

Smithsonian Directive 807
REQUESTS FOR SMITHSONIAN INSTITUTION INFORMATION

Policy

It is the policy of the Smithsonian Institution (“Smithsonian” or “SI”) to respond timely to written requests for Smithsonian information consistent with the principles of disclosure under the Freedom of Information Act and in a manner that fosters openness and accountability and supports the Smithsonian’s mission. When considering requests for Smithsonian information, the Smithsonian will apply a presumption of disclosure. It will be the policy of the Smithsonian to disclose information unless this Directive clearly provides otherwise, except where disclosure would be harmful to an interest protected by an exemption. Where release would not be harmful to the Smithsonian or to an interest protected by an exemption, the Smithsonian may choose to release information that falls within an existing exemption. Procedures for processing requests for information and for appeals are set forth in a separate Procedures document attached to this Directive as Attachment A.

Definition of Information

This Directive applies to all Smithsonian information embodied in a Smithsonian record, regardless of the format in which the information is maintained and whether the information is maintained directly by the Smithsonian or by a private entity under contract.

This Directive is not intended to affect the way in which material about Smithsonian collections and programs is ordinarily made available through the Smithsonian Institution Archives, the Visitor Information and Associates’ Reception Center, the Smithsonian Institution Libraries, and the Research Information System. These offices will continue to provide a wealth of materials directly to the public.

Information Which May Be Exempt from Disclosure

In determining whether to disclose a Smithsonian record, the Smithsonian applies the exemptions from disclosure that are included in the Freedom of Information Act (FOIA) (a copy of the exemptions is attached to this Directive as Attachment B) and interprets those exemptions in a manner consistent with their interpretation by the Executive Branch agencies to which FOIA applies. However, because of the unique nature of the Smithsonian outside the Executive Branch, its charitable and educational activities, and its need to raise funds from private sector sources, the Smithsonian must evaluate records not regularly kept by Executive Branch agencies, some of which may not be exempt under existing interpretations of FOIA.

To assist requesters, this Directive lists examples of such categories of information that are exempt from disclosure under this Directive, and identifies the FOIA exemption which the Smithsonian has determined will apply to such information.

The Smithsonian will not withhold under this Directive any information contained in its publicly-available IRS Form 990 (*Return of Organization Exempt From Income Tax*) and 990-T (*Exempt Organization Business Income Tax Return*) or its audited financial statements.

The following is a partial list of FOIA exemptions and specific information the Smithsonian might withhold under these exemptions.

FOIA Exemption (b)(2). The Smithsonian will interpret Exemption 2 as including information the disclosure of which would risk circumvention of a Smithsonian directive, policy, or procedure, where the Smithsonian reasonably foresees that disclosure would be harmful to the Smithsonian, such as information related to the value of Smithsonian collections.

FOIA Exemption (b)(4). The Smithsonian will interpret Exemption 4 as including:

(1) Information about those aspects of Smithsonian financial investments involving Smithsonian trust funds that are subject to the confidentiality provisions contained in agreements with investment firms; and

(2) Smithsonian trade secrets and Smithsonian commercial or financial information directly related to the Smithsonian's revenue-generating activities, including fund-raising and development activities, and where release of the information would be likely to cause the Smithsonian substantial competitive harm or impair its ability to carry out its charitable and educational mission by raising private funds. Unless directly related to the Smithsonian's revenue-generating activities, the Smithsonian will not apply this exemption to Smithsonian information contained in contracts or agreements which commit federal appropriations or federal assets.

FOIA Exemption (b)(5). The Smithsonian will interpret Exemption 5 to include information that is part of ongoing research and other current projects (exhibitions, educational materials, etc.), where the Smithsonian reasonably foresees that disclosure of the information prior to the information being made publicly available would be harmful to the Smithsonian or its employees. In response to requests, SI will inform the requester of the estimated completion date of the research or project so that the requester may ask for the information at that time. The information then will be released unless otherwise exempt from disclosure. This exemption also includes information provided to the Smithsonian by an outside research, scientific or zoological organization for the purpose of research, consultation or advice that is held confidential by the outside organization.

FOIA Exemption (b)(6). The Smithsonian will interpret Exemption 6 to permit withholding of donor files and information, including donor-identifying information. The Smithsonian will also interpret Exemption 6 to permit withholding of files compiled to conduct employee conflict of interest reviews and financial disclosure forms.

FOIA Exemption (b)(9). The Smithsonian will interpret Exemption 9 as including information and data concerning collecting localities of species and artifacts, if necessary to protect them from being endangered or commercially traded, or to protect cultural and religious sites.

Effective Date for Certain Contracts/Agreements

This Directive does not apply to contracts/agreements directly related to the Smithsonian's revenue-generating activities entered into prior to November 30, 2007, in which parties contracting with the Smithsonian entered into a contractual relationship with an expectation that the terms of the agreement would not be disclosed to the public.

The Privacy Act/Ethics in Government Act

Although the Smithsonian Institution is not subject to the Privacy Act or the Ethics in Government Act, the Institution responds to requests for information in a manner consistent with these Acts and applicable Smithsonian Directives. Smithsonian records or information that would be protected from disclosure under the Privacy Act or the Ethics in Government Act will not be provided through requests for information under this Directive.

Electronic Access to Information

The Smithsonian will establish a link from the homepage of its public website (www.smithsonian.org) to a Request for Smithsonian Information site. This site will serve as an Electronic Reading Room and will provide information related to this Directive, such as how to request Smithsonian information, how to contact relevant staff, and how to determine the status of a request. The Institution will post to this site documents that have been or are likely to be requested by multiple parties.

Amendment

This Directive may only be amended with the approval of the Board of Regents, except with respect to Attachment B which may be amended without such approval to reflect changes in the law.

Attachments

ATTACHMENT A

Procedures for processing requests for Smithsonian Institution information under Smithsonian Directive 807 and for appeals.

Responsibilities

1. The Office of the General Counsel — OGC shall provide the equivalent of a FOIA Requester Center. The General Counsel shall serve as the equivalent of a Chief FOIA Officer and shall have the authority to effectuate this Directive. The General Counsel shall appoint at least one member of his or her staff to serve as the equivalent of a FOIA Officer, who shall be referred to as the Information Requests Officer. The Officer, under the supervision of the General Counsel, will review, redact, and provide records to the public in a manner consistent with this Directive, guided by the spirit of FOIA, and by federal regulations, Executive Orders, judicial decisions, and other federal laws relevant to FOIA. The Officer also will prepare reports and provide information to the public about how to request Smithsonian documents. The Officer's name and contact information will be posted on the Smithsonian website. The General Counsel will consult with the Office of the Secretary as needed, and recommend to the Secretary such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve the implementation of this Directive.

2. The Office of Public Affairs (OPA) — OPA, in consultation with OGC, is responsible for serving as the Institution's liaison when a requester is a member of the media or press, or asks for records that involve the media, press, or public relations. OPA, in consultation with OGC and the Office of the Chief Information Officer, is responsible for posting information on the home page of the Smithsonian website (www.smithsonian.org) that explains the policies and procedures for obtaining SI records.

3. The Office of the Chief Information Officer (OCIO) — OCIO is responsible for providing technical support to locate and retrieve electronic records. OCIO, in consultation with OGC and OPA, is responsible for developing the Requests for Smithsonian Information link on the Smithsonian website (www.smithsonian.org) and for posting information as requested by OGC and OPA.

4. The Office of Human Resources (OHR) — OHR will respond to requests from current and former employees for copies of their personnel records in a manner consistent with this Directive and relevant federal law. OHR will refer other requests for OHR records to OGC.

5. Directors — Smithsonian office and unit directors are responsible for:

- a. referring to OGC requests for records or requests that cite this Directive or FOIA
- b. designating a contact person within the office to coordinate the search for documents and provide documents to OGC
- c. ensuring that staff make reasonable efforts to search for relevant records

- d. providing responsive records to OGC within a reasonable time
- e. identifying information in any responsive record for which there appears to be a legitimate basis for withholding under SD 807 and which is not otherwise publicly available
- f. tracking the amount of time spent and cost of searching for relevant records

Submitting Requests

A request for Smithsonian records must be in writing and of sufficient detail to enable Smithsonian staff to identify and locate specific records using a reasonable amount of time and effort.

Responding to Requests

1. Determination of Requests — OGC will send a written determination to the requester within 20 business days of receiving the request, informing the requester whether or not the Institution can comply with the request and the reasons for its decision. If OGC has determined that no records exist, or additional information is needed to begin a search, or if the General Counsel has determined that records exist but no portion can be released under this Directive, the letter will say so and explain how to seek an appeal. The letter will also provide the requester with a tracking number assigned to the request, which he or she can use to determine the status of his/her request. The Smithsonian must comply with the timing of this requirement in order to charge fees to the requester.

2. Time for Providing Records — The Smithsonian makes every effort to provide documents as quickly as possible, taking into account the scope and depth of each request. When reasonable, the Institution will provide records in the format requested. Requests are placed in one of three tracks. Track one is for those requests that seek and receive expedited processing pursuant to subsection (a)(6)(E) of FOIA. The second track is for those requests that do not involve sensitive records, voluminous records, or lengthy consultations with other entities. Track three is for those requests that involve voluminous records and for which lengthy or numerous consultations are required, or involve sensitive records. This approach allows smaller requests to be answered as quickly as possible. Requesters may narrow the scope of complex requests in order to obtain documents faster. The OGC will evaluate requests for expedited processing in accordance with FOIA.

3. Search for Records — Searches will be diligent and reasonably tailored to locate the documents requested. OGC shall determine if responsive records are likely to exist and, if so, will contact the office(s) best able to conduct a search. The contact person at that office shall estimate a time frame for providing responsive records to OGC and estimate the number of pages that may be generated. The contact person shall conduct the search or assign staff to do so. If, in consultation with OGC, the contact person cannot reasonably ascertain what records are being requested, then OGC will notify the requester that the request cannot be processed as written.

4. Review and Redaction of Records — Records will be reviewed and redacted in accordance with this Directive. Documents created by another governmental entity will either be processed in consultation with that entity or be referred to that entity for processing. Documents authored by a third party or containing information that may be protected from disclosure as a trade secret and/or confidential commercial or financial information may be forwarded to the party for consultation and an opportunity to object to disclosure.

5. Information Originating Outside the Smithsonian – It is the policy of the Smithsonian not to provide records or information from its files that originates in a federal agency or nonfederal organization to persons who may not be entitled to obtain the records or information from the originator. In such instances, requesters will be referred to the person or organization that originated the records.

6. Response Letters and Delivery of Records — Responsive records will be provided unless a determination is made to withhold under this Directive. OGC will include a response letter that explains what documents are provided, what documents are withheld (if any), the reasons for redactions or withholdings, and instructions on how to appeal the decision. When a contact person notifies OGC that a search will yield a large number of records, OGC may, in consultation with the contact person, ask the requester to inspect the records on site, in lieu of delivering copies to the requester.

7. Fees — Requesters will be charged fees consistent with this Directive and federal regulations relevant to the disclosure of agency records. The Institution will post its fee policy on the Requests for Smithsonian Information link on the Smithsonian website (www.smithsonian.org) and will update this policy as appropriate.

8. Reporting — OGC will prepare monthly and annual reports to provide the public with meaningful information about their requests for Smithsonian documents, such as the number of requests, the length of time a request is open, and the type of documents requested. Monthly reports will include a tracking number assigned to each request, so that requesters can easily determine the status of his/her request. These reports will be posted on the Requests for Smithsonian Information site.

9. File Management — OGC will preserve files created in response to a request for records until their destruction is authorized by the Records Management division of Smithsonian Institution Archives.

Appeals

A requester has the right to appeal a partial or full denial of his/her request. An appeal must be in writing and addressed to the Office of General Counsel, Smithsonian Institution, and made within 60 days from the date of a full or partial denial. The request must explain the reason for appeal. The Under Secretary for Finance and Administration shall have the authority to decide appeals. The requester will receive an answer in writing that specifies the reason(s) for granting or denying the appeal.

External Review

A requester may at any time request the Office of Government Information Services, National Archives and Records Administration, to offer dispute resolution and issue advisory opinions to resolve disputes about the withholding of information or documents under this Directive, in accordance with the Open Government Act of 2007. The Smithsonian will provide a written response to any such advisory opinion and post the advisory opinion and the Smithsonian's response on the Smithsonian website (www.smithsonian.org).

Office of the Inspector General

Because the OIG is an independent unit within the Smithsonian, it will make its own determinations as to the release of its records. The OIG will respond to requests in accordance with the Inspector General Act of 1978, as amended, and in accordance with the principles of FOIA, the Privacy Act, and the Ethics in Government Act. The OIG will also generally follow the procedures set forth in this Directive. The Counsel to the Inspector General will serve as the Information Requests Officer within the OIG, and the Inspector General shall have the authority to decide appeals of decisions made by the Officer.

ATTACHMENT B

Exemptions under the Freedom of Information Act

5 U.S.C. § 552(b) of the Freedom of Information Act states that the Act:

“does not apply to matters that are—

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (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 criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological or geophysical information and data, including maps, concerning wells.”