

PTAAARMIGAN

PATENT AND TRADEMARK ATTORNEYS, AGENTS AND APPLICANTS FOR RESTORATION AND
MAINTENANCE OF INTEGRITY IN GOVERNMENT

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January 28, 2022

Via Email FOIARequests@uspto.gov; efoia@uspto.gov

USPTO FOIA Officer
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Re: **Freedom of Information Act request for adopted internal guidance relating to
rulemaking and information collection clearances**

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a), PTAAARMIGAN hereby requests the following records from the U.S. Patent & Trademark Office (USPTO). PTAAARMIGAN LLC has a nonprofit mission to represent Patent and Trademark Attorneys, Agents and Applicants for Restoration and Maintenance of Integrity in Government. PTAAARMIGAN requests a fee waiver, as discussed starting on page 4 of this letter.

REQUEST

Please provide all documents, records, administrative staff manuals, instructions to staff, and statements of policy or interpretation that have been adopted by the agency, issued, adopted, or in effect at any time from August 1, 2004 to present, to govern or guide:

1. USPTO's rulemaking, or making or issuance of any rule (as those two terms are defined in 5 U.S.C. § 551), regulation, guidance, regulatory action (as that term is defined in Executive Order 12866 § 3(e)), or sponsorship of any collection of information (as that term is defined in 5 C.F.R. § 1320.3(c)).
2. USPTO's economic analysis, regulatory analysis, cost-benefit analysis, regulatory impact analysis, or regulatory flexibility analysis of any rule, regulation, guidance, regulatory action, or collection of information, or burden or economic impact on small entities thereof.
3. USPTO's deciding whether or not to seek review of any matter from the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), or the Small Business Administration (SBA).

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4. USPTO decisions to implement or to not implement, and policies and procedures implementing, governing, or guiding USPTO compliance with, any of:
 - a. The rulemaking procedures of the Administrative Procedure Act (5 U.S.C. §§ 552(a)(1) and (a)(2), and 553), the Paperwork Reduction Act (44 U.S.C. §§ 3506 and 3507), the Regulatory Flexibility Act (5 U.S.C. § 603 and 604), the Independent Offices Appropriations Act (31 U.S.C. § 9701), the Congressional Review Act (5 U.S.C. § 801), and OMB's information collection regulations (5 C.F.R. Part 1320).
 - b. Executive Orders 12866, 13258, 13422, 13563, 13771, 13777, 13891, and 13992, OMB Memoranda M-09-13, and M-11-28, and OMB Bulletin 07-02, and 15 C.F.R. Part 29.
 - c. OFFICE OF MGMT. & BUDGET, FINAL BULLETIN FOR AGENCY GOOD GUIDANCE PRACTICES, OMB BULLETIN 07-02 (Jan. 18, 2007), *reprinted in* 72 Fed. Reg. 3432-40, 3436 (Jan. 25, 2007).
 - d. ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, RECOMMENDATION 2020-1, *reprinted in Adoption of Recommendations*, 86 Fed. Reg. 6612 (Jan 22, 2021).
5. USPTO policies, procedures, practices, or standards, issued, adopted, or in effect at any time between August 1, 2004 to present, for preparing any submission to OMB, OIRA or SBA.
6. Policies and procedures for making available to the public any written communication between OIRA and USPTO or any person not employed by the federal government concerning a proposed collection of information under the Paperwork Reduction Act.

Each of topics 1-6 above include records (a) authored by USPTO, or (b) authored by the Department of Commerce, OMB, OIRA, SBA, or any other government or private-sector entity, and adopted or observed by the USPTO.

The request includes records relating to any of the following (this list is by way of example, and does not limit the request):

- Implementation of, interpretation of, or USPTO policy with respect to any of the laws and directives listed in topic 4, above.
- Any record produced by USPTO or Department of Commerce, that was adopted as policy or procedure by the USPTO, in response to the USPTO's request for comment on its regulations and regulatory processes, Patent and Trademark Office, *Improving Regulation and Regulatory Review* (Docket No.: PTO-C-2011-0017), 76 Fed. Reg. 15891 (March 22, 2011).

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- In 2011, the USPTO published a web page announcing a comprehensive regulatory review.¹ The “preliminary plan for the review of its existing significant regulations” announced on that web page is nominally within the request, but because it is already public, it need not be produced. However, the “results of previous regulatory reviews,” “current regulatory review” and finalized “plan” mentioned on this web page are not indexed on this page, and apparently are not public anywhere else either. They are within the scope of this request, and should be produced.
- In 2017, the USPTO announced a “Working Group on Regulatory Reform” to implement Executive Order 13771 to review and improve USPTO regulations.² Any product of that working group and adopted by the USPTO is within the scope of this request, and should be produced.
- Any comment letters that were received in relation to that 2011 request for comment, 2011 regulatory review, or 2017 regulatory working group, and not posted on the web page <https://www.uspto.gov/patents/laws/comments-public/comments-improving-regulation-and-regulatory-review>.³

INITIAL SEARCH POINTERS

Likely locations of responsive records include, but are not limited to, the Counsel for Regulatory Affairs in the Office of General Counsel, and the Records Management Office. Particular individuals who may be custodians include, but are not limited to, Nicholas Oettinger, Kyu Lee, Marcie Lovett, Raul Tamayo, Dahlia George, Rafael Baceres, Susan Fawcett, and Kimberly Hardy.

DEFINITIONS

“Records” are defined at 44 U.S.C. § 3301, and per 5 U.S.C. § 552(f)(2) include “any information that would be an agency record subject to the requirements of [FOIA] when maintained by an agency in any format, including an electronic format” and any such information “that is maintained for an agency by an entity under Government contract, for the purposes of records management.”

¹ <https://www.uspto.gov/learning-and-resources/ip-policy/rulemaking/look-back-plan-plan-retrospective-analysis-existing>

² Working Group on Regulatory Reform, <https://www.uspto.gov/about-us/uspto-working-group-regulatory-reform>

³ The letters themselves that are already made public on this page need not be produced. Any letter that was received and not made public on this page should be produced.

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The terms “and” and “or” as used herein shall be construed both conjunctively and disjunctively in order to bring within the scope of this request any record that would otherwise not be so included.

DELIVERY

PTAAARMIGAN requests that records be produced in the *native* original electronic form or format in which USPTO maintains records for its own use in ordinary course, with no change or conversion. If the USPTO maintains its records as XLS or XLSX spreadsheets, DOCX, or high-resolution text-searchable PDFs, PTAAARMIGAN requests that the records be produced in that native electronic form. For example, a PDF printout of a scanned spreadsheet is *not* a native original form of an electronic spreadsheet—the electronic XLS or XLSX file is. If the USPTO maintains records for its own use as high-resolution or text-searchable PDFs, low-resolution or bitmap PDFs are not “native original electronic form.” Folder structure within directories should be preserved as well. Combining into an enclosing .zip or .rar archive form for emailing, or for physical mail or courier on a CD-ROM or USB drive is appropriate and appreciated.

PTAAARMIGAN prefers to receive the records (a) by email at ptaaarmigan@ptaaarmigan.org (three “a”s), (b) by a file delivery service such as DropBox or KiteWorks, or (c) if the records will exceed 10Mb, via a CD ROM or USB memory to P.O. Box 590372, Newton MA 02459, with a confirmation email that a physical delivery is on its way.

FEE WAIVER

PTAAARMIGAN requests a fee waiver for the following reasons. Requests for fee waivers are to be liberally construed. *Bartko v. Dept. of Justice*, 898 F.3d 51, 75 (D.C. Cir. 2018).

Public interest. 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 is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 37 C.F.R. § 102.11(k)(1).

PTAAARMIGAN has no commercial, trade or profit interest. PTAAARMIGAN LLC is a nonprofit LLC organized under the laws of Missouri, and has applied to the IRS for recognition as a § 501(c)(4) social welfare nonprofit, see Attachment A.

PTAAARMIGAN seeks the records in support of its public benefit activities. PTAAARMIGAN seeks to advance the public interest, by two general classes of activities.

- PTAAARMIGAN’s primary activity is disseminating information to inform the public about actual or alleged Federal government activity. PTAAARMIGAN disseminates information via PTAAARMIGAN’s web site, www.ptaaarmigan.org, and via publications in periodicals and intellectual property web blogs.

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- PTAAARMIGAN advocates on behalf of intellectual property attorneys, agents and owners, and on behalf of IP-owning parties in the private sector.

The records 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.” 37 C.F.R. § 102.11(k)(2)(iii). Upon receipt, PTAAARMIGAN will make these records or their analysis publicly available on its website for use by journalists, scholars, students, and interested members of the public at no charge, and use the information in advocacy, reports, newsletters, and other public disseminations to advance our educational mission. PTAAARMIGAN members have published multiple articles in magazines published by the American Bar Association and American Intellectual Property Law Association, and articles on www.patentlyo.com and www.ipwatchdog.com and <https://www.patentdocs.org> (the three most-read blogs among intellectual property lawyers). Publications by PTAAARMIGAN members and articles based on records previously obtained by PTAAARMIGAN’s FOIA requests are listed on PTAAARMIGAN’s web site, <http://ptaaarmigan.org/resources>.

The records are “likely to contribute ‘significantly’ to public understanding of Government operations or activities.” § 102.11(k)(2)(iv). These records illuminate the USPTO’s processes for rulemaking, issuing guidance, and obtaining Paperwork Reduction Act clearance, an important government function. To PTAAARMIGAN’s knowledge, the records sought are not otherwise available to the public.

The records requested are “likely to contribute significantly to public understanding of the operations or activities of the government,” § 552(a)(4)(A)(iii), 37 C.F.R. § 102.11(k)(1), and, therefore, be eligible for a fee waiver:

- the request seeks materials underlying an agency decision, supplementary to the materials made public by the agency;
- the request is made by an advocacy organization whose public interest activities include producing written materials to be distributed to inform and train members of its relevant public, and advocating on legislative and regulatory affairs;
- the requester proposes to make information accessible to members of the public who cannot otherwise readily locate a particular law or interpretive document.

PTAAARMIGAN is such an entity, requesting records for such purposes, and the request seeks records underlying the USPTO’s regulatory decisions.

Government operations. In addition, PTAAARMIGAN requests a public interest fee waiver because the requested records directly concern and bear upon the government’s operations and activities, will be highly informative to the public regarding the USPTO’s policies, including on matters directly affecting thousands of patent and trademark holders and applicants. The public has a right to know significant details of an agency’s financial arrangements, especially when the requested records might illuminate potential motivations and influences. Because the USPTO has fee-setting authority, and that fee-setting authority involves

Attachment A

Certificate of Organization of PTAAARMIGAN LLC, and § 501(c)(4) registration

STATE OF MISSOURI



John R. Ashcroft
Secretary of State

CERTIFICATE OF ORGANIZATION

WHEREAS,

PTAAARMIGAN LLC
LC1796489

filed its Articles of Organization with this office on the 22nd day of June, 2021, and that filing was found to conform to the Missouri Limited Liability Company Act.

NOW, THEREFORE, I, John R. Ashcroft, Secretary of State of the State of Missouri, do by virtue of the authority vested in me by law, do certify and declare that on 22nd day of June, 2021, the above entity is a Limited Liability Company, organized in this state and entitled to any rights granted to Limited Liability Companies.

Effective Date: June 22, 2021

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, the 22nd day of June, 2021.


Secretary of State





Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
P.O. Box 2508, Room 4024
Cincinnati, OH 45021

Date: July 06, 2021
Person to Contact: Customer Services
Contact telephone number: 877-829-5500

PTAAARMIGAN LLC
Po Box 590372
Newton, Massachusetts 02459

We received your Form 8976, *Notice of Intent to Operate Under 501(c)(4)*, you filed on June 22, 2021. This acknowledgement is not a determination by the IRS that you qualify as tax-exempt under Internal Revenue Code (Code) Section 501(a) as an organization described in Code Section 501(c)(4).

For important information about your responsibilities, including recordkeeping, reporting, and disclosure requirements, go to www.irs.gov/charities.

If you have questions, you can call Customer Services at 1-877-829-5500.