I. Background

The Freedom of Information Act (“FOIA”) [5 USC 552] is a Federal statute based on the principle of openness in government and generally provides that any person has the right to request access to agency or department records or information of the executive branch of the U.S. Government.1

The FOIA sets standards for determining which records must be disclosed and which records may be withheld from disclosure pursuant to nine exemptions and three exclusions specified in FOIA. To the extent that a Federal agency sponsors research or other activities at Tulane University (“Tulane” or “University”), as memorialized in a grant, contract or cooperative agreement with Tulane, then FOIA applies to documents created by Tulane pursuant to that Federally-sponsored arrangement.

This policy provides guidance for monitoring and responding to FOIA requests made to Tulane under the FOIA and describes the conditions under which Tulane should disclose requested information.

II. Policy

A. Scope: This policy applies only to the production of existing Tulane documents related to research activities at the university subject to disclosure under the terms of FOIA2. Neither this policy, nor FOIA, require that a record/document be created by Tulane in order to provide the requested information or to answer questions that are not contained in an existing document. This does not, however, preclude the University from taking such action.

B. FOIA Disclosures: It is the policy of Tulane to comply fully with FOIA to the extent that FOIA applies to the documents requested to be disclosed and to the extent that a FOIA exemption or exclusion does not apply. Tulane respects the right of the public to access Tulane documents subject to FOIA but must also protect privileged information. Refer to the Guidelines entitled, “What Records Do Not Need to be Disclosed Under FOIA?” for additional details.

1 “Executive branch” includes cabinet departments, military departments, government corporations, government controlled corporations, independent regulatory agencies, and other establishments in the executive branch.

2 This Policy is not intended to address FOIA requests not related to research.
C. **Timely Response:** Tulane responds to FOIA requests by providing all non-exempt information in a timely manner (i.e., within **20 work days** of receipt of the request, excluding legal holidays).

D. **Fees:** The FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Before assessing any administrative charges, search costs, or copying fees with respect to a FOIA request, Tulane should communicate and coordinate this with the referring Federal agency/department.

E. **Record Retention:** Tulane maintains a record of all FOIA requests received and responses provided for a period of 6 years after the date of Tulane’s response. At a minimum, that record shall include for each separate request:
   1. Name and address of the requester;
   2. Requested documents;
   3. Date request received by Tulane; and
   4. Date response sent to the requester.

### III. Procedure

**A. Requests**

Any person can file a FOIA request to a U.S. agency/department. This includes U.S. citizens, foreign nationals, organizations, universities, businesses, and state and local governments.

Requests under FOIA must be made initially to a Federal agency or department, which agency/department (through its FOIA officer) will in turn contact Tulane. Requests directly made to Tulane are invalid and, as such, no response should be made by Tulane.

FOIA requests referred to Tulane by a Federal agency/department must be in writing (or electronically transmitted) and indicate that the request is a FOIA request. The request must identify the requested records with reasonable specificity. The request also must identify the name and address of the requester.

**B. Responses**

Tulane’s Research Compliance Officer ("RCO") is responsible for responding to FOIA requests, including preparation of any bills for such responses.

Any Tulane school, department or unit receiving a FOIA request shall immediately notify the RCO and electronically forward the FOIA request. The RCO will work with the receiving school/department/unit, and, as needed, with Office of General Counsel, to develop a timely response. It shall be the responsibility of the school/department/unit possessing the requested documentation to research and copy the requested records. Contact information for the RCO is as follows:

<table>
<thead>
<tr>
<th>Address</th>
<th>Tulane University Research Compliance Officer</th>
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<tbody>
<tr>
<td></td>
<td>Tidewater Building</td>
</tr>
<tr>
<td></td>
<td>1440 Canal St., Suite 2425</td>
</tr>
<tr>
<td></td>
<td>New Orleans, LA  70112</td>
</tr>
<tr>
<td>Phone:</td>
<td>504.988.1147</td>
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<tr>
<td>Fax:</td>
<td>504.988.1238</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:researchcompliance@tulane.edu">researchcompliance@tulane.edu</a></td>
</tr>
</tbody>
</table>

Unless otherwise agreed by the referring agency/department, all Tulane responses shall be completed within **20 business days** from receipt by Tulane of the request from the agency/department. Tulane

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should request additional time in writing beyond the FOIA-permitted response period, if needed. Should the agency/department and Tulane agree to a response time not in conformance with this requirement, such agreement shall be put in writing.³

FOIA permits four possible responses to FOIA requests:

1. The requested records are being provided.
2. The requested records are being entirely withheld.
3. The requested records are being withheld in part (as permitted by FOIA).
4. The requested records could not be found or do not exist.

Simply because a record contains some information that is exempt under FOIA (see “What Records Do Not Need to be Disclosed Under FOIA?”) does not mean that the entire record may be withheld. FOIA requires the provision of any reasonable segregable portion of a record to the requester after the exempt portion is deleted.

Tulane’s response is to be communicated to the referring agency/department, which will then communicate the response with the requester.

C. What Records Can be Requested Under FOIA?

FOIA establishes the public’s right to request governmental records. A “record” is the product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under Federal law in connection with the transaction of public business and in Tulane possession and control at the time the FOIA request is made. Therefore, all documents submitted to government agencies, including Louisiana state agencies and other states’ agencies, are subject to FOIA, and Investigators should remember this when composing the content of such submissions.

Documents commonly requested under FOIA include (but are not limited to) grant applications, correspondence between the university and a governmental agency (including emails), research protocols, and progress reports.

IV. Related Forms

A. “What Records Do Not Need to be Disclosed Under FOIA?”

V. Related Law & Regulations

A. Freedom of Information Act [5 USC 552]

B. Privacy Act of 1974—a companion to the FOIA, it regulates Federal government agency recordkeeping and disclosure practices. The act allows most individuals to seek access to Federal agency records about themselves. The act requires that personal information in agency files be accurate, complete, relevant, and timely. The subject of a record may challenge the accuracy of information.

³ Tulane may file an administrative appeal with the agency/department for additional time to respond when the request is denied by the FOIA officer (typically due to extraordinary volume of records or requires an extraordinarily lengthy search). Before proceeding with the petition, Tulane shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested. Tulane can file a judicial appeal to the extent that its request is administrative appeal is denied.

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WHAT RECORDS DO NOT NEED TO BE DISCLOSED UNDER FOIA?

The Freedom of Information Act (FOIA)\(^4\) lists information that is exempt from disclosure. However, simply because a record contains some information that is exempt from disclosure does not mean the entire record may be withheld. FOIA requires agencies to provide any reasonably segregable portion of a record to the requester after the exempt portion is deleted. In general, however, FOIA does not apply to:

1. material classified by executive order that relates to national defense or foreign policy;
2. matters related to internal personnel rules and practices of an agency;
3. matters specifically exempt from disclosure by statute provided such statute allows no discretion to release the information, or provides particular criteria for withholding or particular types of matters to be withheld (i.e., tax return information);
4. privileged and confidential trade secrets and commercial or financial information obtained from a person;
5. inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency (i.e., FOIA can't be used as a discovery tool);
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 the production of such records or information: could reasonably be expected to interfere with enforcement proceedings; would deprive a person to the right to an impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of personal privacy; could reasonably be expected to disclose the identity of a confidential source or information disclosed by a confidential source; would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure would reasonably risk circumvention of the law or endanger the life or physical safety of any individual;
8. matters contained in or relating to reports of an agency responsible for the regulation of financial institutions; or
9. geological or geophysical information and data, including maps, concerning wells.

Contact the Research Compliance Officer if you have any additional questions or concerns:

Address: Tulane University Research Compliance Officer
Tidewater Building
1440 Canal St., Suite 2425
New Orleans, LA  70112
Phone: 504.988.1147
Fax: 504.988.1238
Email: researchcompliance@tulane.edu

\(^4\) Codified at 5 USC 552 et seq