

Summary of Changes
to
Procedure 513.1
Freedom of Information Act and Privacy Act Records

Revised Version Issued as P 513.1A

LM Procedure 513.1, Freedom of Information Act and Privacy Act Records of 3/17/06, has undergone minor revisions. The procedure has been revised to reflect changes in definitions and formatting. Please replace LM Procedure 513.1 with LM Procedure 513.1A.

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An electronic version of the controlled document has been placed on the LM Intranet for employee use. Printed
hard copies of this electronic version are considered uncontrolled documents.

U.S. Department of Energy Office of Legacy Management



Procedure: 513.1A

Effective: 4/16/07

SUBJECT: FREEDOM OF INFORMATION ACT AND PRIVACY ACT RECORDS

1. PURPOSE.

To ensure Office of Legacy Management (LM) personnel properly respond to requests for information made under the Freedom of Information Act (FOIA) and Privacy Act (PA).

2. CANCELLATION. Procedure 513.1, Freedom of Information Act and Privacy Act Records, dated 3/17/06

3. REFERENCES.

- a. *5 United States Code (U.S.C.) 552, Freedom of Information Act*
- b. *5 U.S.C. 552a, Privacy Act*
- c. *10 Code of Federal Regulations (CFR) Part 1004, Freedom of Information, DOE Guidance*
- d. *10 CFR Part 1008, Records Maintained on Individuals (Privacy Act), DOE Guidance*
- e. *U.S. Department of Justice Freedom of Information Act Guide, May 2004*
- f. *U.S. Department of Justice Overview of the Privacy Act of 1974, May 2004*
- g. *DOE Administrative Records Schedule 14: Informational Services Records, N1-434-98-17*

- h. DOE Order 243.1, Records Management Program

4. DEFINITIONS.

- a. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Administrative Record (AR) Database -- The database used to maintain information and images relating to the CERCLA AR collections. The publicly available portion of the database allows the public and stakeholders to search and view images of documents contained in CERCLA AR collections.
- b. Exemptions -- 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records described in that section. These categories include national defense and foreign policy information; investigatory records; internal procedures and communications; materials exempted from disclosure by other statutes; confidential, commercial, and financial information; and matters involving personal privacy.
- c. File -- For Privacy Act purposes, file refers to a set of record material containing employment, medical, radiological, or related information.
- d. Freedom of Information Act (FOIA) -- Law enacted in 1966 and codified as 5 U.S.C. 552. FOIA establishes the premise that any person has a right of access to Federal agency records and that those records must be made available to the public unless they are specifically exempt from public release. FOIA includes nine exemptions that allow certain information contained in a record or an entire record to be withheld from public release. The Electronic Freedom of Information Act Amendments of 1996 (E-FOIA) requires agencies to make records available both electronically and through public reading rooms.
- e. Privacy Act (PA) -- Law enacted in 1974 and codified as 5 U.S.C. 552a. The Privacy Act provides safeguards against unwarranted invasions of privacy through the misuse of records by Federal agencies. The Act restricts disclosure of personally identifiable records maintained by agencies; grants individuals increased rights of access to any information maintained about them in a “system of records;” grants individuals the right to seek amendment of records maintained about them upon a showing that the records are not accurate, relevant, timely or complete; and establishes a code of “fair information practices” that requires agencies to comply with statutory norms for record collection, maintenance, use, and dissemination.
- f. Privacy Act Review -- A review performed to ensure personal information is not distributed or released to individuals who do not have a need or right to access that information.
- g. Personally Identifiable Information (PII) -- Any information about an individual maintained by an agency, including but not limited to, education, financial

transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual.

- h. Redact -- To create a copy of documentary material in which access restricted information is removed so the non-restricted information in the material may be made available to the public.
- i. Search -- For the purposes of this procedure, a review, manually or by automated means, of agency records to locate records that are responsive to a request.
- j. System of Records -- A group of any records under DOE control from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particulars assigned to the individual.
- k. Unclassified Controlled Information (UCI) -- Unclassified Information that may be exempt from public release under FOIA.

5. QUALITY CONTROL.

- a. The FOIA requires the Government to respond to requests for information within 20 working days after receipt of the request. Extensions are requested, as required, to search, discover, and produce the requested documentation/information.
- b. LM FOIA/PA records will be maintained in accordance with the DOE Administrative Records Schedule 14: Informational Services Records, N1-434-98-17.
- c. New records may not be created as part of a response to a request. Existing records will be provided according to FOIA and Privacy Act regulations.
- d. This procedure will be reviewed annually and as necessary to accommodate changing conditions within LM and to ensure compliance with applicable laws, regulations, and DOE requirements.
- e. The LM FOIA/PA Officer ensures that all FOIA/PA requests are logged and tracked in the FOIA/PA database. Requests are tracked from receipt through response to requestor.
- f. Metrics shall be maintained to track process flow and ensure accountability for request fulfillment in a timely manner.

6. RESPONSIBILITIES.

- a. The LM Director, serving as the LM Authorizing/Denying Official and under guidance of General Counsel (GC), has custody and jurisdiction over the documents subject to a FOIA request. The LM Authorizing/Denying Official certifies that 1) documents may be released in their entirety, 2) documents may be released in part, 3) documents or information is exempt from the FOIA, or 4) no documents exist that are responsive to a request. In the absence of the LM Director, the LM Deputy Director serves as the LM Authorizing/Denying Official.
- b. The DOE FOIA/PA Office:
- (1) Receives all FOIA and PA requests and routes them to the LM FOIA/PA Officer.
 - (2) Coordinates with the LM FOIA/PA Officer to prepare final responses to requestors based on responsive documents and information.
- c. The LM FOIA/PA Officer:
- (1) Manages the coordination of requests assigned to LM, and responds with results to the DOE FOIA/PA Office.
 - (2) Assigns, monitors, and closes out FOIA/PA requests received by LM.
 - (3) Prepares the annual FOIA report submission for LM.
 - (4) Handles all Congressional inquiries.
 - (5) Determines whether the requestor must reimburse the Government for costs incurred for FOIA/PA-related searches.
 - (6) Reviews proposed redactions to responsive documents prepared by the LM FOIA/PA Support Staff. As appropriate, the LM FOIA/PA Officer consults with General Counsel (GC) for redaction guidance.
 - (7) Communicates with the requestor as necessary to narrow search scope, refine criteria, or otherwise communicate response-related information to the requestor. The LM FOIA/PA Officer serves as LM's representative for all such communications.
- d. The LM FOIA/PA Support Point of Contact (POC):
- (1) Directs searches and processing of records responsive to FOIA/PA requests.

- (2) Notifies the LM FOIA/PA Officer if it appears the request is likely to generate a large volume of responsive documents, additional time is needed to process responsive documents, or any request clarification is needed.
 - (3) Ensures that any FOIA/PA requests received are properly routed to the DOE FOIA/PA Office.
- e. The LM FOIA/PA Support Staff:
- (1) Searches for and produces responsive documents according to established procedures. The LM FOIA/PA Support Staff also prepares a chronological index of responsive documents.
 - (2) Proposes redaction and summarizes reasons for redaction on the responsive documents index. Only qualified personnel shall provide redaction services.
 - (3) Images or copies responsive documents.

7. TRAINING REQUIREMENTS.

- a. The LM FOIA/PA Officer shall be trained and be familiar with the FOIA guide and Privacy Act overview published annually by the U.S. Department of Justice.
- b. The LM FOIA/PA Officer and designated LM FOIA/PA Support Staff shall attend refresher training in order to stay current with changes in the acts and remain current with DOE direction concerning FOIA/PA-related responses.

8. DOCUMENT CONTROL.

- a. The current and official controlled hard copy version of this document shall reside with the Directives Manager.
- b. The Directives Manager shall place the most current version of this procedure on the LM Intranet in a read-only format.
- c. Printed hard copies of this document shall be considered information-only copies.

9. PROCEDURE.

FOIA and PA responsive documents may contain UCI or PII. To ensure information is not disseminated to unauthorized personnel, electronic transmissions of documents must be encrypted prior to transmission. If electronic transmissions cannot be encrypted,

personnel are to use a courier service or other alternate transfer techniques to securely route responsive documents.

a. FOIA Requests

Attachment A. illustrates the FOIA request process.

- (1) The LM FOIA/PA Officer receives a FOIA request from the DOE FOIA/PA Office. Within 72 hours of receiving the request, the LM FOIA/PA Officer:
 - (a) Ascertains whether LM holds records responsive to the request. If the LM FOIA/PA Officer determines that the request is not an LM action, the request is returned to the DOE FOIA/PA Office with an explanation as to why LM is not the appropriate office to conduct the search and, if possible, a recommendation concerning which Government organization should receive the FOIA request.
 - (b) Ensures the request is logged in the FOIA/PA database. The LM FOIA/PA Officer uses the database to track the request to completion.
 - (c) Notes and records, where appropriate, the hourly rate at the current grade and step for any Federal employee completing work relating to the request.
 - (d) Routes the request to the LM FOIA/PA Support POC with a deadline appropriate to ensure timely response to the requestor. The LM FOIA/PA Officer sends an e-mail requesting responsive documents for the attached request.
- (2) The LM FOIA/PA Support POC:
 - (a) Initiates and scans LM Form 513.1, Freedom of Information Act/Privacy Act Request and Tracking, and updates the form as each tracking activity is completed. The POC updates the FOIA/PA database as appropriate.
 - (b) Reviews the request to determine the scope of production.
 - If it appears the request is likely to generate a large volume of responsive documents, additional time is needed to process responsive documents, or any request clarification is needed, the LM FOIA/PA Support POC formally notifies the LM FOIA/PA Officer. [Go to step 9.a.(3).]

- If it appears that a response can be provided within the time allotted, the LM FOIA/PA Support POC directs LM FOIA/PA Support Staff to initiate response processing. [Go to step 9.a.(5).]

(3) The LM FOIA/PA Officer:

- (a) Contacts the requestor to discuss the need to either refine the request scope or extend the response deadline. Other knowledgeable personnel (e.g., LM FOIA/PA Support POC) may participate in this discussion as appropriate. The LM FOIA/PA Officer is LM's designated representative for all communications with the requestor.
- (b) Generates a memorandum to document any communications with the requestor. This letter should:
 - Describe the agreement reached;
 - Include the amount of time LM estimates that it will take to fulfill the request;
 - List the additional cost to the requestor to process the request, if warranted; and
 - Ask the requestor to formally communicate to LM their acknowledgement and agreement with the contents of the memorandum.

When appropriate, the LM FOIA/PA Officer seeks concurrence from other LM personnel involved in the discussion.

- (c) Forwards a copy of the memorandum to the requestor and retains a copy for documentation.
 - (d) Notifies the LM FOIA/PA Support POC of the revised scope, clarification, or response schedule.
- (4) The LM FOIA/PA Support POC instructs LM FOIA/PA Support Staff to resume response activities according to the new parameters.

- (5) The LM FOIA/PA Support Staff:
- (a) Searches for responsive documents in LM's active and inactive records collections. If records have been stored at a NARA Federal Records Center (FRC), the LM FOIA/PA Support Staff searches these records collections. The cost to ship the records to and from storage is not an expense chargeable to the requestor. [Note: The LM FOIA/PA Support Staff may also identify related documents that are publicly available (via CERCLA AR Database, Considered Sites Database, etc.) or dispositioned to another Government entity. As part of LM's formal response, the LM FOIA/PA Officer may inform the requestor of these documents and provide guidance on how they may be obtained.]
 - (b) Retrieves responsive documents that fulfill the request or determines that no responsive documents can be located.
 - (c) Reviews and recommends redaction of responsive information exempt from release.
 - (d) Copies or scans responsive documents for recordkeeping purposes and to meet LM FOIA/PA Officer distribution requirements.
 - (e) Returns original records to storage.
 - (f) Prepares a chronological index of the responsive documents, beginning with the most recent document. This index is included with the response in the following format:

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1. Letter to Audrey Smith, Contracts Manager, General Atomics, from Tony Bradley, Contract Specialist, Oakland Operations Office, dated August 28, 2000, Subject: Hot Cell D&D Waste Disposal Costs, Contract DE-AC03-95SF20798. 1 page (F2000-00788)

- (g) Identifies, using brackets [], any responsive documents on the record index or specific information contained in the responsive documents that should not be released. The appropriate FOIA exemptions or the Privacy Act is cited as justification for withholding such information.
- (h) Completes LM Form 513.2, Freedom of Information Act/Privacy Act Fee Computation, where charges are incurred that the requestor may be required to pay.

- (i) Submits the response package to the LM FOIA/PA Support POC or reports that no responsive documents were located. The response package includes any responsive documents, the document index, any recommended redactions, and any forms generated to track request response or expenses.
- (6) The LM FOIA/PA Support POC:
 - (a) Performs a quality assurance review, ensuring the package's completeness and accuracy.
 - (b) Forwards the response package (or a statement that no responsive documents were located) to the LM FOIA/PA Officer.
- (7) Upon receipt of the response package, the LM FOIA/PA Officer works with the LM Authorizing/Denying Official and GC to certify that:
 - The documents may be released in their entirety;
 - Documents may be released in part;
 - Documents or information is exempt from disclosure under FOIA exemptions; or that
 - No documents responsive to the request exist.
- (8) The LM FOIA/PA Officer coordinates with DOE FOIA/PA Office to:
 - (a) Create a letter to the requestor containing an explanation of any document category that was withheld and a citation of any appropriate exemptions.
 - (b) Review the final response for compliance with LM, FOIA, and Privacy Act requirements.
 - (c) Complete LM Form 513.3, Freedom of Information Act/Privacy Act Request for Certification.
 - (d) Send the letter, any responsive documents, and related forms to the requestor.
 - (e) Place a copy of the final response package in the LM FOIA files, provide a copy of the initial letter to the DOE FOIA/PA Office, and close the action in the FOIA/PA database.

b. Privacy Act Requests

Attachment B. illustrates the Privacy Act request process.

A requestor submits a request for their personnel records to the DOE FOIA/PA Office. The LM FOIA/PA Officer handles requests applicable to LM.

- (1) The LM FOIA/PA Officer, upon officially receiving the request:
 - (a) Ensures the request is logged and tracks it in the FOIA/PA database.
 - (b) Determines a due date.
 - (c) Sends the requests to the LM FOIA/PA Support POC using a standard memorandum summarizing the requirements to properly handle Privacy Act requests.
- (2) The LM FOIA/PA Support POC:
 - (a) Initiates and scans LM Form 513.1, Freedom of Information Act/Privacy Act Request and Tracking, and updates the form as each tracking activity is completed. The LM FOIA/PA Support POC updates the FOIA/PA database as appropriate.
 - (b) Reviews the request to determine the scope of production.
 - If it appears the request is likely to generate a large volume of responsive documents, additional time is needed to process responsive documents, or any request clarification is needed, the LM FOIA/PA Support POC formally notifies the LM FOIA/PA Officer. [See steps 9.a.(3) and 9.a.(4) above.]
 - If it appears that a response can be provided within the time allotted, the LM FOIA/PA Support POC directs LM FOIA/PA Support Staff to initiate response processing.
- (3) The LM FOIA/PA Support Staff:
 - (a) Searches for responsive documents in LM's active and inactive records collections. If records have been stored at an FRC, the LM FOIA/PA Support Staff searches these records collections. The cost to ship the records to and from storage is not an expense chargeable to the requestor.

- (b) Retrieves responsive documents that fulfill the request or determines that no responsive documents were located.
 - (c) Reviews and recommends redaction of responsive information exempt from release.
 - (d) Copies or scans responsive documents for recordkeeping purposes and to meet LM FOIA/PA Officer distribution requirements.
 - (e) Returns original records to storage.
 - (f) Prepares a listing of responsive documents or files. The list is included with the response.
 - (g) Identifies, using brackets [], any responsive documents or specific information contained in the responsive documents that should not be released. Cites the appropriate FOIA exemptions or the Privacy Act as justification for withholding such information.
 - (h) Sends the response package to the LM FOIA/PA Support POC including responsive documents, the document index, and any forms generated to track request response.
 - (i) Enters updated information into the FOIA/PA database.
- (4) The LM FOIA/PA Support POC:
- (a) Performs a quality assurance review, ensuring the package's completeness and accuracy.
 - (b) Forwards the response package (or a statement that no responsive documents were located) to the LM FOIA/PA Officer.
- (5) The LM FOIA/PA Officer, under the guidance of GC, performs a Privacy Act Review.
- (6) The LM FOIA/PA Officer coordinates with the DOE FOIA/PA Office to:
- (a) Create letter to the DOE FOIA/PA Office with LM's recommendations.
 - (b) Send the letter, any responsive documents, and related forms to the DOE FOIA/PA Office.
 - (c) Place a copy of the final response package in the LM PA files, and close the action in the FOIA/PA database.

10. ATTACHMENTS.

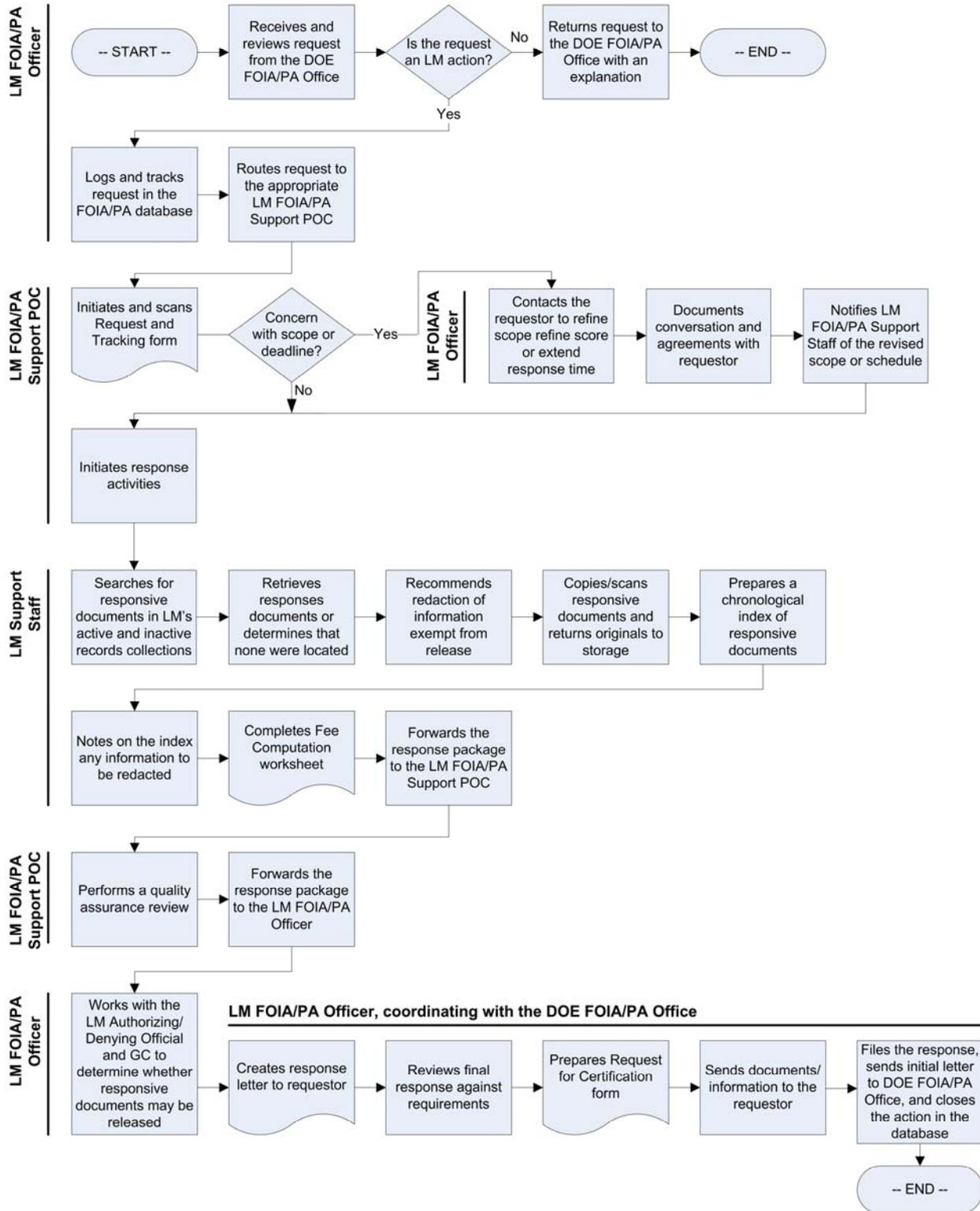
- a. Attachment A. – FOIA Process Flowchart
- b. Attachment B. – Privacy Act Process Flowchart

Approved: Original signed by Celinda H. Crawford
Director
Office of Business Operations

Distribution: As required

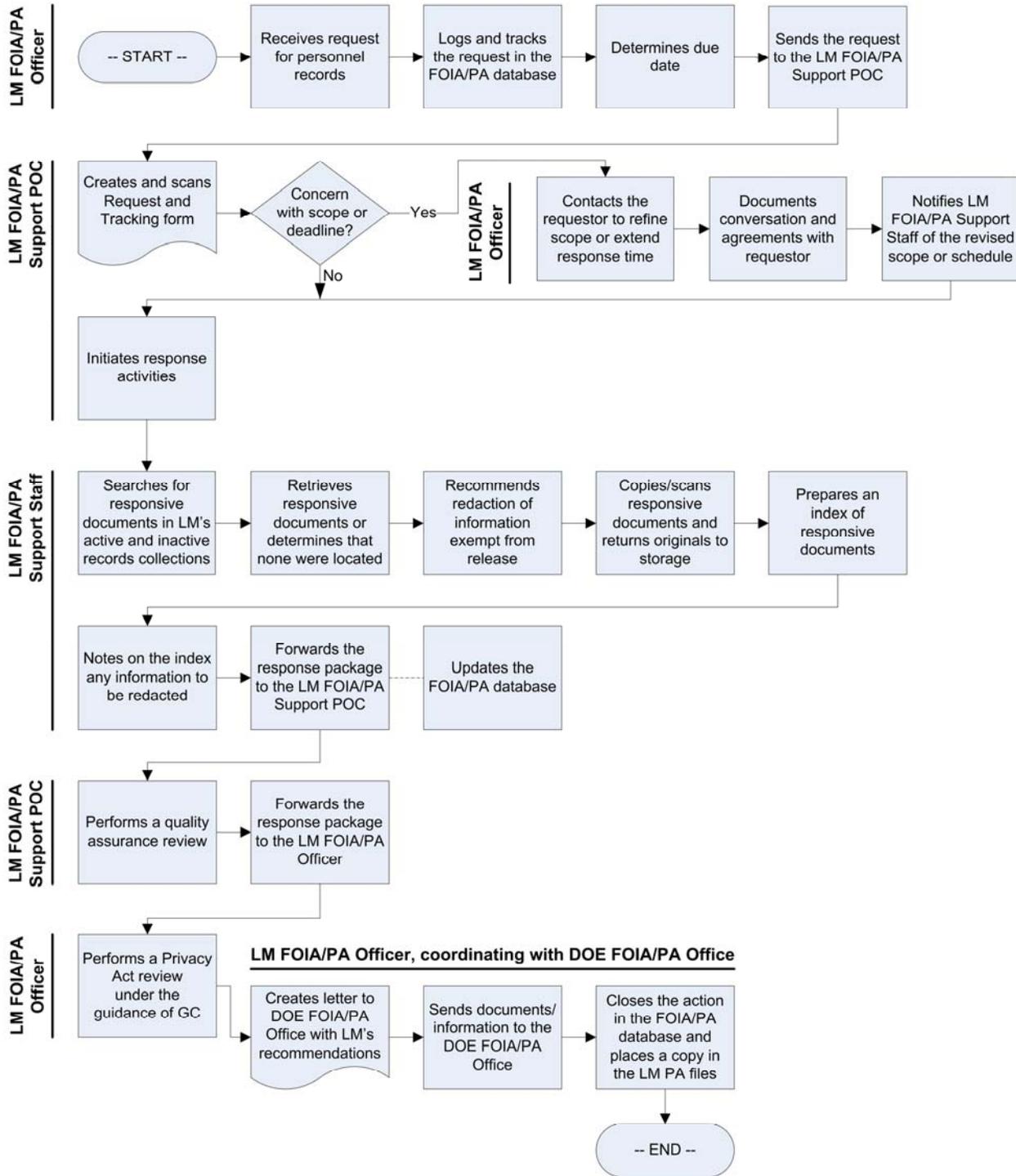
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Attachment A. – FOIA Process Flowchart



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Attachment B. – Privacy Act Process Flowchart



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