

Classification Appeal Decision
Under section 5112 of title 5, United States Code

Appellant: [name]

Agency classification: Program Analyst (Disclosure)
GS-343-13

Organization: Office of the Chief Counsel
[bureau]
[department]
[city and State]

OPM decision: Management Analyst
GS-343-11

OPM decision number: C-0343-11-04

 /s/ Jeffrey E. Sumberg
Jeffrey E. Sumberg
Deputy Associate Director
Center for Merit System Accountability

 June 30, 2009
Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), this decision constitutes a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under the conditions and time limits specified in the *Introduction to the Position Classification Standards (Introduction)*, appendix 4, section G (address provided in appendix 4, section H).

Since this decision lowers the grade of the appealed position, it is to be effective no later than the beginning of the sixth pay period after the date of this decision, as permitted by 5 CFR 511.702. The applicable provisions of parts 351, 432, 536, and 752 of title 5 CFR must be followed in implementing this decision. If the appellant is entitled to grade retention, the two-year retention period begins on the date this decision is implemented. The servicing human resources office must submit a compliance report containing the corrected position description and a Standard Form 50 showing the personnel action taken. The report must be submitted within 30 days from the effective date of the personnel action to the OPM office which accepted the appeal.

Decision sent to:

[appellant]

[servicing human resources officer]

Introduction

On March 25, 2008, the Center for Merit System Accountability, U.S. Office of Personnel Management (OPM), accepted a position classification appeal from [appellant], who occupies the position of Program Analyst, GS-343-13, in the Office of the Chief Counsel at the [bureau], [department], in [city and State]. He requested his position be classified at the GS-14 level. We accepted and decided this appeal under the provisions of section 5112 of title 5, United States Code (U.S.C.)

Position information

The appellant serves as the [bureau] Freedom of Information Act (FOIA) Officer, with responsibility for determining if information requested is releasable, serving as the [bureau] representative to Department meetings of the bureau FOIA Officers to discuss FOIA policy and regulatory changes. He prepares bureau notices and directives to convey changes in disclosure requirements as required, and updates the bureau's FOIA Web site.

The appellant reviews all FOIA requests to determine the releasability of the information or material and the redactions required. The material is collected by the bureau's two FOIA coordinators (one position currently vacant), who also prepare the transmittal letters explaining what is being provided or withheld. The appellant reviews and signs the letters, requesting legal review by the attorneys on the infrequent nonroutine requests. If a FOIA denial were to become the subject of a lawsuit, which has not occurred to date, he would testify in court as the denying official. There were approximately 100 FOIA requests last year, with about half requesting the release of information related to contract awards and the remainder miscellaneous requests. The majority of requests result in some withholding, such as personal information or documents which have not been finalized.

The appellant reported he will be developing a bureau directive to transmit changes in FOIA disclosure policies mandated by the new Administration, but is awaiting Departmental guidance. Since these types of changes normally occur with change in Administrations, there has been no occasion for the appellant to prepare any such directives or similar bureau-wide instructions in the past few years. The appellant serves as the bureau representative to monthly Department FOIA Council meetings, which are primarily for the purpose of the Department conveying information on upcoming FOIA changes. He is also currently serving as chairperson of the Department's Information Technology (IT) Working Group, comprised of FOIA and IT staff from the [other bureau] and the Department, who have been evaluating software packages for potential use as a FOIA tracking system. In this capacity, he makes occasional arrangements for software demonstrations by vendors and participates in the assessments. This Group has been ongoing for about three years. He periodically updates the bureau's FOIA Web site and prepares the bureau's year-end FOIA report to the Department.

The appellant also serves as the [bureau] Privacy Act Officer, with responsibility for implementing, monitoring, and reporting on the bureau's compliance with the Privacy Act, and for implementing certain provisions of the Computer Matching and Privacy Protection Act.

Whenever a new record system or form is proposed for use within the bureau, the originating office must prepare a privacy impact assessment (PIA) identifying whether it will contain any personally identifiable information (PII) and the uses for these data. The appellant reviews these PIAs and, if the proposed system contains PII which will be disclosed outside the bureau as a routine use, prepares a System of Records Notice (SORN) for publication in the Federal Register. This is not required for most cases; the appellant prepared only three SORN's last year. Similarly, he reviews proposed computer matching agreements with other agencies, recommends approval or disapproval to the Chief Counsel, and prepares the associated Federal Register notices. He has prepared two such notices to date, for the background investigations and transit subsidy programs. Both of these were completed several years ago but must be updated every two years, and he reported he is currently working on three additional notices related to the collection of PII for debt records, tour ticket reservations, and the bureau's security system.

He monitors the completion of required Privacy Act training by bureau employees and prepares bureau input to various quarterly and annual Department reports submitted to the Office of Management and Budget (OMB) and Congress, such as the Federal Information Security Management Act (FISMA), section D report, which is an inventory of agency record systems containing PII which require a PIA or SORN. He serves as the bureau representative to various Department committees and task forces related to disclosure and privacy issues. For example, he serves as bureau representative to the Department's Identity Theft Task Force, which is primarily for the purpose of information-sharing on data breaches and associated changes in reporting requirements. He is also the bureau representative to a virtual task force called the Social Security Task Force Elimination, which has periodic data calls to report what actions are being taken to eliminate social security numbers (SSN's) on agency forms. He periodically works with various program staff, such as the drug-testing program, to discuss alternatives to the use of SSN's in their records. He is a member of the Department's FISMA working group, which is convened as needed to convey new FISMA reporting requirements.

We conducted an on-site audit with the appellant on April 21, 2009, and a subsequent interview with his supervisor. We decided this appeal by considering the audit findings and all other information of record furnished by the appellant and his agency, including his official position description (PD) (#13830) and other material received in the agency administrative report on October 9, 2008. Although we find the PD of record contains the major duties and responsibilities the appellant performs, we find it overstates the difficulty and complexity of the work he performs as discussed in this decision.

The appellant's position description is accurate insofar as it encompasses the various duties associated with his overall FOIA and Privacy Act responsibilities that could potentially arise. From a classification standpoint, however, 5 U.S.C. 5112 indicates we may consider only current duties and responsibilities in classifying positions, such as those that have actually occurred in about the past year. Further, the grade of a position may only be affected by duties that are regular and recurring (*Introduction*, section III.F.2) and that occupy at least 25 percent of an employee's time (section III.J).

Series Determination

The appellant's FOIA responsibilities are directly covered by the GS-950, Paralegal Specialist Series. His duties related to ensuring compliance with the Privacy Act and the Computer Matching and Privacy Protection Act are more aligned with the GS-343 Management and Program Analysis Series in that they involve the implementation of administrative mechanisms and management controls to meet the associated statutory requirements.

Guidance provided in the *Introduction* indicates that for positions whose duties fall in more than one occupational group, the series should be determined by considering such factors as the paramount qualifications required, sources of recruitment and line of progression, the reason for establishing the position, and the background knowledge required (section III.G.) Insofar as the knowledge requirements of the appellant's position include knowledge of the FOIA and Privacy Act, knowledge of bureau missions, programs, and functions, and skill in the application of analytical and evaluative methods and techniques to determine compliance with disclosure and privacy laws, and these knowledge requirements have represented the basis for recruitment and line of progression within the bureau, the current GS-343 series allocation is retained.

The position is correctly titled as Management Analyst in that the appellant is engaged in the evaluation of internal administrative operations (i.e., management controls to ensure FOIA and Privacy Act compliance) rather than the bureau's line or operating programs.

Grade Determination

Evaluation using the GS-950 series

The appellant's FOIA duties are properly evaluated by application of the position classification standard (PCS) for the Paralegal Specialist Series, GS-950. This PCS addresses a variety of legal assistance work, such as analyzing the legal impact of legislative developments and administrative and judicial decisions, opinions, determinations, and rulings on agency programs; conducting research for the preparation of legal opinions on matters of interest to the agency; *performing substantive legal analysis of requests for information under provisions of various acts*; and other similar support functions which require discretion and independent judgment in the application of a specialized knowledge of laws, precedent decisions, regulations, agency policies and practices, and judicial or administrative proceedings. Paralegal specialist positions ordinarily encompass a greater variety of legal assistance duties, and consequently require more extensive knowledge of laws, legal precedents, and judicial proceedings, than are contained in the appellant's position. However, since this standard specifically addresses work related to the release of agency records, it provides criteria to which the appellant's FOIA duties can be directly compared.

The GS-950 PCS is written in the Factor Evaluation System (FES) format, under which factor levels and accompanying point values are to be assigned for each of the following nine factors, with the total then being converted to a grade level by use of the grade-conversion table provided in the standard. The factor point values mark the lower end of the ranges for the indicated factor levels. For a position to warrant a given point value, it must be fully equivalent to the overall

intent of the selected factor-level description. If the position fails in any significant aspect to meet a particular factor-level description, the point value for the next lower factor level must be assigned, unless the deficiency is balanced by an equally important aspect that meets a higher level.

The GS-950 standard also includes benchmark job descriptions describing typical work situations in the occupation at various grade levels. These benchmarks include the nine factors and the assigned factor levels. They may be used to evaluate a position under the various factors if the duties described in the benchmark are similar to those being evaluated.

Factor 1, Knowledge Required by the Position

This factor measures the nature and extent of information an employee must understand in order to do the work, and the skills needed to apply that knowledge.

The knowledge requirements of the appellant's position are comparable to Level 1-7 (the highest level described under this factor). At this level, work requires in-depth knowledge of the application of various laws, court and/or administrative decisions and interpretations, regulations, and policies pertaining to the administration of particular types of legal cases and actions, and highly developed, specialized legal skills. This knowledge must be sufficient to perform such duties as analyzing and evaluating the relevance of particular technical evidence or questions and performing extensive and thorough legal research into legislative history, precedent cases, and decisions. Correspondingly, the appellant must have an in-depth knowledge of the application of the FOIA, its implementing regulations, associated court decisions, and current disclosure policy to be able to make independent judgments on the releasability of information and material.

The PCS includes a benchmark description for a GS-11 paralegal specialist with FOIA duties similar to those performed by the appellant. The described position includes the following duties:

Examines and evaluates requests for information under the Freedom of Information and Privacy Acts; researches relevant legislation, regulations, and precedents; and determines if documents or segregable portions of them can be released.

Substantiates rationale for position taken in case of appeal.

Reviews changes in regulations of the Freedom of Information and Privacy Acts and updates and advises other legal personnel and field staff of changes. Consults and assists in formulation of agency regulations regarding the release of information.

In this benchmark description, Level 1-7 is assigned under Factor 1, which requires "knowledge of legal reference sources in agency manuals, reference systems, directives, issuances, precedent decisions, court decisions, and commercial legal publications sufficient to perform extensive and thorough research into the legislative history, precedent cases, decisions and opinions that may be applicable; to evaluate the relevance of and summarize substantive information; to assist in

case preparation; and to insure that information is lawfully released or withheld.” The knowledge requirements of the appellant’s position essentially match this description.

Level 1-7 is credited (1250 points).

Factor 2, Supervisory Controls

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee’s responsibility, and the review of completed work.

The level of supervision under which the appellant works is consistent with Level 2-4 (the highest level described under this factor). At this level, the supervisor defines the objectives and scope of the work. The employee independently plans and carries out assignments and coordinates with agency legal staff and staff of other Federal or non-Federal activities, but keeps the supervisor informed of potentially controversial actions or issues with far-reaching implications. Completed work is reviewed only in terms of productivity and effectiveness in meeting requirements.

This basically characterizes the type of supervision the appellant receives. He coordinates and carries out his work fully independently. Since he is regarded as the bureau’s expert on information release under the FOIA and signs outgoing responses, individual work products are not technically reviewed. However, he is expected to recognize unprecedented FOIA requests requiring legal consultation.

Level 2-4 is credited (450 points).

Factor 3, Guidelines

This factor covers the nature of the guidelines used and the judgment needed to apply them.

The guidelines used by the appellant match Level 3-3. At this level, guidelines are available but not completely applicable. For example, many factual situations or issues may be encountered which do not appear to be the same as earlier situations, or the connection between the factual situation and the legal question is not clear. There are many related precedents that must be analyzed to determine which most nearly fit the situation, and the employee must use considerable judgment in interpreting and adapting guidelines to specific issues.

As at Level 3-3, the appellant’s work is guided by Department regulations and policies pertaining to the release of records under the FOIA, which specify the exemption criteria for withholding information, supplemented by recent court decisions. Since these criteria are generally stated, the appellant must discern their intent in making judgments as to what specific information should be released or redacted.

The position does not meet Level 3-4. At this level, guidelines are limited to basic legislation, implementing regulations, and agency policies which must be analyzed for general application. The more specific guidelines typically applied at lower levels are of limited use as the legislative

histories or precedent decisions are ambiguous or in conflict. The employee must interpret and apply guidelines and precedents in nonroutine situations and evaluate the applicability of guidelines on issues where conflicting decisions have not been resolved or where factual situations vary so widely that it is highly questionable which precedents may apply.

Although the appellant's work requires a good deal of judgment, its nature is not such that it involves resolving cases where conflicting legal precedents exist. The judgment is used in determining exactly what information should be redacted because it falls under one of the various exemption criteria, e.g., whether prohibited information could be discerned or inferred from the release of certain other information. However, it is generally clear which information is releasable. In those infrequent "nonroutine situations" with conflicting or ambiguous legal precedents, the appellant is expected to request legal review by one of the attorneys. In other words, the difficulty lies primarily in *applying* the guidelines, which is more indicative of Level 3-3, rather than in actually interpreting them or in determining which of several ambiguous or conflicting precedents are governing in a particular case.

Level 3-3 is credited (275 points).

Factor 4, Complexity

This factor covers the nature, number, variety, and intricacy of the tasks or processes in the work performed, the difficulty in identifying what needs to be done, and the difficulty and originality involved in performing the work.

The complexity of the appellant's work is comparable to Level 4-3. At this level, work includes varied duties involving different and unrelated processes and methods, such as case or issue analysis; legal research; interviewing claimants or potential witnesses; summarizing and explaining case files; and preparing exhibits. The employee must analyze the information, identify missing information that requires additional research or investigation, identify the appropriate reference source, and develop plans to complete the assignment. The employee must identify the legal or factual issues in the case, locate precedents, and develop a legally supportable conclusion.

Correspondingly, the appellant must review the FOIA request to discern the information being requested, identify the information which should be withheld based on the intent of the FOIA and its implementing regulations, court decisions, and current policy, and specifically identify the legal basis for denying information.

The position does not meet Level 4-4. At this level, work involves varied duties encompassing diverse and complex technical issues or problems. Factual situations vary significantly from assignment to assignment and are difficult to ascertain because there is a large body of interrelated facts to be analyzed, information from different sources is sometimes in conflict, only indirect evidence is available on some issues, and the interpretation of such evidence is disputed. The employee must reconcile conflicting policies and facts, identify and elicit additional information, and make a number of decisions at various stages such as identifying issues; defining the problem in terms compatible with the laws, policies, or regulations;

interpreting considerable data; and weighing facts in order to formulate a legally and factually supportable conclusion.

This level requires a degree of analysis and evaluation that is not present in the appellant's position. The nature of his work is not such that it involves interpreting evidence, determining additional information needed, and formulating a legal position. The work is limited to determining whether the information requested is releasable and what portions of existing case material should be redacted; the FOIA does not require that records be created or that the material be interpreted or explained. Although the appellant must identify the legal basis for denying a FOIA request, appeals are referred to the legal staff who prepare the defense of the bureau decision.

Level 4-3 is credited (150 points).

Factor 5, Scope and Effect

This factor covers the relationship between the nature of the work, and the effect of the work products or services both within and outside the organization.

The scope and effect of the appellant's work match Level 5-4 (the highest level described under this factor). At this level, the purpose of the work is to advise other paralegal specialists or professional staff on highly specialized problems, monitor the consistency of case decisions throughout the agency, or research unsettled issues and develop proposed agency positions. The work provides the foundation for precedents which have a broad impact (e.g., affect aspects of agency-wide programs). This credits the appellant's responsibility for processing FOIA requests on a bureau-wide basis, providing technical advice to the FOIA coordinators and bureau program components, ensuring that requests are processed consistently, and periodically updating bureau instructions pertaining to the interpretation and application of the FOIA.

Level 5-4 is credited (225 points).

Factor 6, Personal Contacts

This factor includes face-to-face and telephone contacts with persons not in the supervisory chain. The relationship between Factors 6 and 7 presumes that the same contacts will be evaluated under both factors.

The appellant's personal contacts match Level 6-2. At this level, personal contacts are with employees in other parts of the agency such as program specialists and with people outside the agency in a moderately structured setting, such as legal counsel. The appellant's contacts are primarily with program and FOIA staff within the Department.

The position does not meet Level 6-3 where, in addition to contacts within the agency, the employee has contacts with claimants, appellants, their attorneys, potential witnesses, and industry representatives in moderately unstructured settings. The appellant's FOIA responsibilities do not require any appreciable contacts outside the Department.

Level 6-2 is credited (25 points).

Factor 7, Purpose of Contacts

This factor covers the purpose of personal contacts ranging from factual exchange of information to situations involving significant or controversial issues and differing viewpoints and objectives.

The purpose of the appellant's contacts is consistent with Level 7-2. At this level, the purpose of contacts is to explain agency practices; plan and coordinate assignments requiring the cooperation of employees in several agency offices; or persuade other agency personnel with different viewpoints on the merits of releasing or withholding portions of documents requested under provisions of various acts. Correspondingly, the appellant's contacts are for such purposes as explaining what information is releasable under the FOIA and advising other staff on proper redaction.

The position does not meet Level 7-3. At this level, the purpose of contacts is to motivate persons who may be fearful or uncooperative to testify in court or to provide information critical to a case; to gain voluntary compliance from persons who have divergent interests or objectives; to convince persons of the correctness of factual, technical, procedural, or other interpretations despite the existence of other differing interpretations and legal positions; or to otherwise influence skeptical or uncooperative persons by the use of tact, persuasiveness, and diplomacy in controversial legal situations. The appellant's work does not involve these types of contentious situations wherein he would have to personally argue the legal defensibility of his actions.

Level 7-2 is credited (50 points).

Factor 8, Physical Demands

This factor covers the requirements and physical demands placed on the employee by the work situation.

The position matches Level 8-1, which covers sedentary work.

Level 8-1 is credited (5 points).

Factor 9, Work Environment

This factor considers the risks and discomforts in the employee's physical surroundings or the nature of the work assigned and the safety regulations required.

The position matches Level 9-1, which describes a typical office environment.

Level 9-1 is credited (5 points).

Summary

<u>Factors</u>	<u>Level</u>	<u>Points</u>
Knowledge Required	1-7	1250
Supervisory Controls	2-4	450
Guidelines	3-3	275
Complexity	4-3	150
Scope and Effect	5-4	225
Personal Contacts	6-2	25
Purpose of Contacts	7-2	50
Physical Demands	8-1	5
Work Environment	9-1	<u>5</u>
Total		2435

The total of 2435 points falls within the GS-11 range (2355-2750) on the grade conversion table provided in the standard.

Evaluation using the Administration Analysis Grade Evaluation Guide

To the extent that the GS-950 series does not cover all of the appellant's duties, his position is properly evaluated by application of the Administrative Analysis Grade Evaluation Guide (AAGEG), which is used to evaluate positions in the GS-343 series. The AAGEG is also written in FES format.

Factor 1, Knowledge required by the position

This factor measures the nature and extent of information an employee must understand in order to do the work and the skills needed to apply that knowledge.

At Level 1-7, assignments require knowledge and skill in applying analytical and evaluative methods and techniques to issues or studies concerning the efficiency and effectiveness of program operations carried out by administrative or professional personnel. This level includes knowledge of pertinent laws, regulations, policies, and precedents which affect the use of program and related support services in the area studied. Projects and studies typically require knowledge of the major issues, program goals and objectives, work processes, and administrative operations of the organization. This knowledge may be applied in evaluating and recommending ways to improve the effectiveness and efficiency of work operations, or in developing new or modified work methods, records and files, guidelines and procedures, and automating work processes for the conduct of administrative support functions or program operations. The following illustration of Level 1-7 knowledge requirements is provided in the AAGEG:

Thorough knowledge of the service or bureau benefit programs, operations, objectives, and policies along with a comprehensive knowledge of management and organizational techniques, systems, and procedures is applied in performing a wide variety of analytical studies and projects related to management improvement, productivity, management controls, and long-range planning. Assignments include: developing guidance on

techniques for management and methods improvement; analyzing and advising on proposed reorganizations or realignment of functions; and developing manuals and directives covering the administrative aspects of field station operations.

The knowledge required by the appellant's position and the way that knowledge is applied are consistent with this level. His work requires knowledge of the laws, regulations, and legal precedents related to freedom of information and privacy combined with an understanding of work processes and program operations as they relate to the purpose and uses for the information at issue. The application of this knowledge is generally comparable to the Level 1-7 illustration cited above in that the overall purpose of the appellant's position is to ensure the implementation of appropriate mechanisms and management controls to meet the bureau's statutory obligations under the FOIA and Privacy Act.

The appellant's position does not meet Level 1-8. This is the level of the expert analyst who has mastered the application of a wide range of qualitative and quantitative methods for the assessment and improvement of program effectiveness or the improvement of complex management processes and systems. This level requires comprehensive knowledge of the range of administrative laws, policies, regulations, and precedents applicable to the administration of one or more important public programs. Typically, this includes knowledge of agency program goals and objectives, the sequence and timing of key program events and milestones, and methods of evaluating the worth of program accomplishments. The work requires knowledge of relationships with other programs and key administrative support functions within the employing agency or in other agencies. This knowledge may be applied to the design and conduct of comprehensive management studies where the boundaries of the studies are extremely broad and difficult to determine in advance, and where the study objectives are to identify and propose solutions to management problems characterized by their breadth, importance, and severity. For other assignments, this knowledge may be applied in preparing recommendations for legislation to change the way programs are carried out; in evaluating the content of new or modified legislation for projected impact on agency programs and resources; or in translating basic legislation into program goals, actions, and services. The following illustration of Level 1-8 knowledge requirements is provided in the AAGEG:

Expert knowledge of analytical and evaluative methods plus a thorough understanding of how regulatory or enforcement programs are administered to select and apply appropriate program evaluation and measurement techniques in determining the extent of compliance with rules and regulations issued by the agency, or in measuring and evaluating program accomplishments. This may include evaluating the content of new or modified legislation for projected impact upon the agency's programs or resources.

Although the appellant may be considered an expert in the administrative aspects of the FOIA and Privacy Act, the breadth and level of complexity of the knowledge required to perform his actual assignments is not comparable to this level. The requirements of the FOIA and Privacy Act in terms of the volume and variety of issues they address do not approach the "range of administrative laws, policies, regulations, and precedents applicable to the administration of one or more important public programs." The appellant must know what information is releasable under the FOIA in keeping with recent court decisions and current policy, and what information

must be protected under the Privacy Act and under what circumstances. However, his work in effect constitutes individual case assignments rather than “comprehensive management studies” to identify and propose solutions to major management problems. The knowledge required by his position is not applied toward the development or evaluation of new legislation, policies, or program actions but rather toward the application of established principles and criteria regarding disclosure and privacy to limited operating-level assignments, such as responding to a FOIA request or preparing a SORN describing the uses for PII in a proposed record system.

Level 1-7 is credited (1250 points).

Factor 2, Supervisory controls

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee’s responsibility, and the review of completed work.

At Level 2-4, within a framework of priorities, funding, and overall objectives, the employee and supervisor develop overall work plans covering requirements, scope, and deadlines. Within these overall parameters, the employee is responsible for planning and organizing the work, estimating costs, coordinating with staff and management, and conducting all phases of the work. The employee keeps the supervisor informed of potential controversies or problems with widespread impact. Completed work is reviewed for compatibility with organizational goals and effectiveness in achieving objectives.

At Level 2-5, the employee is a recognized authority in the analysis and evaluation of programs and issues, subject only to administrative and policy direction concerning overall priorities and objectives. The employee is typically delegated complete responsibility and authority to plan, schedule, and carry out major projects, and exercises discretion in determining whether to broaden or narrow studies. The employee’s analyses and recommendations are normally reviewed only for potential influence on broad agency policy objectives and program goals.

Level 2-4 describes work carried out with a high degree of independence and recognized expertise and as such fully represents the manner in which the appellant operates. Level 2-5 recognizes not only independence of action, but also the degree of responsibility and authority inherent in the work as the context for the independence exercised. Level 2-5 is predicated on responsibility for independently planning and carrying out major program activities or projects, with only broad administrative and policy direction. Because the parameters of the work are not clearly defined, the employee has the authority to determine the most productive areas of endeavor.

Unlike Level 2-5, the appellant’s bureau responsibilities are carried out within the context of Department policies and regulations. Major projects related to implementation of changes in the FOIA and Privacy Act are carried out at the Department level. The work for which the appellant is responsible represents ongoing operational activities to implement provisions of these laws at the bureau level rather than the major studies or endeavors to determine how the laws will be interpreted and translated into Department-level polices and regulations.

Level 2-4 is credited (450 points).

Factor 3, Guidelines

This factor covers the nature of the guidelines used and the judgment needed to apply them.

At Level 3-3, guidelines consist of standard reference material covering the application of analytical methods and techniques (statistical, descriptive, or evaluative) and instructions and manuals covering the subjects involved (e.g., organizations, procedures, policies, and regulations). Analytical methods contained in the guidelines are not always directly applicable to specific work assignments. However, precedent studies of similar subjects are available for reference.

The guidelines used by the appellant are comparable to Level 3-3. These guidelines include the FOIA, Privacy Act, their Department implementing regulations and instructions, OMB guidelines, and court decisions. Most disclosure issues under the FOIA are well documented in precedent cases and court decisions. In the infrequent cases where it is unclear whether requested information can be released, the appellant consults with the attorneys for legal interpretation. Similarly, administrative and reporting requirements under the Privacy Act are well defined in terms of the processes to be implemented and the data to be submitted.

The appellant's position does not meet Level 3-4. At this level, guidelines consist of general administrative policies and management and organizational theories which require considerable adaptation or interpretation for application to issues and problems studied. At this level, policies and precedents provide a basic outline of the results desired, but do not go into detail as to the methods that should be used. Within the context of broad regulatory guidelines, the employee may refine or develop more specific guidelines such as implementing regulations or methods for the measurement and improvement of effectiveness and productivity in the administration of operating programs.

The appellant provided no examples of work performed which requires him to adapt or interpret policies and precedents or to determine the methodology to be used. The disclosure requirements of the FOIA do not lend themselves to adaptation or interpretation by the appellant. Determinations as to whether particular materials or information can be released are, for the most part, well precedented; any unprecedented situations are referred to the attorneys for legal determination. The appellant's responsibilities under the Privacy Act are likewise clearly defined, consisting primarily of reviewing PIAs which have been prepared by record system owners in an established format; preparing SORN's for publication in the Federal Register, which consists only of describing the proposed record system and its uses; monitoring the completion of Privacy Act training by bureau employees, the training consisting of modules developed under contract by the Department; and preparing various reports with prescribed content and format. In other words, the appellant is responsible for carrying out a variety of established processes that are largely precedent-based.

Level 3-3 is credited (275 points).

Factor 4, Complexity

This factor covers the nature, number, variety, and intricacy of tasks or processes in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

At Level 4-4, work involves gathering information, identifying and analyzing issues, and developing recommendations to resolve substantive problems of effectiveness and efficiency of work operations. The subjects and projects assigned consist of issues, problems, or concepts that are not always susceptible to direct observation and analysis (e.g., projected missions and functions). Information is often conflicting or incomplete, cannot be readily obtained by direct means, or is otherwise difficult to document. For example, assignments may involve compiling, reconciling, and correlating voluminous workload data from a variety of sources with different reporting requirements and formats, or the data must be cross-checked, analyzed, and interpreted to obtain accurate and relevant information. The following illustration of Level 4-4 complexity is provided in the guide:

Serves as management advisor in the bureau headquarters of an agency (or equivalent organization) with responsibility for performing a range of analytical studies and projects related to field program operations in the areas of management and productivity improvement (including effectiveness of work methods, manpower utilization, and distribution of functions); management controls; and work planning. Assignments typically involve the study of organizations, work processes, or functions that are interrelated. The work requires detailed planning to conduct information gathering; interpretation of administrative records and reports; correlation of information to corroborate facts; and coordination with management representatives.

The complexity inherent in the appellant's position is comparable to Level 4-4. As at this level, the work involves gathering information (e.g., what are the purposes and uses of a proposed system of records), identifying and analyzing issues (e.g., is material being requested under the FOIA releasable), and resolving problems (e.g., are proposed record system changes covered under an existing SORN). Consistent with the illustration described above, the appellant serves as the bureau FOIA and Privacy Act Officer with responsibility for ensuring that all required management controls related to disclosure and privacy are implemented. This requires similar processes of information gathering, interpretation of record system uses, and coordination with program officials.

The appellant's position does not meet Level 4-5. At this level, work consists of projects and studies requiring analysis of interrelated issues of effectiveness, efficiency, and productivity of mission-oriented programs. Typical assignments require developing detailed plans, goals, and objectives for the long-range implementation and administration of the program. Decisions about how to proceed in planning, organizing, and conducting studies are complicated by such factors as changes in legislative or regulatory guidelines or variations in the demand for program services. The work deals less with concrete administrative processes than with subjective issues, such as the relative advantages and disadvantages of centralizing or decentralizing work operations in organizations with several echelons of geographically separated components.

The appellant's work does not require this depth of planning or analysis. The processes carried out by the appellant are established and do not require any significant degree of planning for their accomplishment, and analysis consists of relatively limited considerations such as whether material is releasable under the FOIA or whether the uses of PII within a proposed record system require publication of a SORN. The appellant's work represents the implementation of "concrete administrative processes" rather than the broad analytical studies expected at Level 4-5.

Level 4-4 is credited (225 points).

Factor 5, Scope and effect

This factor covers the relationship between the nature of the work and the effect of work products or services both within and outside the organization.

At Level 5-4, the purpose of the work is to assess the efficiency and productivity of program operations or to analyze and resolve problems in the staffing, effectiveness, and efficiency of administrative support and staff activities. At this level, work contributes to improvement of program operations and/or administrative support activities at different echelons and/or geographic locations in the organization, or may affect the nature of administrative work done in components of other agencies.

At Level 5-5, the purpose of the work is to analyze and evaluate major administrative aspects of substantive, mission-oriented programs, such as evaluating the effectiveness of programs conducted throughout a bureau or service of an independent agency, a regional structure of equivalent scope, or a large, complex multi-mission field activity. The study reports prepared contain findings and recommendations of major significance to top management of the agency and often serve as the basis for new administrative systems, legislation, regulations, or programs.

Level 5-4 relates to determining the efficiency of program operations or administrative support activities at multiple echelons or geographic locations within an agency; i.e., evaluating how well a program or activity is functioning within established parameters. Level 5-5 relates more to determining the effectiveness of the basic design, structure, or regulatory framework of a program; i.e., evaluating the need for new systems, legislation, or regulations. Consistent with Level 5-4, the scope of the appellant's work is limited to carrying out FOIA and Privacy Act processes rather than developing implementing regulations or administrative systems related to disclosure and privacy.

Level 5-4 is credited (225 points).

Factor 6, Personal contacts

and

Factor 7, Purpose of contacts

Under *Persons contacted*, the appellant's contacts match Level 2, where contacts include employees, supervisors, and managers of the same agency (i.e., Department) but outside the

immediate office, in that most of the appellant's contacts are within the Department. Level 3 is not met, where contacts are with persons outside the agency such as consultants, contractors, or business executives in a moderately unstructured setting, or with the head of the employing agency or program officials several managerial levels removed from the employee when such contacts occur on an ad-hoc basis. The appellant's contacts outside the agency are infrequent and conducted within well-defined parameters, such as with software vendors to view demonstrations. Occasional contacts with high-level program management are for such limited purposes as collecting information for the preparation of a SORN.

Under *Purpose of contacts*, Level b is met, where contacts are to provide advice to managers on noncontroversial issues. Level c is not met, as it involves influencing managers to accept recommendations on organizational improvement or program effectiveness where resistance may be encountered due to such issues as organizational conflict or resource problems. The appellant advises management on such issues as whether material must be released under the FOIA or if a SORN must be published before a record system can be established. These determinations are based on regulatory requirements or legal imperatives and are presented to management as such; they are not subjective determinations that would require the type of influence or persuasion expected under Level c.

Level 2b is credited (75 points).

Factor 8, Physical demands

This factor covers the requirements and physical demands placed on the employee by the work assignment.

The position matches Level 8-1, which covers sedentary work.

Level 8-1 is credited (5 points).

Factor 9, Work environment

This factor considers the risks and discomforts in the employee's physical surroundings or the nature of the work assigned and the safety regulations required.

The position matches Level 9-1, which describes a typical office environment.

Level 9-1 is credited (5 points).

Summary

<u>Factors</u>	<u>Level</u>	<u>Points</u>
Knowledge required by the position	1-7	1250
Supervisory controls	2-4	450
Guidelines	3-3	275
Complexity	4-4	225
Scope and effect	5-4	225
Personal contacts/Purpose of contacts	2b	75
Physical demands	8-1	5
Work environment	9-1	<u>5</u>
Total		2510

The total of 2510 points falls within the GS-11 range (2355-2750) on the grade conversion table provided in the standard.

Decision

The appealed position is properly classified as Management Analyst, GS-343-11.