

# PTAAARMIGAN

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

MAILING: P.O. Box 590372, NEWTON MA 02459  
E-MAIL: PTAAARMIGAN@PTAAARMIGAN.ORG

March 24, 2022

Via Email [Dorothy.Campbell@uspto.gov](mailto:Dorothy.Campbell@uspto.gov); [Traci.Alexander@uspto.gov](mailto:Traci.Alexander@uspto.gov);  
[FOIARequests@uspto.gov](mailto:FOIARequests@uspto.gov); [efoia@uspto.gov](mailto: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 F-22-00072 for adopted internal  
guidance relating to rulemaking and information collection clearances**

Dear Ms. Campbell:

Thank you for your letter of March 9, 2022. PTAAARMIGAN responds as follows. This letter is a near-verbatim copy of PTAAARMIGAN's initial request of January 28, with responses to your questions of March 9 and PTAAARMIGAN's response interlineated.

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 7 of this letter.

**PTAAARMIGAN:** Many of the individual questions and concerns in the USPTO's March 9 letter appear to be based on overlooking a limit stated in the original request. In the first paragraph of the "Request," the scope of requests 1-6 is limited to "documents, records, administrative staff manuals, instructions to staff, and statements of policy or interpretation ... to *govern or guide*" USPTO process or activity. PTAAARMIGAN does not request any rulemaking docket for any particular rulemaking, or information collection request directed to any particular collection of information.

**Likely custodians.** PTAAARMIGAN believes that the population of responsive documents is in the few dozens, and that almost all responsive documents will be in custody of two individuals (Mr. Oettinger and Mr. Lee, see the "Initial Search Pointers" at page 6, below).

**Likely titles.** The USPTO's March 9 letter, in its second-to-last paragraph, requests specification of "a specific universe of records." The initial request included examples (in the section on page 5 now titled "Examples.") Consulting that list as illustrative

Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

examples may be helpful to understand “govern or guide.” Without limiting the generality of the request, and only for purposes of further example, responsive documents may have titles like:

- USPTO Rulemaking—Procedures and Standards
- Procedures for USPTO Publications in the Federal Register and Official Gazette
- Policies for Compliance with the Paperwork Reduction Act and Regulatory Flexibility Act
- Standard Operating Procedures for Regulatory Flexibility Analysis under the Regulatory Flexibility Act
- Standards and Guidelines for Obtaining Supporting Facts for Certifications for Information Collection Requests
- Regulatory Impact Analysis—a Primer
- Implementation of Executive Order [number]
- How to Comply with the Regulatory Flexibility Act
- Ensuring Full Compliance with the Paperwork Reduction Act (PRA)
- The Paperwork Reduction Act: Implementing Guidance
- Exclusions to the regulatory definition of “information” under Paperwork Reduction Act
- Compliance with the Independent Offices Appropriations Act
- Administrative Conference of the United States, Recommendation
- Agency Good Guidance Practices

**Likely authors.** Responsive documents likely originate in the Office of General Counsel, Office of Chief Administrative Officer, Office of the Chief Information Officer, Executive Office of the President, Small Business Administration, Administrative Conference of the United States, GAO, or Congressional Research Service.

Based on the USPTO’s production in several litigation matters and remarks given by the USPTO’s rulemaking staff at various AIPLA and IPO conferences, PTAAARMIGAN has reason to believe that the USPTO has a limited number of documents that “govern or guide” these activities, likely no more than a few dozen. Because the relevant statutes and OMB/SBA regulations have not been amended since the mid-1990s, and updates would have been prompted by a limited number of Executive Orders, one regulation of the Department of Commerce, and a limited number of decisions of the Supreme Court and Federal Circuit in this area, PTAAARMIGAN believes that the relevant documents have only been updated a handful of times over the time period.

If the USPTO still believes that the number of documents is unwieldy, perhaps the USPTO can provide an index of a sample of the documents that could be implicated. With additional information, PTAAARMIGAN can narrow the request.

Documents that are available to the public can be designated by the URL at which they are available and a citation identifying the document by title, author, or the like and preferably date of publication.

Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

## 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*** (emphasis added March 23, 2022):

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)).

**DGC:** Are you seeking information on USPTO's rulemaking process for any type of information collection?

**PTAAARMIGAN:** Yes, "any." The preamble before requests 1-6 is a further limitation on request 1. Requests 1-6 are all limited to "documents, records, administrative staff manuals, instructions to staff, and statements of policy or interpretation ... to ***govern or guide***" USPTO process or activity. The request does not cover any rulemaking docket for any particular rulemaking, or information collection request directed for any particular collection of information. The request is narrow insofar as it requests records to "govern or guide" specific activities of the USPTO, and broad insofar as it request records relating to any "rulemaking process" or any "type of collection of information." Because the relevant statutes and regulations apply generically, PTAAARMIGAN expects that essentially all responsive documents are generic to any "rulemaking process" and "any type of collection of information."

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.

**DGC:** Please narrow the type of analysis you are seeking as well as specifying whether you are looking for analysis of a rule, regulation, regulatory action, etc.

**PTAAARMIGAN:** The preamble before requests 1-6 is a further limitation on request 2. By its terms, request 2 is limited to documents that "govern or guide" the USPTO's analysis activities for activity, ***not*** "analysis of [any *particular*] rule, regulation, regulatory action." The analyses will be those under the statutes, regulations, executive orders, Presidential directives, and guidance that govern rulemaking, regulatory review, information collection review and clearance, and the like. These include the Administrative Procedure Act, Paperwork Reduction Act, OMB's Information Collection regulation, the Regulatory Flexibility Act, the Independent Offices Appropriations Act or OMB Circular A-25, Congressional Review Act, and Executive Orders 12866, 13258, 13422, 13563, 13771, 13777, 13891, and 13892, OMB Memoranda M-09-13 and M-11-28, OMB Bulletin 07-02, Commerce regulations at 15 C.F.R. Part 29, and ACUS Recommendations 2014-3, 2017-5, 2019-1, 2019-3, and 2020-1.

Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

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).

**DGC:** The Agency cannot conduct a search to prove a negative "whether or not to seek review of any matter." Furthermore the term "any matter" must be narrowed in order to conduct a reasonable search for documents.

**PTAAARMIGAN:** The preamble before requests 1-6 is a further limitation on request 3. PTAAARMIGAN does not request any document reflecting a decision to "not seek review." The request is directed to documents that "govern or guide" decisions of "whether or not" to seek review.

The term "any matter" is limited by the rest of the sentence, "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)." To PTAAARMIGAN's knowledge, such reviews arise under, or in implementation of, the limited number of laws listed under item 2. If the scope of the request as originally presented is substantially broader than those laws, PTAAARMIGAN requests an identification of the breadth—if unintentional or unwieldy, PTAAARMIGAN can then limit it, but on the information available today, PTAAARMIGAN believes that the request is reasonably specific and reasonably narrowly-tailored.

4. USPTO decisions to implement or to not implement, and policies and procedures implementing, governing, or guiding USPTO compliance with, any of:

**DGC:** Please see comment above regarding conducting a search to prove a negative, as well as the extensive scope of Agencies and guidance described in sections [a-e] of this request.

**PTAAARMIGAN:** Same answer—the preamble before requests 1-6 is a further limitation on request 4.

- 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, 13892, 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).

Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

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.

**DGC:** Please narrow the timespan of this request, as well as specify the type of submission you are seeking records for. The OMB/OIRA and SBA have discrete and different functions in relation to USPTO. Therefore it will be necessary to specify which types of policies, procedures, practices or standards you are looking for in relation to each agency.

**PTAAARMIGAN:** Rather than limiting by time, PTAAARMIGAN clarifies scope of subject matter. Kindly provide 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, for regulatory review, information collection request, regulatory flexibility review, executive order review, or request for waiver of any of the foregoing.

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.

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

**DGC:** “Relating” is too broad and can be construed in many different ways. Please provide more specificity as to what types of related records you are seeking.

**PTAAARMIGAN:** The list of examples is only that, a list of examples. “Relating to” is narrowed by the preamble and by requests 1-6. “Relating to” in a list of illustrative examples is neither narrowing or broadening.

- 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).
- In 2011, the USPTO published a web page announcing a comprehensive regulatory review.<sup>1</sup> The “preliminary plan for the review of its existing significant regulations”

---

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

Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

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.<sup>2</sup> Any product of that working group and adopted by the USPTO is within the scope of this request, and should be produced.

**DGC:** Please provide what type of work product you are seeking – final guidance, etc. Please note that any work product resulting from this working group that has been published won't be provided through FOIA, while any drafts or deliberative communications created pursuant to the Working Group will be subject to FOIA Exemptions.

**PTAAARMIGAN:** This bullet list provides examples to illustrate requests 1-6. The “Type of work product” is anything that falls within the preamble and requests 1-6, with this bullet as one example to assist in search.

- 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>.<sup>3</sup>

## 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, or Robert Bahr.

## 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

---

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

<sup>3</sup> 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.



Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

information “that is maintained for an agency by an entity under Government contract, for the purposes of records management.”

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](mailto: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

Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

information via PTAAARMIGAN's web site, [www.ptaaarmigan.org](http://www.ptaaarmigan.org), and via publications in periodicals and intellectual property web blogs.

- 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](http://www.patentlyo.com) and [www.ipwatchdog.com](http://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> in the “projects” and “Articles of Interest” section.

**DGC:** [Y]ou have not made clear how these records would actually be disseminated in a manner which would “contribute to the understanding of a ‘reasonably broad audience’ of persons interested in the subject these records, as opposed to the individual understanding of the requester, or a narrow universe of the public such as intellectual property attorneys, agents and owners. Furthermore, due to the scope of your request, it would be helpful to know the range of your website’s viewership or subscription, and how your organization intends to disseminate the information you are seeking. Based on the foregoing, a decision regarding your eligibility for a fee waiver cannot be made at this time, pending clarification of your request.

**PTAAARMIGAN:** First, the entirety of the USPTO’s March 9 letter reflects an apparent misunderstanding of the “scope of the request. “ PTAAARMIGAN hopes that the clarifications provided above resolve those concerns.

Second, the USPTO’s March 9 letter does not explain how posting on a publicly-available website (with no pay wall or other gatekeeper) is anything less than dissemination to the entire world.

Third, the requirement for a “reasonably broad audience” is not statutory. Merrick Garland, while a D.C. Circuit judge, held that agency regulations are not controlling where they impose non-statutory limitations on fee waivers, and that “proof of the ability to disseminate the released information to a broad cross-section of the public is not required.” *Cause of Action v. FTC*, 799 F.3d 1108, 1115-16 (D.C. Cir. 2015). If any such non-statutory “broad audience” test is viable, that test provides that dissemination that is targeted at relatively small group, where that small group will benefit the public at large, qualifies for a public interest fee waiver. *Carney v. Dept of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). “Intellectual property attorneys, agents and owners” is such a group.



Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

Fourth, the USPTO's March 9 letter identifies no basis to classify "intellectual property attorneys, agents and owners" as a "narrow" universe. The relevant test is "whether the requester will disseminate the disclosed records to a reasonably broad audience of persons *interested in the subject*." *Cause of Action*, 799 F.3d at 1116. "Intellectual property attorneys, agents and owners" is the universe of "persons interested in the subject."

Fifth, the USPTO's March 9 letter requests information on PTAAARMIGAN's membership. PTAAARMIGAN suggests that this question is irrelevant. The relevant criterion is dissemination to persons interested in the subject, not to members of the requesting organization.

Sixth, the statutory standard is "*likely* to contribute significantly to public understanding." A requester need not show "actual[ ] disseminat[ion] to a large cross-section of the public." *Carney*, 19 F.3d at 814. Nonetheless, PTAAARMIGAN's past practice should reassure that the records will be posted to PTAAARMIGAN's web site, and therefore disseminated to the entire world, promptly after disclosure. Articles and public comment letters based on FOIA information that further dissemination the FOIA information are listed at the web link shown above.

**Public understanding of Government operations.** 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.

**PTAAARMIGAN:** A fee waiver is appropriate when the requested records may explain an agency's compliance with procedural law, and the requested records may reveal how an agency "functions in reality compared to how the system was intended to function." *Bartko*, 898 F.3d at 75. Understanding the USPTO's rulemaking procedures are especially important in the context of the USPTO's fee-setting rulemaking.

The USPTO's March 9 letter does not question any fact underlying PTAAARMIGAN's request for a "public understanding of Government operations" fee waiver. The USPTO's March 9 letter does not offer any other source to which the public can look for USPTO's processes for rulemaking, issuing guidance, obtaining Paperwork Reduction Act clearance, or compliance with the laws listed under item 2. The USPTO's March 9 letter does not disagree that these are "important government functions."

Members of PTAAARMIGAN regularly use FOIA documents in comment letters to the USPTO and to OMB. Examples of those comment letters and publications are listed at <http://ptaaarmigan.org/resources> in the "Projects" and "Articles of Interest" sections. FOIA documents were used in a public comment letter to OMB in ICR 202110-0651-003. The records produced will likely be incorporated into future comment letters and publications.

**Public understanding of operations of the government.** 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:

Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

- 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.

**PTAAARMIGAN:** This three-element test for “likely to contribute significantly to public understanding of the operations or activities of the government,” was set forth in *Center for Medicare Advocacy, Inc. v. U.S. Dept. of Health & Human Svcs.*, 577 F.Supp.2d 221, 241-42 (D. D.C. 2008). The USPTO's March 9 letter does not question applicability of any element of that test, particularly with respect to the USPTO's fee-setting rulemaking.

**Financial arrangements and motivations.** 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 rulemaking, the requested records may disclose potential motivations and influences over the USPTO's fee setting.

**PTAAARMIGAN:** A request for information on financial arrangements and influences is one recognized test for a “government operations” fee waiver. *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1180-81 (11th Cir. 2005). The USPTO's March 9 letter does not contest that the requested documents are likely to illuminate how the USPTO's financial interests influence the USPTO's rulemaking, especially the USPTO's fee-setting rulemaking.

**Intended effect of law contrasted with function in reality.** A fee waiver is appropriate when the requested records may explain an agency's compliance with procedural law, and the requested records may reveal how an agency functions in reality compared to how the system was intended to function. The requested records may illuminate agency compliance with the laws listed under request 2.

**PTAAARMIGAN:** The contrast between “how [an agency] functions in reality compared to how the system was intended to function” is a recognized test for a “government operations” fee waiver. *Bartko*, 898 F.3d at 75. The USPTO's March 9 letter does not contest that the requested documents are likely to illuminate comparisons and contrasts between laws that govern rulemaking and the USPTO's actual implementation of those laws.

Freedom of Information Act request F-22-00072 for adopted internal guidance relating to rulemaking and information collection clearances

**News media.** PTAAARMIGAN is likewise eligible for the “news media” fee waiver of search fees. § 552(a)(4)(A)(ii)(II); 37 C.F.R. § 102.11(b)(6) and (d)(1). PTAAARMIGAN makes FOIA records available to the public via its web site, <http://ptaaarmigan.org/resources>. The “news” exception does not require identification of a specific publication venue, only a “solid basis for expecting publication” which, in turn, may be based on “past publication record.” § 552(a)(4)(A)(ii). Members of PTAAARMIGAN regularly use FOIA documents articles published by the ABA, AIPLA, and in the major patent law blogs to explain recent developments in agency practice and administrative law to the patent and trademark bar. Examples of those publications are listed at <http://ptaaarmigan.org/resources> in the “Articles of Interest” section. The records produced will likely be incorporated into future comment letters and articles.

**PTAAARMIGAN:** The USPTO’s March 9 letter does not question PTAAARMIGAN’s claim to a “news media” fee waiver.

**DGC:** The USPTO’s March 9 letter requests a response “within 14 calendar days of the date of this letter.”

**PTAAARMIGAN:** The USPTO’s March 9 letter does not identify any statutory or regulatory basis for setting a short deadline. § 552(a)(6)(A)(ii)(II) specifies that time for responding to a request for clarification tolls time for an agency response, and doesn’t reset it.

**PTAAARMIGAN:** PTAAARMIGAN calls attention to a [memorandum](#) from Attorney General Garland to all agencies, issued shortly after the USPTO’s March 9 letter.

## CORRESPONDENCE

We may be reached at email address [ptaaarmigan@ptaaarmigan.org](mailto:ptaaarmigan@ptaaarmigan.org) (three “a”s) for any clarification. § 552(a)(6)(A)(ii)(I).

Very truly yours,

PTAAARMIGAN

Attachments:

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

# **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](http://www.irs.gov/charities).

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