



New EPA FOIA Regulations Expand Politicization without Transparency

The Environmental Protection Agency is planning to implement substantial changes to the agency's Freedom of Information Act regulations without giving the public an opportunity to comment. Although not yet finalized, today the public became aware of the EPA's [new FOIA regulations](#), which expand the politicization of FOIA in harmful ways.

Public comment requirements

The EPA has offered no public comment period for the new regulations, despite the significance of the changes to the public's right to know. Instead, the new regulations will go into effect 30 days after publication in the Federal Registry. The EPA states that the rule change qualifies for the "good cause" exemption to the public notice and comment requirements of the Administrative Procedure Act (APA), meaning that public comment would be "impractical, unnecessary, or contrary to the public interest". The EPA argues the changes are "insignificant in impact and inconsequential to the public," and that the agency lacks the "discretion to reach a different outcome in response to comment." However, it's clear that not only are the changes substantive and significant, but the EPA also could easily revise them in response to public comment.

Centralizing and politicizing FOIA

The new EPA FOIA regulations expand the list of non-FOIA officials who may make final determinations on FOIA requests, and centralize the EPA FOIA process, increasing the potential for politicization. The [current regulations](#) give "the head of an office, or that individual's designee" the authority to "grant or deny any request for a record *of that office or other Agency records when appropriate*" (emphasis added). By contrast, the new regulations explicitly name the Administrator and a list of other political appointees as officials who can "issue *final determinations*" with no mention of which records are appropriate for the Administrator or other appointee influence, essentially giving them authority to make determinations about *any* agency records.

Also troubling in this section is the language stating these officials can "issue final determinations whether to release or withhold a record *or a portion of a record on the basis of responsiveness* or under one or more exemptions under the FOIA" (emphasis added), meaning a document could be partially redacted if portions are deemed non-responsive to the request. This appears to clearly violate the D.C. Circuit's holding in [AILA v. EOIR](#), which stated, "we find no statutory basis for redacting ostensibly non-responsive information from a record deemed responsive." Allowing the EPA to assert that portions of a document are irrelevant to a FOIA request undermines FOIA, and enables arbitrary and abusive redactions.

The new regulations also centralize EPA FOIA management into their National FOIA Office (NFO) and state that regional offices of the EPA may no longer accept FOIA requests. It is unclear how EPA would adequately inform the public of this change, but the regulations the EPA is imposing would effectively ignore requestors who didn't file with the NFO. As written, the regulations state "[i]f a requester erroneously submits a FOIA request to an EPA program or regional office, the EPA will not consider the request received by the Agency." Nowhere in the regulations is there a requirement to provide notice to the public that the Agency is treating the request as not received, so a member of the public who sent a request to a regional FOIA office may never have any idea their request wasn't considered "received". These significant changes to policy are not "insignificant in impact and inconsequential to the public" as stated by the EPA.

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