



**U.S. ELECTION ASSISTANCE COMMISSION**  
**1201 New York Ave. NW – Suite 300**  
**Washington, DC 20005**

September 30, 2013

Allan Blutstein  
Senior Counsel  
Cause of Action  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

Dear Mr. Blutstein:

This letter is in response to your Freedom of Information Act (FOIA) Request 13-00008 dated May 30, 2013.

You requested the following information:

By letter dated August 23, 2010, Senator Charles Grassley and Representative Darrell Issa asked the Inspectors General of twenty-nine agencies to review whether political appointees were made aware of Freedom of Information Act (FOIA) requests and played decision-making roles in those requests.) Pursuant to FOIA, Cause of Action hereby requests access to a copy of your agency's response to the above-referenced letter.

A copy of EAC's response to the referenced letter is attached. No information was withheld.

Sincerely,

A handwritten signature in cursive script that reads "Bryan Whitener".

Bryan Whitener  
Director of Communications  
U.S. Election Assistance Commission

Attachments:

Your request (dated May 30, 2013)  
Responsive Records



May 30, 2013

**VIA CERTIFIED MAIL, FACSIMILE & E-MAIL**

Election Assistance Commission  
Chief FOIA Officer  
1200 New York Ave., NW, Suite 300  
Washington, DC 20005  
Fax: (202) 566-3127  
E-mail: HAVAinfo@eac.gov

**RE: FREEDOM OF INFORMATION ACT REQUEST**

Dear FOIA Officer:

By letter dated August 23, 2010, Senator Charles Grassley and Representative Darrell Issa asked the Inspectors General of twenty-nine agencies to review whether political appointees were made aware of Freedom of Information Act (FOIA) requests and played decision-making roles in those requests.<sup>1</sup> Pursuant to FOIA, Cause of Action hereby requests access to a copy of your agency's response to the above-referenced letter.

For fee purposes, Cause of Action qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, *inter alia*, to publish and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action routinely and systematically disseminates information to the public through various medium forms. Cause of Action maintains a frequently visited website, [www.causeofaction.org](http://www.causeofaction.org). Additionally, since September 2011, Cause of Action has published an e-mail newsletter. This newsletter provides subscribers with regular updates regarding Cause of Action's activities and information the organization has received from various government entities. Cause of Action also disseminates information via Twitter and Facebook. Cause of Action also produces a newsletter titled "Agency Check," which informs interested persons about actions of federal agencies, and another periodical, "Cause of Action

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<sup>1</sup> Press Release, *Grassley, Issa Seek Information About FOIA Requests*, (Aug. 25, 2010), [http://www.grassley.senate.gov/news/Article.cfm?customel\\_dataPageID\\_1502=28447](http://www.grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=28447).

May 30, 2013

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News."<sup>2</sup> As a result of these activities, federal agencies have continually recognized Cause of Action as a representative of the media in connection with its FOIA requests.<sup>3</sup>

If you have any questions about this request, please contact me by e-mail at [allan.blutstein@causeofaction.org](mailto:allan.blutstein@causeofaction.org) or by telephone at (202) 499-4232. Thank you for your attention to this matter.



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ALLAN BLUTSTEIN  
SENIOR COUNSEL

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<sup>2</sup> Newsletters, Cause of Action, available at <http://causeofaction.org/newsletters/>.

<sup>3</sup> See, e.g., FOIA Request HQ-2013-00940-F, Dep't of Energy (Apr. 26, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2013-034F, Consumer Fin. Prot. Bureau (Dec. 7, 2012); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); Dep't of Commerce (Mar. 1, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012).



**U.S. ELECTION ASSISTANCE COMMISSION**

OFFICE OF THE INSPECTOR GENERAL  
1201 NEW YORK AVENUE, N.W., SUITE 300  
WASHINGTON, D.C. 20005  
(202) 566-3100

October 13, 2010

The Honorable Charles Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

**Via U.S. Mail and Electronic Mail**  
**Brian\_Downey@finance-rep.senate.gov**

The Honorable Darrell Issa  
Ranking Member  
Committee on Oversight and  
Government Reform  
United States House of Representatives  
B350A Rayburn House Office Building  
Washington, DC 20515

**Via U.S. Mail and Electronic Mail**  
**Brian\_Downey@finance-rep.senate.gov**

RE: Review of agency procedure for  
responding to information requests

Dear Ranking Members Grassley and Issa:

Thank you for your request to review the U.S. Election Assistance Commission's (EAC) procedure for processing and responding to information requests. We appreciate the additional time to complete this review. According to your request, we have reviewed the EAC's procedure for processing and responding to Freedom of Information Act (FOIA) requests and other information requests made by members of Congress, Congressional Committees, Congressional staff, journalists, activist groups, and watchdog groups. The objectives of this review were to determine whether, and to what extent, politically appointed employees are made aware of and/or have a role in review and decision making related to these types of information requests. Below, we will provide some background information regarding the EAC, the methodology used for our review, and the results of our inquiry.

**Background**

The EAC is an independent executive branch agency created in December 2003 to fulfill the requirements of the Help America Vote Act of 2002 (HAVA). The EAC's mission is to assist states with the effective administration of Federal elections. The EAC accomplishes this mission by awarding grants to states, by conducting research on

election administration best practices and by operating a program to test and certify voting equipment to be used in Federal elections.

The EAC is headed by a four-member commission. The commissioners are appointed by the President and confirmed by the United States Senate. The commissioners serve four-year terms and may, upon expiration of a term, hold over until the appointment of a replacement. The commissioners are the only presidentially-appointed employees of the EAC. They are responsible for appointing three statutory officers: the executive director, the general counsel and the inspector general. These positions are not politically appointed, but these individuals do serve at the pleasure of the commission.<sup>1</sup>

The function of processing requests made pursuant to FOIA has been delegated to a chief FOIA officer. In addition, the EAC has appointed a Congressional liaison, whose duties include responding to requests made by members of Congress and their staffs.

### **Methodology**

In order to complete our objectives for this review, the Office of Inspector General (OIG) notified the EAC of the review. We requested that the EAC provide its policies and procedures for processing information requests and to identify persons responsible for these functions. We specifically asked the EAC to identify the role that the commissioners play in responding to FOIA and Congressional requests. A copy of our request letter is attached as Appendix A.

The EAC provided thousands of pages of documents, which included not only EAC policies and regulations related to processing information requests, but also records that documented the application of those policies and procedures to information requests received by the agency. The EAC also identified the EAC staff responsible for the various stages of receiving, processing and responding to information requests made under FOIA or by members of Congress, Congressional committees, or their staffs. A copy of the EAC's response is attached as Appendix B. We reviewed the documents provided by the EAC and conducted interviews of key EAC employees who appeared, based on the EAC's written response and/or documents provided by the EAC, to have a role in receiving, processing and/or responding to information requests.

For purposes of this review we divided information requests into two broad categories: (1) those made by members of Congress, Congressional committees and staff and (2) those made pursuant to FOIA, by members of the media or by the general public. Throughout this letter, we will refer to these two categories as Congressional requests and FOIA requests, respectively, unless a specific request or type of request is explicitly mentioned.

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<sup>1</sup> The inspector general's appointment may be terminated only after complying with the Inspector General Act and its provisions regarding Congressional notification.

## Results

### FOIA Requests

The EAC has adopted FOIA regulations that establish the manner and means for an individual to make a request, for the EAC to process that request, and for the requester to appeal a denial by the EAC. See 11 C.F.R. Part 9405. However, the EAC has not finalized or adopted procedures to dictate how it will implement these regulations. We relied on responses provided by EAC (Appendix B) and interviews with key EAC personnel to understand how the EAC's FOIA program is implemented.

The agency's FOIA regulations establish the position of chief FOIA officer and place with that individual the responsibility for receiving FOIA requests. The regulations also give the chief FOIA officer the ability to appoint other FOIA officers to assist with the administration of the program. The EAC has delegated that authority to its director of communications. The deputy director of communications is the only other appointed FOIA officer.

Most FOIA requests are processed and handled by the office of communications. However, FOIA requests for particularly sensitive requests are handled by the office of general counsel (OGC). Determinations as to which FOIA requests are handled by the OGC have been made by the Commissioners. There were several FOIA requests that were processed by the OGC. One such request was made by a former candidate for the position of general counsel after he alleged that the commission engaged in a prohibited personnel practice by rescinding an employment offer based upon his political affiliation.

FOIA requests are logged and a determination is made as to which EAC program and administrative staff will likely have records responsive to a request. These persons are asked to search their files for responsive records. This determination is generally made by the chief FOIA officer. In some instances, the chief FOIA officer consults with the executive director or the office of general counsel as to whom requests to search records should be sent. When the FOIA request is handled by the OGC, the determination of which EAC employees will be involved in searching for records is made by an employee of the OGC.

Individual EAC employees, including commissioners, review their files to identify responsive documents. These employees also conduct the first review of responsive documents to identify documents, or parts thereof, which are subject to FOIA exemptions. The chief FOIA officer or OGC, respectively, reviews the documents provided by EAC staff to determine if they are truly responsive and/or are subject to any privilege or FOIA exemption. The chief FOIA officer frequently consults with the OGC on the application of privileges or exemptions. We did not identify any instances in which EAC Commissioners reviewed documents responsive to a FOIA request for purposes of determining whether documents should or should not be provided to the

requester. Likewise, we did not identify any instances in which an EAC Commissioner asked or directed that a document be removed from a response to a FOIA request.

The chief FOIA officer and/or the OGC prepare the initial response to the FOIA requester.<sup>2</sup> Requesters are advised of appeal rights. If the requester believes that the agency has denied part, or all, of the request, the requester may appeal the initial decision to the commission. While the EAC has never received an appeal, according to the regulations, the commission (by vote of the commissioners) would decide the appeal and the ultimate release of documents in response to a FOIA request.

Our review found that the EAC commissioners as group have a role in deciding which documents are released under FOIA, specifically they serve as the appeal authority for all FOIA appeals. Our review also found that the Commissioners have involved themselves in the administration of the FOIA program, as it relates to the appointment of FOIA officers.

In May 2009, my office sought to have changes made to the EAC's FOIA process such that the OIG could receive and process its own FOIA requests. Currently, FOIA requests for documents held by the OIG are made to the EAC's chief FOIA officer. The process as set out by regulation requires the chief FOIA officer to request responsive documents from the OIG and to review those documents prior to release or withholding in keeping with applicable FOIA exemptions. This process is the same for audits, evaluations and even investigations involving EAC programs and personnel. This office has the obligation to maintain the confidentiality and identity of whistleblowers and other witnesses who have been granted confidential status by the inspector general. Information from such confidential sources is maintained in OIG files, audit work papers, and supporting documentation for other evaluations and investigations. The current process does not allow the OIG to protect those individuals and their interests.

We researched the way that FOIA requests for OIG documents are handled in most other agencies and determined that most offices of inspector general have their own FOIA officer, who reviews and processes FOIA requests for OIG documents. We requested that the EAC make the OIG a component office (an independent office for purposes of receiving and processing FOIA requests). This would require changes to the EAC's FOIA regulations. As an interim solution, we agreed with the OGC that a FOIA officer could be appointed within the OIG to process FOIA requests for OIG documents. The OGC recommended that the chief FOIA officer appoint an OIG employee to serve as a FOIA officer for the OIG. According to the EAC's regulations, the chief FOIA officer is vested with authority to appoint FOIA officers. Based upon interviews and documents provided for this review, we learned that the chief FOIA officer, indicating that she was prepared to make the appointment of a FOIA officer for the OIG, sought approval from the executive director, her supervisor. One or more commissioners objected to the

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<sup>2</sup> Even in instances where the OGC prepares the response to the FOIA requester, the response letter is signed by the chief FOIA officer.

appointment. Due to the objection(s) and the failure of the executive director to approve, the appointment has never been made. The failure to make this appointment and to create a mechanism for the OIG to receive and process its own FOIA requests leaves OIG documents open to review by agency FOIA employees and by its commissioners through a FOIA appeal. The current process also fails to respect and protect the confidentiality of whistleblowers, employees and other confidential witnesses.

#### Congressional Requests

In its response to the OIG's engagement letter and initial request for documents and information, the EAC identified that commissioners, the EAC chair, the executive director, and EAC's Congressional liaison are all typical recipients of Congressional requests. (See Appendix B) The EAC's response suggested no set policy as to how a Congressional request is processed and who maintains records related to the request.

4. Depending on to whom a Congressional request is addressed and the subject matter of the Congressional request, the addressee generally identifies which EAC staff members will be responsible for providing information. In the recent past, most senior staff have been responsible for providing information in response to a Congressional request. Senior staff includes, but is not limited to, Division managers and individuals who report to the Executive Director. The Executive Director, Chief Operating Officer, and Chief Financial Officer have also been responsible for providing information in response to a Congressional request. Finally, EAC's Commissioners have been responsible for providing information in response to a Congressional request.

\* \* \*

10. Depending from which party an official response to a Congressional request comes, the signatory generally maintains official government records related to an information request. In general, Commissioners maintain official government records related to information requests for which they are the signatory.

EAC's Response Letter (Appendix B, p. 4). Furthermore, the OIG did not identify any final policies or procedures related to handling or processing Congressional requests.

Subsequent interviews confirm that there are multiple ways in which Congressional requests are handled. Requests made through the Congressional liaison are logged and distributed to all staff through a daily email. Information is gathered by the Congressional liaison in a similar process to a FOIA request and responses are provided



on an expedited basis to the requester.<sup>3</sup> EAC commissioners and staff are informed of the responses provided to the Congressional requester through the daily email referenced above. Requests made through the Congressional liaison tend to be more informal, that is to say that they are communicated via email or telephone and involve more routine matters related to the EAC, its operations and its programs.

Requests made through the EAC chair, commissioners, or executive director tend to be more formal. Those requests are often made by committee chairs or ranking members and are communicated through formal letters. These requests are handled by the respective recipient, including determining and involving staff that may have responsive information or documents, obtaining input from other commissioners, and maintaining records of the request and response.

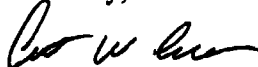
Our review revealed that commissioners are given the opportunity to review and edit response letters and documents related to a Congressional request. We did not identify any instances in which a commissioner or group of commissioners removed or directed that documents be removed from a response to a Congressional request. We did find that the commissioners frequently edit the text of response letters to Congress.

### **Conclusion**

This review was conducted solely for the purpose of responding to this Congressional request. Thus, we do not reach any conclusions or make any recommendations regarding the EAC's process of handling information requests.

We will be happy to discuss this review with you or your staff should you have questions or concerns related to our method or results.

Sincerely,



Curtis W. Crider  
Inspector General

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<sup>3</sup> Responses to requests made by Congressional committees are shared with both majority and minority offices.

## Appendix 1



U.S. ELECTION ASSISTANCE COMMISSION  
OFFICE OF THE INSPECTOR GENERAL  
1201 NEW YORK AVENUE, N.W., SUITE 300  
WASHINGTON, D.C. 20005  
(202) 566-3100

August 26, 2010

The Honorable Donetta Davidson  
Chair  
U.S. Election Assistance Commission  
1201 New York Avenue NW, Suite 300  
Washington, DC 20005

Via Electronic Mail & HAND DELIVERY

RE: Congressional Inquiry

Dear Chair Davidson:

The U.S. Election Assistance Commission (EAC) Office of Inspector General (OIG) recently received a request from Congressman Darrell Issa and Senator Charles Grassley to review the EAC's procedures for processing information requests made under the Freedom of Information Act (FOIA) as well as those made by legislators that are not subject to FOIA. The request specifically asks the OIG to determine the role of political appointees in processing and determining what records should be provided in response to information requests.

The Congressional request has a very aggressive deadline, September 17, 2010. As such, the EAC OIG will begin its work immediately in order to comply with the request. We will need some written documentation and written responses from the EAC as well as time to interview key persons involved in processing information requests. The OIG will need the following documents or responses to the following questions by Wednesday, September 1, 2010:

- 1) Please provide a copy of EAC's current and/or past policies, procedures, or regulations related to processing information requests.
- 2) Please provide any internal memoranda or correspondence related to the EAC's policy, procedure, or practice of processing information requests.
- 3) Please identify all persons responsible for receiving information requests.
- 4) Please identify all persons responsible for identifying or determining to which EAC staff members information requests will be circulated for research and response.
- 5) Please identify all persons responsible for reviewing documents produced by EAC staff members in response to an information request.
- 6) Please identify all persons authorized to exert an exemption or privilege to producing documents in response to an information request.

- 7) Please identify all persons authorized to respond to or make a determination regarding an information request.
- 8) Please identify all persons authorized to receive an appeal of a determination regarding an information request.
- 9) Please identify all persons responsible for deciding an appeal of a determination regarding an information request.
- 10) Please identify all persons responsible for maintaining official government records related to an information request.
- 11) Please identify what role any or all of the EAC Commissioners play in receiving, processing, or responding to an information request, including an appeal of a determination regarding an information request.

Once the OIG has received and reviewed the above requested information and documents, we will begin interviewing individuals identified in response to the above questions. We would appreciate you appointing a liaison for this review who can serve to help coordinate document production and interviews.

Thank you in advance for your assistance. If you would like to schedule a meeting to discuss this Congressional request, please contact me at 202-566-3125 or [ccrider@eac.gov](mailto:ccrider@eac.gov).

Sincerely,



Curtis W. Crider  
Inspector General

cc: Jeannie Layson, Chief FOIA Officer

## Appendix 2



**U.S. ELECTION ASSISTANCE COMMISSION**  
1201 NEW YORK AVENUE, N.W., SUITE 300  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

September 1, 2010

Mr. Curtis Crider  
Inspector General  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Ste 1100  
Washington, DC 20005

**VIA ELECTRONIC TRANSMISSION**

**RE: Congressional Inquiry to Review U.S. Election Assistance Commission (EAC)  
Procedures for Processing Information Requests**

Dear Mr. Crider:

On August 26, 2010, you notified the U.S. Election Assistance Commission (EAC) that the Office of the Inspector General (OIG) received a request from Congressman Darrell Issa and Senator Charles Grassley to review EAC's procedures for processing information requests made under the Freedom of Information Act (FOIA) as well as information requests made by legislators who are not subject to FOIA.

In your correspondence, you requested the following:

1. Provide a copy of EAC's current and/or past policies, procedures, or regulations related to processing information requests;
2. Provide any internal memoranda or correspondence related to the EAC's policy, procedure, or practice of processing information requests;
3. Identify all persons responsible for receiving information requests;
4. Identify all persons responsible for identifying or determining to which EAC staff members information requests will be circulated for research and response;
5. Identify all persons responsible for reviewing documents produced by EAC staff members in response to an information request;
6. Identify all persons authorized to exert an exemption or privilege to producing documents in response to an information request;
7. Identify all persons authorized to respond to or make a determination regarding an information request;
8. Identify all persons authorized to receive an appeal of a determination regarding an information request;
9. Identify all persons responsible for deciding an appeal of a determination regarding an information request;
10. Identify all persons responsible for maintaining official government records related to an information request;

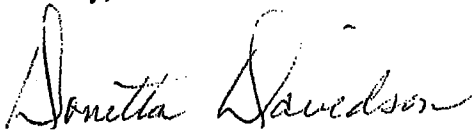
11. Identify what role any or all of the EAC Commissioners play in receiving, processing, or responding to an information request, including an appeal of a determination regarding an information request.

Please find EAC's responses to items 3-11 below. The first set of responses provides information relevant to EAC's FOIA requests for information and the second set of responses provides information on EAC's Congressional requests for information.

Per your conversation with Ms. Tamar Nedzar on Monday, August 30, 2010, EAC will also provide you with a password-protected data disk containing two folders of documents responsive to items 1 and 2 on Friday, September 3, 2010. The first folder contains responses relevant to EAC's FOIA requests for information. The second folder contains responses relevant to EAC's Congressional requests for information. As some EAC staff are not or will not be in the office through September 3, 2010, EAC will also supplement its response to items 1 and 2 as staff on leave return to the office to perform their searches.

You also requested that EAC identify a liaison to work with your office to help coordinate document production for this review. I have identified Ms. Tamar Nedzar as EAC's liaison for this review. You may contact her at (202) 566-1707 or by email at [tnedzar@eac.gov](mailto:tnedzar@eac.gov).

Sincerely,



Donetta Davidson  
Chair

Enclosures: 2

### FOIA Requests

Note: Responses to items 1 and 2 will be sent in a separate transmission.

3. The Chief FOIA Officer is Jeannie Layson, Sarah Litton has been designated a FOIA liaison. FOIA requests primarily go to Ms. Layson and Ms. Litton performs Chief FOIA Officer functions in Ms. Layson's absence.
4. The Chief FOIA Officer or her designee makes primary determinations concerning which EAC staff members are likely to have records responsive to FOIA requests. The Chief FOIA Officer consults with the Executive Director and the Office of General Counsel (OGC) as needed to identify EAC staff members likely to maintain or have access to requested records.
5. The Chief FOIA Officer or her designee does initial review of FOIA materials. The Chief FOIA Officer consults with program staff and OGC in reviewing documents produced by EAC staff members in response to an information request.
6. EAC staff members are individually responsible for reviewing the records they provide in response to a request for information. Pursuant to the instructions provided with FOIA search forms, individual staff members are responsible for flagging those responsive records they believe contain privileged or exempt materials. EAC's OGC then reviews responsive materials and consults with the Chief FOIA Officer to identify and assert applicable exemptions and exclusions to FOIA.
7. The Chief FOIA Officer or her designee is primarily authorized to respond to and make determinations concerning information requests. She does so in consultation with the Executive Director and OGC.
8. Under EAC's regulations, appeals of a determination regarding an information request must be sent to EAC's Chief FOIA Officer.
9. Under EAC's regulations, the Commission decides appeals of a determination regarding an information request.
10. The Chief FOIA Officer or her designee is primarily responsible for maintaining official government records related to an information request. On occasion and depending on the subject matter, OGC may maintain official government records related to an information request.
11. EAC's Commissioners generally do not play a role in receiving or providing an initial response to information requests. Rather, they, as with all other EAC staff, when identified as record-holders, provide responsive materials. Under EAC's regulations, the Commission decides appeals of a determination regarding an information request.



### Congressional Requests

Note: Responses to items 1 and 2 will be sent in a separate transmission.

3. Congressional offices generally send information requests to individual Commissioners, EAC's Chair, all EAC Commissioners, EAC's Congressional liaison, and EAC's Executive Director.
4. Depending on to whom a Congressional request is addressed and the subject matter of the Congressional request, the addressee generally identifies which EAC staff members will be responsible for providing information. In the recent past, most senior staff have been responsible for providing information in response to a Congressional request. Senior staff includes, but is not limited to, Division managers and individuals who report to the Executive Director. The Executive Director, Chief Operating Officer, and Chief Financial Officer have also been responsible for providing information in response to a Congressional request. Finally, EAC's Commissioners have been responsible for providing information in response to a Congressional request.
5. Depending to whom a Congressional request is addressed and the subject matter of the Congressional request, the addressee generally identifies which EAC staff members will be responsible for reviewing documents produced by EAC staff members in response to an information request. If responsive materials have been flagged as containing privileged material, OGC generally participates in the review process.
6. Generally, the individuals who provide responsive materials flag materials as privileged. OGC also generally reviews responsive material that has been flagged to identify and assert applicable privileges.
7. Depending to whom a Congressional request is addressed and the subject matter of the Congressional request, the addressee generally identifies which EAC staff members will be responsible for responding to or making determinations regarding an information request.
8. Not applicable.
9. Not applicable.
10. Depending from which party an official response to a Congressional request comes, the signatory generally maintains official government records related to an information request. In general, Commissioners maintain official government records related to information requests for which they are the signatory.
11. Depending to whom a Congressional request is addressed, each Commissioner may play a role in receiving, processing, or responding to an information request. There is no formal appeal process for responding to a Congressional request.