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GULF COAST ECOSYSTEM RESTORATION COUNCIL

40 CFR Part 1850

Docket Number: 110142015–1111–01

Procedures for Disclosure of Records Under the Freedom of Information Act and Privacy Act

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Proposed Rule.

SUMMARY: This Proposed Rule sets forth the Gulf Coast Ecosystem Restoration Council's (Council) proposed regulations regarding the Freedom of Information Act (FOIA), Privacy Act (PA), and declassification and public availability of national security information.

DATES: Comments are due [insert date 30 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: The Council invites comments on the proposed FOIA and PA regulations. Comments may be submitted through one of these methods:

Electronic Submission of Comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at http://www.regulations.gov. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public.

Comments submitted electronically through the http://www.regulations.gov web site can be viewed by other commenters and interested members of the public.

Mail: Send to Gulf Coast Ecosystem Restoration Council, 500 Poydras Street, Suite 1117, New Orleans, LA 70113.

Email: Send to FOIAcomments@RestoreTheGulf.gov.

In general, the Council will make such comments available for public inspection and copying on its website, http://www.restorethegulf.gov/ without change, including any business or personal information provided, such as names, addresses, e-mail addresses, or telephone numbers. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jeffrey Roberson at 202-482-1315.

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act, Pub. L. 112-141 (July 6, 2012), codified at 33 U.S.C. 1321(t) and note, makes funds available for the restoration and protection of the Gulf Coast Region through a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund (Trust Fund). The Trust Fund will contain 80 percent of the administrative and civil penalties paid by the responsible parties after July 6, 2012, under the Federal Water Pollution

Control Act in connection with the *Deepwater Horizon* oil spill. These funds will be invested and made available through five components of the RESTORE Act.

Two of the five components, the Comprehensive Plan and Spill Impact Components, are administered by the Council, an independent federal entity created by the RESTORE Act. Under the Comprehensive Plan Component (33 U.S.C. 1321(t)(2)), 30 percent of funds in the Trust Fund (plus interest) are available to develop a Comprehensive Plan to restore the ecosystem and the economy of the Gulf Coast Region. Under the Spill Impact Component (33 U.S.C. 1321(t)(3)), 30 percent of funds in the Trust Fund will be disbursed to the five Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) or their administrative agents based on an allocation formula established by the Council by regulation based on criteria in the RESTORE Act.

This Proposed Rule implements the Council's obligation to make records available under the Freedom of Information Act (FOIA) and Privacy Act (PA).

The Council will accept comments on the Proposed Rule for 30 days after publication, and publish a Final Rule after considering any comments.

III. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that this Interim Final Rule will not have a significant economic impact on a substantial

number of small entities. The Council hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, the fees the Council assesses are typically nominal. Further, the number of "small entities" that make FOIA requests is relatively small compared to the number of individuals who make such requests.

B. Paperwork Reduction Act

This rule does not contain a "collection of information" as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

As an independent federal entity that is composed of, in part, six federal agencies, including the Departments of Agriculture, Army, Commerce, and Interior, the Department in which the Coast Guard is operating, and the Environmental Protection Agency, the requirements of Executive Orders 12866 and 13563 are inapplicable to this rule.

List of Subjects in 40 CFR Part 1850

Administrative practice and procedure, Freedom of Information, Privacy, Public information, Classified information.

For the reasons set forth in the preamble, the Gulf Coast Ecosystem Restoration Council proposes to add 40 CFR part 1850 of Chapter VIII, to read as follows:

PART 1850—AVAILABILITY OF RECORDS

Sec.

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Authority: 33 U.S.C. 1321(f); 5 U.S.C. 552; 5 U.S.C. 552a.

Subpart A— Production or Disclosure under the Freedom of Information Act

§1850.1 – Purpose and Scope.

This subpart contains the regulations of the Gulf Coast Ecosystem Restoration Council (Council) implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended. These regulations supplement the FOIA, which provides more detail regarding requesters' rights and the records the Council may release.

The regulations of this subpart provide information concerning the procedures by which records may be obtained from the Council. Official records of the Council made available pursuant to the requirements of the FOIA shall be furnished to members of the public only as prescribed by this subpart. Information routinely provided to the public as part of a regular Council activity (for example, press releases) may be provided to the public without following this subpart.

§1850.2 – Definitions.

(a) *Commercial Use Request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(b) *Confidential Commercial Information* means commercial or financial information, obtained by the Council from a submitter, that may contain information exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4).

(c) *Council* means to the Gulf Coast Ecosystem Restoration Council.

(d) *Days*, unless stated as "calendar days," are business days and do not include Saturday, Sunday, or federal holidays.

(e) *Direct costs* means those expenses the Council actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) documents in response to a request made under § 1850.5. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the documents are stored.

(f) *Duplication* means the making a copy of a document, or other information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microfilm, audio-visual materials, or electronic records, among others. The Council shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(g) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(h) *Fee category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication. The three fee categories are: (1) commercial requesters, (2) non-commercial scientific or educational institutions or news media requesters, and (3) all other requesters.

(i) *News* means information about current events or that would be of current interest to the public.

(j) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(k) *Perfected request* means a written FOIA request that meets all of the criteria set forth in §1850.5.

(l) *Reading room* means a location where records are available for review pursuant to 5 U.S.C. 552(a)(2).

(m) *Records* under the FOIA include all Government records, regardless of format, medium or physical characteristics, and electronic records and information, audiotapes, videotapes, Compact Disks, DVDs, and photographs.

(n) *Records Management Officer* means the person designated by the Executive Director of the Council to oversee all aspects of the Council's records management program, including FOIA.

(o) *Representative of the news media, or news media requester*, means any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes the work to an audience. Examples of news-media entities are television or radio stations broadcasting to the public at large, and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public including news organizations that disseminate solely on the Internet. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. A "freelance journalist" shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would be the clearest proof, but the Council shall also look to the past publication record of a requester in making this determination. The Council's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use of the material.

(p) *Requester* means any person, partnership, corporation, association, or foreign or State or local government, which has made a request to access a Council record under FOIA.

(q) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting it and marking any applicable exemptions. Review costs are

recoverable even if a record ultimately is not disclosed. Review time includes time spent obtaining and considering any formal objection to disclosure made by a business submitter under §1850.12 but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(r) *Search* means the process of looking for and retrieving documents or information that is responsive to a request. Search time includes page-by-page or line-by-line identification of information within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(s) *Submitter* means any person or entity from whom the Council obtains confidential commercial information, directly or indirectly.

(t) *Unusual circumstances* include situations in which the Council must:

(1) search for and collect the requested agency records from field facilities or other establishments that are separate from the office processing the request;

(2) search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(3) consult with another Federal agency having a substantial interest in the determination of the FOIA request.

§1850.3 – General Provisions.

The Council shall prepare an annual report to the Attorney General of the United States regarding its FOIA activities in accordance with 5 U.S.C. 552(e).

§1850.4 – Public Reading Room.

The Council maintains an electronic public reading room on its website, *http://www.restorethegulf.gov*, which contains the records FOIA requires the Council to make available for public inspection and copying, as well as additional records of interest to the public.

§1850.5 – Requirements for Making Requests.

(a) Type of Records Made Available. The Council shall make available upon request, pursuant to the procedures in this section and subject to the exceptions set forth in FOIA, all records of the Council that are not available under §1850.4 of these procedures. The Council's policy is to make discretionary disclosures of records or information otherwise exempt from disclosure under FOIA unless the Council reasonably foresees that such disclosure would harm an interest protected by one or more FOIA exemptions, or otherwise prohibited by law. This policy does not create any enforceable right in court.

(b) Procedures for Requesting Records. A request for records shall reasonably describe the records in a way that enables Council staff to identify and produce the records with reasonable effort. The requester should include as much specific information as possible regarding dates, titles, and names of individuals. The Council may consider wide-ranging requests that lack specificity, require the production voluminous records, or contain broad descriptions of subject matters without reference to specific records to be "not reasonably described" and, therefore, not subject to further processing. For records "not reasonably described," the Council may require the requestor or the requestor's agent to confer with a Council representative in order to attempt to verify the scope of the request and, if possible, narrow such request. All requests must be submitted in writing (including by email, fax or mail) to the Council's Records Management Officer. Requesters shall clearly mark a request as a "Freedom of Information Act Request" or "FOIA Request" on the front of the envelope or in the subject line of the email.

(c) Contents of Request. The request, at minimum, shall contain the following information:

(1) The name, telephone number, and non-electronic address of the requester;

(2) Whether the requested information is intended for commercial use, or whether the requester represents an education or noncommercial scientific institution, or news media; and

(3) A statement agreeing to pay the applicable fees, identifying any fee limitation desired, or requesting a waiver or reduction of fees that satisfies §1850.10(j)(1) to (3).

(d) Perfected Requests. The requester must meet all the requirements in this section to perfect a request. The Council will only process perfected requests.

(e) Requestors may submit a request for records, expedited processing or waiver of fees by writing directly to the Records Management Officer via email at FOIArequest@restorethegulf.gov, first class United States mail at 500 Poydras Street, Suite 1117, New Orleans, LA 70113.

(f) Any Council officer or employee who receives a written Freedom of Information Act request shall promptly forward it to the Records Management Officer. Any Council officer or employee who receives an oral request under the Freedom of Information Act shall inform the person making the request that it must be in writing and also inform such person of the provisions of this subpart.

§1850.6 – Responding to Requests.

(a) Receipt and Processing. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Council by another agency, is the date the Council actually receives the request. The Council normally will process requests in the order they are received. However, in the Records Management Officer's discretion, the Council may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to

process the request, and whether the request qualifies for expedited processing as defined by paragraph (d) of this section. When using multi-track processing, the Records Management Officer may provide requesters in the slower track(s) with an opportunity to limit the scope of their requests to qualify for faster processing.

(b) Authorization. The Records Management Officer and other persons designated by the Council's Executive Director are solely authorized to grant or deny any request for Council records.

(c) Timing. (1) When a requester submits a request in accordance with §1850.5, the Records Management Officer shall inform the requester of the determination concerning that request within 20 days from receipt of the request, unless "unusual circumstances" exist, as defined in §1850.2(t).

(2) When additional time is required as a result of "unusual circumstances," as defined in §1850.2(t), the Records Management Officer shall, within the statutory 20 day period, issue to the requester a brief written statement of the reason for the delay and an indication of the date on which it is expected that a determination as to disclosure will be forthcoming. If more than 10 additional days are needed, the requester shall be notified and provided an opportunity to limit the scope of the request or to arrange for an alternate time frame for processing the request.

(3) The Council may toll the statutory time period to issue its determination on a FOIA request one time during the processing of the request to obtain clarification from the requester. The statutory time period to issue the determination on disclosure is tolled until the Council receives the information reasonably requested from the requester. The Council may also toll the statutory time period to issue the determination to clarify with the requester issues regarding fees. There is no limit on the number of times the agency may request clarifying fee information from the requester.

(d) Expedited Processing (1) A requester may request expedited processing by submitting a statement, certified to be true and correct to the best of that person's knowledge and belief, that demonstrates a compelling need for records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(2) The Records Management Officer will notify a requester of the determination to grant or deny a request for expedited processing within ten days of receipt of the request. If the Records Management Officer grants the request for expedited processing, the Council staff shall process the request as soon as practicable subject §§1850.10(d) and (e). If the Records Management Officer denies the request for expedited processing, the requester may file an appeal in accordance with the process described in §1850.7.

(3) The Council staff will give expedited treatment to a request when the Records Management Officer determines the requester has established one of the following:

(i) Circumstances in which the lack of expedited treatment reasonably could be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information;

(iii) The loss of substantial due process rights;

(iv) A matter of widespread and exceptional media interest raising possible questions about the Federal government's integrity which affects public confidence; or

(4) These procedures for expedited processing also apply to requests for expedited processing of administrative appeals.

(e) Denials. If the Records Management Officer denies the request in whole or part, the Records Management Officer will inform the requester in writing and include the following:

(1) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);

(2) An estimate of the volume of records or information withheld;

(3) The name and title or position of the person responsible for the denial of the request;

(4) The requester's right to appeal any such denial and the title and address of the official to whom such appeal is to be addressed; and

(5) The requirement that the appeal be received within 45 days of the date of the denial.

(f) Referrals to Another Agency. (1) When the Council receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency subject to the FOIA, the Council shall, except as provided in subparagraph (3) of this paragraph, refer the record to that agency for direct response to the requester. However, if the Council and the originating agency jointly agree that the Council is in the best position to respond regarding the record, then the record may be handled as a consultation.

(2) Whenever the Council refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name of the agency to which the record was referred, including that agency's FOIA contact information.

(3) The referral procedure is not appropriate where disclosure of the identity of the agency, typically a law enforcement agency or Intelligence Community agency, to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy and national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Council shall coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination shall then be conveyed to the requester by the Council.

(g) Consulting with Another Agency. In instances where a record is requested that originated with the Council and another agency has a significant interest in the record (or a portion thereof), the Council shall consult with that agency before responding to a requester. When the Council receives a request for a record (or a portion thereof) in its possession that originated with another agency that is not subject to the FOIA, the Council shall consult with that agency before responding to the requester.

(h) Providing Responsive Records. (1) Council staff shall send a copy of records or portions of records responsive to the request to the requester by regular United States mail to the address indicated in the request, unless the requester makes other acceptable arrangements or the Council deems it appropriate to send the records by other means. The Council shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format. The Council need not provide more than one copy of any record to a requester.

(2) The Records Management Officer shall provide any reasonably segregable portion of a record that is responsive to the request after redacting those portions that are exempt under FOIA or this section.

(3) The Council is not required to create, compile, prepare or obtain from outside the Council a record to satisfy a request.

(i) Prohibition Against Disclosure. Except as provided in this subpart, no member or employee of the Council shall disclose or permit the disclosure of any non-public information of the Council to any person (other than Council members, employees, or agents properly entitled to such information for the performance of their official duties), unless required by law to do so.

§1850.7 – Appeals.

(a) Requesters may administratively appeal an adverse determination regarding a request by writing directly to the General Counsel via email at GeneralCounsel@restorethegulf.gov or first class United States mail at 500 Poydras Street, Suite 1117, New Orleans, LA 70113. Administrative appeals sent to other individuals or addresses are not considered perfected. An adverse determination is a denial of a request and includes decisions that: the requested record is exempt, in whole or in part; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has previously been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(b) FOIA administrative appeals must be in writing and should contain the phrase "FOIA Appeal" on the front of the envelope or in the subject line of the electronic mail.

(c) Administrative appeals shall include a copy of the original request, the initial denial (if any), and a statement explaining the reasons that the Council should make the requested records available and the initial denial was made in error.

(d) Requesters submitting an administrative appeal of an adverse determination must ensure that the Council receives the appeal within 45 days of the date of the denial letter.

(e) Upon receipt of an administrative appeal, Council staff shall inform the requester within 20 days of the determination on that appeal.

(f) The determination on an appeal shall be in writing and, when it denies the appeal, in whole or in part, the letter to the requester shall include:

(1) A brief explanation of the basis for the denial, including a list of the applicable FOIA exemptions and a description of how they apply;

(2) A statement that the decision is final for the Council;

(3) Notification that judicial review of the denial is available in the district court of the United States in the district in which the requester resides, or has his or her principal place of business, or in which the agency records are located, or in the District of Columbia; and

(4) The name and title or position of the official responsible for denying the appeal.

§1850.8 – Authority to Determine.

The Records Management Officer or Council Executive Director, when receiving a request pursuant to these regulations, shall grant or deny such request. That decision shall be final, subject only to administrative appeal as provided in §1850.7 of this subpart. The Council General Counsel shall deny or grant an administrative appeal requested under §1850.7 of this subpart.

§1850.9 – Maintenance of Files.

The Records Management Officer shall maintain files containing all material required to be retained by or furnished to them under this subpart. The material shall be filed by a unique tracking number.

§1850.10 – Fees.

(a) Generally. Except as provided elsewhere in this section, the Records Management Officer shall assess fees where applicable in accordance with this section for search, review, and duplication of records requested. The Records Management Officer shall also have authority to furnish documents without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b)(1) Fee Schedule; Waiver of Fees. The fees applicable to a request for Council records pursuant to § 1850.5 are set forth in the following uniform fee schedule:

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate to cover benefits.
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction	$0.05 per page.
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform)	Actual direct cost, including operator time.
(iv) Review of records (including redaction)	Actual salary rate of employee involved, plus 16 percent of salary rate to cover benefits.

(2) Search. (i) The Council shall charge search fees for all requests, subject to the limitations of paragraph (b)(5) of this section. The Records Management Officer shall charge for time spent searching for responsive records, even if no responsive record is located or if the Records Management Officer withholds records located as entirely exempt from disclosure. Search fees shall equal the direct costs of conducting the search by the Council employee involved, plus 16 percent of the salary rate to cover benefits.

ii. For computer searches of records, the Council will charge requesters the direct costs of conducting the search. In accordance with paragraph (f) of this section, however, the Council will charge certain requesters no search fee and certain other requesters are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs attributable to the salary of an operator/programmer performing a computer search.

(3) Duplication. The Council will charge duplication fees to all requesters, subject to the limitations of paragraph (b)(5) of this section. The fee for a paper photocopy of a record (no more than one copy of which need be supplied) is 5 cents per page. The Records Management Officer will charge the requester for the direct costs, including operator time, of making copies produced by computer, such as tapes or printouts. The Records Management Officer will charge a requester the direct costs of providing other forms of duplication.

(4) Review. The Council will charge review fees to requesters who make a commercial use request. Review fees generally are limited to the initial record review, *i.e.*, the review done when the Records Management Officer determines whether an exemption applies to a particular record at the initial request level. The Council will not charge a requester for additional review at the administrative appeal level. Review fees consist of the direct costs of conducting the review by the Council employee involved, plus 16 percent of the salary rate to cover benefits.

(5) Limitations on charging fees. (i) The Council will not charge a search fee for requests from educational institutions, noncommercial scientific institutions, or representatives of the news media.

ii. The Council will not charge a search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

iii. The Council will not charge a fee to a requester whenever the total fee calculated under this paragraph is $25 or less for the request.

iv. Except for requesters seeking records for a commercial use, the Council will provide without charge the first 100 pages of duplication (or the cost equivalent) and the first two hours of search.

v. The provisions of paragraphs (5)(iii) and (5)(iv) of this section work together. This means that for requesters other than those seeking records for a commercial

use, no fee shall be charged unless the cost of search is in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.

vi. No search fees shall be charged to a requester when the Council does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

vii. No duplication fees shall be charged to requesters in the fee category of a representative of the news media or an educational or noncommercial scientific institution when the Council does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

(c) Payment Procedures. All requesters shall pay the applicable fee before the Council sends copies of the requested records, unless the Records Management Official grants a fee waiver. Requesters must pay fees by check or money order made payable to the "Treasury of the United States." Checks and money orders should be mailed to 500 Poydras Street, Suite 1117, New Orleans, LA 70113.

(d) Advance Notification of Fees. If the estimated charges exceed $25, the Records Management Officer shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Records Management Officer to reformulate the request to lower the costs. Council staff shall suspend processing the request until the requester provides the Records Management Officer with a written guarantee that the requester will make payment upon completion of processing (*i.e.,* upon completion of the search, review and duplication, but prior the Council sending copies of the requested records to the requester).

(e) Advance Payment. The Records Management Officer shall require advance payment of any fee estimated to exceed $250. The Records Management Officer also shall require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the Council shall refund the difference to the requester. The Council shall suspend the processing of the request and the statutory time period for responding to the request until the Records Management Officer receives the required payment.

(f) Categories of Uses. The fees assessed depend upon the fee category. In determining which category is appropriate, the Records Management Officer shall look to the identity of the

requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Records Management Officer may seek additional clarification before categorizing the request.

(1) Commercial use requester: The fees for search, duplication, and review apply.

(2) Educational institutions, non-commercial scientific institutions, or representatives of the news media requesters: The fees for duplication apply. The Council will provide the first 100 pages of duplication free of charge.

(3) All other requesters: The fees for search and duplication apply. The Council will provide the first two hours of search time and the first 100 pages of duplication free of charge.

Category	Chargeable fees
(i) Commercial Use Requesters	Search, Review, and Duplication.
(ii) Education and Non-commercial Scientific Institution Requesters	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters	Search and Duplication (excluding the cost of the first 2 hours of search and first 100 pages of duplication).

(g) Nonproductive Search. The Council may charge fees for search even if no responsive documents are found.

(h) Interest Charges. The Records Management Officer may assess interest charges on any unpaid bill starting on the 31st calendar day following the date the Council sent the bill to the requester. The Council will charge interest at the rate prescribed in 31 U.S.C. 3717 on fees payable in accordance with this section. The Council will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) Aggregated Requests. A requester may not file multiple requests at the same time solely in order to avoid payment of fees. If the Council reasonably believes that a request, or a group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the Council may aggregate any such requests and charge accordingly. The Records Management Officer may reasonably presume that one requester making multiple requests on the same topic within a 30-day period has done so to avoid fees.

(j) Waiver or Reduction of Fees. To seek a waiver, a requester shall include the request for waiver or reduction of fees, and the justification for such based on the factors set forth in this paragraph, with the request for records to which it pertains. If a requester requests a waiver or reduction and has not indicated in writing an agreement to pay the applicable fees, the time for responding to the request for Council records shall not begin until the Records Management Officer makes a determination regarding the request for a waiver or reduction of fees.

(1) Records responsive to a request shall be furnished without charge, or at a reduced rate below that established in paragraph (b) of this section, where the Council determines, after consideration of all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, the Council will consider the following factors:

(i) The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government. The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: whether the disclosure is "likely to contribute" to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be likely to contribute to such an understanding.

(iii) The contribution to an understanding of the subject by the public: whether disclosure of the requested information will contribute to the understanding of a

reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration. Merely providing information to media sources is insufficient to satisfy this consideration.

(iv) The significance of the contribution to public understanding: whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities. The public's understanding of the subject in question prior to disclosure must be significantly enhanced by the disclosure.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Council will consider the following factors:

(i) The existence and magnitude of a commercial interest: whether the requester has a commercial interest that would be furthered by the requested disclosure. The Council shall consider any commercial interest of the requester (with reference to the definition of "commercial use request" in §1850.2(b)), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure if "primarily in the commercial interest of the requester." A fee waiver or reduction is justified if the public interest standard (paragraph (j)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. The Council shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraphs (j)(2) and (3) of this section, insofar as they apply to each request. The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(5) Where only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(6) The Records Management Officer shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the General Counsel in accordance with §1850.7 of this subpart.

§1850.11 – Requests for Confidential Treatment of Business Information.

(a) Submission of Request. Any submitter of information to the Council who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Council at the time the information is submitted or within a reasonable time after submission. These designations will expire ten years after the date of submission unless the submitter requests, and provides justification for, a longer period.

(b) Form of Request. Each request for confidential treatment of business information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements indicating that release of the information would cause competitive harm generally are not sufficient to justify confidential treatment.

(c) Designation and Separation of Confidential Material. A submitter shall clearly mark all information it considers confidential as "PROPRIETARY" or "BUSINESS CONFIDENTIAL" in the submission and shall separate information so marked from other information submitted. Failure by the submitter to segregate confidential commercial or financial information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

§1850.12 – Requests for Access to Confidential Commercial or Financial Information.

(a) Notice to Submitters. The Council shall provide a submitter with prompt notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (b) of this section, except as provided in paragraph (e) of this section, in order to give the submitter an opportunity under paragraph (c) of this section to object to disclosure of any specified portion of that information. The

notice shall either describe the business information requested or include copies of the requested records containing the information. If notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(b) When notice is required. Notice shall be given to the submitter whenever:

(1) The submitter has designated the information in good faith as protected from disclosure under FOIA exemption (b)(4); or

(2) The Council has reason to believe that the information may be protected from disclosure under FOIA exemption (b)(4).

(c) Opportunity to object to disclosure. The Council shall allow a submitter seven days from the date of receipt of the written notice described in paragraph (a) of this section to provide the Council with a statement of any objection to disclosure. The statement must identify any portions of the information the submitter requests to be withheld under FOIA exemption (b)(4), and describe how each qualifies for protection under the exemption: that is, why the information is a trade secret, or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time frame specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(d) Notice of intent to disclose. The Council shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose business information. If the Council decides to disclose business information over a submitter's objection, the Council shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the business information to be disclosed; and

(3) A statement that the Council intends to disclose the information seven days from the date the submitter receives the notice.

(e) Exceptions to notice requirements. The notice requirements of paragraphs (a) and (d) of this section shall not apply if:

(1) The Council determines that the information is exempt and will be withheld under a FOIA exemption, other than exemption (b)(4);

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under this section or §1850.11 appears obviously frivolous, except that, in such a case, the Council shall provide the submitter written notice of any final decision to disclose the information seven days from the date the submitter receives the notice.

(f) Notice to requester. The Council shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(g) Notice of Lawsuits. Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Council shall promptly notify the submitter.

§1850.13 – Classified Information.

In processing a request for information classified under Executive Order 13526 or any other Executive Order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the Council or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by the Council because it contains information classified by another agency, the Council shall refer the responsibility for responding to the request to the agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA exemption (b)(1) (5 U.S.C. 552(b)(1)), but should be reviewed to assess whether any other FOIA exemption should be invoked. Appeals involving classified information shall be processed in accordance with §1850.7 of this subpart.

Subpart B—Production or Disclosure under the Privacy Act

§1850.31 – Purpose and Scope.

This subpart contains the regulations of the Gulf Coast Ecosystem Restoration Council (Council) implementing the Privacy Act of 1974, 5 U.S.C. 552a. It sets forth the basic responsibilities of the Council under the Privacy Act (the Act) and offers guidance to members of the public who wish to exercise any of the rights established by the Act with regard to records maintained by the Council. Council records that are contained in a government-wide system of records established by the U.S. Office of Personnel Management (OPM), the General Services Administration (GSA), the Merit Systems Protection Board (MSPB), the Office of Government Ethics (OGE), Equal Employment Opportunity Commission (EEOC) or the Department of Labor (DOL) for which those agencies have published systems notices are subject to the publishing agency's Privacy Act regulations. Where the government-wide systems notices permit access to these records through the employing agency, an individual should submit requests for access to, for amendment of or for an accounting of disclosures to the Council in accordance with § 1850.33 of this subpart.

§1850.32 – Definitions.

(a) For purposes of this subpart, the terms *individual, maintain, record,* and *system of records* shall have the meanings set forth in 5 U.S.C. 552a(a).

(b) *Working days* are business days and do not include Saturday, Sunday, or federal holidays.

§1850.33 – Procedures for Requests Pertaining to Individual Records in a Record System.

(a) Any person who wishes to be notified if a system of records maintained by the Council contains any record pertaining to him or her, or to request access to such record or to request an accounting of disclosures made of such record, shall submit a written request, either in person or by mail, in accordance with the instructions set forth in the system notice published in the *Federal Register*. The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records (as set forth in the system notice to which the request relates);

(3) Any other information specified in the system notice;

(4) When the request is for access to records, a statement indicating whether the requester desires to make a personal inspection of the records or be supplied with copies by mail; and

(5) Any additional information required by §1850.34 of this subpart for proper verification of identity or authority to access the information.

(b) Requests pertaining to records contained in a system of records established by the Council and for which the Council has published a system notice should be submitted to the person or office indicated in the system notice. Requests pertaining to Council records contained in the government-wide systems of records listed below should be submitted as follows:

(1) For systems OPM/GOVT–1 (General Personnel Records), OPM/GOVT–2 (Employee Performance File System Records), OPM/GOVT–3 (Records of Adverse Actions and Actions Based on Unacceptable Performance), GSA/GOVT–4 (Contracted Travel Services Program), OPM/GOVT–5 (Recruiting, Examining and Placement Records), OPM/GOVT–6 (Personnel Research and Test Validation Records), OPM/GOVT–7 (Applicant Race, Sex, National Origin, and Disability Status Records), OPM/GOVT–9 (Files on Position Classification Appeals, Job Grading Appeals and Retained Grade or Pay Appeals), OPM/GOVT–10 (Employee Medical File System Records) and DOL/ESA–13 (Office of Workers' Compensation Programs, Federal Employees' Compensation File), or any other government-wide system of record not specifically listed, to the restorecouncil@restorethegulf.gov]; and

(2) For systems OGE/GOVT–1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records), OGE/GOVT–2 (Confidential Statements of Employment and Financial Interests) and MSPB/GOVT–1 (Appeal and Case Records), to the General Counsel at restorecouncil@restorethegulf.gov

(c) Any person whose request for access under paragraph (a) of this section is denied, may appeal that denial in accordance with §1850.39 of this subpart.

§1850.34 – Times, Places, and Requirements for Identification of Individuals Making Requests.

(a) If a person submitting a request for access under §1850.33 has asked that the Council authorize a personal inspection of records pertaining to that person, and the appropriate Council official has granted that request, the requester shall present himself or herself at the time and place specified in the Council's response or arrange another, mutually convenient time with the appropriate Council official.

(b) Prior to personal inspection of the records, the requester shall present sufficient personal identification (*e.g.*, driver's license, employee identification card, social security card, credit cards). If the requester is unable to provide such identification, the requester shall complete and sign in the presence of a Council official a signed statement asserting his or her identity and stipulating that he or she understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by fine up to $5,000.

(c) Any person who has requested access under §1850.3 to records through personal inspection, and who wishes to be accompanied by another person or persons during this inspection, shall submit a written statement authorizing disclosure of the record in such person's or persons' presence.

(d) If an individual submitting a request by mail under §1850.33 wishes to have copies furnished by mail, he or she must include with the request a signed and notarized statement asserting his or her identity and stipulating that he or she understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by fine up to $5,000.

(e) A request filed by the parent of any minor or the legal guardian of any incompetent person shall: state the relationship of the requester to the individual to whom the record pertains; present sufficient identification; and, if not evident from information already available to the Council, present appropriate proof of the relationship or guardianship.

(f) A person making a request pursuant to a power of attorney must possess a specific power of attorney to make that request.

(g) No verification of identity will be required where the records sought are publicly available under the Freedom of Information Act.

§1850.35 – Disclosure of Requested Information to Individuals.

(a) Upon receipt of request for notification as to whether the Council maintains a record about an individual and/or request for access to such record:

(1) The appropriate Council official shall acknowledge such request in writing within 10 working days of receipt of the request. Wherever practicable, the acknowledgement

should contain the notification and/or determination required in paragraph (a)(2) of this section.

(2) The appropriate Council official shall provide, within 30 working days of receipt of the request, written notification to the requester as to the existence of the records and/or a determination as to whether or not access will be granted. In some cases, such as where records have to be recalled from the Federal Records Center, notification and/or a determination of access may be delayed. In the event of such a delay, the Council official shall inform the requester of this fact, the reasons for the delay, and an estimate of the date on which notification and/or a determination will be forthcoming.

(3) If access to a record is granted, the determination shall indicate when and where the record will be available for personal inspection. If a copy of the record has been requested, the Council official shall mail that copy or retain it at the Council to present to the individual, upon receipt of a check or money order in an amount computed pursuant to §1850.41.

(4) When access to a record is to be granted, the appropriate Council official will normally provide access within 30 working days of receipt of the request unless, for good cause shown, he or she is unable to do so, in which case the requester shall be informed within 30 working days of receipt of the request as to those reasons and when it is anticipated that access will be granted.

(5) The Council shall not deny any request under §1850.33 concerning the existence of records about the requester in any system of records it maintains, or any request for access to such records, unless that system is exempted from the requirements of 5 U.S.C. 552a.

(6) If the Council receives a request pursuant to §1850.33 for access to records in a system of records it maintains which is so exempt, the appropriate Council official shall deny the request.

(b) Upon request, the appropriate Council official shall make available an accounting of disclosures pursuant to 5 U.S.C. 552a(c)(3), unless that system is exempted from the requirements of 5 U.S.C. 552a.

(c) If a request for access to records is denied pursuant to paragraph (a) or (b) of this section, the determination shall specify the reasons for the denial and advise the individual how to appeal the denial in accordance with §1850.39 of this subpart. All appeals must be submitted in writing to the General Counsel at GeneralCounsel@restorethegulf.gov.

(d) Nothing in 5 U.S.C. 552a or this subpart allows an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

§1850.36 – Special Procedures: Medical Records.

In the event the Council receives a request pursuant to §1850.33 for access to medical records (including psychological records) and the appropriate Council official determines disclosure could be harmful to the individual to whom they relate, he or she may refuse to disclose the records directly to the requester but shall transmit them to a physician designated by that individual.

§1850.37 – Request for Correction or Amendment to Record.

(a) Any person who wishes to request correction or amendment of any record pertaining to him or her that is contained in a system of records maintained by the Council, shall submit that request in writing in accordance with the instructions set forth in the system notice for that system of records. If the request is submitted by mail, the envelope should be clearly labeled ‘‘Personal Information Amendment.’’ The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records as set forth in the system notice to which the request relates;

(3) A description of the nature (*e.g.*, modification, addition or deletion) and substance of the correction or amendment requested; and

(4) Any other information specified in the system notice.

(b) Any person submitting a request pursuant to paragraph (a) of this section shall include sufficient information in support of that request to allow the Council to apply the standards set forth in 5 U.S.C. 552a(e) requiring the Council to maintain accurate, relevant, timely, and complete information.

(c) All requests to amend pertaining to personnel records described in §1850.33(b) shall conform to the requirements of paragraphs (a) and (b) of this section and may be directed to the appropriate officials as indicated in §1850.33(b). Such requests may also be directed to the system manager specified in the OPM’s systems notices.

(d) Any person whose request under paragraph (a) of this section is denied may appeal that denial in accordance with §1850.39.

§1850.38 – Council Review of Request for Correction or Amendment to Record.

(a) When the Council receives a request for amendment or correction under §1850.37(a), the appropriate Council official shall acknowledge that request in writing within 10 working days of receipt. He or she shall promptly either:

(1) Determine to grant all or any portion of a request for correction or amendment; and:

(i) Advise the individual of that determination;

(ii) Make the requested correction or amendment; and

(iii) Inform any person or agency outside the Council to whom the record has been disclosed, and where an accounting of that disclosure is maintained in accordance with 5 U.S.C. 552a(c), of the occurrence and substance of the correction or amendments; or

(2) Inform the requester of the refusal to amend the record in accordance with the request; the reason for the refusal; and the procedures whereby the requester can appeal the refusal to the General Counsel of the Council in accordance with §1850.39.

(b) If the Council official informs the requester of the determination within the 10-day deadline, a separate acknowledgement is not required.

(c) In conducting the review of a request for correction or amendment, the Council official shall be guided by the requirements of 5 U.S.C. 552a(e).

(d) In the event that the Council receives a notice of correction or amendment from another agency that pertains to records maintained by the Council, the Council shall make the appropriate correction or amendment to its records and comply with paragraph (a)(1)(iii) of this section.

(e) Requests for amendment or correction of records maintained in the government-wide systems of records listed in §1850.35(c) shall be governed by the appropriate agency's regulations cited in that paragraph.

§1850.39 – Appeal of Initial Adverse Agency Determination on Correction or Amendment.

(a) If a request for correction or amendment of a record in a system of records maintained by the Council is denied, the requester may appeal the determination in writing to the General Counsel at GeneralCounsel@restorethegulf.gov

(b) The General Counsel shall make a final determination with regard to an appeal submitted under paragraph (a) of this section not later than 30 working days from the date on which the individual requests a review, unless for good cause shown, this 30-day period is extended and the requester is notified of the reasons for the extension and of the estimated date on which a final determination will be made. Such extensions will be used only in exceptional circumstances and will not normally exceed 30 working days.

(c) In conducting the review of an appeal submitted under paragraph (a) of this section, the General Counsel shall be guided by the requirements of 5 U.S.C. 552a(e).

(d) If the General Counsel determines to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall so inform the requester, and the

appropriate Council official shall comply with the procedures set forth in §1850.38(a)(1)(ii) and (iii).

(e) If the General Counsel determines in accordance with paragraphs (b) and (c) of this section not to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall inform the requester:

(1) Of this determination and the reasons for it;

(2) Of the requester's right to file a concise statement of reasons for disagreement with the determination of the General Counsel;

(3) That such statements of disagreement will be made available to anyone to whom the record is subsequently disclosed, together with (if the General Counsel deems it appropriate) a brief statement summarizing the General Counsel's reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided with a copy of the statement of disagreement together with (if the General Counsel deems it appropriate) a brief statement of the General Counsel's reasons for refusing to amend the record, to the extent that an accounting of disclosure is maintained under 5 U.S.C. 552a(c); and

(5) Of the requester's right to file a civil action in Federal district court to seek a review of the determination of the General Counsel in accordance with 5 U.S.C. 552a(g).

(f) The General Counsel shall ensure that any statements of disagreement submitted by a requestor are made available or distributed in accordance with paragraphs (e)(3) and (4) of this section.

§1850.40 – Disclosure of Record to Person Other than the Individual to Whom it Pertains.

The Counsel shall not disclose any record which is contained in a system of records it maintains, by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is authorized by one or more provisions of 5 U.S.C. 552a(b).

§1850.41 – Fees.

(a) No fee shall be charged for searches necessary to locate records. No charge shall be made if the total fees authorized are less than $1.00. Fees shall be charged for services rendered under this subpart as follows:

(1) For copies made by photocopy— $0.05 per page (maximum of 10 copies). For copies prepared by computer, such as tapes or printouts, the Council will charge the direct cost incurred by the agency, including operator time. For other forms of duplication, the Council will charge the actual costs of that duplication.

(2) For attestation of documents— $25.00 per authenticating affidavit or declaration.

(3) For certification of documents— $50.00 per authenticating affidavit or declaration.

(b) All required fees shall be paid in full prior to issuance of requested copies of records. Requestors must pay fees by check or money order made payable to the ‘‘Treasury of the United States.’’

§1850.42 – Penalties.

The criminal penalties which have been established for violations of the Privacy Act of 1974 are set forth in 5 U.S.C. 552a(i). Penalties are applicable to any officer or employee of the Council; to contractors and employees of such contractors who enter into contracts with the Council, and who are considered to be employees of the Council within the meaning of 5 U.S.C. 552a(m); and to any person who knowingly and willfully requests or obtains any record concerning an individual from the Council under false pretenses.

Will D. Spoon

Program Analyst, Gulf Coast Ecosystem Restoration Council

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