Release of these records is coordinated through the FOIA Senior Disclosure Analyst in Disclosure Policy and Program Operations.

#### 11.3.7.1.2 (11-08-2017) **Authority**

- (1) The following items govern the authority pertaining to Disclosures of Official information through the FOIA Library:
  - Freedom of Information Act 5 USC 552
  - 26 CFR 601.702
  - 26 USC 6104
  - 26 USC 6110

#### 11.3.7.1.3 (11-08-2017) **Roles and Responsibilities**

- (1) This IRM is used by all IRS employees to help comply with the disclosure provisions of the Freedom of Information Act and the IRS FOIA regulations on public inspection of agency records. It also provides guidance to employees on IRS records required to be made available for public inspection and copying and the requirement to make certain records electronically available.

11.3.7.1.4  
(08-11-2023)  
**Program Controls**

- (1) Business Units are responsible for establishing and documenting the program controls developed to oversee their program as well as ensuring employee compliance with all applicable elements of this IRM.

11.3.7.1.5  
(11-08-2017)  
**Definitions/Acronyms**

- (1) The following is a list of the acronyms that are used in this IRM section:

Acronym	Definition
CFR	Code of Federal Regulations
E-FOIA	Electronic FOIA
FOIA	Freedom of Information Act
GLDS	Governmental Liaison, Disclosure and Safeguards
IMD	Internal Management Document
IRC	Internal Revenue Code
OUO	Official Use Only
PGLD	Privacy, Governmental Liaison and Disclosure
SERP IPU	Servicewide Electronic Research Program IRM Procedural Update
SPDER	Servicewide Policy, Directives and Electronic Research
TE/GE	Tax Exempt Government Entities
UIL	Uniform Issue List
USC	United States Code

11.3.7.1.6  
(11-08-2017)  
**Related Resources**

- (1) Other sources of guidance on disclosure of information through the FOIA Library are available at:
- *IRS Freedom of Information* page on IRS.gov
  - *FOIA Library*

11.3.7.2  
(03-11-2015)  
**Electronic FOIA (E-FOIA)  
Considerations for  
Instructions to Staff**

- (1) The FOIA, 5 USC 552 (a)(2), requires proactive electronic disclosure of certain IRS records, among which are "administrative staff manuals and instructions to staff that affect a member of the public." For any record listed in FOIA subsections (a)(2)(A) - (E) created by the IRS on or after November 1, 1996, the FOIA now requires that it be made available electronically (Electronic FOIA or E-FOIA). The IRS achieves this electronic availability through the FOIA Library. Proactive disclosure means the public must have direct access to the records without having to file a formal request. IRS complies with this requirement by making instructions to staff and other records meeting the proactive disclosure requirement available through its FOIA Library, unless the records or portions of the records are exempt from disclosure under the FOIA, 5 USC 552(b). See also IRM 11.3.7.1.1(7).

**Note:** IRS removes information from records intended for publication that is exempt from disclosure under the FOIA *and* after full and deliberate consideration of the institutional, commercial and personal privacy interests that could be implicated by disclosure of the information. Content authors propose an internal “Official Use Only” (OUO) marking for the content and collaborate with the Disclosure Office to ensure compliance with applicable disclosure laws and policy guidelines. An official in the content author’s business unit with delegated authority under Delegation Order 11-1, found in IRM 1.2.2.12.1, approves and authorizes the designation. IRS withholds from disclosure any records or portions of records marked OUO.

- (2) IRS uses the IRM as the primary repository of instructions to staff. It also uses interim guidance to issue instructions to staff to supplement the IRM between IRM publications. The proactive disclosure requirements of the FOIA extend to all instructions to staff affecting a member of the public regardless of form or format. Organizations that deliver procedural instructions outside of the IRM must still comply with the proactive disclosure requirements of the FOIA. See IRM 11.3.7.2.1 and IRM 11.3.7.2.2.

11.3.7.2.1  
(03-11-2015)  
**Complying with E-FOIA**

- (1) Most instructions to staff are included in an IRM. IRM 1.11.1, IRM 1.11.2, IRM 1.11.9, and IRM 1.11.10 describe the procedures and protocols to follow for creating, updating and clearing IRMs and other Internal Management Documents (IMDs) for publication. Media & Publications posts cleared and approved IRMs to the FOIA Library page on IRS.gov as part of the publishing process.
- (2) Servicewide Policy, Directives and Electronic Research (SPDER) posts recently issued Policy Statements and Servicewide Delegation Orders to the FOIA Library on IRS.gov. See IRM 1.11.3 and IRM 1.11.4.
- (3) The program owner is responsible for ensuring the proper posting of other instructions to staff meeting E-FOIA criteria to the FOIA Library web page, such as interim guidance memoranda and Servicewide Electronic Research Program IRM Procedural Updates (SERP IPU). See IRM 1.11.10.3, Author Interim Guidance for procedures related to proactive disclosure of interim guidance, including SERP IPU.
- (4) A web-based tool, the *E-FOIA Decision Tool*, is available to assist authors to determine whether particular instructions meet E-FOIA criteria and require posting in the FOIA Library on IRS.gov.
- (5) When uncertain if E-FOIA applies to interim guidance or unsure about other procedural records that may meet E-FOIA requirements, IMD authors may consult their *Disclosure Technical Liaison*.

11.3.7.2.2  
(03-11-2015)  
**E-FOIA Criteria**

- (1) IMDs meet FOIA guidelines requiring proactive electronic disclosure and IRS must post them to the FOIA Library on IRS.gov when:
  - a. the guidance is procedural and communicates direction, guidelines, or standards to employees for the performance of their assigned duties,
  - b. the guidance affects how a member of the public files, pays, complies with their tax requirements, or interacts with the Service, and
  - c. the guidance is not exempt from disclosure under 5 USC 552(b). See IRM 11.3.7.2.3, Disclosure Exemptions for Instructions to Staff.



- (2) If the document restates procedures already available in full on the FOIA Library on IRS.gov, then it is not necessary to post the document on the FOIA Library.

11.3.7.2.3  
(03-11-2015)  
**Disclosure Exemptions  
for Instructions to Staff**

- (1) When instructions to staff meet the proactive electronic disclosure requirements under the FOIA, 5 USC 552(a)(2)(C), IRS may still withhold in full or in part when two conditions apply. First, one of the nine FOIA exemptions established in subsection (b)(3) must apply, and further, having met one of the exemptions, there must be full and deliberate consideration of the institutional, commercial and personal privacy interests that could be implicated by disclosure of the information.
- (2) Instructions to staff should rarely, if ever, contain content that affects personal privacy interests and of the nine exemptions, generally only 5 USC 552(b)(7)(E) applies to instructions to staff. For content to meet exemption (b)(7)(E), there must be a reasonable expectation of harm to IRS business interests resulting from the content's disclosure. This exemption applies to law enforcement materials where disclosure could reasonably be expected to allow circumvention of the law. IRS designates such content OUO and the record is not published if the entire record meets the exemption. If only a portion of the record is OUO, that segment is removed prior to publication.
- (3) If internal management documents contain OUO information and non-OUO information, the OUO information is redacted (removed) and the remaining non-OUO content is accessible to the public, unless the remaining content is meaningless. See IRM 11.3.12.3.2, Official Use Only.

**Note:** OUO content must be properly marked by the author, reviewed by the Office of Disclosure and approved by an official under Delegation Order 11-1, Administrative Control of Documents found in IRM 1.2.2.12.1 .

11.3.7.3  
(08-08-2008)  
**Written Determinations**

- (1) IRC 6110 provides for public inspection of written determinations, including private letter rulings, technical advice memoranda, determination letters, and Chief Counsel advice. See IRM 37.1.1 , Disclosure, Written Determinations Under Section 6110, for procedures for the indexing, filing, and viewing of written determinations in the FOIA Library.
- (2) These written determinations are indexed by release number and Uniform Issue List (UIL) Code. The Uniform Issue List is an index of issues based on Internal Revenue Code sections. Written determinations issued after October 1998 (for Chief Counsel advice) and January 1999 (for letter rulings and technical advice) are posted on the *IRS website* by Release Number or by UIL Code Section.
- (3) Each written determination is coded with a nine digit identification number (seven digits for written determinations issued before 1999). Requesters seeking copies of the written determinations are encouraged to make their requests by referencing the identification number.

11.3.7.4  
(08-08-2008)  
**Fees**

- (1) Fees may be charged for photocopying or printing material, as established in the Internal Revenue regulations appearing at 26 CFR 601.702. Except for commercial use requesters, the first 100 pages are provided free of charge. The fee for photocopying or printing material is .20¢ per page. See IRM 11.3.5.2, Fee Provisions.

- 11.3.7.5  
(08-08-2008)  
**Public Inspection of Exempt Organization Material**
- (1) IRC 6104 provides the statutory authority for making approved Applications for Recognition of Exemption and supporting documents, certain letters issued by the IRS, information returns, notices, and reports filed by certain tax exempt organizations available for public inspection.
  - (2) Internal Revenue regulations, at 26 CFR 301.6104(a)-1 and 26 CFR 601.702 also provide guidance for public inspection and copying of exempt organization material. See IRM 11.3.9, Exempt Organizations.
- 11.3.7.5.1  
(11-08-2017)  
**Form 990 - Return of Organization Exempt From Income Tax**
- (1) TE/GE Customer Service processes requests for copies of Form 990 submitted using Form 4506-A, Request for Public Inspection or Copy of Exempt Organization Tax Form. Requesters send the completed form to the address listed in the form's instructions.
  - (2) The Form 990-N is available on IRS.gov at the *EO Select Check* site. You may request images of Form 990-N (e-Postcard), for Tax Exempt Organizations not required to file Form 990 or Form 990-EZ filings at *Form 990-N e-Postcard*.
- 11.3.7.5.2  
(11-08-2017)  
**Forms 1023 and 1024 - Application for Recognition of Exemption**
- (1) If the IRS determines that an organization described in IRC 501(c) or (d) is exempt from taxation for any taxable year, the application for exemption upon which the determination is based and any supporting documents are subject to public inspection under IRC 6104 and its implementing regulation, 26 CFR 301.6104(a)-1. See IRM 11.3.9, Exempt Organizations.
  - (2) When the tax exempt status of an organization has been revoked or terminated, the application for exemption and related documents upon which the original ruling was granted, remain open for public inspection purposes with regard to any period for which exemption is still recognized.
- 11.3.7.5.3  
(11-08-2017)  
**Notices and Reports - Forms 8871 and 8872**
- (1) Political organizations may be required to file Form 8871, Political Organization Notice of Section 527 Status and Form 8872, Political Organization Report of Contributions and Expenditures. These forms are subject to public inspection.
  - (2) Technical questions relating to Forms 8871 and 8872 should be referred to the TEGE CSC toll-free number, 877-829-5500. See IRM 21.7.7.4.6, Form 8871, Political Organization Notice of Section 527 Status and IRM 21.7.7.4.7, Form 8872, Political Organization Report of Contributions and Expenditures for additional information on these forms and requirements.
- 11.3.7.5.4  
(03-11-2015)  
**Requesting Exempt Organization Documents**
- (1) Requests for copies or inspection of the following forms must be made in writing. Form 4506-A is designed for such requests and should be used. The costs associated with processing these requests and the location to which the request should be mailed is provided on Form 4506-A.
    - Approved Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code
    - Approved Form 1024, Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120, with supporting documents
    - *Form 990 Series*, Return of Organization Exempt From Income Tax
    - Form 1041-A, U.S. Information Return Trust Accumulation of Charitable Amounts
    - Form 8871, Political Organization Notice of Section 527 Status

- Form 8872, Political Organization Report of Contributions and Expenditures

**Note:** These forms are stored in TE/GE offices and must be ordered using Form 4506-A.

- (2) Requestors may be advised that Forms 8871 and 8872 are generally available on the internet for viewing and printing at: <https://www.irs.gov/charities-non-profits/political-organizations/political-organization-filing-and-disclosure>
- (3) Requestors may be advised that Form 990 for entities organized under IRC 501(c)(3) may be available at: <http://www.guidestar.org>.
- (4) See IRM 11.3.9, Exempt Organizations, for further information concerning exempt organization documents.

11.3.7.6  
(03-11-2015)  
**Public Inspection of  
Employee Plan Material**

- (1) IRC 6104, as amended, provides the statutory authority for making certain Employee Plan material available to the public. These materials include applications and supporting documents, and any IRS letter issued with regard to the qualification of a pension, profit sharing, or stock bonus plan, individual retirement account, or individual retirement annuity, or with respect to the exemption from tax of such plan or account.
- (2) Internal Revenue regulations at 26 CFR 301.6104(a)-2 and (a)-3 and 26 CFR 601.702 also provide guidance for public inspection of pension plan material.
- (3) See IRM 21.5.11.1.1, Account Resolutions, Employee Plan Accounts, for information concerning requests for Form 5500 series returns.

11.3.7.7  
(11-08-2017)  
**Requests for Inspection  
or for Copies of  
Comments Received in  
Response to Notices of  
Proposed Rulemaking  
and Other Solicitations  
for Public Comments**

- (1) Upon written request, comments solicited from the public by the IRS may be inspected. Persons wishing to inspect comments must sign the request and either email a scanned copy to [notice.comments@irscounsel.treas.gov](mailto:notice.comments@irscounsel.treas.gov) or mail it to:  
  
Commissioner of Internal Revenue  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044
- (2) The requester will be contacted by an IRS Counsel employee when the documents are available for inspection. The Counsel employee will work with the requester to determine the best way to inspect the records.
- (3) Members of the public may obtain copies of comments by emailing a copy of a signed request to [notice.comments@irscounsel.treas.gov](mailto:notice.comments@irscounsel.treas.gov) or by mailing the signed request to:  
  
Commissioner of Internal Revenue  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044
- (4) Copies of comments may be made during inspection. Fees for duplication may be charged at .20¢ per page, with the first 100 pages free to all but commercial-use requesters.

