

**For:** Washington, DC, and Kansas City, MO, FOIA Offices, and State and County Offices

**FOIA Requests for Geospatial Data Covered by Food, Conservation, and Energy Act of 2008  
(2008 Farm Bill), Section 1619**

**Approved by:** Administrator



**1 Overview**

**A Background**

The 2008 Farm Bill, Section 1619, codified as 7 U.S.C. 8791(b)(2)(A):

“prohibits the release of information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department, and geospatial information otherwise maintained by the Secretary about agricultural land or operations for which the previously described information is provided.”

After the 2008 Farm Bill was passed, FSA was advised by OGC that Section 1619:

- qualifies as an exemption 3 statute under FOIA
- allows disclosing payment information for any USDA program that is authorized by law, including the following:
  - names of recipients of payments
  - addresses of recipients of payments
  - amounts of payments made to recipients of payments
- allows disclosing covered information to entities when providing technical or financial assistance to USDA under cooperative programs.

<b>Disposal Date</b>	<b>Distribution</b>
November 1, 2010	Washington, DC, and Kansas City, MO, FOIA Offices and State Offices; State Offices relay to County Offices

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### 1 Overview (Continued)

#### A Background (Continued)

In March of 2009, the U.S. District Court for the District of Columbia in *Mary-Louise Zaroni v. United States Department of Agriculture*, Civil Action no.08-939 (EGS), affirmed that Section 1619 satisfies the conditions necessary for FOIA exemption 3 statutes.

FOIA processors continue to have questions about applying Section 1619 when faced with processing specific FOIA requests seeking access to geospatial data.

#### B Purpose

This notice addresses frequently asked questions and provides additional guidance about processing and responding to FOIA requests seeking geospatial data covered by 2008 Farm Bill, Section 1619.

#### C Exhibits

The following exhibits are provided:

- 2008 Farm Bill, Section 1619 (Exhibit 1)
- example denial letter for FOIA request seeking geospatial data (Exhibit 2).

### 2 Frequently Asked Questions

#### A How to Process FOIA Requests Asking for Geospatial Data

FSA continues to receive FOIA requests for data in the geospatial format. FOIA **requires** that all such requests **must** be fully processed, including that all applicable fee requirements are met. When processing requests for data in the geospatial format, FOIA processors **must**:

- determine if the FOIA request is seeking geospatial data encompassing the entire United States and territories where geospatial information is available, or only a limited geographical area, as follows:
  - route FOIA requests asking for geospatial data encompassing the entire United States and territories to MSD-KC for processing
  - route FOIA requests asking for geospatial data encompassing entire States or counties or grouping of States or counties in a particular region to MSD-KC for processing
  - determine if FOIA requests asking for smaller specific portions of the geospatial data (for example, data for a particular farm) can be processed reasonably efficiently by the office where the data is maintained, and:
    - if so, the FOIA request should be processed by that office
    - if **not**, the FOIA request should be routed to MSD-KC for processing

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### 2 Frequently Asked Questions (Continued)

#### A How to Process FOIA Requests Asking for Geospatial Data (Continued)

- estimate the amount of search and review fees required to process the FOIA request by determining how much it would cost to segregate that portion of the geospatial data responsive to the request and copy it onto a CD ROM disk

**Note:** If the requester agrees to pay the fees required to process the request, the information denied under FOIA exemption 3, pursuant to 2008 Farm Bill, Section 1619, **must** be retained in the administrative file for the request.

- for requests seeking geospatial data encompassing the entire United States and territories, MSD-KC will obtain an estimate of the cost of segregating a representative sample of the specific geospatial data responsive to the request, and copy it to a CD ROM disk
- for requests seeking geospatial data encompassing a limited geographical area or geographical location, offices processing the request will obtain an estimate of the cost of segregating the specific geospatial data responsive to the request in its entirety and copy it to a CD ROM disk
- obtain the requester's written agreement to pay the estimated fee **before** processing the request, if the amount of the fee is over \$25, or to provide advance payment of 50 percent of the estimated fee, if it exceeds \$250, **before** processing begins or resumes
- segregate the data (or, in the event of global requests for geospatial data, the representative sample of the data) requested and copy it to a CD ROM disk, if the requester agrees to pay the estimated FOIA fee, or provides advance payment of 50 percent of the estimated fee
- deny the data requested under FOIA exemption 3 and 2008 Farm Bill, Section 1619
- provide the requester with his/her appeal rights
- bill the requester for the cost of processing his/her request, or for the remainder of the fee if advance payment of 50 percent of the estimated fee was required.

#### B How to Process FOIA Requests Asking for Maps

All FOIA requests seeking maps, including requests seeking copies of older, historical maps maintained in the State or County Office, **must** be fully processed. This means that all applicable fee requirements **must** be met **before** a FOIA request seeking maps can be processed, and that copies of all documents responsive to the request **must** be maintained in the State or County Office's administrative file even when access to the maps is denied, pursuant to FOIA exemption 3 and 2008 Farm Bill, Section 1619 (follow subparagraph A).

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### 3 Action

#### A State Office Action

State Offices shall:

- comply with this notice
- communicate notice content to County Offices, providing training in its implementation, if appropriate
- ensure that County Offices comply with this notice.

#### B County Office Action

County Offices shall comply with this notice.

#### C National FOIA Office Action

National FOIA Offices shall comply with this notice.

#### D Contacts

For questions about this notice, contact Sue Ellen Sloca, FSA FOIA Officer, at either of the following:

- e-mail to [sueellen.sloca@wdc.usda.gov](mailto:sueellen.sloca@wdc.usda.gov)
- telephone at 202-720-1598.

## 2008 Farm Bill, Section 1619

**SEC. 1619. INFORMATION GATHERING.**

(a) **GEOSPATIAL SYSTEMS.**—The Secretary shall ensure that all the geospatial data of the agencies of the Department of Agriculture are portable and standardized.

(b) **LIMITATION ON DISCLOSURES.**—

(1) **DEFINITION OF AGRICULTURAL OPERATION.**—In this subsection, the term “agricultural operation” includes the production and marketing of agricultural commodities and livestock.

(2) **PROHIBITION.**—Except as provided in paragraphs (3) and (4), the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department, shall not disclose—

(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department; or

(B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.

(3) **AUTHORIZED DISCLOSURES.**—

(A) **LIMITED RELEASE OF INFORMATION.**—If the Secretary determines that the information described in paragraph (2) will not be subsequently disclosed except in accordance with paragraph (4), the Secretary may release or disclose the information to a person or Federal, State, local, or tribal agency working in cooperation with the Secretary in any Department program—

(i) when providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices; or

(ii) when responding to a disease or pest threat to agricultural operations, if the Secretary determines that a threat to agricultural operations exists and the disclosure of information to a person or cooperating government entity is necessary to assist the Secretary in responding to the disease or pest threat as authorized by law.

(4) **EXCEPTIONS.**—Nothing in this subsection affects—

(A) the disclosure of payment information (including payment information and the names and addresses of recipients of payments) under any Department program that is otherwise authorized by law;

(B) the disclosure of information described in paragraph (2) if the information has been transformed into a statistical or aggregate form without naming any—

(i) individual owner, operator, or producer; or

(ii) specific data gathering site; or

(C) the disclosure of information described in paragraph (2) pursuant to the consent of the agricultural producer or owner of agricultural land.

(5) **CONDITION OF OTHER PROGRAMS.**—The participation of the agricultural producer or owner of agricultural land in, or receipt of any benefit under, any program administered by the Secretary may not be conditioned on the consent of the agricultural producer or owner of agricultural land under paragraph 4(c).

(6) **WAIVER OF PRIVILEGE OR PROTECTION.**—The disclosure of information under paragraph (2) shall not constitute a waiver of any applicable privilege or protection under Federal law, including trade secret protection.

**Example Denial Letter for FOIA Requests Seeking Geospatial Data**

The following is an example denial letter for FOIA requests seeking geospatial data.

	Control Number
<p>[Mr./Ms. Requester's Name]                  [Requester Address]                  [City, State, Zip Code]</p>	
<p>Dear [Mr./Ms. Requester]:</p>	
<p>This responds to your Freedom of Information Act (FOIA) request (copy attached) dated [month, day, year]_____, control number _____.</p>	
<p>In response to your request, we are withholding the records in full pursuant to 5 U.S.C. § 552(b)(3) of the FOIA.</p>	
<p>In this instance, Section 1619(b) of the Food, Conservation and Energy Act of 2008 prohibits disclosure of the information requested.</p>	
<p>The records you have requested include geospatial information otherwise maintained by the Secretary about agricultural land for which information was provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department. This geospatial information is information that the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department, shall not disclose.</p>	
<p>If you believe our decision to withhold this information is incorrect, you may appeal it within forty-five (45) days of the date of this letter. In so doing, please provide us with a brief explanation of why you believe this decision is in error. Please include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words "Freedom of Information Act Appeal." Mail your appeal package to the following address:</p>	
<p>Administrator                  Attn: Appeals and Litigation Staff                  United States Department of Agriculture                  Farm Service Agency, STOP 0570                  Washington, D.C. 20250-0570</p>	
<p>The cost of processing [CHOOSE 1:]</p>	
<ul style="list-style-type: none"> <li>• a representative sample of the data you requested, sufficient to make a release determination on your request, is \$_____, calculated as follows:<sup>1</sup></li> <li>• your request is \$_____, calculated as follows:</li> </ul>	
<hr style="width: 20%; margin-left: 0;"/> <p><sup>1</sup>For use by MSD-KC, when processing requests for GIS data for the entire United States and territories.</p>	

Example Denial Letter for FOIA Requests Seeking Geospatial Data (Continued)

\_\_\_ Hour(s) of Professional Search Time  
\_\_\_ Hour(s) of Professional Review Time<sup>2</sup>

@ \$\_\_\_\_\_ per ¼ hour  
@ \$\_\_\_\_\_ per ¼ hour

[CHOOSE 1:]

- However, because the cost of processing [CHOOSE 1:] *your request* OR *a representative sample of the data you requested* is equal to or less than \$25.00, your fee has been waived because the cost of collecting this amount would be greater than the amount collected, pursuant to USDA regulations at 7 CFR Part 1, Appendix A to Subpart A, § 6(a)(4).
- Please submit a check, draft or money order payable to the Treasury of the United States for [INSERT TOTAL COST OF PROCESSING REQUEST] \$\_\_\_\_\_, to the following address [INSERT MAILING ADDRESS OF RESPONDING OFFICE] \_\_\_\_\_. Please be advised that payment is due within thirty (30) days of the date of this letter. Interest charges may be assessed at the rate prescribed in 31 U.S.C. 3717.

If you have any questions about our response to your request, you may contact \_\_\_\_\_ at \_\_\_\_\_, by email at \_\_\_\_\_, or by mail at \_\_\_\_\_.

Sincerely,

Attachments

<sup>2</sup>When applicable, for requests filed by commercial-use requesters.