

Management System Description:

Office of Chief Counsel

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1.0 Purpose

The Legal Services Management System protects (1) the Government's interests in Government-owned records, (2) the Governmental interest in the ethical behavior of its employees, and (3) the Governmental interests in legal and other proceedings. This Management System addresses Government interests within the purview of the EMCBC, including Small Sites, Office of Legacy Management (LM), EM Field Office locations, and other client sites, as needed. In some instances, those interests also involve contractors under the terms of their prime contracts for operation of Department of Energy (DOE) National Laboratories and other DOE facilities.

2.0 Responsibilities

The mission of the EMCBC Office of Chief Counsel (OCC) is to provide attorney/paralegal services as needed to resolve legal issues arising at the EMCBC and client sites. These include, but are not limited to: contract law issues; environmental law issues; supporting management in matters related to grievances, collective bargaining, ethics, Equal Employment Opportunity (EEO), request for documents under the Energy Employee Occupational Illness Compensation Program (EEOICPA), toxic tort claims; third-party claims; Freedom of Information Act (FOIA), Privacy Act (PA) and electronic discovery (eDiscovery); legal issues related to divestiture activities in anticipation of, and preparation for, site closure; and, litigation, both judicial and administrative, arising from any or all of the above. All legal services are rendered under the professional supervision and oversight of the Department's Office of General Counsel (OGC).

OCC client sites include the EMCBC, EM Small Sites, LM Field locations, and other client sites, as requested. Support to EM Site Offices is based upon a Service Provider Matrix. The responsibilities below presume that the identified responsibilities relate to the offices and employees as assigned by the Service Provider Matrix and to non-EM DOE organizations in accordance with agreements with them.

The table below represents roles and responsibilities specific to this Legal Services Management System. For a detailed description of EMCBC MS roles and responsibilities, please see the [EMCBC Service Plan](#).

Roles	Responsibilities
Chief Counsel	<ul style="list-style-type: none"> • Review and opine, as appropriate, on the legal sufficiency of draft documents and proposed actions. Serve as the System Manager for Government records under their purview in the following Privacy Act Systems of Records: <ul style="list-style-type: none"> ○ DOE-41 – Legal Files (Claims, Litigation, Criminal Violations, and Others) ○ DOE-55 – Freedom of Information Act and Privacy Act (FOIA/PA) Requests for Records • Provide legal support and counsel to the Freedom of Information Officer (FOIO)/Privacy Act Officer (PAO), System Manager, and FOIA Authorizing Official and Denying Official. • Serve as DOE counsel/representative in legal and other proceedings. • Serve as Contracting Officer’s Representative (COR) as designated by EM Offices in connection with DOE and contractor engagement of outside counsel. • Serve as Subordinate Claims Official for Federal Tort Claims for incidents alleging the negligent or wrongful act or omission of personnel who are acting within the scope of their employment. • Serve as “<i>Regional Counsel</i>” in connection with subpoenas, orders, and other demands of a court or other authority issued for the production or disclosure of material or information contained in the files of assigned EM Field Offices.
Ethics Counsel	<ul style="list-style-type: none"> • Provide advice on seeking employment and post-employment restrictions to employees of assigned organizations. • Advise employees on the applicability of the Standards of Ethical Conduct for Executive Branch Employees. • Review confidential financial disclosure forms of employees of assigned organizations, and provide

	<p>advice on potential conflicts of interest.</p> <ul style="list-style-type: none"> • Ensure the accuracy and currency of financial disclosures that have been entered into the Office of General Counsel Ethics Tracking System. • Provide advice on matters potentially or actually creating a conflict-of-interest with employee’s official duties or responsibilities.
<p>Freedom of Information Act/ Privacy Act/ eDiscovery</p>	<ul style="list-style-type: none"> • Monitor and administer the FOIA and Privacy Act process for the EMCBC Client Sites. • Serve as Authorizing Official on all “no records” and full release responses, and as Denying Official on all FOIA Exemption (b)(6) denials to requests for Government records maintained by elements under their office’s purview by assigned Site Offices. • Inform the DOE EMCBC Director and the respective Offices of Communications/Public Relations of any significant requests. • Support litigation actions involving discovery of electronic and other records.

3.0 Management System Operation

3.1 Overview

The mission of the Office of Chief Counsel is to provide a full range of timely and accurate legal services, and to support the mission and responsibilities of EM and other customers. In this way, OCC supports delivering a diverse array of legal services, which in turn supports the Environmental Management, Legacy Management, Environmental Quality, and Energy Resources missions of DOE. In addition, OCC provides complete legal services to other DOE Field Elements, as assigned, and ensures access to Government records consistent with national Privacy requirements. The OCC is composed of attorneys, paralegals, and administrative staff, who work together to achieve the mission and function of the Office. Specific staff includes a FOIA Officer, a Privacy Act Officer and an Energy Employees Occupational Illness Compensation Program Act (EEOICPA) Coordinator. These personnel work proactively and collaboratively with their customers and, to the maximum extent possible (consistent with their

professional responsibilities), function as an integral part of the DOE organization being supported.

3.2 Key Functions/Services and Processes

OCC provides legal services through the following key functional areas: (1) *Contractor Labor Relations*; (2) *Acquisitions*; (3) *Litigation*; (4) *General Law*; (5) *Ethics*; (6) *Personnel*; (7) *Environmental Law*; and (8) *FOIA, Privacy Act and Government Information, including eDiscovery*. The Government Information subject area includes supporting FOIA, PA and other records requests or management functions, including eDiscovery, in litigation matters. All OCC attorneys serve as Counsel in response to FOIA, PA and other records requests from the public and/or other Governmental entities.

As part of providing legal services, a comprehensive function for OCC is determining the legal sufficiency of draft documents and proposed actions. This function is at the core of each functional area and is the foundation of all services provided by the OCC. DOE Chief Counsels are accountable to the DOE OGC and their respective Managers for anticipating potential issues and liabilities, identifying applicable requirements, and providing appropriate advice and counsel on proposed decisions and documents. In accordance with the OGC Mission and Function Statement, the OCC provides assistance to Headquarters and Field Elements, as requested, by reviewing draft documents to ensure that they are (1) legally sufficient, (2) timely, (3) comprehensive, (4) consistent with delegated authorities, (5) clearly reflective of the intent of the drafter, and (6) when appropriate, sensitive to public concerns. For example, Chief Counsels are responsible for supporting Contracting Officers (COs) and Program/Project Managers by reviewing and negotiating provisions in acquisition and assistance instruments, interagency agreements, subcontracts, nondisclosure agreements, and other agreements to ensure that legal and program requirements are met. Because performance of this function requires broad discretion, and supports all other Management Systems, it is not suitable for the development of specific procedures. However, certain procedures are provided for Ethics, the FOIA and Privacy Act, and eDiscovery, which are subject to regulatory requirements for the timing of responses and, in the case of FOIA requests, determinations regarding fees associated with research, review and photocopy charges.

3.2.1 Ethics Counsel

Ethics requirements applicable to Federal employees flow from Federal statutes, and regulations promulgated by the U.S. Office of Government Ethics (OGE). OGE regulations require that each Agency designate an Agency Ethics Official, who is responsible for carrying out the Agency Ethics Program. In DOE the Designated Agency Ethics Official is an attorney in the DOE OGC, who receives support from designated Field Office Ethics Counsel. The duties of an Ethics Counsel are varied, but primarily include providing advice related to the Standards of Ethical Conduct and restrictions on post-employment, as well as analyzing employees' confidential financial disclosure reports for potential conflicts of interest. The Ethics Counsel also approves, along with the employee's supervisor, requests by the employee to engage in outside employment.

3.2.1.1 Reviewing Annual Confidential Financial Disclosure Reports

Review Annual Confidential Financial Disclosure Reports (Form OGE-450) for potential conflicts of interest, outside positions, assets and liabilities as required for those holding positions of authority, including contracting officers, contracting officer's representatives, holders of purchase cards with the ability of making purchases over \$3,000, or persons otherwise required to file such reports. Provide counseling as required and issue written ethics opinions as necessary.

3.2.1.2 Provision of Pre- and Post-Employment Restrictions Advice (reference 5 Code of Federal Regulations [CFR] Parts 2635 and 2641)

Confer with new employees not coming from another Federal agency regarding limitations that may apply to subsequent official duties stemming from a business relationship that the individual held in the previous year causing a potential real or apparent conflicts of interest (5 CFR § 2635.502). Confer with individuals separating from Federal employment and not accepting new employment from another Federal agency. Provide counsel and a written ethics opinion describing what post Federal employment the individual may engage in. Counseling specifically addresses permanent bans, two year bans and one year bans on specific types of employment based on the individual's Federal employment job duties pursuant to 18 United States Code section 207, as promulgated at 5 CFR Part 2641.

3.2.1.3 Analysis of Requests for Outside Employment/Activity (form available)

Assess requests for outside employment and requests to participate in outside activities to ensure that no conflicts of interest exist and that the employee is informed that such work or activity may not include the use of Government resources or on-duty work time. According to the supplemental ethics requirements at 5 CFR Part 3301, employees may only engage in certain outside activities and employment with written permission signed by the employee's immediate supervisor and Counsel.

3.2.2 Support & Information Access

The primary function of this subject area is to protect records maintained on individuals and to respond to requests for information, whether by an individual regarding his/her own personnel records, requests by the public and others under FOIA, or requests from other governmental entities. The EMCBC maintains certain agency records on individuals that are subject to the Privacy Act, i.e., located in Privacy Act Systems of Records. Additionally, DOE maintains agency records on individuals that are not in Privacy Act Systems of Records (i.e., records about individuals that are not retrieved by name or personal identifier). See [Procedure 1, Processing Requests from Current and Former U.S. Department of Energy \(DOE\) and Contractor Employees](#), for information on how requests for records are processed by the OCC. See [DOE F 1800.1](#), Privacy Act Information Request, and Instructions, for information on how to submit requests.

The EMCBC OCC performs other activities to protect records maintained on individuals. These activities are in addition to receiving and processing Privacy Act and other requests from

individuals for access to, or to correct or amend, records about themselves. See [Procedure 2, Performing Other Activities in Protecting Records Maintained on Individuals](#), for process information on these activities.

3.2.2.1 Processing Requests from Current and Former DOE and Contractor Employees

DOE maintains certain records containing personally identifiable information from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Notification of the types of records in DOE “*Privacy Act Systems of Records*” is published periodically in the Federal Register, as required by law.

Processing requests for records in Privacy Act Systems requires first, confirmation of the identification of the requester; second, the identification of the systems in which such records may be located; third, location of the records through consultation with the System Manager; and finally, release of the records. If the requester is not the individual (or authorized representative of the individual) whose records are being sought, the request is processed under FOIA.

3.2.2.2 Processing Energy Employees Occupational Illness Compensation Program Act (EEOICPA) Requests

Requests for these records are forwarded to the FOIO as protocols have been established for the handling of various records, including radiological exposure records and DOE-owned (programmatic) records. Final responses are signed by the FOIA Authorizing Official on FOIA requests from current/former employees and survivors (or other individuals) seeking radiological exposure records, medical records, and other records in DOE Privacy Act records to support claims under the EEOICPA.

3.2.2.3 Processing Requests under the Freedom of Information Act (FOIA)

The EMCBC FOIA Program is administered by a Cognizant FOIO. The Cognizant FOIO processes FOIA requests for agency records and performs other FOIA-related activities.

The Cognizant FOIO delivers a copy of a request received from any news media organization to the Cognizant PAO for information purposes. Also, the Cognizant FOIO must provide any record that has been requested more than twice, or is considered likely to be, to his or her respective PAO for posting in the appropriate Electronic Reading Room.

In addition to receiving and processing FOIA requests, the Cognizant FOIO performs a variety of other activities to support administration of the EMCBC FOIA Program.

3.2.2.4 FOIA Appeals before the DOE Office of Hearings and Appeals (OHA)

In certain proceedings in which the complaint alleges a violation of DOE regulations, the deciding official is an attorney of DOE OHA. Appeals of FOIA Denial Letters fall within this jurisdiction. Appointment of Field Counsel as DOE Counsel is common under regulations. The

standard rules of practice for informal adjudications by OHA are set forth in the regulations. Decisions of OHA are final decisions of the Department of which the appellant may seek judicial review. Support & Information Access staff provide support in FOIA appeals to Counsel assigned to the respective FOIA request.

3.2.2.5 Support eDiscovery in Litigation

Litigation at the pre-trial stage includes document production. The National Archives and Records Administration (NARA) has defined records to include electronic records and associated “metadata,” which includes information such as to whom the electronic document was distributed, when it was read, responses, and other pertinent information. Discovery in litigation extends not only to paper, or hard copies but to electronic records and records in other mediums. Support & Information Access staff review and collect all electronic records that must be produced in the course of Court-Ordered discovery. The OCC and Office of Information Management and Records provide each other with mutual support on an as-needed basis.

4.0 Requirements

4.1 Primary Responsibility

This Management System has primary responsibility for ("owns") the following requirements:

Document	Title
Civilian Board of Contract Appeals	Rules of the Court Dictating Timeframes, Formats, and Procedures, Applicable to Proceedings Initiated On or After January 6, 2007
4 CFR 21	GAO Bid Protests
5 CFR 3301	Supplemental Standards of Ethical Conduct for Employees of the Department of Energy
5 CFR 730	Notification of Post-Employment Restrictions
5 CFR 1201	Merit Systems Protection Board-Practices and Procedures (and statutory references therein)
5 CFR 1209	Merit Systems Protection Board-Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistle blowing
5 CFR 2634	Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

5 CFR 2635	Standards of Ethical Conduct for Employees of the Executive Branch
5 CFR 2636	Limitations on Outside Earned Income, Employment and Affiliations for Certain Noncareer Employees
5 CFR 2637	Regulations Concerning Post Employment Conflict of Interest
5 CFR 2640	Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)
5 CFR 2641	Post-Employment Conflict of Interest Restrictions
10 CFR 202	Production or Disclosure of Material or Information
10 CFR 719	Contractor Legal Management Requirements
10 CFR 1003	Office of Hearings and Appeals Procedural Regulations
10 CFR 1004	Freedom of Information
10 CFR 1008	Records Maintained on Individuals (Privacy Act)
10 CFR 1010	Conduct of Employees
10 CFR 1014	Administrative Claims Under Federal Tort Claims Act
29 CFR 1614	Federal Sector Equal Employment Opportunity
DOE O 206.1	Department of Energy Privacy Program
DOE O 326.1	Confidential Financial Disclosure Reports (OGE 450)
E.O. 13392	Improving Agency Disclosure of Information
74 Federal Register 994-1090	Privacy Act of 1974; Publication of Proposed Compilation of Privacy Act Systems of Records
Memo General Counsel (11/24/2004)	Memorandum from Susan Beard, GC-77, to Field Counsel, titled Field Counsel Duties and Responsibilities, dated 11/24/2004
Memo Fygi (04/03/1998)	Memorandum from Fygi to Chief Counsels, titled Litigation Involving Classified Information, dated 04/03/1998
Memo Nordhaus	Memorandum from Robert R. Nordhaus to Chief Counsels, titled

(04/04/1994)	Disclosure of Contractor Litigation Records and Bills Under the Freedom of Information Act (FOIA), dated 04/04/1994
Memo-004	General Counsel Memorandum for Reporting Contingent Liabilities
OMB M-06-19	Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments
P.L. 110-175	Openness Promotes Effectiveness in Our National Government Act of 2007
Rule of Procedure of the GSA Board of Contract Appeals	Rules of Procedure of the General Services Administration (GSA) Board of Contract Appeals (In effect Until the CBCA Establishes Its Own Rules.)
5 U.S.C., Section 552a	Records Maintained on Individuals (Privacy Act)
5 U.S.C., Section 552	Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings (Freedom of Information Act)
5 U.S.C., Section 7321	Political Participation
5 U.S.C., Section 7323	Political activity authorized; prohibitions
5 U.S.C., Section 7324	Political Activities on Duty; Prohibition
18 U.S.C., Section 205	Activities Of Officers And Employees In Claims Against And Other Matters Affecting The Government
18 U.S.C., Section 207	Restrictions On Former Officers, Employees, And Elected Officials Of The Executive And Legislative Branches
18 U.S.C., Section 208	Acts Affecting A Personal Financial Interest

4.2 Parsed Responsibility

This Management System is responsible for a part of the following high-level requirements:

Document	Title
10 CFR 710	Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material
40 CFR 179	Formal Evidentiary Public Hearings
DOE O 311.1B	Equal Employment Opportunity And Diversity Program

5.0 Subject Areas, Program Descriptions, and Guidance Documents

The following Subject Areas are maintained by this Management System:

- Support & Information Access
- Ethics

6.0 References

None